CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42112 of 2015

(Arising out of Order-in-Appeal No. 127/2015(STA-I) dated 27.07.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. PVP Corporate Parks Pvt. Ltd. **...Appellant**
KRM Centre, 9th Floor,
No. 2, Harrington Road,
Chetpet,
Chennai – 600 041.

Versus

Commissioner of GST and Central Excise **...Respondent**
Newry Towers, No. 2054-I,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

<u>APPEARANCE:</u>

For the Appellant : Ms. Sanchita S., Advocate
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

<u>FINAL ORDER No. 41128 / 2025</u>

DATE OF HEARING : 17.06.2025
DATE OF DECISION : 08.10.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42112/2015 has been filed by M/s. PVP Corporate Parks Pvt. Ltd. (hereinafter referred to as the 'Appellants') assailing the Order-in-Appeal No. 127/2015(STA-I) dated 27.07.2015 passed by the Commissioner of Service Tax (Appeals-I), Chennai.

2. Appellants are engaged in renting of immovable property service. The appellant has been regularly paying service tax and also has been filing service tax returns with the department. On review of accounts and settlement with the parties, it was noticed that the Electricity deposits paid by the appellant/tenants in earlier years, had not been shown separately in the books of accounts. Certain entries were passed resulting in reversal of prior year expenses and accounted under Misc. Income.

3. The appellants were issued with a Show Cause Notice No.295/2011 dated 29.08.2011 seeking to demand service tax of Rs.8,83,519/- on reversal of book entries resulting in miscellaneous income and invoking the extended period of limitation. The appellants submitted their reply with supporting case laws to substantiate the following points: -

i. Service tax is not leviable on book reversal entries/damages and the resultant miscellaneous income is not connected with 'renting of immovable property service'.
ii. Show cause notice is time barred.
iii. Penalty is not imposable and relief under Section 80 of the Finance Act is available.

4. The Additional Commissioner of Service Tax, Chennai *vide* Order-in-Original No. 217/2012 dated 11.12.2012 has confirmed the proposals in the Show Cause Notice.

5. Being aggrieved, the Appellant preferred an appeal before the Commissioner (Appeals) who *vide* impugned order in original Order-in-Appeal No. 127/2015 (STA-I) dated 27.07.2015 confirmed the Order-in-Original dated 11.12.2012 demanding service tax and imposition of penalty.

6. Again as aggrieved by the above order, the Appellant has preferred this Appeal before this Tribunal.

7. The Ld. Advocate Ms. Sanchita appeared on behalf of the Appellant who have re- iterated the arguments in the grounds of appeal filed. The Ld. Counsel has mainly argued that: -

i. They had acquired building assets from SSI P Ltd and continued the leasing of property business and there were few omissions in the accounting entries which were rectified later. This gives rise to write back of provisions which resulted in Miscellaneous Income in the year 2009-10.

ii. Service tax is chargeable on the income/consideration received against providing the taxable service under sec.67 of the Finance Act 1994. The appellant had acquired property business from SSI P Ltd/AGS Holding P Ltd in 2008. The books of accounts at the time of takeover, did not provide the details of deposits with the Government authorities/Electricity Board.

iii. The appellant had noticed that a deposit with Electricity Board (Rs.12,35,139/-) was not captured properly and the same was accounted by debiting Electricity Deposit and crediting the 'Misc. Income Head'.

iv. The amount accounted is not to be equated with the consideration towards 'renting of immovable property'.

v. The appellant had received rental deposit of Rs.6,40,00,000/- only from TCS. But TCS had filed suit in the court against the appellant for recovery of Rs.7,56,67,064/- towards rental deposit and other claims.

vi. Further, the appellant did not accept the claim of TCS.

vii. The appellant had also made a counter claim towards damages to interiors/buildings. In the meantime, the auditor of the appellant had pointed out that the appellant had to make provisions for the differential amount of Rs.1,16,67,064/- in the books of accounts in line with Indian Accounting Standard (Ind AS) 37- proviosions, contingent Liabilities and contingent assets issued by the Institute of Chartered Accountant of India in the year 2008.

viii. They had also pleaded that the demands are time barred and penalties are also unsustainable.

ix. They had also placed reliance on the decisions rendered in *Team HR Services Private Limited vs. Commissioner, Central GST vide Final Order No. 51646/2023 dated 15.12.2023* and *VITP Private Limited vs. Commissioner of Central Tax, Hyderabad & others vide Final Order No. A/30070- 30073/2022 dated 08.07.2022* in support of their contentions.

8. *Per Contra*, the Ld. Authorized Representative N. Sathyanarayana appearing for the Revenue, re-iterated the findings in the Order-in-Appeal and submitted that the appeal is liable to be rejected.

9. Heard both sides and considered the rival submissions including the evidence available on appeal records and the case laws relied upon.

10. The issues that arise for determination in this appeal are: -

i. Whether the appellant is liable to pay service tax on the miscellaneous income shown in their financial records and whether it is related to the service of Renting of Immovable Property? and,

ii. Whether the extended period can be invoked and penalty leviable or not in the facts and circumstances of this appeal?

11. A perusal of the appellate records indicate that appellant was issued with a Show Cause Notice seeking to demand service tax of Rs.8,83,519/- after noticing miscellaneous income shown in the financial records of the appellant. The appellant replied that they have acquired this business from M/s. SSIP Ltd. and M/s. AGS Holding P. Ltd. in 2008 and financial records have not provided for deposits with Electricity Board and also security deposits taken from their customers *viz.,* TCS, Tech Mahindra, *etc.*

12. During the personal hearing before the Adjudicating Authority, the appellant has explained that Rs.72,82,636/- was towards EB deposits and refundable security deposits and Rs.13,48,383/- towards the amount collected on damages to 'interiors and building' and these

amounts were not towards the rent and so, no service tax could be demanded on this miscellaneous income. On review of their accounting procedures, certain entries were passed relating to electricity deposits paid by the company and also tenants in the earlier years which were not shown separately in their books of accounts necessitating passing of reversal entries in 2009-2010 for earlier expenses which are accounted under miscellaneous income. As these amounts were not collected from the tenants towards Renting of Immovable Property Service, no service tax can be charged on the miscellaneous income. Whenever there was any instance of damage to the property, necessary negotiations with the tenants were conducted and dues to the tenants were settled and as the miscellaneous income did not pertain towards any service rendered, the payment of service tax on such book entries is not tenable.

13. During the hearing before the Tribunal, the Ld. Advocate Ms. Sanchita has relied upon the decisions rendered by the Tribunal in the case of *Team HR Services Private Limited vs. Commissioner of Central GST, New Delhi vide Final Order No.51646/2023 dated 15.12.2023* and *VITP Private Limited vs. Commissioner of Central Tax, Hyderabad IV & others vide Final Order No. A/30070-30073/2022 dated 08.07 2022* wherein it was held that refundable security

deposits are returned to the customers at the end of the lease period with no interest in terms of Lease Deed entered into and so cannot be treated as a consideration for renting/leasing of immovable property services.

14. In the case of *Samir Rajendra Shag Vs. Commissioner of Central Excise, Kolhapur [2015 (37) STR 154 (Tri.-Mumbai)]* wherein it was held as follows: -

> ***"7.*** *The appellant has contested only the quantum of Service Tax but not the levy of Service Tax. Therefore, we have to consider the issue of quantum of tax on which the appellant has to pay the Service Tax. Admittedly, the security deposit collected by the appellant is refundable at the time of termination of lease/rent agreement. Therefore, the said security deposit cannot form a part of service provided by the appellant. Therefore, on the said amount, Service Tax is not payable. We have examined the copy of the agreement produced before us by the appellant. As per the agreement, the Service Tax is payable separately by the lessee. As the appellant has not recovered Service Tax from the lessee, they may recover separately. Therefore, the contention of the appellant as they have not recovered the Service Tax from the lessee, the rent recovered by them be treated as cum-Service Tax is not acceptable. In these circumstances, we hold that the rent received by the appellant shall be treated as gross value of taxable service and on the said amount the appellant is required to pay Service Tax."*

15. Relying on the decision of the Tribunal Mumbai in the case of *Murli Realtors Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-III [2015 (37) STR 618 (Tri.-Mumbai)]* wherein it was held that the consideration of leasing of the property is the rent and what can be levied to service tax is only the rent charged and refundable security deposits taken

up towards default in payment of utility charges or for damages not being a consideration for leasing of the property, cannot be subjected to service tax.

16. As if the demands are made on book entries / miscellaneous income and other deposits, we find that the same is not a consideration towards renting of immovable property service.

17. Considering the explanation given by the appellant regarding the necessity to make entries resulting in showing some miscellaneous income in their financial records, is not related to provision of immovable property service and as such, the demand of service tax raised is not sustainable. Amounts collected are informed to be deposits with the Electricity Board including tenants' deposits, security deposits taken from the tenants toward the damages to furniture and interiors of rented spaces.

18. The Appellant has argued on applicability of limitation as well. In the present case, the issue of whether renting of immovable property was taxable or not was subject matter of interpretation and matter attained finality only upon the pronouncement of Delhi High Court in the case of *Home Solutions [2011 (9) TMI 46*]. Further, legislature

had made retrospective amendments to this provision of law with effect from 2007.

19. In this regard, the decision in the case of *Northern Operating Systems Pvt. Ltd. [2022 (5) TMI 967-SC],* the Apex Court has held as follows: -

> *"**62**. The revenue's argument that the assessee had indulged in wilful suppression, in this court's considered view, is insubstantial. The view of a previous three judge ruling, in Cosmic Dye Chemical v. Collector of Central Excise (1995) 6 SCC 117 - in the context of Section 11A of the Central Excise Act, 1944, which is in identical terms with Section 73 of the Finance Act, 1994 was that:*
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> > *"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful."*
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> ***63**. This decision was followed in Uniworth Textiles v. Commissioner of Central Excise (2013) 9 SCC 753 where it was observed that "the conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts" is "untenable". This*

view was also followed in Escorts v. Commissioner of Central Excise (2015) 9 SCC 109, Commissioner of Customs v. Magus Metals (2017) 16 SCC 491 and other judgments."

20. Considering the same, we are of the opinion that extended period of limitation cannot be invoked as the said issue itself was interpretative in nature and was subject matter of retrospective amendments.

21. In view of the above findings, the impugned Order-in-Appeal No. 127/2015(STA-I) dated 27.07.2015 passed by Commissioner of Service Tax (Appeals-I), Chennai is ordered to be set aside.

22. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 08.10.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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