CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

(E-Hearing)

Service Tax Appeal No. 51498 of 2018

(Arising out of Order-in-Appeal No. 508-510(SM)ST/JPR dated 12.01.2017 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

M/s Shubham Resorts (P) Ltd. **Appellant**
Village – Syari, Near Tala Mode,
Achrol, Jaipur-Delhi Highway, N.H. 8,
Jaipur – 302002 (Rajasthan)

VERSUS

Commissioner (Appeals), Central Excise & **Respondent**
& Central Goods And Service Tax, Jaipur
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302005 (Rajasthan)

WITH

Service Tax Appeal No. 51499 of 2018

(Arising out of Order-in-Appeal No. 508-510(SM)ST/JPR dated 12.01.2017 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

Shubham Resorts Pvt. Ltd. **Appellant**
Village – Syari, Near Tala Mode,
Achrol, Jaipur-Delhi Highway, N.H. 8,
Jaipur – 302 002 (Rajasthan).

VERSUS

Commissioner (Appeals), Central Excise & **Respondent**
& Central Goods And Service Tax, Jaipur
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302005 (Rajasthan)

AND

Service Tax Appeal No. 51500 of 2018

(Arising out of Order-in-Appeal No. 508-510(SM)ST/JPR dated 12.01.2017 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

Shubham Resorts Pvt. Ltd. **Appellant**
Village – Syari, Near Tala Mode
Achrol, Jaipur-Delhi Highway, N.H. 8
Jaipur – 302 002 (Rajasthan)

VERSUS

Commissioner (Appeals), Central Excise & **Respondent**
& Central Goods And Service Tax, Jaipur

NCR Building, Statue Circle, C-Scheme,
Jaipur – 302005 (Rajasthan)

Appearance

Shri Sanjiv Agarwal, Chartered Accountant – for the Appellant.

Shri S.K. Meena, Authorized Representative – for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: 01/02/2024

Final Order Nos. 54479-54481/2024

Binu Tamta

Challenging the order in appeal dated 12.01.2017 whereby the Commissioner (Appeals) affirmed the demand of service tax on the notional interest on the security deposit collected by the appellant at the time of renting out the property and fixing the monthly rent, the appellant has the filed appeals before this Tribunal. The details of the appeals filed are:

S. No.	Appeal No.	Order-in-Original No. & date	Amount of Service Tax (Rs.)	Adjudicating authority
1.	APPL/ST/JP/282/XII/2014	117(ST)JP-I/2014-ADC dated 14.10.2014	24,88,076	ADC, CE Jaipur
2.	APPL/ST/JP/416/VII/2016	21(ST)JP/2016-17 dated 27.05.2016	10,27,858	ADC, CE Jaipur
3.	APPL/ST/JP/868/VII/2017	20(ST)Dem/2017 dated 25.05.2017	12,48,614	ADC, STD-1 Jaipur

The issue involved in all the appeals are identical and hence the same are being disposed of by this common order.

2. The appellant is registered under the Service Tax in the category of "Renting of Immovable Property Service" under erstwhile section (65) (105) (zzzz)of the Finance Act, 1994 and is

engaged in providing the said services. The appellant apart from renting out the property to the Lessee/tenant had also collected interest free refundable security deposit of Rs.2,64,00,000/- for the period October 2007 to July 2012. The service tax audit was conducted by the department in January 2013 at the premises of the appellant and it was found that the assessee had received the said amount as interest free security against the renting of immovable properties service from the recipients of service, which indicates that the service provider had not computed the taxable value of rent equivalent to notional interest on security against the impugned service as the assessee must have lowered the taxable value of rent equivalent to notional interest on security flowing indirectly from the recipients to them in relation to the service provided. '

3. Show cause notice dated 23.04.2013 was issued alleging that the noticee has earned additional consideration of ₹2, 25, 72,000/- by way of notional interest on this amount of security deposit received from the lessee and the said notional interest is an additional consideration which is liable for payment of service tax in terms of section 67 of the finance Act, 1994, read with rule 3 of the Service Tax (Determination of Value) Rules, 2006. calculating the notional interest at the rate of 18% per annum and therefore service tax amounting to Rs.24,88,076/- was recoverable from them under Proviso to section 73 (1) along with interest under section 75 of the Act. The adjudicating authority confirmed the demand along with interest and penalty. The appellant challenged the order-in-original dated 14.10.2014, however the Commissioner

(Appeals) by the impugned order rejected the appeal. Hence the appellant is in appeal before this Tribunal.

4. The learned Counsel for the appellant has submitted that the amount of notional interest earned on the security amount can be included in the taxable value only if the said amount has nexus with the depression of the prices, i.e., amount of rent charged by the assessee for renting out the properties to the lessee. According to the appellant, neither the advances received by them in the form of security deposit has impacted on lowering down the rental charges collected by them nor the department has discharged the burden of proving that the interest free security deposit has influenced the amount of rent fixed for renting out the properties and therefore no amount of notional interest can be considered as any additional consideration. The learned Counsel relied on the decisions of this Tribunal in support of his contentions.

5. The learned Authorized Representative for the Revenue has reiterated the findings of the authorities below, however along with the synopsis dated 9.11.2023 he has placed on record the order of this Tribunal in **M/s Singhal Premises Pvt. Ltd. Vs Commissioner, Central Excise, Jaipur Final order No. 51314–51317 of 2023 dated 12.09.2023** which once again set the controversy at rest in favour of the assessee.

6. The issue that arises for consideration in all these appeals is whether notional interest on security deposit amount collected by the appellant initially from the customers can be subjected to levy of service tax?

7. The issue is no longer res-integra and has been decided in favour of the assessee by the this Tribunal in **Murali Realtors Private Ltd vs Commissioner of Central Excise, Pune – 2015 (37) STR 618** which was followed in **M/s Singhal Premises, Pvt Ltd Vs Commissioner, Central Excise, Jaipur Final order No. 51314–51317 of 2023 dated 12.09.2023,** where the Bench quoted the relevant para from the earlier decision in Murali Realtors and observed as :

> "8. A Division Bench of this Tribunal in Murli Realtors, while examining a similar issue, observed as follows:
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> > "6.1 Section 67 of the Act, reproduced in para 4.1 above, clearly provides that only the consideration received in money for the service rendered is leviable to Service Tax. The consideration for renting of the immovable property is the amount agreed upon between the parties and on this amount the appellant is discharging Service Tax liability. The security deposit is taken for a different purpose altogether. It is to provide for a security in case of default in rent by the lessee or default in payment of utility charges or for damages, if any, caused to the leased property. Thus, the security deposit serves a different purpose altogether and it is not a consideration for leasing of the property. **The consideration of the leasing of the property is the rent and, therefore, what can be levied to Service Tax is only the rent charged and no notional interest on the security deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on security deposit taken as a consideration for leasing of the immovable property.** Therefore, in the absence of a specific provision in law, as held by the Hon'ble Apex Court in the case of Moriroku UT India (P) Ltd. (supra), there is no scope for adding any notional interest to the value of taxable service rendered. Even in the excise law, under Rule 6 of the Valuation Rules, unless the department shows that the deposit taken has influenced the sale price, notional interest cannot be automatically included in the sale price for the purpose of levy. In the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the security deposit as a consideration received for the services rendered cannot be sustained and we hold accordingly." (emphasis supplied)
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> > **9. A perusal of the aforesaid decision of the Tribunal reveals that since the consideration for leasing of the property is rent, so what can be levied to service tax is only rent and notional interest on the security deposit cannot be subjected to levy of service tax.**
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> > 10. In view of the aforesaid decision of the Tribunal, it has to be held that service tax could not have been levied on the notional interest calculated by the department on the interest fee security deposit collected by the appellant from tenants."

8. Considering the facts of the present case, we find that the appellant had not disputed their liability to pay service tax on the rental amount of the property as they are paying service tax on the same and therefore the dispute is limited regarding the liability to pay service tax on the notional interest earned by them on the amount of security deposits received from the service recipients. Following the binding precedents referred above, we are of the considered opinion that no service tax can be levied on the appellant in respect of the notional interest earned on the security deposits.

9. Since we have decided the main issue in favour of the appellant, it is not necessary to go into the other grounds of challenge raised in the appeal.

10. The impugned orders, therefore deserves to be set aside and the appeals are accordingly allowed.

(Pronounced in open Court)

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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