CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench - Court No. – I

Service Tax Appeal No 30882 of 2017

(Arising out of **Order-in-Appeal** No.64/2013 (V-I) ST, dated 09.12.2013 passed by Commissioner of Customs, Central Excsie and Service Tax, Visakhapatnam)

M/s. Bachina Srinivas .. **APPELLANT**
Flat No.9, 2nd Floor, Rednam Plaza,
Dwarakanagar, 2nd Lane,
Visakhapatnam - 530016

VERSUS

Commissioner of Central Excise, .. **RESPONDENT**
Customs & Service Tax, Viskhapatnam -I
Central Excise Bulding, Port Area,
Visakhapatnam,
Andhra Pradesh - 530035

Appearance
Shri, G. Prabhakar Sastry, Advocate for the assessee.
Shri, A.V.L.N. Chary, Authorized Representative, for the Department.

Coram: Hon'ble Mr. S.K. MOHANTY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. _30927/2020

Date of Hearing:18.02.2020
Date of Decision:18.02.2020

[ORDER PER: MR. S.K. MOHANTY]

Heard both sides and perused the records.

2. The short question involved in this appeal for consideration by the Tribunal is whether, the security deposit collected by the appellant from its tenants for renting of immovable property is liable to service tax under the taxable category of "Renting of Immovable Property Service", defined under Section 65 (90a) read with Section 65 (105) (zzzz) of Chapter – V of the Finance Act, 1994.

3. In this case, the department has confirmed the adjudged demands on the ground that the amount received as refundable interest free advance from the tenants is liable to service tax under Renting of Immovable

Property Service. The issue arising out of the present dispute is no more *res integra* in view of the decisions of this Tribunal in the case of Karad Nagar Parishad Vs. Commissioner C.Ex. & S.T., Kolhapur, 2019 (20) G.S.T.L. 288 (Tri. – Mumbai) and Samir Rajendra Shah Vs. Commissioner of Central Excise, Kolhapur – 2015 (37) S.T.R. 154 (Tri. – Mumbai). It has been consistently held that security amount refundable at the time of termination of lease/rent agreement is not forming part of the taxable service for levy of service tax. Further, in the service tax education guide dated 19.06.2012 issued consequent upon introduction of negative list of services, it has been clarified by CBEC that returnable deposit is in the nature of security and hence, do not represent consideration of service.

4. In view of above, we do not find any merits in the impugned order and accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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