**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

**(1) Service Tax Appeal No.82 of 2010**
**(2) Service Tax Appeal No.83 of 2010**
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.76-77/JSR/2009 dated 10.08.2009 passed by Commissioner (Appeals) of Central Excise & Service Tax,Ranchi)

**M/s Voltas Limited**
(Voltas House, Main Road, Bistupur, Jamshedpur)

**Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Jamshedpur**
(143, New Baradwani, Sakchi, Jamshedpur-831001)

**Respondent**

**WITH**

**(3) Service Tax Appeal No.405 of 2012**
**(4) Service Tax Appeal No.406 of 2012**
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.72-73/JSR/2012 dated 24.05.2012 passed by Commissioner (Appeals) of Central Excise & Service Tax,Ranchi)

**M/s Voltas Limited**
(Voltas House, Main Road, Bistupur, Jamshedpur)

**Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Jamshedpur**
(143, New Baradwani, Sakchi, Jamshedpur-831001)

**Respondent**

**APPERANCE :**

Shri Kumarjit Das, Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO…76735-76738/2023**

DATE OF HEARING : 13.09.2023
DATE OF DECISION : 13.09.2023

**Per Ashok Jindal :**

The issue in all the appeals is common and therefore, all the appeals are disposed off by a common order.

2. The facts of the case are that the appellant is the owner of a building known as "Voltas House" at Jamshedpur . A part of the said building is occupied by the appellant and the same is being used for their own business. A part of the said building is leased out to various lessesees under the various Lease Agreements. The appellant leased out the office premises in the said building and received rental from the parties. The appellant was also providing certain common services and facilities namely, centralized air condition of the office block in the entire building, lift, stand by power from diesel generating set, lighting in common areas and water supply to the said premises, watch and ward from the common areas and maintenance and air conditioning equipment, generator set, water pump and other common facilities. These services were enjoyed by the appellant and as well as other lessee to whom premises were leased out, the appellant received a consolidated service charge from the lessee to whom the portion of the premises have been leased out proportionately on the basis of area of occupancy for provision of the said services.

2.1 The Revenue is of the view that in respect of the ancillary service provided by the appellant, the appellant is liable to pay service tax under the category of "maintenance and repair services" w.e.f. 16.06.2005.

2.2 Therefore, periodical show-cause notices were issued to the appellants and the demand of service tax was confirmed under "Management,Maintenance and Repair Services".

2.3 Aggrieved from the said order, the appellant is before us.

3. The ld.Advocate appearing on behalf of the appellants, submits that the appellants are the owner of a building, namely, Voltas House and a part of the said building has been leased out to various lessees under the various Lease Agreements. The appellant leased out the office premises in the said building and they were receiving rental along with certain amount towards build-up area for the provision of common services and on these amount, the appellant is paying service tax under the category of "renting immovable property" service w.e.f. 01.06.2007.

3.1 It is further submitted by the ld.Advocate that the appellant is providing certain common facilities, which are ancillary to contract of lessee. Therefore, the said maintenance charges are the part of the lease agreement. Therefore, no service tax is payable by the appellants under the category of "Management, Maintenance and Repair" service.

3.2 It is his submission that the appellant was under an obligation to maintain a common area and common facility for the property for themselves as well as for the lessee as per the agreement, therefore, these are not termed as "management, maintenance and repair" service.

3.3 He also submitted that against the show-cause notices dated 29.03.2006 & 20.03.2007 pertaining to the Appeal Nos.ST/82/2010 & ST/83/2012, the ld.Commissioner (Appeals) has observed that "the service tax is payable on actual basis." Therefore, if there is any demand that should be on the basis of actual expenses basis.

4. The ld.A.R. for the Revenue reiterated the findings of the impugned orders.

5. Heard both the parties and considered the submissions.

6. It is a fact on record that as per the lease deed, the appellant was receiving certain fixed amount from the lessee for providing common facility and services. It is also fact on record that when the activity of "Renting Immovable Property services" came into effect, the appellant is paying service tax under the category of "Renting Immovable Property services" for the said amount received by the appellant w.e.f. 01.06.2007.

7. As the appellant is under obligation to provide a common facility for maintenance and repair of the building, in that circumstances, the appellant is required to pay service tax under the category of "management, maintenance and repair service" during the impugned period, but the service tax is payable on the amount recovered from the lessee on proportionate basis less the expenses incurred by the appellant for providing those services.

8. We further take note of the fact that the appellant has paid service tax on the entire amount towards common services and facilities provided by the appellant to lessee w.e.f. 01.06.2007 under the category of "Renting of Immovable Property" Service That amount has to be adjusted against the demand of service tax under the category of "management, maintenance and repair service" before computing the

amount received by the appellant towards common facility service less actual expenses incurred by the appellant in proportionate basis.

9. In that circumstances, the appellant was under an impression that they are liable to pay service tax under the category of "Renting Immovable Property Service and paid the service tax therein. In that circumstances, the allegation of suppression of facts is not sustainable against the appellant. Therefore, no penalty is imposable on the appellants.

10. If, there is any demand of service tax arises on the basis of calculation as directed hereinabove, the same is to be paid by the appellants along with interest.

11. Further, if any charges on the basis of the above calculation for any amount of refund, the same shall be granted to the appellants within three months from the date of receipt of this order.

12. Appeals are disposed off in the above terms.

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

Sd/-
**(Ashok Jindal)**
**Member (Judicial)**

**Sd/-**
**(K.Anpazhakan)**
**Member (Technical)**

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