IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 71026 of 2013

(Arising out of Order-in-Original No. 10/Commr/ST/Kol/2013-14 dated 22.05.2013 passed by the Commissioner of Service Tax Kendriya Utpad Shulk Bhawan (3rd Floor), 180, Santipally, Rajdanga Main Road, Kolkata- 700107)

M/s. ITC Limited **: Appellant**
37 Jawaharlal Nehru Road
Kolkata-700071, West Bengal

VERSUS

Commissioner of Service Tax, Kolkata **: Respondent**
Kendriya Utpad Shulk Bhawan (3rd Floor), 180, Santipally,
Rajdanga Main Road, Kolkata- 700107

APPEARANCE:

Shri Dr. Samir Chakraborty, Sr. Advocate
Shri Agnibesh Sengupta, Advocate
Shri Indranil Banerjee, Advocate for the Appellant

Smt. K. Kalpana, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75596/2025

DATE OF HEARING / DECISION: 03.03.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No. 10/Commr/ST/Kol/2013-14 dated 22.05.2013 passed by the Commissioner of Service Tax, Kolkata, wherein the Ld. Commissioner has confirmed the demand of service tax of Rs.95,06,861/- along with interest and penalty.

2. The facts of the case are that M/s. ITC Ltd (herein after referred as the appellant), as owner of ITC Centre, Kolkata, and ITC Infotech Park,

Bangalore, permitted certain entities to use portions of its said premises under leave and licence agreements. In terms of the said agreements, the licencees concerned were required to pay the monthly licence fee to the appellant for the use and enjoyment of the specified area in the property concerned. In addition to the licence fee, the licencees were to pay for the electricity consumed as well as charges on account of maintenance.

2.1. Electricity at ITC Centre, Kolkata was provided by CESC Ltd. which raised a single bill on the appellant for the entire premises. Such bill was paid by the appellant at the first instance. The amount charged by CESC Ltd. for electricity consumed by the licencees was ascertained on pro rata basis with reference to the area occupied by them and such amount was recovered from the licencees without any mark-up.

2.2. Maintenance of ITC Centre, Kolkata was entrusted to M/s. Greenacre Holdings Ltd. which raised a single bill inclusive of service tax on the appellant for the entire premises. The appellant paid such bill at the first instance. The amount charged by M/s. Greenacre Holdings Ltd. referable to the areas occupied by the licencees was determined on pro rata basis and such amount was recovered from/reimbursed by the licencees without any mark-up.

2.3. Telecommunication service was provided at ITC Centre by M/s BSNL Ltd. and M/s. Bharti Airtel Ltd., who raised bills inclusive of service tax in the appellant’s name which were paid by it in the first instance. In respect of the telephone connections, identified by the telephone number/account number, installed in the areas occupied by the licencees, the amount charged by the said service providers was recovered from by the licencees without any mark-up.

2.4. The service tax authorities obtained the details of the amounts recovered from/reimbursed by the appellant from the licencees at ITC Centre, Kolkata and ITC Infotech Park, Bangalore, in respect of electricity, telephone and maintenance for the material period. A SCN dated 20.04.2012 was issued to the appellant and demanding Service tax of Rs.95,06,861, on the recoveries made by the appellant from the licensees, on the allegation that the appellant had recovered such service tax amount of Rs.95,06,861/- from the licencees but had not deposited the same with the Government exchequer. After due process, the said notice was adjudicated and the demand of service tax made in the notice was confirmed along with interest and penalty. Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

3. The appellant submits that the show cause notice was issued on the allegation that service tax of Rs.95,06,861 was recovered from the licencees but not deposited to Government exchequer. However, in the impugned order, the Ld. Commissioner found that no service tax was recovered by the appellant from the licencees in respect of the cost of electricity, telephone and maintenance. In view of the said finding, the Commissioner should have dropped the proceedings and could not have confirmed the demand as if service tax was "*recovered from the client but not deposited to Govt. exchequer*". After having found against the Department on the ground on which the show cause notice was issued, the Commissioner had

no jurisdiction to confirm the demand on any other ground. Accordingly, the appellant submits that the demand confirmed is liable to be set aside on this ground alone.

3.1. The appellant further submits that the amounts reimbursed by the licencees on account of electricity, telephone and maintenance charges cannot be included in the value of renting of immovable property service. The appellant submits that they did not provide electricity or telephone or maintenance to the licensees. Accordingly, the payments received by them are the reimbursements and they were not expenditure or cost incurred by the appellant in the course of providing renting of immovable property service. The amounts reimbursed by the licencees for electricity, telephone and maintenance were not 'consideration' for any service provided by the appellant in the course of providing renting of immovable property service. Further they got the reimbursements of the actual cost without any mark up. Thus, they acted as 'pure agents' for collecting the charges and paying it to the concerned agencies. Accordingly, the appellant submits that the reimbursements received by them on account of electricity, telephone and maintenance charges are not includable in the assessable value. Thus, they prayed for setting aside the demands of service tax along with interest and penalty confirmed in the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the SCN was issued to the appellant demanding service tax on the allegation

that the appellant has "*recovered service tax from the clients but not deposited the same to Govt. exchequer*". However, we find at para 8.2(b) of the impugned order that the Ld. Commissioner has given the finding that the appellant has not collected the service tax from the licensees. For the sake of ready reference the said finding of the Commissioner in the impugned order is reproduced below:

> *(8.2(b). The noticee submitted that no service tax has been collected from any of the tenants in respect of services in relation to electricity, telephone and/or general maintenance which is pending to be deposited with the Government exchequer. The reason being that the assessee did not render any service in relation to electricity, telephone and/or general maintenance to its tenants and hence the question of charging or collecting any service tax from them did not arise. In this regard they have enclosed invoices raised by them on the tenants. I have examined the said invoices and have found that no service tax has been recovered from the tenants in their Bills or invoice in respect of the cost of electricity, telephone and maintenance service.*

6.1. Thus, we are of the view that after having found against the Department on the ground on which the show cause notice was issued, the Ld. Commissioner should not have confirmed the demand on any other ground. Accordingly, we hold that the demand confirmed in the impugned is not sustainable abd the same is liable to be set aside on this ground alone.

6.2. Regarding merits of the case, we observe that the amounts reimbursed by the licencees on account of electricity, telephone and maintenance cannot be included in the value of renting of immovable property service. The appellant did not provide electricity or telephone or maintenance to the licensees. Accordingly, we observe that the payments received by them are the reimbursements and they were not expenditure or cost incurred by them in the course of providing renting of immovable property service. The amounts reimbursed by the licencees for electricity, telephone and maintenance were not 'consideration' for any service provided by the appellant in the course of providing renting of immovable property service . Further, we observe that the appellant got the reimbursements of the actual cost without any mark up. Thus, we observe that they acted as 'pure agents' for collecting the charges and paying it to the concerned agencies. Thus, we hold that the reimbursements received by the appellant on account of electricity, telephone and maintenance charges are not includable in the assessable value. Accordingly, we set aside the demands of service tax along with interest confirmed in the impugned order. Since the demand of service tax is not sustained, the question of imposing penalty does not arise.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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