

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75809 of 2017

(Arising out of Order-in-Original No. 12/Commr/STA/KOL/16 dated 22.02.2017 passed by the Commissioner of Service Tax Audit Commissionerate Kolkata Kedriya Utpad Shulk Bhawan, 3rd Floor, 180, Shanti Pally, Rajdanga Main Road, Kolkata 700107)

M/s. Forum Project Holding Pvt. Ltd.

Technopolis Building, BP-4,
1st Floor, Sector-V, Salt Lake, Kolkata-700091

: Appellant

VERSUS

Commissioner of Service Tax Audit, Kolkata

Kedriya Utpad Shulk Bhawan, 3rd Floor, 180,
Shanti Pally, Rajdanga Main Road, Kolkata 700107

: Respondent

AND

Service Tax Appeal No. 75810 of 2017

(Arising out of Order-in-Original No. 12/Commr/STA/KOL/16 dated 22.02.2017 passed by the Commissioner of Service Tax Audit Commissionerate Kolkata Kedriya Utpad Shulk Bhawan, 3rd Floor, 180, Shanti Pally, Rajdanga Main Road, Kolkata 700107)

Deepak Agarwal-Manager Accounts

M/s. Forum Project Holding Pvt. Ltd.

Technopolis Building, BP-4,
1st Floor, Sector-V, Salt Lake, Kolkata-700091

: Appellant

VERSUS

Commissioner of Service Tax Audit, Kolkata

Kedriya Utpad Shulk Bhawan, 3rd Floor, 180,
Shanti Pally, Rajdanga Main Road, Kolkata 700107

: Respondent

APPEARANCE:

Shri Tarun Chatterjee, Advocate

MS. Sneha Das, Advocate for the Appellant

Shri D. Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOs. 77078-77079/ 2025

DATE OF HEARING: 24.07.2025

DATE OF PRONOUNCEMENT: 29.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 12/Commr/STA/KOL/16 dated 22.02.2017 passed by the Commissioner of Service Tax Audit Commissionerate Kolkata Kedriya Utpad Shulk Bhawan, 3rd Floor, 180, Shanti Pally, Rajdanga Main Road, Kolkata.

2. The facts of the case are that M/s. Forum Project Holding Pvt. Ltd, Technopolis Building, Salt Lake, Kolkata (herein after referred as the appellant) is a registered assessee for rendering services under under Chapter V of the Finance Act, 1994. The appellant was regular in payment of service tax and furnishing returns.

2.1. On the basis of audit conducted on the books of accounts of the appellant, a Show Cause Notice dated 18-10-2016 was issued to the appellant demanding Service Tax of Rs. 5,58,73,725/- for the period 2011-12- 2014-15 by invoking extended period of limitation. The said Notice was adjudicated vide the impugned Order in Original dated 22-02-2017, wherein the demand of service tax made in the Notice has been confirmed along with interest and equal amount of tax as penalty under Section 78 of the Finance Act,1994. A penalty of Rs.1,00,000/- was also imposed under Section 78A of the Finance Act on the Manager (Accounts) of the appellant Company. Aggrieved against the confirmation of service tax along with interest and penalty, the appellant company and the Manager (Accounts) have filed these appeals.

3. The Summary of the demand under challenge in the impugned order are as under:

Sl. No.	Period	Demand	Issue
1	July,12 to March,2014	Rs.2,677/-	Under reverse charge basis on the amount reimbursement of expenses of Advocate
2.	2014-15	Rs.1,03,652/-	Under RCM, the Service Provider has charged and collected the Service Tax from the appellant, however, it is held that as service recipient the appellant is liable to pay 50% of the tax liability under reverse charge basis
3.	2011-12 to 2014-15	Rs.4,25,95,982/-	Reimbursement of electricity charge, water

			consumption charge, diesel generating charge
4	2014-15	Rs.90,48,885/-	Sale of immovable property by way of long terms lease for 999 years
5	2011-12 to 2014-15	Rs.40,66,835/-	Abatement of Kolkata Municipal Corporation Tax. This demand is accepted, paid together with interest and appropriated.

3.1. Regarding the demand of Rs.2,677/- under reverse charge basis, the appellant submits that the demand is not sustainable on the ground of revenue neutrality. The appellant submits that if at all they are liable to pay the service tax under RCM, then they are eligible to take the credit on the same day itself. Further, the demand in this case has been made by invoking the larger period. In the instant case, there is no element of fraud, collusion or suppression of facts is present. The appellant

submits that they have been filing returns regularly and disclosed all information in the returns filed. Therefore, invocation of the larger period is bad in law. Thus, the appellant submits that the demand confirmed on this count is not sustainable. In support of their contention, the appellant relied on the following decisions:

(i) (a) *Jet Airways (India) Ltd. Versus Commissioner – 2017 (7) G.S.T.L. 135(S.C.)*

(ii) *Commissioner v. V.E. Commercial Vehicles Ltd. - 2019 (31) G.S.T.L. 196 (S.C.)*]

3.2. Regarding the demand of Rs.1,03,652/- confirmed under reverse charge basis, the appellant submits that the service provider has charged, collected and paid Service Tax to the Government account. Therefore, the demand of service tax on the same service again would tantamount to double taxation. In support of their contention, the appellant relied on the decision in the case of *SHREE SAIBABA CHEMICALS INDUSTRIES VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, VADODARA-II, (2025) 28 Centax 158 (Tri.-Ahmd) [06-03-2025]*.

3.3. Regarding the demand of service tax of Rs.4,25,95,982/- on reimbursement of electricity charge, water consumption charge and diesel generating charge, the appellant submits that Service Tax is not payable on reimbursement of electricity charges etc. The appellant states that they have collected the actual amount on the basis of consumption. In support of this claim, the appellant

submitted a Chartered Accountant's Certificate and ledger account, payment particulars from which it can be seen that the amount paid to the WBSEDCL is more than what is collected. The appellant submits that the issue is squarely covered by the decision of this Tribunal in their own group companies appeals, in Forum Mall Management Services Pvt Ltd VS. Commissioner of Service Tax, vide Final Order No. 77044-77045/2024, dated 23-09-2024. The same view has been taken in the decision rendered vide Final Order No.76299/2024, dated 10-07-2024 in the case of M/s.Choicest Enterprises limited Vs. Commissioner of Service Tax, Kolkata. Accordingly, the appellant submits that the demand of service tax confirmed on this count is not sustainable.

3.4. Regarding the demand of Service Tax of Rs.90,48,885/-confirmed in the impugned order, the appellant states that the said consideration has been received against transfer of assignment/sub-lease of leasehold property. The appellant states that they have acquired the property located at Block BP, Sector V, Bidhannagar, Kolkata 700091 from the Government of West Bengal for a period of 999 years on lease with right to assign/sub-lease. The Agreement intended to transfer some office space(s) on outright basis to M/s. Dynamic Commodities Pvt. Ltd, Pranik Healing and Arthatic Yoga Centre and MCKS Pranik Healing Trust. The transfer was done on outright lease basis for the balance leasehold period on receipt of the consideration. The Appellant does not have any reversionary right on the property after the permanent transfer of the commercial space together with proportionate right on leasehold land to the M/s. Dynamic Commodities Pvt. Ltd, Pranik Healing and Arthatic Yoga Centre and MCKS Pranik

Healing Trust. The permanent assignment of commercial space together with proportionate right on leasehold land cannot be called as 'lease' and hence it would not fall under the definition of taxable service as defined under Section 65(105)(zzzz) of the Finance Act, 1994. The appellant submits that the instant case is squarely covered by the decision of this Bench in the following cases:

(i) LUXMI TOWNSHIP LTD. Versus COMMISSIONER OF CGST & C. EX., SILIGURI, 2023 (79) G.S.T.L. 232 (Tri. - Kolkata) / (2023) 11 Centax 238 (Tri. - Kolkata) and

(ii) SAFARI RETREATS PVT. LTD. VS. PRINCIPAL COMMISSIONER OF G.S.T. AND C.EX. BHUBANESWAR, (2025) 26 Centax 53 (Tri. -Cal)

3.5. Thus, the appellant submits that the consideration received in this case was not towards 'rent' and therefore, the demand confirmed on this count is not sustainable.

3.6. In view of the above submissions, the appellant prayed for setting aside the demands of service tax along with interest and penalties confirmed in the impugned order and allow their appeal.

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

5. Heard both sides and perused the appeal records.

6. Regarding the demand of service tax of Rs.2,677/- under reverse charge basis, we observe that service tax has been demanded on RCM basis

on the amount of reimbursement of expenses of Advocate. In this regard, the appellant submitted that the issue involved is of revenue neutral situation since the service tax, if any, paid by the appellant under RCM would be available as credit to the appellant on the same day itself. We agree with the submission of the appellant. Further, we observe that the demand in this case has been made by invoking the larger period. In the instant case, we find that there is no element of fraud, collusion or suppression of facts is present. We find that the appellant has been filing returns regularly and disclosed all information in the returns filed. Therefore, we hold that invocation of the larger period is not applicable in this case. In support of this view, we rely on the decision of the Hon'ble Apex Court in the case of *Jet Airways (India) Ltd. Versus Commissioner – 2017 (7) G.S.T.L. 135(S.C.)*. Thus, we hold that the demand confirmed on this count is not sustainable and hence we set aside the same.

7. Regarding the demand of service tax of Rs.1,03,652/- under reverse charge basis, we observe that the service provider has charged, collected and paid Service Tax. Therefore, the demand of service tax on the same service again would tantamount to double taxation. In support of this view, we rely on the decision in the case of *SHREE SAIBABA CHEMICALS INDUSTRIES VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, VADODARA-II, (2025) 28 Centax 158 (Tri.-Ahmd) [06-03-2025]*. Thus, we hold that the demand confirmed on this count is not sustainable and hence we set aside the same.

8. Regarding the demand of service tax of Rs.4,25,95,982/- on reimbursement of electricity charges, water consumption charges and diesel generating charges, we observe that Service Tax is not payable on reimbursement of electricity charges etc on actual basis. The appellant states that they have collected the actual amount on the basis of consumption. In support of this claim, the appellant submitted a Chartered Accountant's Certificate and ledger account, payment particulars. On perusal of the same, we find that the amount paid by the appellant to the WBSEDCL is more than what is collected. We also find that that the issue is squarely covered by the decision of this Tribunal in their own group companies appeals, in *Forum Mall Management Services Pvt Ltd VS. Commissioner of Service Tax*, vide Final Order No. 77044-77045/2024, dated 23-09-2024. The same view has been taken in the decision rendered by this Tribunal vide Final Order No.76299/2024, dated 10-07-2024 in the case of M/s. Choicest Enterprises limited Vs. Commissioner of Service Tax, Kolkata. The relevant part of the said decision is reproduced below:

"8.2. Regarding the demand of Service Tax of Rs.42,03,908/ on 'reimbursement of electricity charges', we observe that the assessee-appellant has collected electricity charges on actual consumption basis and paid the same to CESC Limited. Hence, there is no liability on the assessee-appellant to pay Service Tax on this amount of reimbursement collected from the shop owners, as they acted as a 'Pure agent'.

8.2.1. We also find that this issue is no longer res integra as this Bench has already

examined this issue in the case of Choicest Enterprises Limited v. Commissioner of Service Tax, Kolkata vide Final Order No. 76299 of 2024 dated 10.07.2024 in Service Tax Appeal No. 76307 of 2014 (CESTAT, Kolkata) wherein it was observed as under: -

"10. Further, we take note of the fact that in the case of ICC Reality(India) Private Limited (supra), this Tribunal held that no service tax is payable for providing electricity. In that circumstances, the Tribunal has held as under :

"We have gone through the Lease Agreements. As per the terms and conditions of the Lease Agreements, the tenants have to pay electricity charges directly to the MSEB and the appellants are also providing electricity through generator set in case there is a power failure and the appellants are charging for the same. We find that electricity is specifically covered under Tariff Heading 27 of the Central Excise Tariff Act. We find that as per the provisions of Maharashtra Value Added Tax Act, 2002, electricity is also covered under Schedule A sl.no.20 and charged to Nil rate of tax. In view of this, we find the electricity is goods chargeable to duty under Central Excise Tariff as well as under the Maharashtra Value Added Tax Act, 2002. Therefore, the supply of electricity to tenant amounts to sale of goods and not supply of service. Further the Notification No.12/03 ST dated 20/6/2003 exempt from service tax, any value of goods supplied by service provider to service recipient. Further we find that the Commissioner of Central Excise Pune. III vide Order-in-Original dated 28.11.2011 relied upon by the appellants dropped the proceedings which were initiated on the same ground in the case of M/s. Panchshil Tech Park Ltd. The Commissioner of Central Excise in the

adjudication order held that electricity is goods and chargeable to Nil excise duty. The decision of the adjudicating authority is accepted by the Revenue as per the communication dated 26.9.2012 by the Commissioner of Central Excise, Pune.III. The present appellants are also under the jurisdiction of Pune III Commissionerate."

11. Therefore, we hold that the electricity charges are not liable to service tax."

8.2.2. By relying on the decision cited supra, we hold that the demand of Service Tax of Rs.42,03,908/- confirmed on reimbursement of electricity charges is not sustainable. Accordingly, we set aside the demand on this count."

8.1. Thus, by relying on the decisions cited supra, we hold that the demand of service tax confirmed on this count is not sustainable and hence we set aside the same.

9. Regarding the demand of Service Tax of Rs.90,48,885/-confirmed in the impugned order, we observe that the said consideration has been received against transfer of assignment/sub-lease of leasehold property. We find that the appellant has acquired the property located at Block BP, Sector V, Bidhannagar, Kolkata 700091 from the Government of West Bengal for a period of 999 years on lease with right to assign/sub-lease. The Agreement intended to transfer some office space(s) on outright basis to M/s. Dynamic Commodities Pvt. Ltd, Pranic Healing and Arthatic Yoga Centre and MCKS Pranic Healing Trust. The transfer was done on outright lease basis for the balance leasehold period on receipt of the consideration. The Appellant does not

have any reversionary right on the property after the permanent transfer of the commercial space together with proportionate right on leasehold land to the M/s. Dynamic Commodities Pvt. Ltd, Pranik Healing and Arthatic Yoga Centre and MCKS Pranik Healing Trust. Some of the relevant provisions of the said Agreement are reproduced below:-

Clause 4 – Transfer of the office space together with proportionate share of undivided land, mutation of the office space in the name of the buyer.

Clause 7 – Status of the premises – 999 years lease with UD and

Clause 8 – Consideration – Total consideration for the transfer.

Clause 9 – payment of property tax, the buyer shall pay Property Tax, levies, duties etc to the Municipal Corporation w.e.f.01-06-2014.

9.1. From the Clauses of the agreement reproduced above, we find that that the clauses of the agreement clearly indicate that the said agreements were not for 'renting' but for outright transfer of the property. In this regard, we observe that the permanent assignment of commercial space together with proportionate right on leasehold land cannot be called as 'lease' and hence it would not fall under the definition of taxable service as defined under Section 65(105)(zzzz) of the Finance Act, 1994.

9.2. We find that the issue involved in this case is squarely covered by the decision of this Bench in the case of *LUXMI TOWNSHIP LTD. Versus COMMISSIONER OF CGST & C. EX., SILIGURI, 2023 (79) G.S.T.L. 232 (Tri. - Kolkata) / (2023) 11 Centax 238 (Tri. - Kolkata)*.

9.3. We also find that the decision of this Tribunal in the case of *SAFARI RETREATS PVT. LTD. VS. PRINCIPAL COMMISSIONER OF G.S.T. AND C.EX. BHUBANESWAR*, (2025) 26 Centax 53 (Tri. -Cal) is squarely applicable to the facts and circumstances of this case. The relevant part of the said decision is reproduced below:-

10. Section 54 of the Transfer of Property of Act, 1882, reads as under:

'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised".

It is an admitted fact on record that the appellant has transferred the leasehold rights of the immovable property for one time consideration termed as SubLease Premium".

10.1. The State Govt of Odisha requires stamp duty to be paid on such transactions, treating the same as deemed sale. Accordingly, the appellants have paid the requisite stamp duty on the total consideration received from the buyers.

10.2. It is also observed that the appellant has received the lumpsum amount as consideration from the buyers on a one-time basis. There is no evidence that the appellant has been collecting the amounts regularly on account of Lease. Thus, it gets clarified that the appellant has not received any amount as rent but the amount received is in the nature of amount towards purchase of constructed space for commercial use

10.2.1. In the cited judgement of the Madras Hon'ble High Court in the case of A.R. Krishnamurthy and AR. Rajagopalan v. Commissioner of Income Tax, Madras, [1981] 6 Taxman 289/133 ITR 922 (Madras), the activity of

lease, consideration thereof have been discussed in detail. The relevant portion of the decision is reproduced below : -

"Section 105 of the Transfer of Property Act defines a lease of immovable property as "a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent". A lease thus consists of a right to the possession and use of the property owned by some other person. It is an outcome of the separation of ownership and possession. The lessor of the land is the who owned and possessed it, but has transferred the possession of it to another. The price paid for the transfer of possession or the right to enjoy the property is called the premium under section 105 of the Transfer of Property Act. The periodical payments made for the continuous enjoyment of the benefits under the lease are called rents or royalties."

10.2.2. As per this judgment, in case of Renting or Leasing, the Lessee makes periodical payments for the continuous enjoyment of the benefits under the lease. When such payments are not made on periodical basis, the amount paid cannot be equated to 'Rent'.

10.3. The Hon'ble Apex court in the case of Commissioner of Income Tax v. The Panbari Tea Co. Ltd. [[1965] 57 ITR 422 (SC)], had the occasion to differentiate between the 'Premium' and 'Rent'. The relevant portion of this decision is extracted below:-

"Under section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of

crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the so-called premium is a fact advance rent and in others rent is deferred price. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the court, having regard to the other circumstances, to ascertain the intention of the parties. Bearing the said principles in mind let us scrutinize the lease deed dated March 31, 1950. Under that document interest in two large tea estates comprising 320 acres and 305 acres respectively under tea, along with the bungalows, factory buildings, houses, godowns, cooly lines and other erections and structures, was parted by the lessor to the lessee for a period of 10 years, and during that period the lessee could enjoy the said tea estates in the manner prescribed in the document. Under the document, therefore, there was a transfer of substantive interest of the lessor in the estates to the lessee and a conferment of a right on the lessee to use the said estates by exploiting the same. Under clause 4 of the lease deed for the transfer of the right a premium of Rs. 2,25,000/- had to be paid to the lessor and for using the estates the lessee had to pay an annual rent of Rs 54,000/-. Both the premium and the rent were payable in instalments in the manner provided in the document. The parties were businessmen presumably well-versed in the working of tea estates. They must be assumed to have known the difference between the two expressions "premium" and "rent", and they had designedly used those two

expressions to connote two different payments. The annual rent fixed was a considerable sum of Rs. 54,000 and the premium, when spread over 10 years, would work out to Rs. 22,500 a year. There is no reason, therefore, to assume that the parties camouflaged their real intention and fixed a part of the rent in the shape of premium. The mere fact that the premium was made payable in instalments cannot obviously be decisive of the question, for that might have been to accommodate the lessee."

10.3.1. This judgement clarifies that while the Premium or Salami is a one-time payment, the 'rent is payable at regular intervals. It also recognizes that in trade and commerce practice of payments on account of premium and rent exists.

10.4. The issue as to whether the Service Tax is payable on One time premium' in case of long term leasing, was before the Tribunal in the case of Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Noida 102015 (38) S.T.R. 1062 (Tri-Del)). The relevant extracts are reproduced below :-

"10. Whether the Service Tax is chargeable only on the lease rent or also on one time premium amount charged in respect of long term leases?

10.1 A lease is a transaction, which has to be supported by consideration. The consideration may be either premium or rent or both. The consideration which is paid periodically is called rent. As regards premium, the Apex Court in the case of Commissioner of Income Tax, Assam and Manipur v. Panbari Tea Co. Ltd. reported in (1965) 3 SCR 811 has made a disjunction between premium and rent observing that when the interest of the lessor is parted with for a price, the price paid is premium or salami, but the periodical payments for continuous enjoyment are in the nature of rent, the former is a Capital Income and the latter is the revenue receipt. Thus, the premium is the price paid for obtaining the lease of an immovable property. While rent, on the other hand, is the payment made for use and occupation of the immovable property leased. Since taxing event under Section 65(105)(zzzz) read with Section 65(90)(a) is renting of immovable property. Service Tax would be leviable only on the element of rent ie. the payments made for continuous enjoyment under

lease which are in the nature of the rent irrespective of whether this rent is collected periodically or in advance in lump sum. Service Tax under section 65(105)(zzzz) read with Section 65(90a) cannot be charged on the "premium" or salami paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee as this amount is not for continued enjoyment of the property leased. Since the levy of Service Tax is on renting of immovable property, not on transfer of interest in property from lessor to lessee, Service Tax would be chargeable only on the rent whether it is charged periodically or at a time in advance"

10.4.1. In the above case, the Tribunal has relied upon the decision of the Hon'ble Supreme Court in the case of Panbari Tea Co., cited supra, while examining as to whether Service Tax is payable when an amount is being paid on lumpsum basis for long term basis. It has been concluded that only when the amounts are paid at regular intervals, the same can be viewed as 'Rent'. Since only the rent received is exigible to Service Tax under the classification of 'Renting of Immovable property', the Tribunal has held that amount received in lumpsum on one time basis on account of long term lease would not require any Service Tax payment.

10.5. We also observe that the appellant has placed reliance on the decision of the CESTAT at Kolkata in the case of Bengal Silver Spring Projects Ltd. v. Principal Commissioner of Service Tax - I vide Final Order No. 77501 of 2024 dated 14.11.2024 in Service Tax Appeal No. 76203 of 2016, wherein it has been held as under: -

"2. Brief facts of the case are that the appellant had entered into an agreement with Kolkata Municipal Corporation (KMC in short) to develop and maintain 8-acres of land. As per the lease agreement with KMC, appellant is entitled to all the construction / erection / structure of any nature whatsoever as the absolute owner thereof and to enter into agreement for transfer of its leasehold rights together with the constructed areas belonging to it. Accordingly, the appellant sub-leased the properties to various parties. In respect of the land to be mutated by the sub-lessee in their name, the sub-lessee is deemed to be

the lessee of the said plot and has to apply to KMC for renewal of lease after expiry of the 99 years lease period. After mutation, the full rights and title goes in favour of the sub-lessee, subject to renewal of the original deed after its expiry. Therefore, the appellant treated the said transaction as 'sale of leasehold rights' and not paid service tax on the outright transfer of lease hold rights. However, the department considered the transaction of long term lease undertaken by the appellant as a taxable service liable for service tax under the category of 'Renting of immovable property service'. The department considered the one time Premium/ Salami received by the appellant from the sublessee as consideration towards the taxable service namely, 'Renting of Immoveable Property Service'.

6.3 We observe that the Appellant does not have any reversionary right of the property after the permanent transfer of their leasehold rights to the respective sub-lessee. It is only the assignees who have the right to get the lease renewed in their favour after completing the formalities directly with the KMC and the Appellant does not have any role in this regard. We observe that once they received the one-time salami/premium from the said sub lessees, the appellant cannot be said to be a 'lessor' of the said leasehold property for the purpose of levy of service tax. Since the leasehold right along with obligations are permanently assigned in favour of the assignees herein and the property would not come back to the Appellant, we hold that the transaction cannot be considered as sub-lease of property thereby attracting service tax liability under "Renting of immovable property".

6.4. We observe that a similar view has been taken by this bench in the case of Luxmi Township Ltd. Versus Commissioner CGST & C. Ex., Siliguri [2023 (79) G.S.T.L. 232/(2023) 11 Centax 238 (Tri.-Cal)].,

wherein on similar facts and circumstances this Tribunal has held as under:

33. In view of the decisions mentioned above, it is clear that consideration, i.e. one time payment, in the form of Premium or Salami and consideration in the form of 'rent' connotes two different types of consideration. In the instant case, we observe that the Appellant has not received any 'rent' from the assignees and the rent is payable by the assignees to the state of West Bengal through DLLRO. Accordingly, we hold that the premium or salami paid to the Appellant for transfer of interest in the property, is not exigible to the service tax as held by the Tribunal in the case of Greater Noida Industrial Development Authority v. Commissioner of Central Excise and Service Tax, Noida.

6.4. In this case, we observe that the appellant has only received the one time premium as the consideration. There was no periodical rent payment. Accordingly, we hold that the permanent transfer of lease hold right by appellant to various parties would not be liable to Service Tax."

11. When the factual matrix of the present Appeal is applied to the cited decisions, particularly that of this Tribunal in the cases of Bengal Silver Spring Projects Ltd. (cited supra) and Greater Noida Industrial Development Authority (cited supra), we find that these case laws are squarely applicable to the facts of the present case.

11.1. Accordingly, we hold that the appellant has not rendered any service under the category of 'Renting of Immovable property. Therefore, the confirmed demand of Rs.11,58,32,907/-, is legally not sustainable and we set aside the same and allow the Appeal filed by the appellant on merits to this extent."

9.4. Thus, by relying on the decisions cited supra, we hold that the demand of service tax confirmed on this count is not sustainable and hence we set aside the same.

10. As the demands of service tax confirmed in the impugned order are not sustained, the question of demanding interest and imposing penalty on the appellant company does not arise and hence we set aside the same.

11. Regarding the penalty imposed on the Manager (Accounts), we observe that penalty has been imposed on him for his role in the alleged offence. Since the demand of service tax is held as not sustainable, we observe that the role of the Manager (Accounts) in the alleged offence is also not established. Accordingly, we hold that no penalty is imposable on him and hence we set aside the penalty imposed on Shri. Deepak Agarwal, Manager (Accounts) in the impugned order.

12. In view of the above findings, we set aside the demands of service tax along with interest and penalties confirmed in the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 29.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)