

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

REGIONAL BENCH – COURT NO. 2

**Service Tax Appeal No. 76029 of 2019**

(Arising out of Order-in-Original No. 37/COMMR/ST-II/KOL/2018-19 dated 21.01.2019 passed by the Commissioner of C.G.S.T. and Central Excise, Kolkata South, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107)

**M/s. Forum Mall Management Services Pvt. Ltd. : Appellant**  
10/3, Forum, Elgin Road,  
Kolkata – 700 020

**VERSUS**

**Commissioner of C.G.S.T. and Central Excise, : Respondent**  
Kolkata South Commissionerate,  
G.S.T. Bhawan, 180, Rajdanga Main Road, Shantipally,  
Kolkata – 700 107

**APPEARANCE:**

Shri Tarun Chatterjee, Advocate,  
Smt. Sneha Das, Consultant,  
For the Appellant

Shri R.K. Agarwal, Authorized Representative,  
For the Respondent

**CORAM:**

**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)**  
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 77760 / 2025**

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 24.11.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

The present appeal has been filed against the Order-in-Original No. 37/COMMR/ST-II/KOL/2018-19 dated 21.01.2019 passed by the Ld. Commissioner of C.G.S.T. and Central Excise, Kolkata South, wherein demand of Service Tax amounting to Rs.2,32,48,096/-, inclusive of all cesses, pertaining to the period from October, 2012 to March, 2017, has been confirmed.

2. M/s. Forum Mall Management Services Private Limited, 10/3, Forum, Elgin Road, Kolkata – 700 020 (herein after referred to as the “appellant”) is a private limited company, holding the erstwhile service tax registration no AAHCS1922MST001 and derives income by way of rendition of service under the category of Maintenance or Repair Service prescribed under the relevant provisions of the Finance Act, 1994

2.1. The Service tax Audit conducted by the Audit Officers in respect of F.Y. 2012-13 to FY 2016-17, made the following observations:

(i) that the appellant had received consideration in form of electricity charges with an added element of transmission and distribution loss at a specified percentage,

(ii) that the appellant had not recorded the value received as advances and deposits,

(iii) that the appellant had short paid the service tax under reverse charge mechanism on legal & professional services taken and

(iv) that the appellant has availed inadmissible CENVAT Credit

2.2. On the basis of the observations raised by Audit, a Show Cause Cum Demand Notice bearing no. 02/Commr/Kol Audit-1/FMALL/Kol/18-19 dated 27-08-2018 was issued to the appellant demanding total service tax of Rs 2,41,87,546/-, including cesses.

2.3. The said Notice was adjudicated by the Ld. Commissioner of C.G.S.T. and Central Excise, Kolkata South Commissionerate, wherein he has confirmed the demands of Service Tax, including cesses, along with interest and penalty.

2.4. Aggrieved by the confirmation of the demands of Service Tax, including ceases, along with interest and penalty, the appellant has filed this appeal.

3. The Ld. Counsel appearing on behalf of the appellant submits that the demands have been confirmed in the impugned order on the following issues:

- (i) Non-payment of Service Tax on Bundle Services amounting to Rs.2,32,48,096/-
- (ii) Non-payment of Service Tax amounting to Rs.7,010/- (including all Cesses) on Legal Service under Reverse Charge Mechanism (RCM)
- (iii) Irregular availment of Input Services Credit amounting to Rs.3,75,968/-(including all Cesses)
- (iv) Non-payment of Service Tax amounting to Rs.5,56,472/- (including all Cesses) on Advances received from Customers

3.1. The submissions made by the appellant in respect of the above issues, inter alia, are as under:

4. (i) Non-payment of Service Tax on Bundle service amounting to Rs. 2,32,48,096/-:

4.1. The issue in this case pertains to the amount received by the Appellant from their clients towards electricity charges with an added element of transmission and distribution loss, gas charges, air conditioning charges, etc. It has been alleged that the appellant has provided bundle service and therefore, they are liable to pay service tax under section 66F of the Act. In this regard, the appellant submits that the

said amount has been received as a pure agent in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and therefore they are not liable to pay service tax on the said amount; however, the Ld. Commissioner has observed that 'providing facility of electricity, air conditioning gases through pipelines, etc are naturally bundled in the ordinary course of business without providing these facilities the assessee would not be in a position to expect any tenant. It is mentioned that these provisions constitute the indispensable facilities for the tenants and thus these are to be considered as provision of a single service. The appellant submits that they are not the person who has given the property on rent and they are no way connected to the renting service. Therefore, the question of providing bundle service in the nature of electricity, air conditioning, etc does not arise in any manner whatsoever; the appellant is purely engaged in providing maintenance service and hence the observation of the Ld. Commissioner is factually incorrect.

4.2. It has also been submitted by the appellant that they are providing maintenance service to various shop owners including food outlets and multiplex. The said mall is owned by Heilgers Constructions & Development Pvt. Ltd. and Forum Shopping Mall Pvt. Ltd. and separate tenancy agreements have been entered into in this regard. The appellant is only responsible for providing maintenance service in respect of the shops, food court, Inox, etc. located in mall for which they are recovering maintenance expenditure towards electricity, air conditioning, gas, etc., in pursuance of separate agreement for maintenance service with each of the tenants; the service of maintenance was provided by the appellant

in terms of agreement and recovery of expenditure towards electricity, air conditioning, gas etc. was made in pursuance of these agreements on actual cost incurred basis; simply because the recovery of transmission and distribution loss was made on a particular basis, one cannot assume that the appellant is not a pure agent.

4.3. The appellant further submits that they supply Gas to the food court and collected Gas Charges on the basis of actual consumption; furthermore, gas is goods, therefore, demand of service tax on gas charges is out of question.

4.4. In support of their claims, the appellant submitted the following documents:-

- The sample copy of the invoices regarding gas charges received from the tenant.
- The sample copy of the invoices regarding AC running charges.
- CA Certificate certifying that reimbursement of electricity charges collection is lower than the amount paid to the electricity company.

4.5. It is also specifically submitted that the issue is covered by the *Final Order Nos. 77044-77045 of 2024 dated 23.09.2024* of this Tribunal in appellants own case being Appeal Nos.71210 and 70663 of 2013 .

4.6. Accordingly, the appellant submits that they are not liable to pay service tax amounting to Rs. 2,32.48,096/ (including all cesses), along with the appropriate interest thereon, confirmed in the impugned order.

5. (ii) Non payment of service tax amounting to Rs 7,010/- (including all cesses) on legal service under Reverse Charge Mechanism (RCM)

5.1. With respect to the above demand, the appellant submits that they have admitted this liability and discharged service tax of Rs. 8,901- [even though the demand is only Rs 7,010/- (including all cesses)], along with the interest of Rs. 13,361/- which was communicated vide their reply dated 06-07-2018. Thus, the appellant states that they are not contesting this issue.

6. (iii) Irregular availment of Input Services Credit amounting to Rs. 3,75,968/-(including all cesses):

6.1. In this regard, the appellant submits that originally, the total amount of CENVAT Credit alleged to be irregular as per the Notice was Rs. 4,59,878/- which was reduced to an amount of Rs. 3,75,968/- while confirming the demand in the impugned order. It is submitted that on the basis of their analysis, the CENVAT Credit to be disallowed is only Rs 90,787/-, which they have already discharged vide challan No. 00061 and 00062, dated 24.08.2018 along with applicable interest of Rs.75,670/-, as against the alleged amount of Rs. 4,59,878/-; however, the Ld. Commissioner failed to appropriate the said amount, along with interest, paid by them in the impugned order. Regarding the remaining credit disallowed in the impugned order, the appellant submits that from the annexure C/1 to C/5 it can be seen all the input services are for providing the output services and there is no dispute regarding receipt of the input services and use of input services, hence, rejection of CENVAT Credit is not sustainable.

7. (v) Non Payment of service tax amounting to Rs. 5,56,472/- (including all cesses) on Advance received from customers:

7.1. On this issue, the submission made by the appellant is that the amounts received by them from their clients are in the nature of refundable deposits, which are in the form of Loans. The appellant also submits that they have taken refundable loan from Multiplex Equipment & Services Pvt. Ltd. And M/s. Vidyut Electronics and Electricals Ltd. In support of this claim, the appellant submitted the copy of the loan agreement, Bank Statement and ledger account evidencing receipt of the loan and re-payment of the loan. Moreover, it is pointed out that this issue is squarely covered by *Final Order dated 28.10.2025* of this Tribunal in appellants group companies case being No.75611 of 2017, wherein the appellant is Forum Projects Pvt. Ltd; hence, no service tax is payable by them on the said advances received. Thus, the appellant contends that the demand of Rs. 5,56,472/- confirmed in the impugned order is not sustainable.

8. The Ld. Authorized Representative of the Revenue appearing before us has reiterated the findings in the impugned order.

9. Heard both sides, perused the appeal records and the submissions made by both the sides.

10. Regarding the issue of non-payment of Service Tax on 'Bundle service' amounting to Rs.2,32,48,096/-, we observe that the Ld. Commissioner has given a finding that 'providing facility of electricity, air conditioning gases through pipelines, etc., are naturally bundled in the ordinary

course of business and hence, has held that the appellant is liable to discharge Service Tax in this regard. However, we take note of the fact that the appellant is not the person who has given the property on rent and they are in no way connected to the renting service. Therefore, the question of providing bundle service in the nature of electricity, air conditioning, etc., does not arise. We observe that the appellant recovered from their tenants the mutually agreed system of sub-meter reading, which is collected by them as a 'pure agent'. Thus, we agree with the submission of the appellant that they act as a 'pure agent' and hence the charges collected are not liable to service tax, as held by the Hon'ble Apex Court in the case of *Union of India v. Intercontinental Consultants & Technocrats Pvt. Ltd. [2018 (10) G.S.T.L. 401 (SC)]*. Further, we observe that the appellant is purely engaged in providing maintenance service and they have received the said amount from their clients towards electricity charges with an added element of transmission and distribution loss, gas charges, air conditioning charges, etc., as a 'pure agent' in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. Therefore, we are of the view that the appellant are not liable to pay Service Tax on the said amount as bundled service.

10.1. We also find that the appellant submitted the following documents in support of their claim that they have collected the charges only as a 'pure agent':-

- The sample copy of the invoices regarding gas charges received from the tenant.
- The sample copy of the invoices regarding AC running charges.
- CA Certificate certifying that reimbursement of electricity charges collection is lower than the amount paid to the electricity company.

10.2. We also find that the said issue is covered by the *Final Order Nos. 77044-77045 of 2024 dated 23.09.2024* of this Tribunal in appellant's own case being Service Tax Appeal Nos.71210 and 70663 of 2013.

10.3. Accordingly, by following the ratio of the *Final Order dated 23.09.2024* passed by this Tribunal in appellant's own case in Service Appeal No.71210 of 2013 & anr., we hold that the demand of Service Tax amounting to Rs.2,32,48,096/-, confirmed in the impugned order, is not sustainable and hence, we set aside the same.

11. Regarding non-payment of Service Tax amounting to Rs.7,010/- (including all cesses) on legal service under Reverse Charge Mechanism (RCM), we find that the appellant have admitted this liability and discharged service tax of Rs. 8,901- (even though the demand is only Rs 7,010/- (including all cesses), along with the interest of Rs. 13,361/-, which was communicated vide their reply dated 06.07.2018. Thus, it is observed that the appellant are not contesting this issue. Accordingly, we uphold the demand of Service Tax, along with interest, as confirmed in the impugned order, on this issue.

12. Regarding the Irregular availment of Input Services Credit amounting to Rs. 3,75,968/-(including all cesses), we find that the Appellant has on their own analysis found that they were not eligible for the CENVAT credit amounting to Rs 90,787/-, which they have already discharged vide challan No. 00061 & 00062, dated 24.08.2018 along with applicable interest of Rs. 75,670/-, as against the alleged confirmed demand of 3,75,968/-(including all cesses), on this issue. However, we find that the Ld.

Commissioner failed to appropriate the said amount along with interest paid by them in the impugned order. Regarding the balance CENVAT credit disallowed in the impugned order, the Appellant submitted that they are eligible for the credit in terms of Rule 2(1) of the CENVAT Credit Rules, which allows CENVAT credit of input services which are used in providing the output services. In this case, there is no dispute that all these services on which credit has been availed by the appellant were used in connection with providing of output services. Thus, we are of the view that all these services fall within the ambit of the definition of 'input services' as provided under Rule 2(1) of the CENVAT Credit Rules. We also find that the appellant has voluntarily reversed the CENVAT credit on certain input services which were not used in relation to providing of 'output services'. Accordingly, we uphold the disallowance of CENVAT credit amounting to Rs 90,787/-, which the Appellant have already discharged vide challan No. 00061 & 00062, dated 24.08.2018 along with applicable interest of Rs. 75,670/-. We set aside the balance CENVAT Credit disallowed in the impugned order.

13. Regarding non-payment of service tax amounting to Rs. 5,56,472/- (including all cesses) on Advance received from customers, we find that the amounts received by the Appellant from their clients are in the nature of refundable deposits. We find that the Appellant have taken refundable loan from Multiplex Equipment & Services Pvt. Ltd. And M/s. Vidyut Electronics and Electricals Ltd. In support of this claim, the appellant submitted the copy of the loan agreement, Bank Statement and ledger account evidencing receipt of the loan and re-payment of the loan. A perusal of these documents reveal that the

Appellant has taken refundable loan and the same has been returned subsequently. We find that the department has raised and confirmed the demand merely on the basis of the nomenclature used for recording the receipts in the Balance Sheet. In reality, all these receipts are in the form of refundable Loans. Hence, we observe that no service tax is payable by them on the said advances received.

13.1. We find that the issue of service tax liability of refundable loans is squarely covered by *Final Order dated 28.10.2025* of this Tribunal in appellants group companies case being Service Tax Appeal No.75611 of 2017, wherein the appellant is Forum Projects Pvt. Ltd. Thus, we hold that the demand of Rs.5,56,472/- confirmed in the impugned order is not sustainable and hence we set aside the same.

14. We further find that the appellant has contested the penalty imposed on them vide the impugned order. On this score, we note that the demands confirmed in the impugned order have not sustained, except to the extent of the demands admitted and paid by the appellant, as discussed in paragraphs 11 and 12 of this Order (supra). The amounts admitted by the appellant were paid by them along with interest before issue of the Notice. Thus, we find that there was no need to issue notice to the extent of the demand which had been admitted and paid by the appellant, before issue of the Notice. Accordingly, we observe that there is no intention to evade payment of tax, on the part of the appellant, established in this case. As the remaining demands confirmed in the impugned order have not sustained, we hold that no penalty is imposable on the appellant. Under these

circumstances, we set aside the penalties imposed on the appellant in the impugned order.

15. In view of the above discussions, we pass the following order:

(i) We set aside the demand of Service Tax amounting to Rs.2,32,48,096/-, including cesses, confirmed in the impugned order, along with interest.

(ii) We uphold the demand of service tax of Rs 7,010/- (including all cesses) confirmed in the impugned order on legal service under Reverse Charge Mechanism (RCM). The amount of service tax of Rs. 8,901- [even though the demand is only Rs 7,010/- (including all cesses)], already discharged by the appellant along with the interest of Rs.13,361/-, is appropriated against this demand upheld.

(iii) The disallowance of CENVAT credit amounting to Rs.90,787/-, along with interest is upheld. This amount which has already been paid by the appellant vide challan No. 00061 & 00062, dated 24.08.2018 along with applicable interest of Rs.75,670/- is appropriated against this demand confirmed and upheld. We set aside the balance CENVAT Credit disallowed in the impugned order.

(iv) The demand of Rs.5,56,472/- confirmed in the impugned order on the advances received, is set aside.

(v) All the penalties imposed on the appellant are set aside.

16. The appeal filed by the appellant is disposed of on the above terms.

(Order pronounced in the open court on 24.11.2025)

Sd/-

**(R. MURALIDHAR)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

Sdd