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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.79457 of 2018

(Arising out of Order-in-Appeal No.504/S/Tax I/Kol/2018 dated 17.08.2018 passed by Commissioner (Appeals) of CGST & Central Excise, Kolkata)

M/s Unmesh Properties Pvt. Ltd.
(21, Hemant Basu Sarani, Kolkata GPO, Kolkata-700001)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Shri Arvind Behati, Chartered Accountant for the Appellant
Shri A.Mukherjee, Authorised Representative for the Respondent

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

FINAL ORDER NO.75768/2026

DATE OF HEARING : 23 JUNE 2026
DATE OF DECISION : 23 JUNE 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.53,60,347/- was confirmed along with interest and an equivalent amount of penalty under Section 78 of the Finance Act, 1994, was also imposed on the appellant.

2. The facts of the case are that the appellant acquired a commercial property, namely "Centre Point", consisting of multiple units. Majority of the units of the said commercial property were sold out by the Appellant. The remaining units were rented out, and service tax was duly discharged by the Appellant on the rent received. The said

property was also managed by the Appellant. To carry out the aforesaid activities, duly registered with the Service Tax authorities under the taxable category "Management, maintenance or repair service" and "Renting of Immovable Property".

2.1 In order to ensure uninterrupted power supply to the occupiers, the Appellant had entered into an agreement with CESC Limited that permitted the Appellant to transform/convert high-tension electricity into low tension electricity and distribute it to the occupiers. The Appellant recovered charges from the occupiers towards such redistribution/sale of electricity. Further, the Appellant, as a financial safeguard, collected a refundable maintenance deposit from the occupiers as a security against potential defaults in the payment of monthly maintenance, electricity, or common expenses.

2.2 Proceedings were initiated vide issuance of periodical Show Cause Notices covering the periods 2007-08 to 2011-12 (SCN dated 16.10.2012) and 2013-14 to 2014-15(SCN dated 14.10.2015). Both the Show-cause notices primarily alleged that the electricity charges recovered from occupants constituted taxable consideration for "management, maintenance, or repair service". The proceedings initiated vide the first Show-cause notice dated 16.10.2012 were subsequently dropped in the favor of the Appellant by this Tribunal vide final order No.75606/2026 dated 18.05.2026.

2.3 The present appeal arises from the second Show-cause notice dated 14.10.2015, which, in addition to reiterating the demand on electricity charges, raised a new demand on the refundable deposits collected from the occupiers towards maintenance, electricity, and common expenses.

2.4 The Appellant submitted a formal reply on 8 December 2015, challenging the allegations on both merits and limitation. Alternatively, the Appellant argued that the benefit of cum-tax valuation should be allowed. In its order dated 27 December 2016, the Ld. Adjudicating Authority accepted this alternate contention, thereby dropping a service tax demand of Rs. 3,18,833. However, the authority disregarded the primary contentions on merits and limitation, confirming the remaining demand of INR 53,60,347.

2.5 Aggrieved by the Order-in-Original, the Appellant preferred an appeal before the Ld. Commissioner (Appeals). By Order-in-Appeal No 504/S.Tax-I/Kol/2018 dated 17 August 2018, the Ld.Appellate Authority dismissed the appeal and upheld the Order-in-Original. The demand on electricity charges was sustained on the grounds that the Appellant lacked a trading licence from the regulatory authority, and the agreement with CESC Limited did not indicate an agency arrangement on behalf of the occupiers. Furthermore, the demand on security deposits was upheld because the maintenance agreement did not explicitly state the deposits were returnable, and the Appellant failed to adduce evidence showing that these funds remained unadjusted.

2.6 Being aggrieved with the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the Ld.Appellate Authority completely overlooked the settled legal position that electricity constitutes "goods", a proposition that is firmly established in the Appellant’s own case and is no longer res integra.

3.1 He further submits that the Learned Appellate Authority failed to appreciate that despite being intangible, electricity falls squarely within the definition of "goods". This precise principle stands conclusively decided in favor of the Appellant in their own case vide Final Order No.75606/2026dated 18.05.2026 (Service Tax Appeal No. 71423 of 2013) by this Tribunal. The issue at hand is further covered by the decision of the Hon'ble Tribunal in Commissioner v. M/s DLF Infocity Developers (Kolkata) Ltd. [2025 (8) TMI 1658-CESTAT Kolkata] whereby, after extensive consideration of various landmark judgments of the Hon'ble Supreme Court, it was categorically held that the supply of electricity to occupiers/tenants constitutes a sale of goods and is entirely outside the ambit of service tax liability.

3.2 It is further submitted that given the settled jurisprudence and the specific facts of the Appellant's case, the recovery of electricity charges cannot be repositioned as a taxable service, and the impugned Order-in-Appeal sustaining such a demand is wholly contrary to law and liable to be set aside.

3.3 It is further submitted that the Appellant collects security deposits from occupiers at a nominal rate of ₹12/- per sq. ft. of the super built-up area solely as a financial safeguard. Under the governing maintenance agreement, these deposits are strictly refundable and can only be adjusted in the event of a default by the occupier in clearing their monthly maintenance, electricity, or common expenses. Therefore, unless these deposits were adjusted by the Appellant the same could not have been construed as a consideration towards the provision of any taxable service. Reference in this regard is invited to Sl. No.5 of Para 2.3.2 of the Education Guide.Further, reliance is being placed on the following judgment which held that refundable maintenance deposit could not be considered as a taxable consideration:

a. The Commissioner, CGST & Central Excise, Jaipur (Raj.) Vs. M/s Maglam Build Developers Ltd. [[2022 (4) TMI 255]
b. M/s KDP Infrastructure Pvt. Ltd. Versus Commissioner of Central Excise & Service Tax, Ghaziabad [2018 (11) TMI 984 - CESTAT ALLAHABAD]

3.4 He further submits that the Ld. Appellate Authority summarily brushed aside the Appellant's contentions by asserting a lack of evidence regarding the non-adjustment of these funds. It is submitted that since no default occurred during the relevant period, the deposits remained unadjusted, untouched, and fully returnable in the Appellant's books. In view thereof, he prays for dropping the service tax demand of Rs. 16,50,247/-.

3.5 Finally, he prays that their appeal be allowed by setting aside the impugned order.

4. The ld.A.R. for the Revenue has supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the following issues are involved for consideration :

(i) whether the amount recovered by the Appellant from occupiers towards redistribution/sale of electricity is exigible to service tax or not ?

and

(ii) whether the maintenance deposits collected by the Appellant from tenant/unit holders could be construed as an advance payment towards provision of a taxable service when such deposits were adjustable only in the event of a default and no evidence adduced to show that these were at all adjusted during the relevant period or not?

Issue (i)

Whether the amount recovered by the Appellant from occupiers towards redistribution/sale of electricity is exigible to service tax or not ?

7. The said issue has been settled by this Tribunal in the appellant's own case vide Final Order No.75606/2026 dated 18.05.2026 in Service Tax Appeal No.71423 of 2013 wherein this has held as under :

> *"6. The sole issue involved in this matter is that whether the supply of electricity and installation of transformer for supply of electricity are liable to taxed under the category of "Management, Maintenance or Repair Service" or not ?*
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> *7. The said issue has been dealt with by this Tribunal in the case of Commissioner of CGST & Central Excise, Kolkata Vs. M/s DLF Infocity Developers (Kolkata) Ltd. reported in 2025 (8) TMI 1658-CESTAT-Kolkata, wherein this Tribunal has observed as under :*
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> > *"6. The sole issue emerges here that the respondents are supplying electricity to their tenants, so whether the supply of electricity is "goods" or not ?*
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> > *7. The said issue has been examined by the by the Hon'ble Madras High Court in the case of Kumbakonam Electric Supply Corporation Ltd. Versus Joint Commercial Tax Officer, Esplanade Division Madras - 1963 (9) TMI 43 -*

Madras High Court, which has been affirmed by the Hon'ble Apex Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur (supra), wherein electricity has been held as goods. Same view has been taken again by the Hon'ble Apex Court in the case of State of AP & Others versus National Thermal Power Corporation Ltd. And Others (supra), wherein after relying on the decision in the case of Madhya Pradesh Electricity Board (supra), it was held electricity as goods.

8. This Tribunal also in the case of ICC Reality (India) Pvt.Ltd. Vs. Commissioner of Central Excise, Pune III (supra), held that once electricity has been held to be goods and the entire transaction of sale of goods and the question of charging service tax on the same, treating it as provision of service, is incorrect and unwarranted.

9. Further, this Tribunal in the case of Radius Water Ltd. Vs. Commissioner of Central Excise & Service Tax, Raipur (supra), which has been affirmed by the Hon'ble Apex Court, wherein it has been held that the transaction involving pure sale of water would not be susceptible to service tax.

10. Further, we find that in the case of Logix Soft Tel Private Limited and Others Vs. Commissioner of Central Excise, Noida (supra), this Tribunal has held as under :

"4. After hearing both sides, we find that admittedly on electricity VAT is charged on the sale of electricity by the Sales Tax Department. Further, distribution of electricity is not a taxable activity under Service Tax, as clarified by Notification No.45/2010–ST. Further, we find that as per the facts noticed in the show cause notice, it is revenue's case that the appellant have sold electricity and not given the service tax of electricity. Accordingly, we find that the show cause notice with respect to sale of electricity as a

distributor under the fact that the Electricity Department provided them with one common meter for the whole building, intrusting upon the appellant to give connection through sub meters to its tenant (s) and thereafter, they collected the amount and paid to the Electricity Department. Thus, the activity is also in the nature of pure agent, being done by the appellant. Accordingly, we hold that the appellant is not liable to pay service tax on the sale of electricity either received from the Electricity Department or supplied from its D.G. Sets and also regarding sale of other consumer goods to the tenants."

11. Admittedly, in this case, the respondent has supplied electricityto their tenants against payment. Therefore, the same will be termed as sale of goods on which VAT has also been discharged. Therefore, no service tax is payable by the respondent. The same view has been taken by the adjudicating authority in the impugned order. Therefore, we do not find any infirmity with the impugned order and the same is upheld."

8. As the supply of electricity is a transaction of sale of goods, therefore, no service tax is payable by the appellant. In view of this, we hold that the appellant is not liable to pay service tax under the category of "Management, Maintenance or Repair Service". Consequently, no service tax is payable by the appellant on account of supply of electricity or installation of transformer. Therefore, we set aside the impugned order. Consequently, no penalty is imposable on the appellant.

9. In these terms, the appeal is allowed with consequential relief, if any."

8. In view of the above decision in the appellant's own case, the Issue No.(i) is no more res integra and the same is covered in favour of the appellant.

Issue (ii)

Whether the maintenance deposits collected by the Appellant from tenant/unit holders could be construed as an advance payment towards provision of a taxable service when such deposits were adjustable only in the event of a default and no evidence adduced to show that these were at all adjusted during the relevant period or not?

8. We find that the appellant collects security deposits from occupiers at a nominal rate of ₹12/- per sq. ft. of the super built-up area solely as a financial safeguard. Under the governing maintenance agreement, these deposits are strictly refundable and can only be adjusted in the event of a default by the occupier in clearing their monthly maintenance, electricity, or common expenses. Therefore, unless these deposits were adjusted by the Appellant the same could not have been construed as a consideration towards the provision of any taxable service. We find that this Tribunal in the case of the Commissioner, CGST & Central Excise, Jaipur (Raj.) Vs. M/s Maglam Build Developers Ltd. [[2022 (4) TMI 255, held as under :

> *"8. After hearing both sides and perusing the records, we find that the appeal is filed by the Revenue under the wrong assumption that the maintenance deposit taken by the respondent from the buyers is to be utilized for maintenance of the complexes and any unutilized amount will be transferred to the society after it is formed. It is,*

therefore, the contention of the Revenue that merely because unutilized amount will be subsequently transferred to the society, the respondent does not get exempted from paying service tax on the amounts collected by it as maintenance deposit.

9. After going through the records of the case, assisted by the learned Counsel for the respondent and the learned Authorized Representative of the Department, it is evident that no amount of the maintenance deposit was to be utilized for maintenance of the complex by the respondent and the entire amount was to be transferred to the society once it was formed and was then to be used for major repairs, etc. As far as the respondent is concerned, it only held the deposit for the society to be formed later. The maintenance done by the respondent during the intervening period was at its own cost. No amount was charged for such maintenance nor was any amount, out of the maintenance deposit, spent by the respondent on the maintenance. In view of this factual position, we find that the respondent has not received any consideration for maintenance of the complexes and the maintenance deposit was only held by it in custody for subsequent transfer to the society.

10. In view of the above, there is no infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, the appeal is dismissed."

9. In view of the decision cited above, we find that the Issue No.(ii) is squarely covered in favour of the appellant.

10. Accordingly, respectfully following the ratio of the above cited decisions, we set aside the demand of service tax along with interest as

confirmed in the impugned order. As the demand of service tax is not sustainable, consequently, no penalty is imposable on the appellant.

11. In view of the above discussions, we do not find any merit in the impugned order and the same is set aside.

12. In the result, the appeal filed by the appellant is allowed with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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