ST - Applicant collecting rent and paying tax under Renting of Immovable Property Service - however, electricity charges collected from tenants not included in value of taxable service - as electricity is 'goods', said charges may not form part of taxable value - waiver of pre-deposit of Rs 5.7 Cr - Stay granted: CESTAT

MUMBAI, NOV 21, 2012: THE applicant is the owner of premises which have several units and were given on rent to various persons. On this rent collected, the applicant is paying Service Tax under the category of 'Renting of Immovable Property Service'. They are also involved in the activity of maintaining and repairing of the building and the applicant are paying Service Tax on this activity also. The department is more than happy to receive these Service Tax payments on time.

However, the CCE, Pune-III has an objection to another activity which the applicant does, objection to the fact that the applicant is not diligent in including the following charges collected from their tenants while paying Service Tax on the activity of 'Renting of Immovable Property'. Inasmuch as the applicant is under an obligation to supply electricity to their tenants and for that a common electricity connection has been taken by the applicant from MSEB and separate meters have been installed in each of the premises and on the basis of reading in the meter the applicant is charging electricity charges from the tenants. Further, when electricity is not being supplied by MSEB, the same is supplied through DG set to the tenants and on that also they are charging electricity charges from the tenants.

It is the Revenue view that electricity charges recovered from their tenants is to be part of the service of 'Renting of Immovable Property Service' and, therefore, a Show-cause notice was issued and the demand of service tax of Rs.2,85,85,512/- was confirmed against the applicant along with interest, apart from penalty of equivalent amount under section 78 of the Finance Act, 1994.

The applicant is before the CESTAT and makes the following submission while seeking a stay of the impugned order -

+ in similar set of facts, in the case of Panchsheel Tech Park Pvt. Ltd. , vide order no. 22-23-24/P-III/ST/COMMR/2011-12 dated 28.11.2012 the proceedings have been dropped against the assessee and that order has been accepted by the Committee of Chief Commissioners vide order dated 14.06.2012.

+ In the impugned order, the applicant has contended before the adjudicating authority that supply of electricity is supply of 'goods' and the same is exempted as per Notification no. 12/2003-ST wherein it has been clarified that supply of goods shall not form part of taxable service.

In the face of the submissions made by the applicant and finger pointed to the o-in-o cited and its acceptance by the Committee, the Revenue representative could not have said anything further.

The Bench observed -

"4. Heard the learned AR and perused the adjudication order passed in the case of Panchsheel Tech Park Pvt. Ltd. (supra). The contention of the applicant that electricity is 'goods' and the same shall not form part of taxable service is clarified by the Notification no. 12/2003. Therefore, we find that the applicant has made out a prima facie case for 100% waiver of the service tax confirmed and penalty imposed. Accordingly, we waive the requirement of pre-deposit of the service tax, interest and penalty and stay recovery thereof during the pendency of the appeal."

Committee Wisdom:

Wisdom is like electricity. There is no permanently wise man, but men capable of wisdom, who, being put into certain company, or other favorable conditions, become wise for a short time, as glasses rubbed acquire electric power for a while. - Ralph Waldo Emerson