

No Service Tax on Electricity Charges (Either from Grid or thru DG Set) reimbursement from Tenants - CESTAT

2013-TIOL-1751-CESTAT-MUM

Appeal No.ST/383, 384, 416, 469 & 504/12-Mum

Arising out of Order-in-Original/ Appeal No. 27-28-/P.III/ST/ Commr /2011-12, P.III/RS/184/2012, 56-57/P.III/ST/ Commr /2011-12 & 63/P.III/ST/ Commr /2011-12,

Dated : 29.02.2012, 30.5.2012, 29.03.2012 respectively

Passed by the Commissioner of Central Excise & Service Tax Pune.III

Date of Hearing: 18.4.2013

Date of Decision: 18.4.2013

- 1) M/s ICC REALITY (INDIA) PVT LTD
- 2) M/s INDIA LAND INFRASTRUCTURE DEVELOPMENT PVT LTD
- 3) M/s CHITRALI PROPERTIES PVT LTD
- 4) M/s EON HINJEWADI INFRASTRUCTURE P LTD
- 5) M/s VANSUM INDUSTRIES

Vs

COMMISSIONER OF CENTRAL EXCISE, PUNE-III

Appellants Rep by: Shri Bhurat Raichandai , Adv. with Shri V Jain, CA for (sr.no. 1,2 & 4) Shri J C Patel, Adv. (sr.no.3) And Shri Shushant Murthy, Adv. (sr.no.5)

Respondents Rep by: Shri Rakesh Goyal , Addl. Commr (A.R.) And Shri P N Das, Commr .(A.R.)

CORAM: S S Kang, Vice President

S K Gaule, Member(T)

ST - Rule 5 of Service Tax (Determination of Value) Rules, 2006 - Applicant collecting rent and paying

ST under Renting of Immovable Property Service - however, electricity charges collected from tenants not included in value of taxable service - As Electricity is goods chargeable to duty under CE 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 - In terms of Notfn . 12/03-ST value of goods supplied by service provider to service recipient is exempt from service tax - Electricity charges cannot form part of taxable value - Orders set aside and appeals allowed: CESTAT [para 9]

Appeals allowed

ORDER NO.A/968-972/13/CSTB/C-I

Per: S S Kang:

Heard both sides Common issue is involved and therefore, these appeals are being taken up together for disposal.

2. The appellants are engaged in providing services of renting of immovable property. Renting of immovable property is chargeable to service tax under the provisions of Section 65(90a) of the Finance Act. The appellants are paying appropriate service tax in respect of rent received from the tenants. Show-cause notices were issued to the appellants on the ground that the appellants had received certain amounts as

reimbursement of electricity charges from the tenants. Show-cause notices were issued invoking the provisions of Rule 5 of Service Tax (Determination of Value) Rules, 2006 which provides if there are expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax.

3. The adjudicating authority confirmed the demand by adding the amounts which are as reimbursement of electricity charges from the tenants in the assessable value for the purpose of service tax as provider of renting of immovable property.

4. The contention of the appellants is that as per the Lease Agreement, tenants are to pay the actual electricity expenses to the MSEB. In some cases when the tenants default in payment of electricity charges, the appellants will pay from their own pocket and subsequently recover the electricity charges from their tenants. In cases where the tenants paid the electricity charges late to the appellants, the appellants also charging nominal interest on such amount. In some cases, the appellants are having one main meter in respect of electricity supply and the appellants are providing sub meters to the tenants and as per the reading of sub meters the appellants have collected the electricity charges and are paying to the State Electricity Board. In the case of M/s. Vansum Industries, the appellants are also supplying electricity from the generator set when there was failure of power supply from the Electricity Board and in such cases the appellants were charging on commercial rate.

5. The contention of the appellants is that the charges in respect of electricity which were recovered on actual basis are nothing to do with the service of renting of immovable property. The charges are to be paid by the tenants directly to the Electricity Board or where the electricity is supplied by the appellants the tenants are to pay on actual consumption. The back up is available where the tenants opted to avail such facility provided by the landlord.

6. The contention of the appellants is that in the case of M/s. Panchshil Tech Park Pvt. Ltd. the adjudicating authority has dropped the proceedings initiated which were on the same ground vide Order-in-Original No. 22-23-24/P.III/ST/ Commr /2011-12 dated 28.11.2011 by the Commissioner of Central Excise, Pune.III. The appellants also received information under the RTI Act that the Revenue has accepted that order. The appellants relied upon the Pune III Commissionerate communication dated 26.09.2012. The appellants are also situated in the same Commissionerate. The appellants also submitted that the electricity being goods, supply of electricity does not amount to service. Under the Central Excise Tariff Act, electricity is covered under Chapter 27 of the Tariff and under the Maharashtra Value Added Tax Act, 2002, electricity is chargeable to Nil rate of tax as per Schedule A 20 to the Act. Hence the charges which are on actual basis recovered from the tenants towards the electricity charges and paid to the Electricity Board or retained by the appellants as the appellants were providing back up by way of providing generator set cannot be added to the assessable value for the purpose of service tax as provider of renting of immovable property service. Appellant also relied upon the provisions of Notification No.12/03 ST dated 20.6.2003 to submit that value of goods sold by service provider to service recipient is exempted from service tax. Appellants have not availed any credit in respect of goods sold i.e. electricity.

7. Revenue reiterated the findings of the lower authorities and submitted that the appellants are liable to pay service tax on the gross amounts as the appellants were receiving the amounts for consumption of electricity by the tenants and these amounts are part of renting of immovable property. Hence the

appellants have to pay service tax on such amounts also as provider of immovable property service. The appellants are providing bunch of services such as renting of immovable property, maintenance and repair services and provides electricity. The main activity of the appellants is renting of immovable property. Hence all the considerations received in respect of renting of immovable property including electricity charges are chargeable to service tax as provider of renting of immovable property. The Revenue also submitted that as per the Lease Agreement, the landlord has to provide electricity load to the tenants and the appellants also undertook to 100% generator back up and the tenants have to pay to the landlord a specific amount to be deposited to the appellants account in respect of such facility. In view of this, the demands are rightly made.

8. We find that the appellants are engaged in renting of immovable property and paying service tax. Show-cause notices were issued on the ground that the appellants were receiving certain amounts of reimbursement of charges from their clients while renting of immovable properties. Therefore, such charges are to be added to the assessable value for the purpose of service tax as provider of renting of immovable properties.

9. 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 sr.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 .

10. In view of the above discussion, we find merit in the contention of the appellants that the electricity charges collected from the tenants cannot be formed part of the assessable value for the purpose of service tax as provider of renting of immovable properties.

11. Impugned orders are set aside and the appeals are allowed.

Source: TIOL