

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos.ST/70503/2016 & 70148/2017-CU[DB]

[FOR APPEAL No.ST/70503/2016-CU[DB]

(Arising out of Order-in-Original No. 40/Commr./Noida-I/2015-16 dated
08/02/2016 passed by Commissioner of Central Excise, Noida-I)

M/s Logix Soft Tel Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Noida-I

Respondent

[FOR APPEAL No.ST/70148/2017-CU[DB]

(Arising out of Order-in-Original No. 12/Commr./ST/Noida/2016-17 dated
16/12/2016 passed by Commissioner of Service Tax, Noida)

M/s IT Enfra Services Pvt. Ltd.

Appellant

Vs.

Commissioner of Service Tax, Noida

Respondent

Appearance:

Shri Abhinav Kalra, Chartered Accountant,
Shri Rajeev Ranjan, Joint Commissioner (AR),

for Appellants
for Respondents

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/02/2018

Date of Decision : 26/02/2018

FINAL ORDER NOs- **70766-70767 / 2018**

Per: Anil Choudhary

The issue in these two appeals is whether the appellants are liable to pay service tax on the sale of electricity by way of sub seller and also whether they are liable to pay service tax on the sale of electricity originated from DG Set.

2. The brief facts as per Appeal No.ST/70503/2016 is that the appellant is registered with the Department for service tax

under the category being BAS and Renting of Immovable Property. They have been regularly paying service tax under the aforementioned categories. In the course of audit the reconciliation was done with respect to the balance sheets with ST-3 returns. Further, some difference was observed. The appellant provided details, that the difference is on account of reimbursement for Security Charges, Advance Rent, Electricity Charges, Car Parking Charges, Maintenance Charges, Consumable Charges, etc. Further, in the impugned order the learned Commissioner have recorded that the appellants have paid service tax on reimbursement and/or collection of amount towards Security Charges, Advance Rent, Car Parking Charges, Courier and Fax charges, Display Fee, Overtime Rent, Telephone Charges, etc. The only dispute remains regarding levy of service tax on reimbursement received on account of electricity charges, consumable (s) goods supplied to the tenants and electric consumable (s) goods supplied to the tenants.

3. Heard the parties.

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.

5. Accordingly, we allow both the appeals and set aside the impugned orders, so far the dispute regarding levy of service tax on reimbursement of electric charges and reimbursement towards supply of consumable goods and electrical goods is concerned. The appellant shall be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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