CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 12087 of 2017

[Arising out of OIA-RAJ-EXCUS-000-APP-028-029-2017-18 dated 27/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Marwadi Shares & Finance Ltd **.....Appellant**
Marwadi Finance Plaza,
Nana Mava Main Road,
Near Iscon Mega Mall,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat- 360001

WITH

SERVICE TAX Appeal No. 12088 of 2017

[Arising out of OIA-RAJ-EXCUS-000-APP-028-029-2017-18 dated 27/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Ketan Marwadi **.....Appellant**
Director Of M/S Marwadi Shares & Finance Ltd.,
Marwadi Finance Plaza,
Nana Mava Main Road, Near Iscon Mega Mall,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

AND

SERVICE TAX Appeal No. 10613 of 2018

[Arising out of OIA-RAJ-EXCUS-000-APP-253-2017-18 dated 22/02/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Marwadi Shares & Finance Ltd **.....Appellant**
Marwadi Finance Plaza, Nana Mava Mgin Road,
Near Iscon Mega Mall,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat- 360001

APPEARANCE:
Shri Sudhansu Bissa, Advocate for the Appellant
Shri. G. Kirupanandan, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A / 11371-11373 /2022

DATE OF HEARING: 11.11.2022
DATE OF DECISION: 14.11.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay Service Tax on the deposit taken by the appellant from their customers as security deposit against towards trading of shares which is subsequently refunded without utilizing the same.

2. Shri Sudhansu Bissa, Learned Counsel appearing on behalf of the appellant submits that in the appellant's own case this tribunal vide order No. A/10338-10339/2022 dated 12.04.2022 held that the deposit taken by the appellant as a security deposit is not liable to Service Tax. Therefore, the issue is no longer *res integra,* as the present case is for different period only whereas facts and legal issue is common.

3. Shri G. Kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the revenue has demanded the Service Tax on the security deposit taken by the appellant from their customer towards operating of the trading account of shares. We find that this issue in the appellant's own case only for a different period has been decided vide order dated 12.04.2022(supra), wherein the following order was passed:

04. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the submissions made at the time of hearing and also the submissions made learned Authorized Representative. The dispute in the present appeals relates to service tax on interest free deposit amount collected by the Appellant from the demat account holders under the Scheme and in lieu of the same Appellant has not collected AMC charges. However, we find that the said "Interest Free Deposit" did not represent value of any taxable service. The said deposit amount was kept with the Appellant as security deposit to adjust the amount in case of any default in making payment by the client. The said deposit amount also refundable to client. We find that in the present matter Appellant also produced Certificate issued by the Chartered Accountant who certify that Appellant have not used the amount collected by them as „Interest Free Security Deposit" from client for any financial operations or for earning any interest and shown the said amount in Balance Sheet as Current Liability. The amount collected by the Appellant from the clients is in fact an interest free refundable deposit and is not towards any advance for a service. It is, therefore, not taxable.

4.1 We further find that Section 67 provides that taxable value is the consideration whether in monetary or monetary form. Therefore, if any benefit accrues to either party which is not in the nature of consideration agreed upon by the parties, the same is not liable to be added to the value of service in terms of Section 67. Further, there is no deeming provision for increasing the value of consideration either in Section 67 or in the Service Tax (Determination of Value) Rules, 2006 framed thereunder. Here, the deposit is taken for a different purpose. Thus, the said deposit serves a different purpose altogether and it is not a consideration for providing service. The „consideration for service" is absent in the present case, therefore, what can be levied to Service Tax is only the consideration received for the service charged and no notional interest on the deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on deposit taken as a consideration for providing the services. Therefore, in the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the deposit amount as a consideration received for the services rendered does not arise.

4.2 We also find that Supreme Court in Commissioner of Service Tax v. M/s. Bhayana Builders 2018 (10) G.S.T.L. 118 (S.C.), while deciding the appeal filed by the Department against the decision of the Tribunal, also explained the scope of Section 67 of the Act. The Supreme Court observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The observations are:

> *"The amount charged should be for "for such service provided" : Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a*

consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply of goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined."

The aforesaid view was reiterated by the Supreme Court in Union of India v. Intercontinental Consultants and Technocrats [2018 (10) G.S.T.L. 401 (S.C.)] and it was observed that since service tax is with reference to the value of service, as a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

4.3 We also find that issue of addition of notional interest on refundable security deposit in the value of service has already been settled by the Tribunal in the following Judgments.

(i) In the case of Kalani Infrastructure Pvt. Ltd. - 2018 (8) TMI 247 the Tribunal also took the same view and held as under:-

"6. The case of the department is that in addition to the service tax payable on rent, the liability for the tax also extends to the notional interest accuring on the lump sum deposit received by the Appellant from the lessee. We find that such a stand is not justified particularly in view of the decision of the Tribunal in the case of Murli Relators Pvt. Ltd. (supra) cited by the Appellant in their support. The Tribunal observed as follows: 6.3 In the case before us, there is not even an iota of evidence adduced by the Revenue to show that the security deposit taken has influenced the price i.e. the rent in any way. In the absence of such evidence, it is not possible to conclude that the notional interest on the security deposit would form part of the rent. We also do not find any reason for adopting a rate of 18% per annum as rate of interest. Adoption of such an arbitrary rate militates against concept of valuation. In view of the foregoing, we hold that notional interest on interest free security deposit cannot be added to the rent agreed upon between the parties for the purpose of levy of service tax on renting of immovable property."

(ii) In the case of Murli Realtors Private Limited Others. v. Commissioner of Central Excise, Pune-III [2015 (37) S.T.R. 618 (Tri. - Mumbai)], a Division Bench of the Mumbai Tribunal made the following observations with regard to the security deposit towards the renting of immovable property and the observations are as follow :

"6.1 Section 67 of the Act, reproduced in para 4.1 above, clearly provides that only the consideration received in money for the service rendered is leviable to Service Tax. The consideration for renting of the immovable property is the amount agreed upon between the parties and on this amount the appellant is discharging Service Tax liability. The security deposit is taken for a different purpose

altogether. It is to provide for a security in case of default in rent by the lessee or default in payment of utility charges or for damages, if any, caused to the leased property. Thus, the security deposit serves a different purpose altogether and it is not a consideration for leasing of the property. The consideration of the leasing of the property is the rent and, therefore, what can be levied to Service Tax is only the rent charged and no notional interest on the security deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on security deposit taken as a consideration for leasing of the immovable property. Therefore, in the absence of a specific provision in law, as held by the Hon"ble Apex Court in the case of Moriroku UT India (P) Ltd. (supra), there is no scope for adding any notional interest to the value of taxable service rendered. Even in the excise law, under Rule 6 of the Valuation Rules, unless the department shows that the deposit taken has influenced the sale price, notional interest cannot be automatically included in the sale price for the purpose of levy. In the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the security deposit as a consideration received for the services rendered cannot be sustained and we hold accordingly."

(iii) In M/s. ATS Township Private Limited v. Commissioner, Central GST, Noida [2019 (11) TMI 297 (CESTAT-Allahabad)], a Division Bench of this Tribunal observed as follows :

"3. The issue relates to inclusion of the amount collected by the appellant as IFMS. Revenue's contention is that the said collected amount would fall under the category of „Management Maintenance and Repair Services" and would be liable to service tax separately. We note that the said amount collected by the appellant from the flat owners is towards the security for the purpose of maintenance of the building and to cover the eventual default made by any of the flat owners for payment of monthly maintenance charges. As per the agreement with the flat owners, the said amount is liable to be refunded to them within the period of Six months from the date of termination of the said agreement. The Adjudicating Authority observed that the genuineness of the said term is very much doubted inasmuch as the appellant had not produced any evidence to show that the said IFMS was ever refunded to anyone. We really fail to understand the said reasoning of the Adjudicating Authority. The amount is refundable in case of termination of the ownership agreement and if no such termination has taken place till date, the amount would not be refunded. As long as the provisions for refund of the said amount in the agreement itself is there, it has to be considered that the said amount is refundable and was towards security deposits and was not for the purpose of providing any services, so as to levy tax on the same."

In view of the above judgments coupled with the facts that department could not bring on record any clinching evidence that the deposit has influenced the service charges, the demand is not sustainable.

05. Thus, for all the reasons stated above, it is not possible to sustain the impugned orders passed by the Commissioner (Appeals). Accordingly, the impugned orders are set aside and the appeals are allowed.

From the above decision of this tribunal, the issue is no longer *res integra* and following the same, the impugned order is not sustainable. Hence, the same is set aside, appeal is allowed.

(Pronounced in the open Court on 14.11.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Palak