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Dear Professional Colleague,

No Service tax on notional interest on security deposit for rented premises

We are sharing with you an important judgement of the Hon'ble CESTAT, Mumbai in the case of **Magarpatta Township Development & Construction Co. Ltd. Vs CCE [2013-TIOL-1068-CESTAT-MUM]** on the following issue:

Issue:

Whether service tax is required to be paid on notional interest on security deposit taken for premises rented out on lease?

Facts & Background:

M/s Magarpatta Township Development & Construction Co. Ltd. ("**the Appellant**") is a service provider engaged in renting of immovable property of commercial construction undertaken by them. The Appellant discharged service tax liability on the rent received from the lessees. Further, the Appellant has taken security deposit from the lessees for the damages, if any, caused to the furniture and fittings supplied along with the premises or any damage done to the properties.

The department contended that notional interest on the security deposit is a consideration for the renting of the immovable property and thus liable to service tax. Thus service tax of Rs.3,26,12,102/ was demanded for the period June 1, 2007 to January 31, 2011 along with interest and penalty, which was confirmed by the by the Commissioner of Central Excise & Service Tax, Pune along with interest thereon and equivalent amount of penalty was also imposed on the Appellant.

Hence, the Appellant filled appeal before the CESTAT.

Held:

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The Hon'ble CESTAT granted unconditional waiver from pre-deposit of dues adjudged against the Appellant and stay recovery thereof during pendency of the appeal. The Hon'ble CESTAT observed as under:

- Taking security deposit for the premises rented out on lease basis is common throughout the country. The amount of security deposit taken varies from place to place and also depends on the property, whether it is for commercial or residential purpose.
- No evidence available on record led by the revenue to show that the notional interest on the interest free security deposit has influenced the consideration received for renting and it is only a presumption on the part of the revenue.
- The Hon'ble CESTAT relied on the decision of Apex Court decision in the case of **CCE, Mumbai-III Vs. ISPL Industries Ltd. [2003 (154) ELT 3 (SC)]** wherein it has been held that notional interest on the advances taken by the assessee, from the buyers cannot be added to the assessable value of the goods cleared, unless there is evidence to show that the interest free deposit taken has influenced the price.

In this context the Appellant contended that security deposit has no nexus with the area of the property rented out. It is charged as six months' rent and therefore, it cannot be said that the notional interest has influenced the consideration received for the services rendered.

Therefore, relying on the judgement of ISPL Industries Ltd, the Hon'ble Mumbai Tribunal rejected the contention of the authorities and granted stay of recovery during pendency of the appeal.

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

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Thanks & Best Regards

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