

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

APPEAL Nos.ST/70752-70763/2018-CU[DB]

Sl. No.	Appeal No.	Appellant	Respondent	Impugned Order dated & passed by
1.	ST/70752/2018	Logix Infrastructure Pvt. Ltd.	Commissioner of Central Excise & S.T. Noida	17/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
2.	ST/70753/2018	Shree Chetan Sharma Vice President	Commissioner of Central Excise & S.T., Noida	17/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
3.	ST/70754/2018	Shri Sawan Kumar Manager (Taxation)	Commissioner of Central Excise & S.T., Noida	17/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
4.	ST/70755/2018	Shri Sameer Satija, DGM (Accounts)	Commissioner of Central Excise & S.T., Noida	17/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
5.	ST/70756/2018	Logix Infratech Pvt. Ltd.	Commissioner of Central Excise & S.T., Noida	18/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
6.	ST/70757/2018	Shri Chetan Sharma Vice President	Commissioner of Central Excise & S.T., Noida	18/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
7.	ST/70758/2018	Shri Sawan Kumar, Manager (Taxation)	Commissioner of Central Excise & S.T., Noida	18/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
8.	ST/70759/2018	Shri Sameer Satija, DGM (Accounts)	Commissioner of Central Excise & S.T., Noida	18/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
9.	ST/70760/2018	M/s Logix City Developers Pvt. Ltd.	Commissioner of Central Excise & S.T., Noida	19/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
10.	ST/70761/2018	Shri Chetan Sharma Vice President	Commissioner of Central Excise & S.T., Noida	19/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
11.	ST/70762/2018	Shri Sameer Satija, DGM (Accounts)	Commissioner of Central Excise & S.T., Noida	19/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida

12.	ST/70763/2018	Shri Sawan Kumar, Manager (Taxation)	Commissioner of Central Excise & S.T., Noida	19/Commissioner/Noida/2017-18 dated 28/02/2018 passed by Commissioner Central Goods & Service Tax, Noida
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Appearance:

Shri Abhinav Kalra, Chartered Accountant, for Appellants
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 20/09/2018
Date of Decision : 20/09/2018

FINAL ORDER NOs-**72361-72372 / 2018**

Per: Anil G. Shakkarwar

The above stated appeals are preferred by three service tax providers and persons associated with said service tax providers against whom penalties have been imposed. Since the issue involved in all the appeals is same, they are taken together for decision.

2. The facts in all the cases are similar therefore, for the sake of convenience facts in Appeal No.ST/70756/2018 are being recorded and facts in the other appeals are also of similar nature. The appellants are provider of Residential Complex Service which was defined under the Finance Act, 1994 and w.e.f. 01.07.2012 the said definition of Individual Services does not exist on the statute and w.e.f. 01.07.2012 a new concept of negative list was introduced wherein whatever

has not been included in the negative list, is treated as a service. The appellants were issued with a show cause notice dated 26.04.2017 wherein the contention of revenue is as follows:-

“It also appears that they are issuing invoices in the form of demand letter to their customers and charging amount under various heads i.e. base value, preference location charges (PLC), external development charges (EDC), internal development charges (IDC), Electric sub-station charges, club membership charges, lawn charges etc. from customers, as per sample demand sheet provided by the party (RUD-15).

10. And whereas, it appears that the assessee has claimed these charges separately from buyers as per specimen demand note and data provided by the assessee. Further, they are paying service tax @3.09% instead of full rate [which is 12.36% at the intervening period i.e. July, 2012 to March, 2015. In this case, the amount charged on account of Preferential Location Services (PLC) etc, appears to be taxable at the full rate and not at abated rate of 25% because of following reasons:

10.1 While rendering Preferential Location Services i.e. Direction- pool facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers, there is no transfer of material from the service provider to the service recipient. Abatement in Service Tax is granted only in respect of such services where there is transfer of materials. Thus, if the service tax is allowed to be paid at the abated rate in respect of the PLC, it will go against the basic principle of granting abatement.

10.2 “Construction of a Complex, Building etc” and “Preferential Location” are separate and different

activities. Usually, all the houses/floors in a complex/building may not have preferential location. Therefore, the builder may not charge the PLC in respect of all the houses/floors. Thus, an inference may be drawn that “Construction of a Complex, Building etc.” is an independent activity [service] in itself even without Preferential Location.

10.3 The builders of residential or commercial complexes provide other facilities and charge separately for them i.e. Internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc., Fire- fighting installation charges and Power back up charges etc. there is no transfer of material from the service provider to the service recipient. Abatement in Service Tax is granted only in respect of such services where there is transfer of materials. Thus, if the service tax is allowed to be paid at the abated rate in respect of these services, it will also go against the basic principle of granting abatement.

From the above, it appears that service tax is payable at full rate in those cases where separate consideration is charged for the PLC, EDC, IDC etc. as per provisions of Section 67 and 68 of the Finance Act, 1994.”

Further, revenue have relied on letter issued by CBEC on 26.02.2010 containing the instructions by CBEC to the filed formations on certain issues of valuation in respect of construction of commercial structures and residential complex. Revenue contended that the component such as preferred location charges, external development charges etc. stated above are not covered by the provisions of Sub-section

3 of Section 66F of the Finance Act, 1994 and therefore, the services rendered by the appellant to their clients were bifurcated into two components one as 'Residential Complex Service' and other as 'Special Services' and they included preferred location charges etc. into special services and contended that special services being not the Residential Complex Service were not eligible for 75% abatement provided under Notification No.26/2012-ST dated 20.06.2012 and therefore, the components such as preferred location charges, external development charges etc. were contended to attract full rate of service tax on the full value and on such premises demands were raised in respect of M/s Logix Infratech Pvt. Ltd. to the tune of Rs.3.68 crores approximately. In respect of other two appellants on similar contentions demands were raised to the extent of Rs.2.49 crores and Rs.3.85 crores approximately. On contest the above demands were confirmed through the impugned Orders-in-Original and through the impugned Orders-in-Original personal penalties were also imposed on the personnel associated with the service providers. Aggrieved by the said order, above stated appeals are preferred before this Tribunal.

3. Heard the learned Chartered Accountant for appellants. He has submitted that provisions of Section 66F of Finance Act, 1994 provide for Bundled Service. He has explained that w.e.f. 01.07.2012 Section 66F was introduced to the statute

which has provided that when there are various elements of services then they are to be bundled together and shall be treated as provision of the Single Service which gives such bundle its essential character. He argued that the charges collected by the appellant such as External Development Charges, Preferred Location Charges, Internal Development Charges, Legal Specification Charges etc. do not have independent existence and they are associated the provision of Residential Complex Service and therefore, essentially they are various element of the service which is predominant for Residential Complex Service and therefore they cannot be vivisected and cannot be treated as separate. He further submitted that the contract with the customer is for the complete amount and there is no separate contract with the client for base value and separate contract for other charges like External Development Charges, etc. He argued that therefore, all the considerations received by the appellant were in the course of provision of single service which is predominantly Residential Complex Service and therefore appellants were eligible for abatement as provided under said Notification No.26/2012-ST for the entire consideration received from their clients.

4. Heard the learned A.R. for revenue who has supported the impugned orders.

5. Having considered the rival submissions from both the sides, we note that the CBEC's letter issued by TRU dated 26.02.2010 about the scope of valuation in respect of Residential Complex Service which was introduced in the year 2010, during such period when there was no provision of Section 66F dealing with bundled service on the statute. After the introduction of Section 66F on the statute, the provisions of Section 66F will prevail over any clarification or view taken by CBEC. We, therefore, hold that the components such as preferred location charges, external development charges etc. are part and parcel and for various elements of the main service which is Residential Complex Service and therefore the entire consideration received by the appellants are eligible for abatement under said Notification No.26/2012-ST. We, therefore, do not find any merit in the impugned orders.

6. We, therefore, set aside all the impugned orders and allow all the appeals. Appellants shall be entitled for consequential relief, if any, as per law.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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