CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Miscellaneous Application No.70398 of 2019
(On behalf of Respondent)
In
Service Tax Appeal No.70811 of 2018

(Arising out of Order-in-Original No.10/COMMISSIONER/(AUDIT) NOIDA/17-18 dated 28.03.2018 passed by Commissioner (Audit) Central Goods & Services Tax, Noida)

M/s Jaypee Infratech Ltd., ...**Appellant**
(Sector-128, Noida, U.P.)

VERSUS

Commissioner of Central Goods & Services Tax, Noida ....**Respondent**
(C-56/42, Sector-62, Noida-201307)

APPEARANCE:

Shri Atul Gupta, Advocate & Ms. Aayushi Srivastava, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO.- 70295/2024
FINAL ORDER NO.- 70645/2024

DATE OF HEARING : 09.10.2024
DATE OF DECISION : 09.10.2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Original No.10/COMMISSIONER/(AUDIT) NOIDA/17-18 dated 28.03.2018 passed by learned Commissioner of Central Goods & Services Tax, Noida.

2. The facts of the case in brief are that the Appellant is a company incorporated as a special purpose vehicle to implement the concession agreement entered into by its parent company M/s Jaiprakash Associates Ltd.[1] and the Yamuna Expressway

[1] JAL

Industrial Development Authority[2] for the development of Yamuna Expressway Project. The Appellant inter alia, is engaged in the construction and sale of residential properties to prospective buyers for development of the said land. The Appellant collected the following charges from home buyers for project developed.

- Internal Development Charges (IDC) – collected for developing, maintaining parks, laying of sewerage water pipelines, providing access to roads and common lighting.
- External Development Charges (EDC) – development of road work, drainage and sewer (including sewage treatment plant and solid waste management), water supply and electricity, transportation and bus terminal, horticulture etc. on the net sector area outside the premises.
- Electric Substation Charges (ESSC) – collected for the provision of electric substation and other related facilities in the residential complex.
- Preferential Location Charges (PLC) – collected for preferred location such as a specific floor.
- Transfer Charges (TC) – charged to those customers that desire to obtain an already allotted flat which was relinquished by the original allottee.

The Department issued a show cause notice[3] dated 26.07.2013 proposing to demand service tax on the above services (except TC) by disallowing abatement claimed by the Appellant under Notification No.1/2006-ST dated 01.03.2006. The above SCN culminated into Final Order No.70266/2023 dated 27.09.2023 by which demand was dropped and it has been held that the above referred services (except TC) were bundled with main service i.e. construction of "Residential Complex Service" and therefore, abatement is available. Subsequent to issuance of the show cause notice for the period July, 2010 to June, 2012, audit of the Appellant's records for the period from July, 2012 to September,

[2] YEA
[3] SCN

2013 was conducted by the Departmental Officers on 21 to 24 January, 2014 and 25 & 26 February, 2014 based on which audit objections were raised and various communication took place between the Appellant and the Department regarding availability of abatement for payment of service tax in terms of Notification No.26/2012-ST dated 20.06.2012 in respect of above referred services. In light of the above audit objection and the communications, SCN dated 08.02.2017 was issued for the period from July, 2012 to March, 2015 by invoking the extended period of limitation proposing demand of service tax on charges such as PLC, EDC, ICD, ESSC & TC mainly on the ground that since Entry 12 of the Notification No.26/2012-ST dated 20.06.2012 only allows abatement for construction of residential complexes and therefore, the Appellant has wrongly availed abatement on these charges and service tax has been wrongly discharged by the Appellant on the abated value. Further, such services are not specified anywhere in the Negative List and these charges were paid by the customer in addition to the purchase of the flats, therefore, the same were subjected to service tax. It was further alleged that breakdown of the service tax demanded for the various charges are as follows:-

S. No.	**Particulars**	**Service Tax Demand**
1.	Transfer Charges	2,30,06,398
2.	Preferential Location Charges	3,05,63,266
3.	IDC	11,04,78,716
4.	EDC	12,77,04,720
5.	Electric Substation Charges	6,35,31,655
	Total	**36,52,84,755**

The SCN was adjudicated vide Order-in-Original dated 28.03.2018 wherein the learned Adjudicating Authority confirmed the demand proposed in the SCN. Aggrieved by the impugned order, the Appellant has preferred the present appeal.

3. Learned Advocate appearing on behalf of the Appellant submitted that the issue is no more *res integra* as the same has been settled in favour of the Appellant in their own case vide Final Order No.70266/2023 dated 27.09.2023. Further, in the matter of Logix Infrastructure Pvt. Ltd. Vs. CCE & ST, Noida

2019 (25) G.S.T.L. 59, Tribunal held that the components such as external development charges (EDC), internal development charges (IDC), preferred location charges, Electric sub-station charges (ESSC) are part and parcel and forms various elements of the main service which is Residential Complex Service and therefore the entire consideration received by the Appellant are eligible for abatement under Notification No.26/2012-ST dated 20.06.2012.

4. Learned Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant being devoid of any merits may be dismissed.

5. Heard both the sides and perused the appeal records.

6. Appellant is provider of Residential Complex Services which are defined under 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. Further, we find that Revenue have relied on letter issued by C.B.E. & C. on 26-2-2010 containing the instructions issued by C.B.E. & C. 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-S.T., dated 20-6-2012 and therefore, the components such as preferred location charges, external development charges etc. were contended to attract Service Tax on the full value.

7. We find that the facts of the present case are squarely covered by the decision of the Tribunal in the case of Logix Infrastructure Pvt. Ltd. vs. CCE & ST, Noida reported as 2019 (25) G.S.T.L. 59 (Tri.-All.). The relevant paragraphs of the aforesaid decision are reproduced for ready reference:-

> ***"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. 1-7-2012 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-S.T. for the entire consideration received from their clients.*
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> ***4.*** *Heard the Learned A.R. for revenue who has supported the impugned orders.*
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> ***5.*** *Having considered the rival submissions from both the sides, we note that the C.B.E. & C's letter issued by TRU dated 26-2-2010 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 C.B.E. & C. 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-S.T. We, therefore, do not find any merit in the impugned orders."

8. Further in the Appellant's own case for the period from 01.07.2012 to 30.06.2012 the Tribunal vide Final Order No.70266/2023 dated 27.09.2023 in Service Tax Appeal No.55440/2014 allowed the appeal filed by the Assessee by setting aside the Order-in-Original dated 28.07.2014. The relevant paragraphs of the Tribunal's Order dated 27.09.2023 are reproduced below:-

"4.13 Undisputedly appellants had obtained registration for providing the taxable services as defined under 65 (105) (zzzh) and were paying service tax payable under that category after claiming abatement as provided for. It is also an admitted fact that the these charges were included in gross amount for the computation of the taxable value and for determination of tax payable and tax paid. Appellant had been filing the ST-3 returns with adequate disclosures and nothing was suppressed from department as alleged. As nothing has been suppressed from Department, and the issue is only in respect of interpretation of the provisions as contained in the statue. The issue with regards to the Constitutional Validity of the provisions was also taken up before various High Courts in the writs filed by various builder associations. In such situation where the issue was under consideration of various courts and tribunal invoking extended period for making this demand as per Section 73 (4) of the Finance Act, 1994 cannot be upheld. Reliance is placed on the decisions as follows:

- *Suvikram Plastex Pvt. Ltd. [2007 (10) TMI 218 CESTAT Banglore]*
- *Mahanagar Telephone Nigam Limited [2023 (4) TMI 216 - Delhi High Court]*
- *Essel Propack Ltd. [2015 (323) ELT 248 (SC)]*
- *ZYG Pharma Pvt. Ltd. [2017 (358) ELT 101 (MP)]*
- *Sanmar Speciality Chemicals Ltd. [2016 (43) STR 347 (Kar.)]*

- *G D Geonka Pvt. Ltd. [Final Order No. 51088/2023 dated 21.8.2023].*

4.14 As we are not in position to uphold the demand made we are not in position to uphold the demand for interest and the penalties imposed.

4.15 We do not find any merits in the impugned order to the extent it demands service tax classifying the services under the taxable category of 65 (105) (zzzzu).

5.1 Appeal is allowed."

9. In view of the above discussions and decisions cited supra, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

10. Since the matter is already being listed on Board, the prayer for out of turn hearing of the appeal filed by the Department is dismissed as infructuous.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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