

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

**CROSS Application No. ST/CROSS/70503/2016 in  
APPEAL No. ST/70718/2016-CU[DB]**

(Arising out of Order-in-Appeal No. 156/ST/LKO/2016 dated 12/02/2016 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Lucknow)

**Commissioner of Central Excise & Service Tax, Allahabad Appellant**

Vs.

**M/s Chhotey Lal**

**Respondent**

Appearance:

Shri Mohd Altaf (Assistant Commissioner) AR  
Shri Sita Ram (Consultant)

for Appellant  
for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**  
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 07/12/2018  
Date of Decision : 07/12/2018

**FINAL ORDER NO 72809 / 2018**

**Per: Archana Wadhwa**

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing both the sides duly represented by learned AR Shri Mohd Altaf, Assistant Commissioner for the Revenue and learned Consultant Shri Sita Ram for the Respondent we find that the dispute relates to the construction of flat under "Manyavar Kansiram Sahari Garib Awas Yojna" for Allahabad Development Authority under Works Contract. The disputed

issue is as to whether the same would attract service tax or not.

3. The Appellate Authority has extended the benefit to the respondent by observing as under:-

*“It is evident on record that the impugned services are construction of residential building not the construction of commercial building or industrial building. Constructed buildings are not used, occupied or engaged for the furtherance of commerce or industry. EWS flats are given to economically weaker section not for profit. All such activities are performed by the Sovereign/Public Authority Viz. ADA under the provisions of law in the nature of statutory obligations in compliance of orders of the U.P. Govt. which are to be fulfilled in accordance with law. The fee collected in the activity is in the nature of compulsory levy as per relevant statute and it is deposited in Govt. treasury. Such activities are purely in public interest and it is undertaken as mandatory and statutory function. It is not service to any individual for any self consideration of anyone. Therefore, such activity performed by the VDA under the provisions of law does not constitute provision of taxable service to a person and therefore, no service tax is leviable on such activities. Thus from the above definition of residential complex and the exception laid down in it is evident that the appellant do not come under the taxable category pertaining to construction of residential complexes under Works Contract Services. Hence the appellant is not liable to pay service tax on such construction activity performed under work contract.”*

4. We find that the issue is no more *res integra* and stands settled by the Tribunal's decision in the case of Commissioner of Customs, Central Excise & Service Tax, Allahabad vs. Ganesh Yadav reported at 2017 (6) G.S.T.L. 428 (Tri.- All.). It stands followed subsequently in the case of Commissioner of Central GST & Central Excise, Allahabad vs. Padma Enterprises vide Final Order No.71356/2018.

It stands held that the said construction of residential flats under the Manyavar Kanshiram Scheme are not taxable. As such, we find no infirmity in the views adopted by Commissioner (Appeals).

5. Revenue's appeal is accordingly rejected. Cross Objections which are in the nature of written submissions also get disposed of.

(Dictated and pronounced in Court)

**Sd/-**  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

**Sd/-**  
**(Archana Wadhwa)**  
**Member (Judicial)**