

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No. 71199 of 2018

(Arising out of Order-in-Appeal No. NOI/EXCUS/001/APP/2030-2031/2017-2018 dated 28/03/2018 passed by Commissioner of Central Tax (Appeals), Noida)

M/s ATS Township Pvt. Ltd.

.....Appellant

(Plot No. 16, Sector-135, Noida, U.P.)

VERSUS

Commissioner, Central GST, Noida

.....Respondent

(The Commissioner, Central Excise & Service Tax Noida)

WITH

Service Tax Appeal No. 71200 of 2018

(Arising out of Order-in-Appeal No. NOI/EXCUS/001/APP/2030-2031/2017-2018 dated 28/03/2018 passed by Commissioner of Central Tax (Appeals), Noida)

M/s ATS Township Pvt. Ltd.

.....Appellant

(Plot No. 16, Sector-135, Noida, U.P.)

VERSUS

Commissioner, Central GST, Noida

.....Respondent

(The Commissioner, Central Excise & Service Tax Noida)

APPEARANCE:

Shri Kapil Vaish & Shri Ashish Vaish, Chartered Accountant for Appellant

Shri Rajeev Ranjan, Authorized Representative for Respondent

CORAM :

Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71752-71753 / 2019

DATE OF HEARING: 05 September, 2019
DATE OF DECISION: 05 September, 2019

ARCHANA WADHWA

After hearing both the sides duly represented by Shri Kapil Vaish & Shri Ashish Vaish, learned chartered accountant appearing for the appellant and Shri Rajeev Ranjan, learned A.R. appearing for the Revenue, we find that the appellant is engaged in providing taxable services under the category of "Construction of Residential Complex" and is duly registered with the Service Tax Department for the said purpose.

2. The dispute in the present appeal relates to the valuation of the services. The appellant is collecting charges from their customers under the category of "Interest Free Maintenance Security" (IFMS) and "External Development Charges" (EDC). Revenue by entertaining a view that such charges collected by the appellant from that owners would form value of the services provided by them raised the demand against them by way of issuance of a show cause notice dated 09 October, 2015 and 29 March, 2016 for the period 2013-14 and 2014-15, for the differential service tax amount of Rs.23,82,854/- and Rs.3,93,533/-. The same stands confirmed by the Lower Authorities

alongwith confirmation of interest and imposition of penalty. Hence the present appeal.

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.

4. In any case, we also note that the issue stands decided by precedent decisions of the Tribunal. Reference can be made to the Tribunal decision in the case of CCE & ST, Jaipur vs. Sand Dunes Construction Pvt. Ltd. 2018 (7) TMI-1383-CESTAT-New Delhi, whereby while taking note of the precedent decision of the Tribunal in the case of Kumar Beheray Rathi vs. CCE, Pune 2013 (12) TMI-269-CESTAT Mumbai. It was held that the security deposits collected by the Builder for providing maintenance to immovable property services would not be taxable under the category of 'Management Maintenance or Repairs Services'. In fact, we note that Commissioner (Appeals) for the subsequent period in the appellant's own case has

dropped the demand vide its Order-in-Appeal No. GZB/SVTAX/000/APPL-MRT/10/2017-18 dated 19/04/2018.

Inasmuch as the issue stands decided, we find no reason to take a different view. Accordingly demand on the said account is set aside, alongwith setting aside of penalty.

5. Both the appeals are allowed with consequential relief.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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