CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70088 of 2019

(Arising out of Order-in-Original No.02/COMMR./ST/GZB/2018-19 dated 14/12/2018 passed by Commissioner, CGST, Ghaziabad)

M/s Manisha Projects Pvt. Ltd. **.....Appellant**

(D-23, RDC Raj Nagar, Ghaziabad (U.P.) 201002)

VERSUS

Commissioner of Central Excise, Ghaziabad ...Respondent

(C.G.O Complex-II, Kamla Nehru Nagar, Ghaziabad)

<u>APPEARANCE:</u>

Ms. Rinki Arora, Advocate for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 11 September, 2019
DATE OF PRONOUNCEMENT : 29 November, 2019

FINAL ORDER NO.71959/2019

PER : ANIL G. SHAKKARWAR

The present appeal is directed against Order-In-Original No.02/COMMR./ST/GZB/2018-19 dated 14.12.2018 passed by Commissioner, CGST Commissionerate, Ghaziabad.

2. Brief fact of the case is that the appellants were registered with the department for payment of service tax. The appellants were awarded with contract for construction of residential quarters for defense personnel through two originations of viz. M/s RITES Limited and M/s IRCON International Limited and for construction of residential quarters for the staff of Gautam Budh University, through GNIDA. The appellant did not pay service tax on construction of said residential quarters. On the basis of

audit conducted on the records of the appellant it appeared to Revenue the appellants were required to pay service tax on providing said service of construction of quarters for the Ministry of Defense and Gautam Budh University under the category of construction of residential complex service. Therefore appellants were issued with a show cause notice dated 20.10.2011 raising a demand of service tax of around Rs.1.77 crore for the period from 2006-2007 to 2009-2010 in respect of construction for said residential quarters. Initially the demand was confirmed and penalties were imposed through an Order-In-Original dated 26.03.2013. The same was challenged before this Tribunal and this tribunal through Final Order No. ST/A/71739/2018 dated 02.08.2018 had remanded the matter to the Original Authority with a direction to reconsider the matter in view of decisions of this Tribunal in following cases:-

a. Sugandha Construction Private Limited Vs. Commissioner of Central Excise, Bhopal reported as 2018 (9) G.S.T.L. 399 (Tri.-Del.)
b. Brahma Developers Vs. Commissioner of Central Excise, Tirunelveli reported as 2018 (10) G.S.T.L. 27 (Tri. Chennai)
c. Nitesh Estates Limited Vs. Commissioner of Central Excise, Bangalore reported as 2012 (26) S.T.R. 587 (Tri. Bang.)
d. Khurana Engineering Limited Vs. Commissioner of Central Excise, Ahmedabad reported as 2011 (21) S.T.R. 115 (Tri. Ahmd.) as confirmed by Hon'ble Supreme Court. In the remand proceedings learned Original Authority once again confirmed the demand alongwith interest and equal penalty. Therefore, the appellants are before this Tribunal.

3. Heard Ms. Rinki Arora advocate on behalf of the appellant. She has submitted that RITES limited is a Government of India Enterprise and they were awarded contract for construction of residential quarters for employees of Ministry of Defence at Mathura. Further IRCON International Limited is a government of India Enterprise and they were awarded with contract for construction of residential quarters for defence personnel at Jhansi. Further GNIDA is a government authority and the said authority was awarded with construction of residential quarters for the personnel of Gautam Budh University. All the said three contracts were further awarded to the appellant who constructed the said residential quarters during the period from 2006-2007 to 2009-2010. She has further submitted that all the quarters constructed by the appellant were for personal use of the organizations such as Ministry of Defence and Gautam Budh University. She has further submitted that residential complex has been defined under Finance Act, 1994 and as per said definition if the structure is constructed for intention of personal use then the same is not covered by the definition of residential complex. She has further submitted that the Act has also defined what is personal use and personal use includes permitting the structure for use as residence by another person on rent or without consideration. She has submitted that all quarters constructed by the appellant were for personal use of the employees of the organizations on payment of rent and therefore the said quarters were for personal use and therefore the construction activity undertaken by the appellant was not for construction of residential complex and therefore the same did not attract levy of service tax. She has further relied on all the four decisions stated hereinabove and emphasized on decision of

this Tribunal in the case of Khurana Engineering Limited (Supra).

4. Learned A.R. has submitted that the learned Commissioner has held that since the construction was not undertaken by organisations such as RITES, IRCON and GNIDA the original authority has confirmed the demand.

5. Having considered the submissions from both sides and on perusal of record we note that the issue involved in the present appeal is whether the appellant has provided service of construction of residential complex. As per provision of law the ultimate use of the constructed residential unit is having bearing of levy of service tax. The law has very clearly provided that if the residential unit is intended for personal use or it is being used by other persons on rent then such unit is not covered by the definition of residential complex and therefore not eligible to be subjected to levy of service tax under construction of residential complex service. We note that this Tribunal in the case of Khurana Engineering Limited (supra) has observed as follows:-

> *We have already explained the submission of learned advocate in brief and as explained by him in this case, residential complex constructed by the appellant is meant for use by the Income Tax department to provide the same on rent to the employees and therefore, it is clearly covered by the explanation given for "Personal use" in the definition. In this case the CPWD has engaged the appellant for construction of residential complex for giving it on rent to the employees of Income Tax department and therefore this service cannot be included in the definition of residential complex services.*

It is basically the case of one department taking the help of another department to get the work done basically because of specialization of that department in preparing documents and get the work executed.

6. We note that in the said case of Khurana Engineering the construction was done by M/s Khurana Engineering and contract was awarded to M/s Khurana Engineering by CPWD and CPWD was engaged by Income Tax department for construction of quarters to be used as residences by the staff. Therefore, the ratio of the decision of this Tribunal in the said case of M/s Khurana Engineering (supra) is squarely applicable in the present case. Further, this being a case of demand, the onus was on revenue to establish that the residential units constructed by the appellant were covered by the definition of residential complex to raise the demand. Revenue has not produced any evidence in the proceedings to establish that the residential units constructed by appellant were not for personal use. The said onus was not discharged by Revenue to establish that the residential units constructed were liable to levy of service tax. We therefore hold that impugned order is not sustainable. We therefore set aside the impugned order and allow the appeal.

(Order Pronounced in the open Court on 29/11/2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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