

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

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70651 of 2018-[DB]

(Arising out of Order-in-Appeal No.111/ST/Appeal/Audit-LKO/2018 dated 19/03/2018 passed by Commissioner (Audit)CGST & Central Excise, Lucknow)

M/s Narsi Apartments Pvt. Ltd.,

.....Appellant

(1918, Dampier Nagar, Mathura)

VERSUS

Commissioner of CGST & Central Excise,

....Respondent

(Agra)

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

**CORAM: HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO-70248 / 2020

DATE OF HEARING : 07 February, 2020
DATE OF PRONOUNCEMENT : 28 July, 2020

PER: ANIL G. SHAKKARWAR

The above stated appeal is directed against Order-in-Appeal No.111/ST/Appeal/Audit-LKO/2018 dated 19/03/2018 passed by Commissioner (Audit) CGST & Central Excise, Lucknow.

2. Brief facts of the case are that the appellants were engaged in 'Construction Activities'. It appeared to revenue that the activities undertaken by the appellant were covered for levy of service tax. Therefore, investigations were initiated and various records were resumed and statements were recorded. On the basis of examination of said documents it appeared to revenue that appellant were providing 'Construction of Residential Complex Service' for the period upto 30.06.2012 and same service after 01.07.2012 being covered by the provisions of Section 66 E of the Finance Act, 1994. It was stated in the show cause notice dated 14.10.2015 issued to appellant that appellant had informed through a declaration dated 07.10.2015 that for each independent complete villa and/or flat sold from 01.04.2010 to 30.09.2015, carpet area was less than 2,000 square feet and the amount charged for each such complete villa or flat was less than Rs.1 crore. Through the said show cause notice dated 14.10.2015 service tax amounting to Rs.41,84,066/- was demanded under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994. There were also proposals for demanding interest and imposition of penalties. In reply to show cause notice appellants stated that since appellants were selling the residential units only after its completion, they were under the bonafide belief that said activity did not fall under the category on which service tax was leviable. They further submitted that combined reading of various clauses of sale deed between the appellant and the purchasers of constructed property revealed that the transaction was purchase

and sale of the premises and that the appellant was not caring out any constructional activity on behalf of the buyers and that the entire transaction was nothing but sale and purchase of immovable property. They further submitted that CBEC through its Circular No.332/35/2006-TRU dated 01.08.2006 and No.19/7/2007-ST dated 23.08.2007 had clarified that when the flats are sold after completion of construction, no service tax would be levied. They further submitted that ownership of the property was passed on by a sale deed only after construction was completed and therefore their activity was not covered by the definition of service and therefore they were not liable to pay service tax. They further submitted that they were constructing single residential unit and the same was not a part of residential complex and therefore, their activity was not covered by 'Construction of Residential Complex Service' prior to 01.07.2012 and that since they were constructing single residential unit, service tax on the same was exempted through Sl. No.14 of Notification No.25/2012-ST dated 20.06.2012 for the period after 01.07.2012. They further submitted before the Original Adjudicating Authority as follows:-

"In the instant matter, there is no residential complex and all the units sold to the buyers were constructed at different places in the same locality or area. Therefore the Party is eligible for obtaining the benefit of said exemption Notification. It is not alleged in the impugned SCN anywhere that there is any residential complex exist at the Party site. This exemption does not extend to residence constructed as part of a complex. The specific role of developer is to procure services in common for those who intend to occupy the complex and a residential

complex will contain within it more than one residential unit. As the particular service rendered by developer in a complex, other than bundling the various input services, is the aggregation of residential owners on a common property, the perceptible legal distinction between the single unit and unit in a complex appears, from the above definitions, exemption and the tax objective, to be the transfer of share of land and constructed facilities in common as an undivided share to the buyer who has been making over consideration before issuance of certification of completion. From the facts & documents on record, following points emerges for consideration of the adjudicating authority-

(a) That the units Sold were completed in all respect.

(b) That the units sold were out of Municipal Area of Mathura Municipal Corporation

(c) That at time of receipt of Sale consideration by the Party, completion certificate was issued by the Chartered Engineer

(d) That the Party had not tendered any service to the buyers before the Sale of units or in other words the Party was unaware about who would become buyer before Sale.

(e) That the entire sale consideration was received at the time of execution of Sale deed.

(f) That the agreement between the Party and the vendors are for transfer of immovable property by way of sale.

(g) The Party renounces all rights to any part of the property that is transferred as evident from Registered Sale deed.

(h) That from the perusal of the sale agreement executed between the Party & buyers it reveals only transfer of land on which residential units were built and no other built-up facilities such as share in the common roads, community facilities or any other facility had been transferred or assigned specifically to a house owners.

(i) It is not an allegation of the department in the impugned SCN that the Party had taken advance from the buyers of the residential units during the construction of units or before the execution of Sale deed.

On the basis of above facts and law on the above subject matter, the Party graciously request to the adjudicating authority to set aside the demand of Service Tax amounting to Rs.41,84,066/- which is raised by the department on Sale of flats and Sale is out of domain of Finance Act 1994. Payment of Stamp duty is conclusive evidence that the transaction between the Party and buyers were related to Sale of units and not for service. Thus it is subject matter of State and by raising the demand on such transaction the department has transgress its authority.

B. LIABILITY OF SERVICE TAX UNDER REVERSE CHARGE MECHANISM AFTER 01/07/2012- In the impugned SCN, the department had raised the liability of Service Tax on certain specified services under the mechanism of reverse charge in terms of Notification No.30/2012 dated 20.06.2012. In this regard Party submits that the provider of Security service was registered Private Limited Company and Private limited Company were out of ambit of RCM as per the aforesaid Notification. In this regard the Party submits the copy of Work order awarded by the Party to the Service Provider are annexed herewith for the kind perusal of the adjudicating authority marked as **Annexure No.3.**

In relation to legal charges notices submit that legal fees have been paid to his chartered accountant and same time statutory fee also. No legal fees have been paid to any Advocates. In this regards assessee is submitting copty of the Chartered Accountant bills and ledger of legal.

On the basis of foregoing discussion as narrated above, it is apparent that the demand of service tax under RCM is devoid of merit and raised by the department without considering the legal provisions and ingredients of the Charging Notification No.30/2012 dated 20.06.2012. Any demand which fails to satisfy the basis ingredients of the charging mechanism cannot stand on its own leg and liable to be set aside alone on this ground.”

The said show cause notice was adjudicated through Order-in-Original dated 28.02.2017. The Learned Original Adjudicating Authority has held in para no.22 as follows:-

“However, I would like to make it clear that this restriction of presence of minimum 12 residential units in a residential complex was applicable only upto 30.06.2012 and with effect from 01.07.2012 this quantitative restriction did not find place in the provisions.”

He, therefore, held that appellant was providing ‘Construction of Residential Complex Service’, and therefore he confirmed the demand to the tune of Rs.41,81,347/- and imposed equal penalty and ordered the appellants to pay interest on the same. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) and raised the said grounds before the learned Commissioner (Appeals). Learned Commissioner (Appeals) through the impugned Order-in-Appeal has upheld the said Order-in-Original dated 28.02.2017. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard Shri Vineet Kumar Singh learned Advocate on behalf of the appellant. He has submitted that the appellant had very categorically stated that the construction activity taken up by appellant was for construction of individual villas and individual residential units and the same were constructed at different places in the same locality and therefore, the same were not covered by the definition of Residential Complex for the period up to 30.06.2012. He has submitted that neither the show cause notice nor the findings by authorities below established that for

the period prior to 30.06.2012 appellant was engaged in construction of complex, where more than 12 residential units with common facilities were being constructed. He has further submitted that the finding by the Original Adjudicating Authority that there was no such requirement of minimum 12 residential units for the period after 01.07.2012 is contrary to the provisions of law for levy of service tax because Sl. No. 14 of Notification No.25/2012-ST dated 20 June, 2012 clearly provides that if the single residential unit is constructed then the activity does not attract levy of Service Tax. He, therefore, submitted that the activities were not covered by any of the tax entries in the service tax. He further, submitted that all the sales of the properties were done after the completion of the construction and therefore, there was no service involved and it was a pure transaction of sale and purchase to immovable property. He has further submitted that the contentions of the appellant about non applicability of Service Tax under Reverse Charge Mechanism before Original Authority are sustainable in law. He has submitted that therefore the impugned order do not sustainable.

4. Head the learned Authorised Representative Shri Gyanendra Kumar Tripathi, who has supported the impugned order.

5. Having considered the submissions from both the sides and on perusal of record, we note that there is no evidence on record to establish that the appellant had constructed a

residential complex before 30.06.2012 or the appellant had constructed a complex with more than 2 residential units together after 01.07.2012. We, therefore, hold that appellant did not provide residential complex service prior to 01.07.2012 and appellant was eligible for exemption under Notification No.25/2012-ST dated 20.06.2012 at Serial No.14 for activity of construction undertaken by him for the period subsequent to 01.07.2012. Further, appellant was not liable to pay Service Tax under Reverse Charge Mechanism.

6. We, therefore, set aside the impugned order and allow the appeal. The appellant shall be entitled for consequential relief as per law.

(Pronounced on- 28 July, 2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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