

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2

Service Tax Appeal No. 737 of 2010

[Arising out of Order-In-Original No.9/2009-ST dated 30.12.2009 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut.]

Commissioner of Central Excise,

Customs & Service Tax,

C.R.Building, Mananchira,

Calicut-673001

.....Appellant

VERSUS

M/s. Ardra Associates,

Capital Towers,

Patturaickal

Thrissur, Kerala

.....Respondent

Appearance:

Mr. Rajesh Shastry, Authorized Representative for Appellant

Mr. Oomman, Advocate for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20989 of 2024

Date of Hearing: 02.04.2024

Date of Decision: 01.10.2024

Per: P.A. Augustian

M/s. Ardra Associates, the Respondent herein is engaged in the activity of 'Construction of Complex services' and has taken Service Tax registration and paid Service Tax upto 30.06.2006 and filed return till 30.09.2006.

2. The brief facts are, alleging that the respondent continued to perform the said activity without paying service tax, proceedings were

initiated and Show Cause Notice was issued. Thereafter, Adjudication Authority vide order dated 23.01.2009 confirmed demand of duty with Interest and imposed penalty. Aggrieved by the said order, an appeal was filed before this Tribunal and Tribunal vide Final Order No. 652/2009 dated 15.05.2009 remanded the matter to the Adjudication Authority for re-examination by taking into consideration Board's Circular No. 108/02/2009-ST dated 29.01.2009.

3. Accordingly, Adjudication Authority passed the order and held that; activity of the respondent in the construction of 'Residential Complex' is distinguishable as that of the developer/builder, who enters into an agreement with the prospective clients for construction of apartments on his own land by utilising the service of contractors for the purpose of sale on a sum agreed upon for the ultimate handing over of the apartments to the respective clients only for their intended residential purpose as per the sale agreement and contract agreements executed between them. Accordingly, any service provided by any seller in connection with the residential complexes till execution of such sale deed would be in the nature of self-service. Consequently, demand was dropped by the Adjudication authority. However, Committee of Chief Commissioners reviewed the order and the present appeal is filed by the Revenue.

4. When the appeal came up for hearing, learned Authorised Representative (AR) for the appellant submits that the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the said transaction would squarely attract Service Tax.

5. The learned Counsel for the Respondent submits that; the service of construction of a residential complex for Personal/Residential use is not a taxable service under Section 65(105) (zzzh) for the period up until 01.07.2010; the issue is no more *res integra* and squarely covered by various decisions. Learned counsel relied upon the following judgments and decisions;

- i. Garden city Realty Private Limited., Vs. Commr of Service Tax (MANU/CB/0135/2023) (Bang)**
- ii. Jagdish Pala Vs. Commissioner of C. EX & ST, Rajkot 2022 (65) G.S.T.L. 471 (Ahmd.)**
- iii. Ashoka Developers & Builders Ltd., Vs. CCE(2020) 34 GSTL 550 [Hyd]**
- iv. Keerthi Estates Pvt. Ltd. Vs. CCE 2019 (26) GSTL. 227 (Bang.)**
- v. Adarsh Developers Commissioner Vs. (MANU/CB/2067/2019) [Tri Bang] of CE**
- vi. Vinayaka Homes Vs. Commr. of Central Excise & ST, Cochin 2016 (43) S.T.R. 251 (Tri. - Bang.)**
- vii. Krishna Homes Vs. CCE, Bhopal (2014) 34 STR 881 (Tri-Del)**
- viii. CCE, Chandigarh Vs. UB Construction (P) Limited [2013] 32 STR 738 [Tri - Del]**

6. The learned counsel for the respondent further submits that; this Tribunal remanded the issue for considering whether the activity falls under the category of classification covered by Board's Circular No.108/02/2009-ST dated 29.01.2009 and considering the entire issue, Commissioner has rightly dropped the proceedings; however, when the review was carried out, as evident from the impugned review order No. 01/2010 dated 08.04.2010, the reviewing authority has not examined the issue in the light of Board's Circular No.108/02/2009-ST

dated 29.01.2009 as directed by this Tribunal but proceeded on the ground that the buyers have made payment in instalments and unless the entire payment for the property is paid by the prospective buyer or on his behalf after completion of construction, the activity of construction would be deemed to be a Taxable Service provided by the Builder/Promoter/Developer to the prospective buyer and the said transaction would squarely attract Service Tax. Learned Counsel for the Respondent submits that the said finding is contradictory to the judgements and even the Final Orders issued by this Tribunal in similar cases. Moreover, the Review order is not disclosing as to why the order- in-original issued by the adjudication authority is not legal and proper. In support, the learned counsel relied on the decisions of;

- i. Delmott Engg. Pvt., Ltd., Vs CCE, Bombay (1999) 112 ELT 821
- ii. Deek Printers Vs. CCE, Ahmedabad [2013] 291 ELT 433
- iii. Veerabhadraiah Vs. Muddamma AIR 1975 Kan 160

7. The learned Counsel for the Respondent further submits that the respondent had paid Rs. 8,13,720/- for the period from January 2007 to June 2007 under the category of 'Construction of Complex Services'. Thereafter, on receipt of the order-in-original dated 30.12.2009, the respondent filed a refund application and it was allowed by this Tribunal vide Final Order No. ST/21468/2016 dated 15.03.2017. Based on the above, Assistant commissioner vide order dated 18.09.2017 has sanctioned the related refund. Thus, the present appeal is also barred by the doctrine of res judicata especially, since the appellant have not preferred any appeal against the sanction of the refund.

8. Heard both sides, on perusal of the Final Order by this Tribunal, we find that facts were verified by the Tribunal and thereafter it was

held that in the instant case there exists an agreement for sale of land to the client and thereby making the client the owner of the land. This Tribunal also considered Board's Circular No.108/02/2009-ST dated 29.01.2009 and directed adjudication authority to consider the matter in view of the above Circular. Thereafter on remand, Commissioner has rightly followed the direction issued by this Tribunal and dropped the proceedings against the respondent. However, respondent proceeded with review and as per the Review Order, no reference is made to Board's Circular No.108/02/2009-ST dated 29.01.2009 as directed by this Tribunal. Moreover, the issue on merit is also squarely covered by large number of decisions including the decisions in **Garden city Realty Private Limited Vs. Commissioner of Service Tax (supra)**. Hence demand of service tax with interest and imposition of penalty on respondent is unsustainable.

9. In view of the facts of the case and the catena of decisions on the issue, the Appeal filed by the Revenue is dismissed.

(Order Pronounced in Open court on 01.10.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar