CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1299 of 2011

(Arising out of Order-in-Original No.03/2010 dated 11.02.2010 passed by the Commissioner of Central Excise, Bangalore.)

M/s. Ittina Infra-Tech Ltd,
No.1054, 7th Main, 3rd Block,
Koramangla,
Bangalore - 560 034.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
Bengaluru III Commissionerate,
Bengaluru.

Respondent(s)

APPEARANCE:

Ms. Meghna Lal and Mr. Sudhanva K, Advocates for the Appellant.
Shri P. Saravana Perumal, Addl. Comm. (AR) for the Revenue.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20160 /2025

DATE OF HEARING: 07.01.2025
DATE OF DECISION: 07.01.2025

PER : D.M. MISRA

This appeal is filed against Order-in-Original No.03/2010 dated 11.02.2010 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants had rendered 'Construction of Residential Complexes' service during the period June 2005 to January 2007. Alleging that the service provided by the appellant attracts service tax, a show-cause notice was issued to the appellant on 02.07.2007 for recovery of service tax of Rs.2,51,82,253/- along with interest

and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submits that the 'Construction of Residential Complexes' service attracts service tax provided by a builder/developer under Agreement to individual flat buyers only with effect from 01.07.2010. She submits that by a Circular issued by the Board No.108/02/2009-ST dated 29.01.2009, it is clarified that builder, promoters and developers are not liable to pay service tax as any service provided in connection with the construction of residential complex till the execution of such sale deed, which would be in the nature of 'self-service', not leviable to service tax. The Explanation added post 01.07.2010 to the definition of 'Construction of Residential Complexes' service, which is intended for sale, by a builder or any person authorised by the builder, is deemed to be service by the builder to the buyer. Thus the builder was not a service provider prior to 01.07.2010, as the deeming provision contained in the Explanation to Section 65(105)(zzzh) of the Act that would have only prospective effect. It is their contention that prior to 01.07.2010, the appellant could not have been considered to be a service provider and hence, not liable to pay Service Tax. In support, they have referred to the judgment rendered in the case of **Krishna Homes vs. CCE, Bhopal: 2014 (34) STR 881 (Tri.-Del.)**.

3.1 Further, she has submitted that subsequent Circular No.151/2/2012-ST dated 10.02.2012 issued by Board has also clarified that even in case of 'Tripartite Models', builder/developer is also not liable to pay Service Tax prior to 01.07.2010.

3.2 Further, she has submitted that alternatively the constructions undertaken by the appellant is under turnkey contract, which cannot be leviable to Service Tax during the said period. Further, she has submitted that turnkey contracts entered into by the appellant are indivisible in nature, which comprises of both material and service components. The Service Tax on turnkey contracts i.e., works contract had been introduced only with effect from 01.06.2007, since present case pertains to the period prior to January 2005 to January 2007, the same cannot be leviable to service tax under 'works contract service'. In support, she has referred to the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise & Customs vs. M/s. Larsen & Tourbo Ltd. and Others: 2015 (39) STR 913 (SC).**

3.4 Further, she has submitted that the invocation of extended period and imposition of penalty, is unjustified. In support, she has referred to the judgment rendered in the case of **Commissioner of Central Excise, Jalandhar vs. Royal Enterprises: 2016 (337) ELT 482 (SC)**.

4. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the learned Commissioner (A).

5. Heard both sides and perused the records. The short issue involved in the present appeal for consideration is whether the appellant as a builder/developer is required to pay Service Tax under the category of 'Construction of Residential Complexes' service during the period June 2005 to January 2007 under the category of 'Construction of Residential Complex Service'. Undisputedly, the appellant had constructed flats on the land provided to him for development and sale to the prospective customers. The project was named as 'Ittina Neela' comprising of 1092 flats. The appellant during the relevant period had sold the flats by entering into individual agreements with various buyers. Thus, the question arises whether the consideration received by the appellant from the sale of flats during the said period against the individual agreement, is liable to pay Service Tax under the category of 'Construction of Residential Complexes' service. We find that the Boad had issued a Circular No.108/02/2009-ST dated 29.01.2009 and Circular No.151/2/2012-ST dated 10.02.2012, wherein it has been

clarified that builder/developer is not liable to pay Service Tax for the period prior to 01.07.2010.

6. This circular has been considered at length by this Tribunal in the following cases:

- **CCE & ST, Visakhapatnam vs. Pragathi Edifice Pvt. Ltd.: 2019 (31) GSTL 241 (Tri.-Hyd.)**
- **M/s. Gardencity Realty Pvt. Ltd. vs. CST, Bangalore: 2024 (7) TMI 477 – CESTAT Bangalore.**
- **CCE & ST vs. Ardra Associates: 2024-VIL-1355-CESTAT-BLR-ST**

7. In **Pragathi Edifice Pvt. Ltd.** (supra), the Tribunal observed as :

> **"11.** ……
>
> 9. In view of the above, though in view of the Apex Court judgment in the case of *M/s. Larsen & Toubro Limited and Others* v. *State of Karnataka & Others* (supra), the agreements entered into by a builder/promoter/developer with prospective buyers for construction of residential units in a residential complex against payments being made by the prospective buyers in instalments during construction and in terms of which the possession of the residential unit, is to be handed over to the customers on completion of the residential complex and full payment having been made, are to be treated as works contracts, it has to be held that during the period of dispute, there was no intention of the Government to tax the activity in terms of such contracts a builder/developer with prospective customers for construction of residential units in a residential complex. Such works contracts involving transfer of immovable property were brought within the purview of taxable service by adding explanation to Section 65(105)(zzzh) w.e.f. 1-7-2010, and therefore, it has to be held that such contracts were not covered by Section 65(105)(zzzh) during the period prior to 1-7-2010."
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> (n) To sum up, as far as construction of 'residential complexes' by the builders are concerned :

(i) Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view of the judgment of the Hon'ble Apex Court in the case of *Larsen & Toubro* (supra).

(ii) After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.

(iii) However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.

(iv) Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.

(v) After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.

(o) In view of the above, it is well settled legal position that whether the service is rendered as service simpliciter or as a works contract, no Service Tax can be levied on construction of residential complex prior to 1-7-2010. Learned Counsel would submit that for the period post 1-7-2010, they have been discharging Service Tax appropriately. This is a fact which can be verified to ascertain the full tax liability for the period post 1-7-2010 or otherwise."

The aforesaid judgment has been followed by this Tribunal in **KVG Builders & Developers P. Ltd. vs. CCE: 2024 (1) TMI 893** and similar view has been expressed by this Tribunal in **Commissioner of Central Excise vs. Keerthi Estates Pvt. Ltd.: 2018 (10) TMI 840**.

8. In view of the above said precedents, we do not see any merit in the impugned order. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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