

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

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20393 of 2015

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-023,24-14-15
dated 25.11.2014 passed by the Commissioner of Central Excise,
Customs & Service Tax, Cochin]

M/s. Hebron Developers Pvt. Ltd.

74/4, Adde Viswanatha Pura
Arakkare P.O., Rajankunte
Bangalore – 561 203
(Formerly also situated @ 1st Floor
Venugopal Arcade
Pulinchode, Aluva – 683 101)

Appellant(s)

VERSUS

**Commissioner of Central Excise,
Customs and Service Tax, Cochin**

C.R Building, I.S Press Road
Ernakulam
Cochin – 682 018

Respondent(s)

With

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APPEARANCE:

Mr. Rajesh Chander Kumar Rohra, Sr. Advocate, Ms P.S. Deepa Rani and
Mr. Tashi Caubey, Advocates for the Appellant
Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order Nos. 21830 - 21831 / 2025

DATE OF HEARING: 21.07.2025
DATE OF DECISION: 18.11.2025

PER : P.A. AUGUSTIAN

Issue in the present appeal is regarding service tax liability under Works Contract Service w.e.f. 01.06.2007. Appellant is engaged in Construction of Residential Complexes. Alleging that the activity provided by the appellant is falling under the category of 'Works Contract Service,' proceedings were initiated and for the transaction carried out from 01.10.2007 to 31.12.2011, service tax @4% demanded on gross amount. The adjudication authority as per the impugned order, confirmed the demand. Aggrieved by the said order, present appeals are filed.

2. When the appeal came up for hearing, learned counsel for the appellant draws our attention to the show-cause notice where it is stated that the appellant had entered into agreement with various clients for constructing villas under the name and style of Vineyard Meadows with all amenities like swimming pool, market, gymnasium and the services rendered by the appellant to their clients are falling under the category of 'Works Contract Service.' In this regard, learned counsel submits that there is no such agreement and it is only the presumption of the investigating officer that an agreement was entered. In this regard, learned counsel draws our attention to the statement recorded from the appellant and the documents relied by the adjudication authority while issuing the SCN. There is no such contract and there is no approved layout as alleged in the show-cause notice or impugned order. Learned counsel draws our attention to the definition of 'Works Contract Service' as reproduced in the impugned show-cause notice.

"6. "Works Contract Services" was introduced as a taxable service w.e.f. 01.06.2007 vide Notification No. 23/2007-ST dated

22.05.2007. As per the definition given under Section 65(105) (zzzza) of the Finance Act, 1994, "Works Contract Service" means a contract wherein,-

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and
- (ii) such contract is for the purposes of carrying out, -
 - (a) erection, commissioning or installation of plant, machinery, equipment structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or
 - (f) commissioning (EPC) projects

Thus, to bring out in the contract certain activities as enumerated under the definition has to be performed by the appellant. In the appellant's case, it is alleged that the appellant had made attempt to carry out Construction of New Residential Complex or part thereof as falling under (c) construction of a new residential complex or a part thereof. In this regard, learned counsel draws our attention to the definition of "Residential Complex", which is as under:

"Residential Complex" means any complex comprising of -

- (i) a building or buildings, having more than 12 residential units;

- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment systems, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout and the construction of such complex is intended for personal use as residence by such person.

3. Thus, as per Section 65 (91a) (i) (ii) & (iii) approval of layout of the project, ie building or buildings having more than 12 units with common area and other facilities by local authorities is mandatory to classify under Residential Complex Service. In the appellant's case, there is no common layout approved by the concerned local authorities. Learned Counsel further submits that there is no allegation in the show cause notice having approved plan or issued any common layout of housing complex of more than 12 units by Tripunithura Municipal Authority in the name of housing project "Vineyard Meadows" either in the name of the appellant or in the name of anybody else. Learned Counsel further submits that the plot owners obtained individual permits in respect of houses they intended to construct and after that, they had directly engaged the appellant for designing and construction of houses for their personal use. As per definition of Residential Complex as mentioned above, the individual houses got constructed by the individual plot owners for their personal use through a contractor fall under the exclusion provided under clause (iii) of Section 65(91a) of F.A. 1994 and hence the construction of individual houses undertaken by the appellant does not fall under the definition of Residential Complex Service and accordingly the demand of service tax related to construction of the said houses fall outside the purview of tax liability. Learned Counsel also draws our attention to the contract for construction entered between plot owners and the appellant to support the above submission.

4. Learned counsel further draws our attention to the finding in para 49 of the impugned order where the adjudication authority presumed that the activity carried out by the appellant amounts to Construction of Residential Complex. There is no construction of 69 villas and as alleged. Thus, other than by relying the statement and the financial statement, there is no evidence relied by the adjudicating authority to reach above conclusion. Learned counsel also draws our attention to the approved plan of the villa issued by the Tripunithura Municipality and the sale deed executed by the individual purchaser of the plot from the land owners directly. Learned counsel further submits that even if it is considered as development of the land, as developer it was not under the taxable category up to 01.07.2010. In this regard, learned counsel relied on the decision of this Tribunal in the matter of ***Gardencity Realty Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore – (2024) 22 Centax 440 (Tri.-Bang.)*** and ***Ashoka Developers & Builders Ltd. Vs. Commr. of Cus., C.Ex. & S.T., Hyderabad-I – 2020 (34) G.S.T.L. 550 (Tri.-Hyd.)*** where it is held that:

“9. We have considered the arguments on both sides and perused the records and find that the issue of taxability on construction of residential complexes service prior to 1-7-2010 is no longer *res integra* and has been settled in the case of *Kolla Developers and Builders* (supra) and *M/s. Mehta and Modi Homes* (supra) by the Tribunal. We also find that the C.B.E. & C. has also clarified that prior to 1-7-2010 no service tax is chargeable on such services. Accordingly, the demand of service tax for the period prior to 1-7-2010 needs to be set aside and we do so. As far as the period post 1-7-2010 is concerned, Learned Counsel for the appellant submits that they have already discharged service tax for this period and had filed ST-3 returns. In view of the above, the demand for service tax for the period prior to 1-7-2010 is set aside and the demand for service tax post 1-7-2010 is confirmed which according to the Learned Counsel for the appellant has already been discharged. As we have set aside the demand in respect of the most of the period and service tax has already been paid in respect of the remaining

period, we find no case to impose penalty under Sec. 77 & 78 of the Finance Act, 1994. Accordingly, in exercise of the powers conferred under Sec. 80, we set aside the penalties imposed upon the appellant.”

5. The learned counsel further submits that the demand is also unsustainable on the ground as evident from the impugned order, the entire construction activity which was proposed initially was handed over to sub-contractors (1) M/s. Ajay Construction (2) M/s. V.V. Construction (3) Shri P.P. Cleatus (4) Shri Johny & Kunjumon (5) Shri C. John Joy (6) Shri P.J. Saji (7) Shri Raju George (8) M/s. Eden Construction (9) M/s. Lakshmi Construction and (10) M/s. P.H. Construction. Learned counsel also draws our attention to the judgment of the Hon’ble High Court of Karnataka in the matter of **Commissioner of C.Ex., S.T. & Cus., Bangalore – II Vs. Nithesh Estates Ltd. 2018 (17) G.S.T.L. 414 (Kar.)**

“21. In view of this clear position of law indicated by the C.B.E. & C. itself, we are of the considered opinion that the Revenue cannot be allowed to argue against the legal position rightly explained by the C.B.E. & C. itself which can certainly be invoked and applied by this Court for interpreting the provisions of law on the principles of interpretation of *Contemporenea Expositio* and the Central Board of Excise and Customs or the highest Administrative body of the respondent Department itself has interpreted the provisions that the construction activities of this nature where Bi-partite or Tri-partite Agreements are entered into is clearly indicated in the said Circular, which clearly and rightly hold the sub-contractors liable to pay the Service Tax as it is the Sub-contractor who actually undertakes the construction activity.”

6. Learned counsel draws our attention to the judgment of the Hon’ble Supreme Court in **Commissioner of C.Ex., Bangalore Vs. Brindavan Beverages (P) Ltd. – 2007 (213) E.L.T. 487 (S.C)**, wherein it is held as under:

“9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established.

10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted.”

7. Learned Counsel also draws our attention to the finding of the Hon'ble High Court of Calcutta in the matter of ***Delta International Limited Vs. Commissioner of Customs – 2012 (281) E.L.T. 400 (Cal.)***, it is held as under:

“15. In our opinion, the flaw in the show cause notice is fundamental. The subject says “non-realization of customs duty”. The body of the show cause notice does not disclose how there is non-realization of customs duty or short payment of it. However, documents have been brought on record including an affidavit-in-opposition and notes of submission purporting to establish what was to be collected was central excise duty and that such duty is computed as customs duty, but nevertheless, collected as central excise duty.

The customs authorities by virtue of the above notifications had power to issue the show cause, it was submitted.

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21. The only reason why the show cause notice falls through, in our opinion, is that it is completely devoid of any grounds or reasons or particulars in support of its claim for short paid customs duty against the appellant/writ petitioner. Therefore, on the basis of the principles in the above Supreme Court judgments this show cause notice has to be set aside.”

8. Learned counsel further relied on the decision of the Hon’ble High Court of Delhi in the matter of ***Rajesh Kumar Singhal Vs. Goods and Service Tax Network – (2024) 18 Centax 151 (Del.)***, wherein it is held as follows:

9. Normally, this Court does not interdict a Show Cause Notice and delegates the authorities to adjudicate the Show Cause Notice, however, we note that the subject Show Cause Notice itself is defective and does not give any details or particulars. The Show Cause Notice in the reasons column has merely extracted the provisions of law. It states that the petitioner has issued invoices or bills without supply of goods or services, however, no details of invoices, bills or non-supply of goods or services has been mentioned in the Show Cause Notice.

10. This Court has consistently held that a Show Cause Notice that does not contain any details or particulars is vague and cannot be expected to be responded to.

11. In view of the fact that the Show Cause Notice is bereft of any details and suffers from infirmities that go to the root of the cause, we are not exercising the power of remit and directing the proper officer to re-adjudicate the Show Cause Notice.

12. In view of the infirmities in the Show Cause Notice, we quash the same. The impugned Show Cause Notice dated 12-10-2022 is accordingly set aside.”

9. Learned counsel relied on the decision of the Tribunal in the matter of ***Mahindra & Mahindra Ltd. Vs. Commissioner of Central Excise, Nashik – 2017 (358) E.L.T. 508 (Tri.-Mumbai)***, wherein it is held as under:

“4. We express our displeasure in the manner the SCN has been issued in the present case without any evidence and legal basis. Hypothetical demand has been made. Apex Court in the case of *Brindavan Beverages* - [2007 \(213\) E.L.T. 487](#) (S.C.), *Ballarpur Industries Ltd.* - [2007 \(215\) E.L.T. 489](#) (S.C.), *Champdany Industries Ltd.* - [2009 \(241\) E.L.T. 481](#) (S.C.) and *Precision Rubber* - [2016 \(334\) E.L.T. 577](#) (S.C.) has held that show cause notice is the foundation for adjudication. Once that is absent, adjudication order is fatal. Finding no reason stated in the show cause notice, except a bald statement therein as to sitting capacity of “Armada Vehicle” without making any technical examination or conducting enquiry from Motor Vehicle authority, opportunity of defence was denied to the appellant to defend its case. Mere assumption that Armada vehicle had sitting capacity below 10, does not make the adjudication sustainable. Ld. adjudicating authority did not conduct physical verification of the vehicle nor the vehicle was sent to the Motor Vehicle authority to ascertain the seating capability thereof, for a proper classification. Summarily discussing in para 44 of the impugned order as to the law relating to the classification and without any technical report to support order of learned adjudicating authority, adjudication has been made arbitrarily.”

10. As regarding the penalty, the learned counsel submits that once the impugned order confirming the demand itself is unsustainable, imposing penalty is also unsustainable.

11. Learned AR reiterated the findings in the impugned order and submits that as per the evidence on record, appellant proposed a villa project comprising 69 villas, Common Area and Common Facilities like Swimming Pool, Market, Gymnasium etc and that the entire project has been undertaken by the assessee through sub-contractors. Further on a perusal of the agreements for construction

of villas, it is evident that the appellant has agreed to construct villas for their clients at per Sq. Ft. rates which includes cost of materials, labour etc. Works Contract is a composite contract for supply of goods and services. Learned AR also draws our attention to Tax Research Unit letter F.No. B1/16/2007-TRU dated 22.05.2007 and Board Circular No. B1/6/2005 TRU dated 27.07.2005 and submits that it is issued prior to the introduction of Works Contract Service and no application in the instant case. It is admitted fact that there was contracts entered into by the assessee are for the construction of villas, which are parts of a new Residential Complex and also that the said contracts have in-built agreement for the supply of goods involved in the execution of such contracts. Therefore, service provided by the appellant is rightly classifiable under Works Contract Service as envisaged under Section 65(105)(zzzza) of Chapter V of Finance Act, 1994 and demand is sustainable.

12. Heard both sides. As regarding the issue on merit, we find that while issuing the show-cause notice, only limited documents were considered as relied documents whereas while issuing the impugned order, adjudication authority has expanded the scope of show-cause notice by adding additional documents including alleged agreement etc. But there is no such documents available on record and learned AR is also not in a position to draw our attention to any such agreement which is relied by the adjudication authority to reach finding regarding tax liability on the appellant. Further we find that on a combined reading of the definition of 'Works Contract Service' and the definition of 'Construction of Residential Complexes', an approved plan is mandatory to classify activity as falling under the category of Works Contract Service and in the absence of any such approved plan by the local body, no presumption can be drawn that the activity carried out by the appellant are part of Construction of Residential Complexes. Moreover, as evident from the reply given by the appellant, the individual had purchased the land from the land owners and construction was carried out in their own premises. Further as per the statement of the appellant, the appellant has appointed 10 contractors as sub-contractors for construction of the villas and the piling work of the entire work foundation work was

carried out given to M/s. ZED Pile Foundation, Ernakulam, Electrical work of the entire project was given to M/s. Cosmic Electricals, Ernakulam, plumbing & painting work of the project was given to various individuals. Thus, considering the ratio of the Hon'ble High Court of Karnataka in the matter of ***Nithesh Estates Ltd. (supra)***, the subcontractor who had undertaken the construction are liable to pay service tax if they are falling under the category of taxable service and service tax cannot be imposed on the appellant.

13. Considering the same, appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 18.11.2025)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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