

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20532 of 2018

(Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-003-2018
(MY) dated 19.01.2018 passed by the Commissioner of Central Taxes
& Central Excise (Appeals), Cochin.)

M/s. Kalyan Developers,
TC 35/1403, Sree Krishna Building,
West Palace Road,
Thrissur – 680 022.

Appellant(s)

VERSUS

**Commissioner of Central
Tax & Central Excise**
C.R. Buildings, Mananchira,
Calicut – 673 001.

Respondent(s)

APPEARANCE:

Mr. Kuriyan Thomas, Advocate for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

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

Final Order No. 22005 /2025

DATE OF HEARING: 10.12.2025

DATE OF DECISION: 10.12.2025

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No. CAL-
EXCUS-000-APP-003-2018 (MY) dated 19.01.2018 passed by the

Commissioner of Central Taxes & Central Excise (Appeals),
Cochin.

2. Briefly stated the facts of the case are that the appellant are engaged in providing 'Construction of Residential Complex Services' and 'Works Contract Services' during the relevant period. On the verification of records, it is alleged that during the period April 2013 to March 2014, the appellant had classified certain works relating to construction of residential complex under the category of 'Construction of Residential Complex Services' and paid service tax @ 25% on the amount received by availing the exemption provided under Notification No. 26/2012-ST dated 20.06.2012, whereas the Department was of the view that the services provided by the appellant would fall under the scope of Works Contract Service and they are required to pay service tax after availing 60% abatement in view of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Consequently, the differential tax of Rs.11,59,957/- was demanded along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved, appellant preferred an appeal before the learned Commissioner(Appeals), who in turn, rejected the same. Hence, the present appeal.

3. At the outset the learned advocate for the appellant submits that classification of the services rendered by them whether under 'Construction of Residential Complex Service' as per the declared services under Section 66E(b) of the Finance Act, 1994 or under 'Works Contract Service' Section 66E(h) is relevant only in the context of availing reduction from the gross taxable value. In the former case, they have availed exemption/ abatement of 75% from the value by referring to Notification No. 26/2012-ST dated 20.06.2012 and discharged duty on the 25%

of the contract value whereas under 'Works Contract Services' in view of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, Department proposed to allow abatement only 60% of the value and directed to discharge duty on 40% of the gross taxable value. He submits that by virtue of the retrospective amendment introduced through Finance Act, 2017, the rules have been amended whereby the abatement under 'Works Contract Services' has been made at par with the Notification No. 26/2012-ST dated 20.06.2012 w.e.f. 01.07.2010. He has fairly submitted that the retrospective amendment was not neither before the original authority or the first appellate authority; hence he has no objection to remand the case to verify applicability of the said retrospective amendment to the facts of the present case.

4. The Learned AR for the Revenue has reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the appellant w.e.f. 01.07.2012 classified the services rendered by them under the scope of 'Construction of Residential Complex Service', whereas it is the Department's stand that the service be classifiable under 'Works Contract Services'. In the former case, 75% of the abatement is allowed whereas in the case of classification under 'Works Contract Services' abatement allowed was 60% of the gross taxable value. The learned advocate for the appellant submits that by way of retrospective amendment brought under the Finance Act, 2017, Rule 2A of the Service Tax (Determination of Value) Rules, 2006 has been amended whereby, the abatement allowed in both cases became equal thereby the dispute on classification becomes irrelevant as there would not be short payment of duty.

We find that this retrospective amendment was not placed before the original authority or first appellate authority; hence, it is prudent to remand the matter to the adjudicating authority to verify whether the retrospective amendment is applicable to the facts of the present case. All the issues are kept open. Needless to mention that reasonable opportunity may be granted to the appellant adhering to principle of natural justice.

7. Accordingly, the impugned order is set aside and appeal is allowed by way of remand to the adjudicating authority.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Gb/Raja...