

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21089 of 2018

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-10-17-18 dated 20.02.2018 passed by the Commissioner of Central Tax and Central Excise, Thiruvananthapuram.)

**The Commissioner of Central Tax
and Central Excise**

Central Revenue Building,
I.S. Press Road,
Cochin - 682 018.

Appellant(s)

VERSUS

**M/s. Skyline Foundation and
Structures (P) Ltd.**

Karikkamuri Cross Road,
Cochin - 682 011.
(Presently operating from
SFS Silicon Drive
Opposite CESZ,
Seaport - Airport Road,
Kakkanad,
Cochin - 682 037.

Respondent(s)

APPEARANCE:

Shri Rajashekar B.N.N, Superintendent (Authorised Representative) for the Appellant.

Shri Cherian Punnoose, Advocate for the Respondent.

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

FINAL ORDER NO. 22074 / 2025

DATE OF HEARING: 11.12.2025

DATE OF DECISION: 11.12.2025

PER: D.M. MISRA

This is an appeal filed against the Order-in-Original No.COC-EXCUS-000-COM-10-17-18 dated 20.02.2018 passed by the Commissioner of Central Excise, Thiruvananthapuram.

2. Briefly stated the facts of the case are that during the relevant period dated 01.04.2009 to 31.03.2010, the appellant provided services under the taxable category of 'Construction of Residential Complex Service' and 'Works Contract Service'. Show-cause notice was issued to the appellant on 20.10.2010 for recovery of Rs.3,71,22,691/- along with interest and penalty. On adjudication, the demands were dropped. Aggrieved by this order, Revenue is in appeal.

3. Learned Authorised Representative (AR) for the Revenue has reiterated the grounds of appeal.

4. At the outset, the learned counsel for the respondent submitted that levy of service tax on 'Construction of Residential Complex Service' for the period in dispute has been well settled. Now in support, he has referred to the Board's Circular No.108/2/2009-ST dated 29.01.2009 and Circular No.151/2/2012-ST dated 10.02.2012 and placed reliance on the following judgments.

- **Krishna Homes vs. CCE, Bhopal: 2014 (34) STR 881 (Tri.-Del.)**
- **CCE, Chandigarh vs. U.B. Construction (P) Ltd.: 2013 (32) STR 738 (Tri.-Del.)**
- **CCE & ST, Bangalore vs. Keerthi Estates Pvt. Ltd.: 2019 (26) G.S.T.L 227 (Tri.-Bang.)**
- **CCE & St vs. Desai Homes: 2025 (3) TMI 123 – CESTAT – BANGALORE**
- **Skyline Builders (Trivandrum) vs. CCE, Trivandrum: 2025 (6) TMI 1670-CESTAT Bangalore**

5. Heard both sides and perused the records.

6. Revenue has come in appeal against the order of the learned adjudicating authority on the ground that respondent had rendered taxable services but not paid service tax; the learned Commissioner has wrongly dropped the demand against the respondent considering that the services rendered by the

respondent are in the nature of 'Construction of Residential Complex Service' and 'Works Contract Service' are not leviable to service tax prior to 01.07.2010. This issue is no longer *res integra* and stands settled by various decisions of this Tribunal. In a similar set of facts and circumstances, this Tribunal in the case of **CCE & ST vs. Desi Homes** (supra) observed as:

"7. Assailing the impugned order, the Revenue in their grounds of appeal averred that the respondent discharging the service tax under the WCS prior to March 2009 but discontinued to pay service tax for the period March 2009 to June 2010 referring to the Circular dated 29.01.2009. However, on going through the show-cause notice and the order of the learned Commissioner, nowhere it has been brought on record that the respondent had been paying service tax from 01.06.2007 to February 2009 under the WCS. In the show-cause notice, it is alleged that the amount received by the appellant during the period March 2009 to June 2010 as recorded in their financial records not suffered service tax even though they have rendered the WCS. On going through the sample agreement placed by the respondent during the course of argument between the respondent and one Mr. Justin Joseph, the buyer, it is clear that the respondent were engaged in the construction of two towers and 19 residential individual units and the lands owned by them and after construction of the said units sold the same to the buyers. The allegation of the Revenue on the other hand in their grounds of appeal is that the respondent as a promoter / developer of residential complexes received payments on installment basis against contracts from the prospective purchasers of the units in the developed project during the course of construction of the complex. But no such sample agreement has been placed by the Revenue. On the contrary, the payment schedule in the sample agreement shows that the units have been completely constructed and sold to the buyers. In such circumstances, the Circular dated 29.01.2009 is applicable. The said Circular is reproduced below:-

Construction of Residential Complex service — Service tax liability of builders, promoters, developers and contractors clarified

Circular No. 108/2/2009-S.T., dated 29-1-2009

F.No. 137/12/2006-CX.4

Government of India Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Imposition of Service tax on Builders - Regarding.

Construction of residential complex was brought under service tax w.e.f. 1-6-2005. Doubts have arisen regarding the applicability of service tax in a case where developer/builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

3. The matter has been examined by the Board. Generally, the initial agreement between the promoters/builders/developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a

promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

Also, in the subsequent Circular No.151/2/2012-ST dated 10.02.2012, the Board has clarified as follows:-

2.1 Tripartite Business Model (Parties in the model : (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction) : Issue involved is regarding the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers.

Clarification : Here two important transactions are identifiable : (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder/developer. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash.

(A) Taxability of the construction service :

(i) For the period prior to 1-7-2010 : construction service provided by the builder/developer will not be taxable, in terms of Board's Circular No. 108/2/2009- S.T., dated 29-1-2009 [2009 (13) S.T.R. C33].

(ii) For the period after 1-7-2010, construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

8. This Tribunal taking note of the aforesaid circulars in **CC,CE & ST Vs. Pragati Edifice Pvt. Ltd.** (supra) case, summarised the findings as follows:-

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."

(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."

7. Following the ratio of the above decision, the impugned order is upheld and the appeal filed by the Revenue is dismissed.

(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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