

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

REGIONAL BENCH - COURT NO. 2

**Service Tax Appeal No. 21915 of 2015**

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-83-14-15 dated 28.03.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin.)

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

C R Building, I.S. Press Road,  
Ernakulam,  
Cochin-682 024,  
Kerala.

Appellant(s)

*VERSUS*

**M/s. Abad Builders Pvt. Ltd.,**

14/392-U3, Office No.86, VIII Floor,  
Abad Nucleus Mall & Office,  
N.H. 49, Maradu P.O,  
Cochin - 682 034.  
Kerala.

Respondent(s)

**WITH**

**Service Tax Appeal No. 22235 of 2015**

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-018-15-16 dated 30.07.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin.)

**M/s. Abad Builders Pvt. Ltd.,**

14/392-U3, Office No.86, VIII Floor,  
Abad Nucleus Mall & Office,  
N.H. 49, Maradu P.O,  
Cochin - 682 034.  
Kerala.

Appellant(s)

*VERSUS*

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

C R Building, I.S. Press Road,  
Ernakulam, Cochin-682 024,  
Kerala.

Respondent(s)

**APPEARANCE:**

Mr. Allen Joseph and Mr. N. Vijayakumar, Advocates for the Assessee.

Shri M. Sreekanth, Asst. Commissioner (AR) for the Revenue.

**CORAM:**

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

**FINAL ORDER NO. 22090 - 22091 / 2025**

DATE OF HEARING: 25.11.2025

DATE OF DECISION: 25.11.2025

**PER: R. BHAGYA DEVI**

These two appeals have been filed, one by the assessee and another by the Revenue. Since the issue involved in both these appeals lies in a very narrow compass, they are taken up together for hearing and disposal. The details of appeals are given below:

<b>Appeal No.</b>	<b>Appellant vs. Respondent</b>	<b>Order-in-Original</b>	<b>Period</b>	<b>Duty involved</b>
ST/21915/2015	CCE vs. Abad Builders Pvt. Ltd.	No. COC-EXCUS-000-COM-83-14-15 dt. 28.03.2015	01.10.2008 to 30.06.2010	Rs.1,13,73,393/-
ST/22235/2015	Abad Builders Pvt. Ltd. vs. CCE	No. COC-EXCUS-000-COM-018-15-16 dt. 30.07.2015	January 2009 to June 2010	Rs.92,65,387/-

2. Briefly the facts are that the assessee M/s. Abad Builders Pvt. Ltd. are registered under the categories of Construction of

Residential Complex Service, Works Contract Service, Maintenance or Repair Service, etc. The assessee had not discharged service tax for the period from January 2009 to June 2010; since they were liable to pay tax, the Revenue issued show-cause notice and confirmed the demand on the ground that the assessee was not covered by the Board's Circular No.108/02/2009-ST dated 29.01.2009. Aggrieved by this order, the assessee is in appeal before us in Appeal No.ST/22235/2015.

2.1 In appeal No.ST/21915/2015, the Commissioner vide impugned order No.83/2014-15 dated 28.3.2015 dropped the proceedings on the ground that the assessee is not liable to pay service tax prior to 1.7.2010 as there was no provision in the statute to collect the service tax and for the period after 1.7.2010, they were not liable to pay tax on account of the Circular No.108/02/2009-ST dated 29.01.2009. Aggrieved by this order, the Revenue is in appeal before us.

3. The learned counsel for the assessee submits that for the period from January 2009 to June 2010 in appeal No. ST/21915/2015, for the period prior to the period 1.7.2010, the Commissioner himself has dropped the proceedings in view of the decision of the Hon'ble Supreme Court in the case of **CCE & Customs vs. Larsen & Turbo Ltd.: 2015 (39) S.T.R. 913 (SC)** and also on the ground that they are covered by the Board's Circular No.108/02/2009-ST dated 29.01.2009 and hence, not liable to pay service tax. He further submits that the same should be applicable to them in assessee's Appeal No.ST/22235/2015 wherein Commissioner has confirmed the

demand irrespective of the fact that the similar agreements are in dispute which are part of the Appeal No.ST/21915/2015; hence, question of confirming the demand does not arise. He relies on the following decisions of the Tribunal.

- **Sunil Kumar vs. CCT, Cochin: Final Order No.20092/2022 dated 04.03.2022**
- **M/s. KVJ Builders & Developers P. Ltd.: Final Order No.20044/2024 dated 19.01.2024**
- **M/s. MFAR Construction Pvt. Ltd. vs. CCE: Final Order No.20905/2024 dated 20.09.2024**
- **M/s. Skyline Builders (Trivandrum) vs. CCT: Final Order No.20511/2025 dated 01.04.2025**

4. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner in appeal No.ST/22235/2015 and in appeal No.ST/21915/2015 submits that the grounds of appeal filed by the department very clearly establish the fact that the assessee is not covered by the Circular in view of the fact that there were two separate agreements; one for the land and the other for the construction. It is also submitted that the services provided by the assessee fall under the category of Construction of Residential Complex Service and relies on the decision rendered in the case of M/s. LCS City Makers (P) Ltd. vs. CCE: 2012-TIOL-618-CESTAT-MAD.

5. Heard both sides. During the disputed periods, the liability of service tax was full of controversy and the issue got settled by the apex court in the case of **CCE & Customs vs. Larsen & Turbo Ltd.** (supra), wherein it was held that there was no

provision to tax under the category of 'Construction of Residential Complex Service' since the construction undertaken by the appellant was to be classified under 'Works Contract Service' which came into effect from 1.7.2010 onwards. Therefore, prior to 1.7.2010 they were not liable to pay service tax and after 1.7.2010 they were liable to pay service tax only under the category of 'Works Contract Service'. Since the demands are under the category of 'Construction of Residential Complex Service', the Commissioner was right in dropping the proceedings in Appeal No.ST/21915/2015.

6. In appeal No.ST/22235/2015, the Commissioner in the impugned order observes that *"the consideration for the undivided share of land is either received in advance or recovered through instalments along with cost of construction. The undivided share of land along with constructed building is finally transferred to the buyers through a single sale deed registered after the completion of construction and receipt of the payment in full."* In view of the above, as per the Board circular and as is held in various decisions of this Tribunal, the appellant is not liable to discharge service tax. The Tribunal in the case of **Kirshna Homes vs. CCE Bhopal: 2014 (34) STR 881 (Tri.-Del.)** has held as follows:

**"8.** Coming first to the question as to whether the activity of M/s. Krishna Homes and M/s. Raj Homes was taxable during the period of dispute or not, by Finance Act, 2005, Clause (zzzh) was introduced into Section 65(105) of Finance Act, 1994, so as to bring within the purview of the term 'taxable service', a service provided or to be provided to any person by any other person "in relation to construction of complex". The

expression "construction of complex" was defined in sub-section (30a) of Section 65 and accordingly this expression covered - "(a) construction of a new residential complex or a part thereof or (b) completion of finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex". The expression residential complex was defined in Section 65(91a) of the Finance Act, 1994 as any complex comprising of - "(i) a building or buildings, having more than twelve 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 system, located within a premises and the layout of such premises is approved by any authority under 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". There is no dispute that the complex constructed by both the assesseees in these appeals are covered by the definition of "residential complex" as given in Section 65(91a). There is also no dispute that both the assesseees had engaged contractors for construction of the complexes. The dispute in these appeals is as to whether the assesseees would be liable to pay Service Tax on the amounts charged by them from their customers with whom they had entered into agreements for construction of the residential units and whose possession was to be handed over on completion of the construction and full payment having been made by the customers. It is seen that on this point, the Tax Research Unit of the Central Board of Excise & Customs, which is a wing of the C.B.E. & C. dealing with legislation work, had vide Circular No. 332/35/2006-TRU, dated 1-8-2006 clarified that in case where a builder, promoter,

developer builds a residential complex having more than 12 residential units by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay Service Tax on the gross amount charged for the construction service provided to the builder/promoter/developer under construction of complex service falling under Section 65(105)(zzzh) of the Finance Act, 1994 and that if no person is engaged by the builder, promoter, developer for construction work who undertakes construction work on his own without engaging the services of any other person than in such cases, in absence of the service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise. W.e.f. 1-7-2010 an explanation was added to Section 65(105)(zzzh) which was as under :-

*"Explanation. - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."*

Thus, in terms of this explanation, when a builder/promoter/developer got a residential complex constructed for his customers with whom he had individually entered into agreements, in terms of which the prospective customers were required to make payments for the residential units to be constructed in instalments and the possession of the residential units was to be given to the customers on completion of the complex and full payment having been made, the builder/promoter/developer was to be treated as a deemed provider of construction of residential complex service to his customers. Thus, by this explanation, the scope of the Clause (zzzh) of Section 65(105) has been

expanded and this amendment by adding an explanation has been held by this Tribunal in the case of *CCE, Chandigarh v. U.B. Construction (P) Ltd.* (supra) as prospective amendment. In this regard, para 5 of this judgment is reproduced below :-

*"5. In Maharashtra Chamber of Housing Industry v. Union of India - 2012 (25) S.T.R. 305 (Bom.), the validity of the 'Explanation' added to Sections 65(105)(zzq) and (zzzh) was challenged on several grounds. The Bombay High Court, also considered the issue whether the explanation was prospective or retrospective in operation and ruled that the explanation inserted by the Finance Act, 2010 brings within the fold of taxable service a construction service provided by the builder to a buyer where there is an intended sale between the parties whether before, during or after construction; that the 'Explanation' was specifically legislated upon to expand the concept of taxable service; that prior to the explanation, the view taken was that since a mere agreement to sell does not create any interest in the property and the title to the property continues to remain with the builder, no service was provided to the buyer; that the service, if any, would be in the nature of a service rendered by the builder to himself; that the explanation expands the scope of the taxable service, provided by builders to buyers pursuant to an intended sale of immovable property before, during or after the construction and therefore the provision is expansive of the existing intent and not clarificatory of the same; and is consequently prospective".*

**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."

6. In view of the above, the appeal No.ST/22235/2015 filed by the assessee for the period from 01.10.2008 to 30.06.2010 is allowed and the appeal No.ST/21915/2015 filed by the Revenue for the period January 2009 to June 2010 is to be dismissed since the Commissioner has rightly dropped the proceedings in view of the above Board Circular.

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

**(P.A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

rv