

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

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 22261 of 2015**

(Arising out of Order-in-Appeal No.TVM-EXCUS-000-APP-136-15-16 dated 23.07.2015 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.)

**M/s. Beacon Projects Pvt. Ltd.**

G-5, Gaan Enclave,  
EVRA 450,  
Vazhutacadu,  
Trivandrum - 695 014.

Appellant(s)

*VERSUS*

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

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

Respondent(s)

**APPEARANCE:**

Ms. Meghna Lal and Ms. Parvathy Meno, Advocates for the Appellant.  
Shri Vikalp Jain, 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. 22093 /2025**

DATE OF HEARING: 03.12.2025

DATE OF DECISION: 03.12.2025

**PER: R. BHAGYA DEVI**

This appeal is filed by the appellant against Order-in-Appeal No.TVM-EXCUS-000-APP-136-15-16 dated 23.07.2015 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.

2. Briefly the facts are that the appellant M/s. Beacon Projects Pvt. Ltd. are into activity of Construction of Residential Complex during the relevant period. They had undertaken Construction of Residential Complex such as 'Beacon Green Lillies Apartments', 'Beacon Grace Apartments' and 'Beacon Green Apartments'. The Revenue alleged that appellant had not paid service tax under the category of Construction of Residential Complex for the period from 01.10.2009 to 30.06.2010. Accordingly, show-cause notice was issued and the original authority confirmed service tax amount of Rs.21,10,760/- along with interest and penalty which was upheld by the Commissioner (Appeals) in the impugned order. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submits that during the relevant period, the agreements entered into by the appellant with the buyers are turnkey contracts which warrant supply of both goods and services and in terms of the agreements, the appellant undertakes entire construction activity on a composite basis which is indivisible in nature and they are in the nature of 'Works Contract' which came to be introduced only w.e.f. 01.06.2007. Further, it is submitted that the appellant cannot be held to be liable to service tax during the disputed period i.e. prior to 01.07.2010 since the service rendered by the appellant is in the nature of self service. Only from 01.07.2010, an *Explanation* was added to Section 65(105)(zzzh) where the services rendered by the appellant were liable to service tax. Also, relied on the CBEC Circular Nos. 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 even in cases of 'Tripartite Models' the builder/developer is not liable to pay service tax prior to 01.07.2010. Relied upon the following decisions:

- **M/s. Gardencity Realty Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore 2024 (7) TMI 477 CESTAT Bangalore**
- **Commissioner of Central Excise, Customs & ST Vs. Andra Associates 2024-VIL-1355-CESTAT-BLR-ST**

3.1 She also submitted that extended period of limitation cannot be invoked as there is no justification provided in the impugned order and the periodical show-cause notice has been issued on identical facts for an earlier period, therefore, the question of suppression cannot be invoked against the appellant.

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

5. Heard both sides. The period of dispute is from October 2009 to June 2010 and it is not in dispute that the appellant was undertaking Construction of Residential Complex Service during the disputed period. It is also a fact that the definition of Construction of Residential Complex Service which was introduced w.e.f. 01.06.2005 was amended w.e.f. 01.07.2010 by introducing an *Explanation* to the definition of taxable services of Construction of Residential Complex Service under Section 65(105)(zzzh) which reads as follows:

“Explanation – For the purpose of this sub-clause, construction of a complex which is intended for sale, by a builder or any person authorised by a 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 a person authorised by the builder before the 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 buyers”.

5.1 The Tribunal in the case of **M/s. Real Value Promoters Pvt. Ltd. Vs. Commissioner of GST and Central Excise (2024) 19 Centax 377 (Tri.-Mad)** dated 04.04.2024 CESTAT Chennai held as follows:

"7. The Principal Bench of CESTAT in the case of *Krishna Homes v. Commissioner of Central Excise, Bhopal*, reported in 2014 (34) S.T.R. 881 (Delhi) has held, following judgement in *Larsen & Toubro and Others v. State of Karnataka*, 2014 (34) S.T.R. 481 (S.C.) as under:

*"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."*

8. Further, to tax a particular service, the liability under that head shall only be prospective and not applicable for any period prior to that date, *i.e.* 1-7-2010 as in the case on hand. Hence, service tax could not be levied under works contract service prior to 1-7-2010; and the levy could only be under CRCS/CCS simplicitor as the case may be. Further, as held by the Hyderabad Bench of the Tribunal *vide* Final Order No. A/31010 to 31011/2019 dated 18-9-2019 in the case of *Pragati Edifice Pvt. Ltd. v.*

*Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I* [2019 (31) G.S.T.L. 241 (Tribunal)], after 1-6-2007, the chargeability to works contract arises only if it is a composite contract and under construction of complex service if it is a service simplicitor.

**8.1** We note that the learned Advocate has relied on a number of orders of CESTAT Benches wherein similar views have been expressed, we *set aside* the impugned orders to the above extent and allow the appeals insofar as with grounds relating to CCS and CRCS are concerned”.

5.2 In view of the above, the appellant was liable to pay service tax only w.e.f. 01.07.2010. This fact is also emphasized by Board Circular No.151/2/2012-ST wherein it is stated that ‘for the period prior to 01.07.2010: Construction service provided by the builder/developer will not be taxable in terms of Board Circular No.108/02/2009-ST dated 29.01.2009’. Accordingly, the impugned order is set aside and the Appeal is allowed.

(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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