CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 1344 of 2011

(Arising out of Order-in-Original No. 12/2011 dated 31.01.2011 passed by the Commissioner of Service Tax, Bangalore.)

M/s. Puravankara Projects Ltd.
No. 130/1, Ulsoor Road,
Sivan Chetty Gardens,
Bangalore – 560 042. ....**Appellant(s)**

VERSUS

The Commissioner of Service Tax,
16/1, 5th Floor, S. P. Complex,
Lalbagh Road,
Bangalore – 560 004. ....**Respondent(s)**

APPEARANCE:
Mr. Syed Peeran and Mr. Siddarth Bavle, Advocates for the appellant
Mr. M.A. Jithendra, Asst. Commissioner (AR) for the Revenue

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

FINAL ORDER No. 22094 / 2025

Date of Hearing: 20.11.2025
Date of Decision: 20.11.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding eligibility of the Appellant for composition scheme. Appellant is engaged in the activity of construction of residential complex during the period from June 2005 to June 2007 and registered under said category. During the period, Appellant had entered into agreement with prospective buyers of individual apartment for sale of undivided share in the immovable property and also entered into construction agreement with the prospective buyers. Though the Appellant was not liable to pay service tax on the amount received from the client, as an abounded precaution, Appellant paid service tax with effect from 16.06.2005 under the taxable category of construction of complex services. Thereafter with effect from 01.06.2007, works service contract was introduced and Appellant vide letter dated 31.05.2007 informed the respondent that they shall thereafter classify their services under Works Contract and also informed that as per Rule 3 of Works Contract (Composition Scheme for Payment of Service Tax) Rule, 2007, appellant had opted to discharge service tax in respect of agreements entered into prior to 01.06.2007. Appellant had paid service tax accordingly and the same was reflected in the ST-3 returns filed during the period from June 2007 to March 2008. During audit in the month of January 2009, certain objections were made and informed that the appellant is liable to pay service tax short paid by availing composition scheme. Thereafter show-cause notice was issued alleging irregular shifting of the classification of ongoing residential construction project to works contract service and for discharging service tax under the composition scheme and as per Order-in-Original dated 31.01.2011, the Commissioner confirmed the demand. Aggrieved by the said order present appeal is filed.

2. When the appeal came before hearing, Learned Counsel draws our attention to the finding in the impugned order where it is held that appellant could not have irregularly shifted from the category of 'construction of residential complex' to composition scheme provided for the category of 'Works Contract'. Learned Counsel also submits that the activities undertaken by the appellant is on execution of turnkey contracts for carrying out construction of residential complexes and as per the settled law, no service tax could be levied in respect of composite contracts under any of the categories including construction of residential complexes as the said categories do not envisage to cover composite

supply of goods and services. Learned Counsel further submits that the issue is no more res integra and as per the judgment of the Hon'ble Supreme Court in the matter of the **Commissioner of Central Excise and Customs Vs. Larsen and Toubro Limited reported in 2015 (39) STR 913 SC**, wherein it was stated that service simplicitor contracts alone are liable to service tax prior to 01.06.2007 and does not provide for levy on composite works contract such as the present contract. In this regard, Learned Counsel relied on large number of decisions and submits that as regarding supply of composite service it can be taxed only under the category of works contract service as held in the case of **Real Value Promoters Pvt. Ltd. and Ors Vs. Commissioner of GST and Central Excise, Chennai-2018 (9) TMI 1149 – CESTAT Chennai and Krishna Homes Vs. CCE, Bhopal – 2014 (3) TMI 694 - CESTAT Ahmedabad**. Learned Counsel further submits that as regarding liability on ongoing project, it is categorically held that - ongoing projects are also eligible for the availment of works contract composition scheme as per the following decisions:-

i. ***NCC Ltd. v. Commissioner of Central Tax, Hyderabad GST - 2023 (10) TMI 590-CESTAT Hyderabad***
ii. ***M/s. KVJ Builders & Developers P. Ltd. v. Commissioner of Central Excise and Customs, Cochin Commissionerate, Cochin - 2024 (1) TMI 893 CESTAT Bangalore***
iii. ***M/s. Mfar Construction Private Limited v. C.C.E & C.S.T. - Bangalore Service Tax- I - 2020 (7) TMI 28-CESTAT Bangalore***
iv. ***Godrej Properties Ltd v. Commissioner of Central Tax, Bangalore North - 2023 (11) TMI 722 - CESTAT Bangalore***
v. ***M/s. D.S. Gupta Contracts Ltd. v. The Commissioner of Service Tax, 2019 (6) TMI 628 CESTAT New Delhi***

3. Learned Authorized Representative (AR) for the revenue reiterated the submissions in the impugned order.

4. Heard both sides and perused the records. We have considered the decisions relied by the appellant. As per the decision of the Tribunal in the matter of **NCC Ltd. Vs. Commissioner of Central Tax, Hyderabad – GST 2023 (10) TMI 590 – CESTAT Hyderabad,** the issue was considered and it is held that:-

> "19.2 So far the issue of tax liability with respect to ongoing projects (which were started prior to 01.06.2007) when the head of works contracts was introduced in the Finance Act, view had been taken by the Revenue and also by some High Courts that in case of ongoing projects though the activity is classifiable under 'works contract service with effect from 01.06.2007 however, the benefit of composition scheme cannot be availed. We find that the rulings being relied upon by the Revenue against the appellant are all prior to August, 2015 when the Apex Court held that in case of composite contracts, service tax cannot be demanded prior to 01.06.2007 under the existing heads of services like CCS, ECIS, CICS etc., as there was no mandate in the Act to bifurcate a composite contract and tax the service component. The Apex Court categorically held that prior to 01.06.2007 only simple contracts involving only service, and no deemed transfer of material can be subjected to service tax. Thus the issue of ongoing projects prior to 01.06.2007 stands settled by Hon'ble Supreme Court in the subsequent ruling of L & T in August, 2015. In the circumstances, as the scheme of composition was introduced for the first time for ease of business, and to avoid harassment to the assessees, the window to pay tax under the composite scheme was provided. The benefit of the scheme to the appellant was denied as it could not opt for composition scheme in due time. Thus, we hold that benefit of composition scheme is available to the assessee, and accordingly the denial of benefit of composition scheme is set aside".

5. Further the issue was also considered by this Tribunal in the matter of **M/s. Mfar Construction Private Limited Vs. C.C.E. & C.S.T – Bangalore Service Tax – I – 2020 (7) TMI 28 – CESTAT Bangalore**, where it is held that:-

> *"13. In the instant case, the appellants have been paying service tax under Construction of Complex Services etc. before 01.06.2007. On introduction of service tax on "Works Contract", the appellants had written to the Department for clarification. They have submitted a letter on 14.06.2007 that they will be opting for Composition Scheme. The Department has demanded the duly denying the opportunity. We find*

that the Rule 3 (1) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007".

"14. It is clear from the Rule that the person providing Works Contract can pay service tax under Composition Scheme if he opts for the same before payment of service tax. The appellants have exercised the option to go under Compensation Scheme vide letter dated 14.06.2007, the same is not disputed by the Department who sought to deny the benefit in view of the Circular discussed above and the Circular loses its relevance after the judgment in the case of L&T. We find that Tribunal has gone into very same issue in the case of B.R. Kohli Construction Pvt. Ltd. Vs CST, Delhi, 2017 (5) GSTL 182 (Tri. Delhi) and held that Composition Scheme cannot be denied to the appellants merely on the ground of discharge of service tax under different Head prior to 01.06.2007. The Tribunal held in Paragraph 4".

"15. In view of the above, we are of the considered opinion that the benefit cannot be denied to the appellants. We find that Tribunal and Courts have been setting aside the demands raised in respect of Composite Works Contracts after the judgment in the case of L&T. The appellants have been paying duty albeit under a different Head before 01.06.2007. It would be miscarriage of justice if the appellants are denied the compounded scheme of payment of duty under Works Contract after 01.06.2007 which could have been easily exercised by those who were not paying duty before 01.06.2007. The appellants cannot be put to jeopardy for the reason that they have been paying service tax before 01.06.2007 though they were not legally required to pay in view of the judgment in the case of L&T".

6. Considering the ratio of the above decisions, impugned order is set aside; the appeal is allowed with the consequential relief if any in accordance with the law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

hr/Sasi