CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21395 of 2015

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-019 to 021-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.)

Sree Chakra Living Space
Govind, XXI/270, Chinmaya Road,
Tripunithura,
Kerala. **........Appellant(s)**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
C R Building, I S press Road,
Ernakulam, Cochin,
Kerala - 682018 **.........Respondent(s)**

AND

Service Tax Appeal No. 21396 of 2015

(Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-019 to 021-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.)

Sree Chakra Living Space
Govind, XXI/270, Chinmaya Road,
Tripunithura,
Kerala. **.........Appellant(s)**

VERSUS

Commissioner of Central Excise,
Customs and Service Tax,
C R Building, I S press Road,
Ernakulam, Cochin,
Kerala - 682018 **......Respondent(s)**

APPEARANCE:

Mr. K. Hariharan, Chartered Accountant for the Appellant
Mr. Rajashekar B.N.N, Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20440-20441 /2026

Date of Hearing: 03.03.2026
Date of Decision:03.03.2026

Per: Pullela Nageswara Rao

These 2(two) appeals are filed against Order-in-Appeal No. COC-EXCUS-000-APP-019 to 021-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin.

2. The issue involved in the present appeals is whether the services under dispute classified as "construction of complex service" as per Section 65(30a) read with section 65 (105) (zzzh) of the Finance Act, 1994 are exempt from service tax during the relevant period.

3. The brief facts of the case are, the appellant M/s. Sree Chakra Living Space is a builder and developer in Cochin engaged in construction and selling of residential flats and is registered under "construction of residential complex service". The appellant enters into agreements with prospective customers for construction of dwelling units in a residential complex being composite contracts of construction involving supply of goods and services. The department alleging that the appellant is liable to pay service tax for the services of 'construction of residential complex' issued a show cause notice (SCN dated 12.05.2011. The learned Adjudicating Authority vide Orders-in-Original dated confirmed the 2(two) demands of Rs.86,675/- and Rs.1,52,463/- along with interest under section 75 and imposed penalties under sections 76 and 77, on the ground that the appellant is not entitled to exemption as per Circular No 108/02/2009-ST dated 29.01.2009 and that the appellant is not the actual owner of the properties and they have only possessory right to develop the land and construction of the building, therefore the service rendered by the appellant cannot be considered as self-service, hence the exemption in terms of the Board Circular No. 108/02/2009-ST dated 29.01.200 cannot be extended to

the appellant. Aggrieved by the Orders-in-Original appellant filed appeals before Commissioner (Appeals), who vide the common impugned order dated 28.04.2015, dismissed the appeals of the Appellant and upheld the Order-in-Originals. Aggrieved by the impugned order appellant filed these appeals before this Tribunal.

4. Details of the 2(two) appeals are as under;

Particulars	Appeal No. ST/21395/2015	Appeal No. ST/21396/2015
Period Of Dispute	01/2009 to 03/2009	April, 2009 to March, 2010
Show Cause Notice No./ Date	17/2010-ST dated 12.04.2010	41/2010-ST dated 07.10.2010
Order-in-Original	No.39/10-ST 30.11.2010	16/2011-ST 12.05.2011
Order-in-Appeal	Nos. 19-21/15-16 Dated 28.04.2015	Nos. 19-21/15-16 Dated 28.04.2015
Demand of Service Tax	Demand of Rs.86,675/- a/w interest u/s 75 and penalties u/s 76&77	Demand of Rs.1,52,463/- a/w interest u/s 75 and penalties u/s 76&77
Service provided	Construction of Complex Services	Construction of Complex Services

5. The above 2(two) appeals were filed against a combined Orders-in-Appeal dated 28.4.2015 passed by Commissioner (Appeals), Cochin, and involve common issues.

6. The learned counsel for the appellant during the hearing as regards the applicability of Circular No. 108/02/2009-ST dated 29.01.2009, submits that; the Hon'ble Bangalore Tribunal and other

benches have held that builders and developers are not liable for service tax for the period up to 01.07.2010 based on the Circular No. 108/02/2009-ST dated 29.01.2009 and 151/2/2012-ST dated 10.02.2012 and also as per the amendment to section 65(105) (zzzh) by the insertion of explanation from 01.07.2010, the relevant decisions are as below:

I. **Skyline Builders (Trivandrum) Vs. Commissioner, Trivandrum-2025-TIOL-996-CESTAT-Bang-Final Order No. 20511/2025 dated 01.04.2025**

II. **CCE & ST Vs. Desai Homes Final Order No. 20226 /2025- dated 28.02.2025- (Tri-Blr)**

III. **Commissioner of C. Ex. & S.T., Bangalore-LTU Vs. Keerthi Estates Pvt. Ltd.- 2019 (26) G.S.T.L. 227 (Tri. - Bang.)**

IV. **Commr. Of Cus., C.E. & S.T., Visakhapatnam-I Vs Pragati Edifice Pvt. Ltd. - 2019 (31) G.S.T.L. 241 (Tri. - Hyd.)**

V. **Krishna Homes Vs. Commissioner Of Central Excise, Bhopal -2014 (34) S.T.R. 881 (Tri.-Del.)-**Composite Contracts cannot be taxed under "Construction Of Complex" services.

7. The learned counsel submits that; without prejudice to the above submission of tax exemption as per the Circulars and Tribunal decisions, the Hon'ble Supreme Court has held in **Commissioner, Central Excise & Customs, Kerala Vs. Larsen & Toubro Ltd - 2015 (39) STR 913 (SC)** that "works contracts" are taxable only from 01.06.2007 and only under the category of "works contract" services as defined under section 65 (105) (zzzza), only pure services were held as taxable under existing categories of 'commercial or industrial construction' service [65(105)(zzq)] and 'construction of complex' services [65(105) (zzzh)]. Accordingly, service tax demand on composite contracts comprising of materials and labour are not sustainable for the period before and after 01.06.2007 under "construction of complex" services; further, relying

on the Larsen & Toubro Ltd., decision (supra), the Hon'ble Chennai /Hyderabad benches of CESTAT have also held that composite contracts of construction involving supply of goods and services are taxable only from 01.06.2007 under the classification of "works contract service" and post 01.06.2007, the demand is not sustainable under any other service categories.

8. The learned counsel in support of the above contention relied on the following case laws:

a. **Commr. of Cus., C.E. & S.T., Visakhapatnam-I Vs. Pragati Edifice Pvt., Ltd. - 2019 (31) G.S.T.L. 241 (Tri. - Hyd.)**
b. **Real Value Promoters Pvt. Ltd. Vs. Commissioner Cestat-Mad 2018-Tiol-2867-**
c. **Jain Housing & Construction Ltd. Vs. Commissioner Of Service Tax, Chennai - (2023) 10 Centax 170 (Tri.-Mad) - Affirmed by SC in-(2023) 10 Centax 171 (SC).**

9. The learned counsel submits that based on the above submissions, the confirmation of the 2(two) demands of Rs. 86,675/- and Rs. 1,52,463/- along with interest under section 75 and imposition of penalties under sections 76 and 77 are liable to be set aside.

10. The learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order of Commissioner (Appeals).

11. Heard both sides and perused the records.

12. In Appeal Nos. ST/21395/2015 and ST/21396/2015, the adjudicating authority /appellate authority had confirmed the service tax demand along with the interest and imposed penalties for the construction activities of the appellant under 'construction of complex' service. We find that the appellant is not liable for payment of service tax for the period up to 01.07.2010 under the category of 'construction of complex' service based on the Circular Nos. 108/02/2009-ST dated 29.01.2009, 151/2/2012-ST dated 10.02.2012, and also as per the

amendment to section 65(105) (zzzh) by the insertion of explanation from 01.07.2010. Therefore, 'construction of complex' services are not liable to service tax prior to 01.07.2010. We find that the period involved in the impugned services provided by the appellant are prior to 01.07.2010, therefore the demand of service tax prior to 01.07.2010 is unsustainable.

13. In view of the above discussion, we find that confirmation of demand along with interest and imposition of penalties on the activity of 'construction of complex' service by the appellant vide the impugned orders in Appeal Nos. ST/21395/2015 and ST/21396/2015 are unstainable and liable to be set aside.

14. Accordingly, the impugned orders are set aside, and the appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in Open Court on 03.03.2026)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasi...