CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/699/2008-DB

[Arising out of Order-in-Appeal No. 143/2008 dated 18/09/2008 passed by the Commissioner of Central Excise, Customs and Service Tax, Mangalore]

Mandavi Promoters And Developers
Near Bus Stand, Shiribeedu,
Udupi
Karnataka

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax, Mangalore
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore - 575 003
Karnataka

Respondent(s)

Appearance:

Mr. H.Y. Raju, Advocate
#39/1, Pinaki , 2nd Floor, Sannidhi Road, Above SBI, N.R. Colony, Basavanagudi, Bangalore – 560 004

For the Appellant

Dr. J. Harish, Deputy Commissioner (AR)

For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20284 / 2018

Per : V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 143/2008 dated 18.09.2008. The appellants were engaged in providing services under the category of 'Construction of Complex Services' falling under Section 65(30a) of the Finance Act 1994 and is taxable under Section 65(105) of the Finance Act 1994. The dispute covers the period June 2005 to March 2006. During the course of audit, the Department noticed that the appellant was receiving consideration from its customers, on the basis of agreement which indicated that the consideration pertains to:-

(a) Sale of undivided rights of the land on which the building was constructed

(b) the Construction charges

The land value was indicated separately in the Books of Accounts of the service provider. Department was of the view that the amount recovered as land value should also form part of the total consideration received for payment of service tax. Accordingly service tax was demanded on the value shown as land value. The claim of the appellant has been that service tax is required to be paid only on the amount recovered for Construction of Residential Complex, in terms of Board's Clarification F.No. B1/5/2005-TRU dated 27.07.2005.

2. After hearing both parties and on perusal of record, we note that the agreements entered into by the appellant with the buyer clearly indicate that the consideration recovered is partly for the sale of undivided rights of the land on which the complex has been constructed and rest is for the construction charges. The two amounts are indicated separately in the

agreements entered into with the buyers as well as recorded separately in the Books of Accounts of the appellant. In view of the above, we find no reason to uphold the levy of service tax on the amount booked as land charges particularly in view of the clarification issued by TRU supra.

3. In the result, the impugned order is set aside and appeal is allowed.

(Order was pronounced and dictated
in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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