CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.1

Appeal(s) Involved:

ST/640/2008-DB, ST/292/2009-DB

[Arising out of Order-in-Appeal No. 123/2008 dated 28/08/2008 passed by CCE(Appeals), Mangalore]

[Arising out of Order-in-Appeal No. 9-2009 dated 06/01/2009 passed by CCE(Appeals), Mangalore]

K. Manmohan Mally
Prop: Abhiman Constructions, 9th Floor, Near Bunts Hostel Circle, Kadri Road, Mangalore - 575003
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax Mangalore
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE, - 575003
KARNATAKA

Respondent(s)

Appearance:

Shri Malla Rao, Advocate
NO.3/1, PRANAVA COMPLEX, 5TH CROSS,
MALLESWARAM, BANGALORE-560003

For the Appellant

Shri K. Veerabadra Reddy, Addl. Commissioner(AR)

For the Respondent

Date of Hearing: 26/03/2019
Date of Decision: 26/03/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20297-20298 / 2019

Per : P. ANJANI KUMAR

The appellant M/s. Abhiman Constructions, Bangalore (represented by Proprietor Shri K. Manmohan Mally) are providers of constructions service in relation to commercial complexes. They have been issued show-cause notices for the reason that they have claimed abatement in terms of Notification No.15/2004 (as amended by No.18/2005) and therefore they are not entitled for exclusion of the cost of the land from the gross payment received by them for the purpose of payment of service tax. The Show-cause notices were confirmed by the lower authorities. On an appeal filed by the appellant, Commissioner(Appeals) vide Order-in-Appeal No.123/2008 dt. 28/08/2008 and No.9/2009 dt. 06/01/2009 has confirmed the demands holding when Notification No.15/2004 and No.18/2005 is availed, abatement will be given to pay service tax only on 33% of gross amount charged and since the appellants having availed abatement in terms of the Notifications, cost of land cannot be permitted to be excluded.

2. Learned advocate for the appellants has submitted that sale of land has nothing to do with the services provided by appellant depending on the circumstances, he sold the land to his customers either on his own or on behalf of the owners. He further submitted that Board Circular F.No.B1/6/2005-TRU dt. 27/07/2005amply clarifies that service tax will be payable only on the gross amount charged by the service tax provider for the construction services provided and it would not include the cost of land and stamp duty paid for registration of land. He also relied upon Board circular No.108/02/2009-ST issued from F.No.137/12/2006-CXIV dt. 29/01/2009 wherein it was clarified that any service provided by such seller in connection with the construction of residential complex in the execution of such sale deed would be in the nature of self service and consequently would not attract service tax. lastly, he submitted that as held by Hon’ble

Supreme Court in the case of of CCE & C, Kerala vs. Larsen & Toubro Ltd., [2015 (39) STR 913 (SC)], the activity undertaken being in the nature of works contract is not taxable before 01/07/2010. He also submitted that the above decision was followed by Tribunal, Delhi in the case of Krishna Homes 2014(34) STR 881 (Tri.Del.)] .

3. Heard both sides and perused records of the case.

4. We find that the appellant is engaged in construction of commercial and residential complexes. The immovable property transferred by the appellants to the ultimate customers of the completion of the work pertains to period 2005-06 and 2006-07. Understandably, such transfer also included the cost of the land. Therefore the appellant's case is squarely covered by the decision of Tribunal in the case of Krishna Homes (supra) following Apex Court's judgment in the case of Larsen and Toubro (supra). We find that Tribunal in the case of Krishna Homes held that

> ***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.

5. In view of the above, the appeals are allowed.

(Operative portion of the Order was pronounced
in Open Court on **26/03/2019**)

S.S. GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

Raja...