**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Appeal No. ST/00255/2016 -[DB]**

(Arising out of Order-in-Original No. 01/ST/CHD-II/2016 dated 20.01.2016 passed by the Commissioner, Chandigarh)

**M/s G S Promoters & Developers** ......**Appellant**
(SCO 409 1st floor Sector 20 panchkula, Haryana )

*VERSUS*

**C.C.E & S.T. Chandigarh** ......**Respondent**
(Plot No. 19 Central Revenue Building Sector 17-C Chandigarh 160017)

**WITH**

**Appeal No. ST/60164/2016 -[DB]**

(Arising out of Order-in-Original No. 07/ST/CHD-II/2016 dated 22.02.2016 passed by the Commissioner, Chandigarh)

**M/s A P Shresh Colonisers** ......**Appellant**
(SCO-409 1st floor Sector 20 Panchkula, Haryana)

*VERSUS*

**C.C.E & S.T. Chandigarh II** ......**Respondent**
(Plot No. 19 Central Revenue Building Sector 17C Chandigarh 160017)

**APPEARANCE:**

Shri Vikrant Kackria, Advocate for the Appellant

Shri Vijay Gupta, Authorised Representative for the Respondent

**CORAM:** **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61106-61107 of 2019**

DATE OF HEARING: 29.11.2019
DATE OF DECISION: 29.11.2019

**PER ASHOK JINDAL:**

The appellants are in appeal against the impugned orders for confirmation of demand under section 65(105) (zzzh) of the Finance Act, 1994 as well as explanation to Section 65 (105) (zzzu) for the Finance Act.

2. as facts of both the appeals are similar, therefore, both are disposed off by a common order.

3. The facts of the case are that the appellants are engaged in the activity of construction of residential complexes and sale thereof. The demand of service tax was confirmed against them under the category of Construction of residential complex services and it was held that they were liable to pay 25% as service tax of the 30% of the value of the flat. Accordingly, the show cause notices were issued to the appellants, the same were adjudicated, the demand of service tax was confirmed along with interest and various penalties under the Finance Act were also imposed. Against the said orders, the appellants are before us.

4. Shri Vikrant Kackria advocate, Ld. Counsel for the appellant appearing on behalf of the appellant submits that the similar issue came up before the Hon'ble Delhi High Court in the case of ***Suresh Kumar Bansal Vs. Union Of India reported in 2016 (43) S.T.R. 3 (Del.),*** wherein the levy of service tax was challenged and it was also challenged the mechanism of recovery of service tax. In the said matter, the Hon'ble High Court held that service tax can be charged on the service in question but the mechanism of levy of service tax is

incorrect, therefore, service tax is not payable. The said decision was followed by the Hon'ble High Court of Delhi in the case of ***Vani Kapoor Vs. Commissioner of Service tax reported in 2019 (25) G.S.T.L 534 (Del.)***, therefore, the appellant are not liable to pay service tax.

5. On the other hand, Ld. AR submits that the decision of the Hon'ble High Court of Delhi in the case of ***Suresh Kumar Bansal (Supra)*** has been challenged before the Hon'ble Apex Court and the same is pending for decision. He further submits that, as per the Finance Act, 2017 there was a retrospective amendment which confirms the levy of service tax and mechanism of recovery of service tax from the appellant.

6. Heard the parties and considered the submissions.

7. On careful consideration of submissions and made by both the sides, the first issue arose in the matter is that when appeal has been filed against the order of ***Suresh Kumar Bansal (Supra)*** by Revenue before the Hon'ble Apex Court can the said decision be relied on or not?

8. The said issue came up before the Hon'ble High Court of Delhi in the case of ***Space Telelink Ltd. reported in 2017 (355) E.L.T. 189 (Tri. Delhi),*** wherein the Hon'ble High Court has held that if the order of High Court has not been set aside by the Hon'ble Apex Court, till date the order of the Hon'ble High Court is to be followed. Admittedly, neither stay has been granted nor the order in the case of ***Suresh Kumar Bansal (Supra)*** has been set aside by the Hon'ble Apex Court, therefore, in the light of the decision of ***Space Telelink Ltd.(Supra)*** we are bound to follow the decision of ***Suresh Kumar***

***Bansal (Supra)***. As in the case of ***Suresh Kumar Bansal (Supra)*** it has been held that service tax can be levied but the mechanism of recovery of service tax has been set aside, therefore, we hold that service tax is not payable by the appellants. Accordingly, the impugned orders are set aside. In results, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

**(ASHOK JINDAL)**
**MEMEBR (JUDICIAL)**

**(BIJAY KUMAR)**
**MEMBER (TECHNICAL)**

kailash