CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60988 of 2019

(Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-55-2019-20 dated 21.06.2019 passed by the Commissioner (Appeals), Chandigarh)

Rajeev Chopra **......Appellant**
C/o M/s Sugandha Apartments South Enclave
Village Saproon, Solan, Himachal Pradesh 173212

VERSUS

Commissioner of C.E. & S.T., Shimla **......Respondent**
Ground & 1st Floor, Commercial Parking Complex,
Chota Shimla, Shimla, Himachal Pradesh 171011

APPEARANCE:

Present for the Appellant: Mr. Naveen Bindal, Advocate

Present for the Respondent: Mr. Rajesh Rai, Authorised Representative

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 61137/2019

DATE OF HEARING: 18.12.2019
DATE OF DECISION: 18.12.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order confirming the demand of Rs.74,98,182/- along with interest and various penalties under Finance Act, 1994.

2. The facts of the case are that the appellant was engaged in the activity of construction of residential flats and was not paid service

tax on their activity. An investigation started. Various statements have been recorded and records of the appeal were resumed. On the basis of the records resumed, a show cause notice was issued to the appellant to demand the service tax under the category of construction of residential flats and renting of immovable property service. The matter was adjudicated. Demand of service tax was partly dropped by the adjudicating authority on construction of residential flats and partly was confirmed. For renting of immovable property service, the whole of the demand was confirmed. On appeal, the learned Commissioner (Appeals) set aside the adjudication order qua dropping the demand under the category of construction of residential flats. Therefore, total demand of Rs.74,98,182/- was confirmed by way of impugned order. Against the said order, the appellant is before us.

3. The learned Counsel for the appellant submits that the appellant is not contesting the demand of Rs.3,24,992/- but is contesting the demand of Rs.71,73,190/- on the ground that there is no mechanism of recovery of service tax for construction of residential flats, therefore, the service tax cannot be demanded thereon. To support his contention, he relied on the decision of this Tribunal in the case of ***M/s G S Promoters & Developers vs. CCE&ST, Chandigarh vide Final Oder No. 61106-61107/2019 dated 29.11.2019.***

4. On the other hand, the learned AR submits that the decision of ***M/s G S Promoters & Developers (supra)*** is based on the

decision of Hon’ble Delhi High Court in the case of ***Suresh Kumar Bansal vs. UOI – 2016 (43) STR 3 (Del.)*** and against the said order, the appeal has been admitted by the Apex Court; therefore, the issue cannot be decided.

5. Heard the parties and considered the submissions.

6. We find that the sole of argument was taken by the learned AR was also taken care in the case of ***M/s G S Promoters & Developers (supra)*** and after considering all the issues, this Tribunal observed as under:

> *“**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?*
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> ***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.”*

7. Considering the fact that there is no stay has been granted by the Hon’ble Apex Court in the case of ***Suresh Kumar Bansal***

(supra) wherein it has been held that there is no mechanism of recovery of service tax from the appellant; in that circumstance, the service tax is not payable by the appellant. Therefore, following the decision of this Tribunal in the case of ***M/s G S Promoters & Developers (supra)***, we hold that the appellant is not liable to pay service tax under the category of construction of residential complex; accordingly, the impugned order qua demand thereof is set aside. Consequently, the demand of Rs.71,73,190/- is set aside. Consequently, no penalty is imposable for the said demand.

8. We further take note of the fact that the appellant has conceded the demand of service tax of Rs.3,24,992/-. The same is confirmed along with interest and penalty under Section 78 of the Finance Act, 1994 is also confirmed on the said demand as per law.

9. The appeal is disposed of in the above terms.

Order be given dasti.

(Operative part of the order pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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