IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: ST/00558/2012

(Arising out of Order-in-Appeal No. 27/2012-ST (SLM) dated 29.06.2012 passed by the Deputy Commissioner of Central Excise, Hqrs. Office, Salem)

The Commissioner of Central Excise, Salem : Appellant

Vs.

M/s. P & C Constructions (P) Ltd. : Respondent

Appearance:-
Shri. S. Govindarajan, AC (AR)
for the Appellant
Shri. M. N. Bharathi, Advocate
for the Respondent

CORAM:
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**09.08.2018**

Final Order No. 42273 / 2018

Per Bench,

The Revenue has filed this appeal challenging the Order of Commissioner (Appeals) wherein the Commissioner has allowed the assessee's appeal by setting aside the demand against the assessee.

2. The assessee-respondent had entered into a contract for construction of Residential Quarters with M/s. Central Public Works Department, Trivandrum (hereinafter called 'CPWD') and had constructed 192 Residential Complexes for which the appellant had discharged the applicable service tax. The adjudicating authority(AA) issued a Show Cause Notice dt. 23.03.2011 proposing to demand service tax under the category of 'Construction of Residential Complex Service' as, according to the AA, the appellant had failed to file proper statutory half-yearly ST-3 returns with correct taxable value. The adjudicating authority however, vide Order-in-Original dt. 06.09.2011, confirmed the demand as also interest and imposed penalties as proposed in the Show Cause Notice. The assessee approached the Commissioner of Central Excise (Appeals), Salem, who vide the impugned Order dt. 29.06.2012 allowed the appeal after considering the CBEC clarification letter F. No. 332/16/2010-TRU dt. 24.05.2010, Board Circular No. 80/10/2004-ST dt. 17.09.2004 and also the decision of the Ahmedabad Bench of the CESTAT in the case of ***Khurana Engineering Ltd. Vs. C.C.E., Ahemdabad – 2011 (21) S.T.R. 115 (Tri. – Ahmd.)***.

3. Today when the matter was taken up for hearing, Shri. S. Govindarajan, Ld. DR appearing for the Revenue, relied on the Order of the AA as well as the grounds of appeal.

4. *Per contra*, Shri. M. N. Bharathi, Ld. Advocate, contended that the very same issue has been considered by this very Bench of the Tribunal in the case of ***Ramalingam Construction Co.(P).Ltd. Vs. Commissioner of Central Excise& Service Tax, Salem (Final Order No. 41891-41896/2018 dt. 29.06.2018)*** apart from the decision of the Ahmedabad Bench of the Tribunal in *Khurana Engineering Lt. (supra*). He further drew our attention to the findings of the Bench in the case of *Ramalingam Construciton Co. (P) Ltd. (supra)*, wherein it has been held as under :

> *"10.2 The tax liability has been demanded under construction of residential complex service in impugned orders relating to Appeal ST/40066/2013, ST/40066/2014 ST/41748/2015 & ST/42180/2017. Benefit of exemption Notification No.25/2012-ST is also denied.*
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> *10.3 We find that the periods of demand in all these disputes related to construction of residential complexes for KHB etc. spans from 2005 to 2015. We find merit in the appellant's contention that demands on this score prior to 1.6.2007 is liable to be set aside in view of the decision of the Hon'ble Apex Court in CCE & CC Kerala Vs Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC). So ordered.*
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> *10.4 In respect of demands for the periods subsequent to 1.6.2007, we find that in a number of decisions, the higher appellate forums have consistently held that there is no liability to pay service tax for the reason that the complex so constructed are intended for personal use which is excluded in the definition of construction of residential complex.*

(i) In Khurana Engineering Ltd. Vs CCE Ahmedabad - 2011 (21) STR 115 (Tri.-Ahmd.), the construction of quarters for government employees of Income Tax Department as per the contract given by CPWD was held to be a service provided to Govt. of India directly and that the endues of the residential complex by government is covered by the definition "personal use".

(ii) This very Bench, in the case of SIMA Engineering Construction and three others vide final Order No.41143-41146/2018 dt. 13.03.2018 and S.Kadirvel [Final Order No.41504/2018 dt. 11.05.2018 in Appeal ST/446/2011] involving construction of residential complex, for TNPHCL for use of police personnel, and relying upon the CESTAT Bangalore decision in Nithesh Estates Ltd. Vs CCE & ST Bangalore - 2015 (40) STR 815 (Tri.-Bang.), has held that the houses so constructed rested with TNPHCL which is nothing but an extended arm of the Government and they are only meant for personal use.

10.5 Even after the negative list regime w.e.f. 1.7.2012, higher appellate forums have consistently held that services provided by contractors to Housing Boards, Local Development Authority under JNNRUM etc. there could be no service tax liability since such houses etc. were meant for residential purpose, was within exemption under Notification No.25/2012-ST. In Bharat Bhusan Gupta & Company Vs State of Haryana - 2016 (44) STR 195 (P&H), involving the construction of houses for Below Poverty Line (BPL) category persons, the Tribunal held that the Board was a governmental authority and that the BPL houses constructed by the appellants were meant for residential purposes and hence service provided by contractors was within exemption Clause 12 of Notification No. 25/2012-S.T., dated 20-6-2012, effective from 1-7-2012, and from that date Board could not deduct Service Tax from bills of contractor. In NCR Builders Pvt. Ltd. Vs CCE & ST Ghaziabad - 2017 (3) GSTL 198 (Tri.-All.), the activity of the appellant therein in building houses for local development authority which was given to weaker sections of society on lease basis without consideration was held as not taxable in view of Explanation in Section 65 (91a) of the Finance Act, 1994.

In Santosh Katiyar Vs CCE Bhopal - 2017 (3) GSTL 2003 construction of small units of jhuggi dwellers without cost or highly subsided cost under Rajiv Awaas Yojana and Jawaharlal Nehru National Urban Renewal Mission (JNNURM) are exempted from service tax since constructed under Central sponsored scheme.

In CC, CE & ST, Allahabad Vs Ganesh Yadav - 2017 (6) GSTL 428 (Tri.-all.) construction of low cost house or housing for economically weaker sections for Varanasi Development authority was held to be a scheme neither intended for commerce or industry and further held as not taxable either under WCS or under CICS.

10.6 In impugned order No.05/2012 dt. 28.09.2012 (Appeal ST/40066/2013) the work of (i) filling low lying area and (ii) construction of retaining wall at RP Nagar, Madurai under JNNURM has been held as composite work of construction of 720 tenements at the same site and part and parcel of construction of residential complex services only. Be that as it may, as already *held supra, the services in relation to construction of such tenements will not be exigible to service tax liability. Tax liability demanded in respect of these works will also require to be set aside, which we hereby do.*

10.7 In the event, the above demands made in respect of construction of residential complexes will not sustain, and are set aside. Appeals in this regard succeed. So ordered."

5. Going by the *stare decisis* of the above decisions, we find that the Commissioner (Appeals) is justified in allowing the assessee's appeals and therefore, we dismiss the Department Appeal.

(Operative part of the order was pronounced in open Court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd