IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]

Application No.: ST/Misc[CT]/41114/2017
Appeal No.: ST/00331/2011

[Arising out of Order-in-Appeal No. 18/2011 (MST) dated 03.03.2011 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s. Balaganapathy Estates, **: Appellant**
'Palms Springs', Rams Apartments,
89, Gandhi Nagar Main Road,
Adyar, Chennai – 600 020

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai South Commissionerate
(Formerly known as :
'The Commissioner of Service Tax, Chennai')

Appearance:-
Shri. T. Ramesh, Advocate
for the Appellant
Shri. A. Cletus, ADC (AR)
for the Respondent

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

Date of Hearing: **05.12.2018**

Final Order No. 43097 / 2018

Per P. Dinesha :

This appeal has been filed by the assessee against the Order-in-Appeal No. 18/2011 (MST) dated 03.03.2011 passed by the

Commissioner of Central Excise (Appeals), Chennai. The dispute pertains to the period from July 2003 to March 2007.

2.1 Briefly stated, the appellant is a partnership firm engaged in rendering 'Real Estate Agent Services' and is also registered with the Service Tax Department. During the course of Audit conducted by the Service Tax Commissionerate, it was ascertained that the appellant had entered into a sale agreement with M/s. The Karthikeyapuram Co-operative Building Society Ltd., Chennai ('Society' for short). It appeared that the developmental activities of land viz., laying of roads, canals, drainage, erection of electricity poles, etc., along with obtaining approval from the local panchayat and CMDA, would fall within the purview of Real Estate Agents Services. Further, from scrutiny of the Balance Sheets, income receipts and other related records of the appellant for the period from 2003-04 to 2006-07 it appeared that the appellant had realized an amount of Rs. 3,16,03,841/- from the Society, out of which an amount of Rs. 1,14,12,241/- related to developmental charges and the service tax liability thereof worked out to Rs. 9,37,518/-.

2.2 Accordingly, a Show Cause Notice dated 06.10.2008 was issued proposing to demand the above service tax liability under proviso to Section 73(1) of the Finance Act, 1994 with applicable interest under Section 75 besides proposing to impose penalties under Sections 76, 77 and 78 ibid, whereafter, the adjudicating authority vide Order-in-Original dated 11.02.2009 confirmed the same but, however he did not levy penalty under Section 76. Being aggrieved, the appellant preferred an appeal before the first appellate authority and the Commissioner (Appeals) vide Order impugned herein upheld the Order-in-Original *in toto* and rejected the appeal as devoid of merits. Aggrieved by the same, the appellant has come in appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Shri. T. Ramesh appeared on behalf of the assessee-appellant while Ld. ADC (AR) Shri. A. Cletus appeared on behalf of the Department.

4.1 During the course of hearing, Ld. Advocate submitted that the appellant was the seller of Housing Plots to the members of the Society and received sale consideration for such sale without receiving any commission as a Real Estate Agent. He submitted that the demand on the developmental charges was unsustainable in as much as the same were incurred for making the plots saleable and marketable; that the said expenses/charges are a part of sale consideration and hence, service tax cannot be demanded with respect to the same. He contended that the entire transaction is sale and purchase of land and that the allegation in the Show Cause Notice vivisecting the entire transaction for the purpose of demand of service tax is not proper; that the documents involved evidenced the appellant as a seller of the land involved to the Co-operative Society without having rendered any service to third parties.

4.2 He also stated that the developmental activities were carried out with the sole objective of effective sale of land to fetch higher price and without any service to third parties. He also took us through the agreement between the parties and also proceedings of Registrar of Co-operative Societies (Housing), Chennai who, vide Order dated 18.07.2002, had fixed the price of the land at Rs. 136.36 per sqft., agreement dated 20.07.2002 wherein the basic cost of the land is Rs. 87.12 per sqft. whereas Rs. 49.24 per sqft. is shown to be the development cost. Ld. Advocate further submitted that the demand in the case on hand is barred by limitation.

4.3 He also placed reliance on the following judgements in support of his contentions :

- *Sarjan Realties Ltd. Vs. C.C.E., Pune-III – 2014 (36) S.T.R. 877 (Tri. – Mum.);*
- *C.C.E., Nashik Vs. Viraj Estates Pvt. Ltd. – 2017 (5) G.S.T.L. 386 (Tri. – Mum.);*
- *Saumya Construction Pvt. Ltd. Vs. C.S.T., Ahmedabad – 2016 (46) S.T.R. 723 (Tri. – Ahmd.);*

5. *Per contra*, Ld. AR supported the findings of the authorities below.

6. We have heard the rival contentions, perused the documents placed on record and have also gone through the judgements referred to during the course of arguments.

7. The issue involved in the case on hand is whether the assessee is liable to pay service tax on the developmental charges received for the service rendered as 'Real Estate Agent' to the members of the Society. We find that the Ld. Advocate is correct in his assertion that the appellant was indeed the seller of the housing plots to the members of the Co-operative society and had only received the sale consideration for the same without receiving any commission as Real Estate Agent thereof. Moreover, the developmental activities carried out by them would only be intended to fetch higher price for land and in any case, did not involve services to third parties. In any case, the appellant has sold the lands to the Co-operative Society at the rate of Rs. 136.36 per sqft. the same being the fixed rate of land by the statutory body. It is not the case of the Revenue that there was any extra payment/receipt as commission, which is not booked or that there was any cash transaction (on-money) involved over and above the booked amount. Therefore, on the above facts and

circumstances of the case, the appellant cannot be considered as Real Estate Agent for an amount not received since they have only acted as a 'seller' of the said land by virtue of Power of Attorney.

8. In view of the foregoing, we find that demand made under Real Estate Agent Service is unjustified. We are therefore of the considered opinion that the impugned Order is unsustainable and requires to be set aside, which we hereby do.

9. The Miscellaneous Application filed by the Department for change in cause title is allowed. The appeal is allowed with consequential benefits, if any, as per law.

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

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd