

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/123-125/2012

[Arising out of Order-in-Original No.50 to 52/2011 dt.30.9.2011
passed by the Commissioner of Service Tax, Chennai]

ETA Properties & Investments Pvt. Ltd. Appellant

Versus

Commissioner of Service Tax, Chennai Respondent

Appearance:

Sh.Vijay Anand, Consultant
For the Appellant

Shri K.Veerabhadra Reddy, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 19.12.2018

FINAL ORDER No. 43148-43150/2018

The issue involved in all these appeals being the same, they are heard together and disposed by this common order.

2. The brief facts are that the appellants are engaged in construction activities. They are registered under Construction of

Residential Complex Services. During the course of audit, it was noticed that the appellants did not discharge the service tax correctly and have availed abatement as per Notification 1/2006-ST dt.1/3/2006 which is not eligible. Show cause notice was issued proposing to disallow the abatement and also demanding service tax under the category of Construction of Residential Complex Services alongwith interest and also for imposing penalties. A further demand was also made in respect of show cause notice for the period 2007 to August 2009 under the category of Management, Maintenance and Repair services on the amounts collected by the appellant from customers in this regard. After due process of law, the adjudicating authority confirmed the demand in respect of all the three show cause notices. The appellants have now approached the Tribunal, aggrieved by the confirmation of demand of service tax alongwith interest and the imposition of penalties. The details of the period of dispute, amount involved is given in the table below.

SCN No.237				SCN No.71		SCN No.132		
2007-Aug 2009				Sept 2009		Oct 2009 to Mar 2010		
Amount	ST	Paid	Balance Payable	Amount	ST	Amount	ST	Total
512352659	20224192	14799468	5424724	244330	8305	58162828	1976955	7409983
12075885	410459	-	410459	1439500	48929	6680498	227070	686458
2616012	269449	-	269449	-	-	-	-	269449
239009670	9748726	-	9748726	-	-	-	-	9748726
-	-	-	-	2049423	69660	11494947	390713	460373
766054226	30652827	14799468	15853359	3733253	126893	76338273	2594738	18574990

3. On behalf of the appellant, the Ld. Consultant, Sh. Vijay Anand appeared and argued the matter. He submitted that the demand has been raised in all these show cause notices under Construction of Residential Complex Services (RCS). The works executed by the appellant are in the nature of composite contracts, as it involves supply of goods as well as rendition of services. The department has alleged that the appellant is not eligible for benefit of notification 1/2006 only for the reason that the appellants have availed Cenvat Credit on inputs / input services. This would show that these are composite contracts. The appellant had discharged service tax availing the abatement applicable to the goods supplied while rendering the construction activities. He relied upon the decision of the Tribunal in the case of **Real Value Promoters Pvt. Ltd. and Others vs Commissioner of GST and Central Excise, Chennai** vide Final Order Nos.42436 to 42438/2018 dt.18/9/2018. It is also argued by him that no service tax is payable on the amounts collected by the appellant for maintenance and repair services of the flats/projects.

4. The Ld.AR, Sh.K.Veerabhadra Reddy supported the findings in the impugned order. He submitted that the appellants have collected amounts from their customers / buyers of flats for the purpose of management, maintenance and repair services, and demand in this regard is legal and proper.

5. Heard both sides.

6. The first issue is with regard to the demand under Construction of Residential Complex Services. The period involved is from 2007 to March 2010. The Tribunal in the case of **Real Value Promoters Pvt. Ltd. and Others** (supra) has analysed the issue, whether the levy of service tax under Construction of Residential Complex Services or Commercial or Industrial Construction Services would be sustainable in the case of composite contracts which involve both element of services as well as supply of goods. It is very much clear from the facts that the contracts are composite in nature. Therefore the decision in the case of **Real Value Promoters Pvt. Ltd.** (supra) would apply. The demand of service tax under Construction of Residential Complex Services is therefore unsustainable and liable to set aside which we hereby do.

7. The second issue is with regard to the demand under Management, Maintenance and Repair services. The appellants have collected the amounts from their customers for providing maintenance and repair services. We therefore find that the levy of service tax under this category does not call for any interference.

8. From the above discussions, the impugned order is modified to the extent of setting aside the demand under Construction of Residential Complex Services, only without disturbing the demand, interest thereon and penalties on Management, Maintenance and Repair Services. The Appeal No.123/2012 is partly allowed in above

manner with consequential reliefs, if any. In Appeal No.124 and 125/2012, the issue is only with regard to demand of service tax on Construction of Residential Complex Services. Therefore these appeals are allowed with consequential relief, if any.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

vsr