

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 42182 of 2014

(Arising out of Order-in-Original No. 42/2014-ST (C) (Chennai) dated 16.05.2014 passed by Commissioner of Central Excise, No. 1, Goubert Avenue, Puducherry – 605 001.)

M/s. Land Marvel Homes

No. 45-47, 3rd Floor,
1st Main Road Gandhi Nagar,
Adyar,
Chennai – 600 020.

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai South Commissionerate,
Newry Towers, No. 2954-I,
2nd Avenue, Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

For the Appellant : Mr. J. Shankar Raman, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41074 / 2024

DATE OF HEARING/ DECISION: 02.08.2024

Order :- Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant is a partnership firm engaged in activities of Construction of Residential and Commercial Complexes. They are registered with the Service Tax Department. Based on intelligence that the appellant has not discharged appropriate service tax on the construction

services provided by them a Show Cause Notice dated 20.04.2012 was issued for the period from October 2006 to March 2011 proposing to demand the service tax under Construction of Residential Complex Services and Commercial or Industrial Construction Services along with interest and for imposing penalty.

1.2 After due process of law, the Original Authority confirmed the demand, interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 The Ld. Counsel Shri J. Shankar Raman appeared and argued for the appellant. The appellant received Show Cause Notice No. 185/2012 dated 20.04.2012 issued by the Commissioner seeking to demand service tax under "Construction of Residential Complex Service" and "Construction of Commercial or Industrial Construction" during the above period by invoking larger period.

2.2 The appellant contended that the ownership of the land has been transferred and construction service continues thereafter to each land owner *vide* separate construction agreement and the same was considered by the CBEC Circular No. 108/02/2009-ST dated 29.01.2009 wherein it was clarified that any service provided by a seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of self service and consequently would not attract service tax. The appellant further contended that an Explanation was inserted with

effect from 01.07.2010 to the definition of Construction of residential/commercial complex and the same would apply only prospectively. The appellant contended that except for their Tambaram project all other projects were completed prior to 31.03.2010 and therefore there cannot be any demand for the completed projects. The appellant relied upon the judgement of Hon'ble Guwahati High Court in the case of *Magnus Construction Pvt. Ltd. Vs. UOI [2008 (11) STR 225]* disputing the demand. The appellant also contended that in some of the projects each block contained less than 12 dwelling units and on this ground also contested the demand. For the sake of brevity, the entire reply is not repeated here.

2.3 The Commissioner *vide* Order-in-Original No. 42/2014-ST (C) (Chennai) dated 16.05.2014 confirmed a demand of Rs.1,39,72,835/- after allowing cum tax benefit and imposed equal penalty in addition to a penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

2.4 A perusal of the agreement would show that the contractor agrees to do and perform all concerned works with and incidental to the construction and completion of the flat and supply all materials, labourers and machineries necessary. This is nothing but a composite contract and therefore it would fall under the category of Works Contract. The classification adopted in the present by the Commissioner is therefore erroneous.

2.5 The Tribunal in the case of *Real Value Promoters Pvt. Ltd. [2018-TIOL-2867CESTAT-MAD]* had considered the issue whether construction services which are composite in nature involving both supply of materials and services are taxable under the category 'Construction of Residential Services' and under "Construction of Commercial or Industrial Construction". The Tribunal held that after the introduction of Works Contract Service, the demand under construction of residential complex service for composite contracts cannot sustain. In the present case also, the services are composite in nature and the demand being under Construction of Residential Complex Service/ Construction of Commercial or Industrial Construction, is hit by the position of law laid down in *Real Value Promoters Pvt. Ltd. [2018-TIOL-2867CESTAT-MAD]*. The decision of the Tribunal in the case of *Krishna Homes Vs. Commissioner of Central Excise [2014 (34) STR 881 (Tri.-Del.)]* lends support to the appellant's case.

2.6 Similar issue was decided in the case of *Jain Housing & Construction Ltd. Vs. Commissioner of Service Tax [2023 (10) Centax 170 (Tri.-Mad.)]* which has been upheld by the Hon'ble Supreme Court in *[(2023) 10 Centax 171 (SC)]*. The Ld. Counsel prayed that the appeal may be allowed.

3.1 The Ld. Authorised Representative Shri M. Selvakumar appeared and argued for the Department. Annexure to the Show Cause Notice was referred to by the Ld. Authorised Representative to submit that the appellant has provided construction of residential complexes as well as commercial complexes. One of the contentions raised by the appellant is that the units

are less than 12 and therefore would not come within the definition of Residential Complex. The said argument was countered by the Ld. Authorised Representative by referring to paras 18.6 to 18.8 of the impugned order. It is submitted that in para 18.8, the Adjudicating Authority has observed that 'common area' is understood in the real estate industry and to mean the area which is available for use by more than one person. In the present case, there are areas which can be commonly used and therefore the contention raised by the appellant that the construction of residential projects does not fall under the taxable service of Construction of Residential Complex cannot sustain.

3.2 The argument relying upon the Board Circular No. 108/02/2009-ST dated 29.01.2009 was countered by referring to 18.11 to 18.13. It is submitted that in the present case, the undivided share was sold by the appellant first and thereafter an Agreement was entered into with the individual buyers. The situation in respect of landowners is also the same. For this reason, the clarification given by the Board would not apply to the appellant.

3.3 The Ld. Authorised Representative reiterated the findings in the impugned order and prayed that the appeal may be dismissed.

4. Heard both sides.

5. The demand is for the period from October 2006 to March 2011 under Construction of Residential Complex Service and Construction of Commercial or Industrial Complex Service. The Annexure to the Show Cause Notice would show that the appellant has provided both Construction of Residential project as well as Commercial project. The issue as to whether a builder / promoter / developer is liable to pay service tax for construction of residential complexes for the period prior to 01.07.2010 is settled by the decision in the case of *Krishna Homes Vs. Commissioner of Central Excise* [2014 (34) STR 881 (Tri.-Del.)]. This Tribunal has followed the decision in the case of *Vijay Shanthi Builders Ltd. Vs. Commissioner of Service Tax* [2018 (9) GSTL 257 (Tri.-Chennai)] and set aside the demand.

6. In the present case, it is very much clear from the discussions made in the 18.11 of the impugned order that the appellant has carried out the construction services as a builder since the undivided share was also sold and thereafter constructions carried out. They have also carried out constructions for the landowner in exchange of the land value. All these would show that the appellant has acted as a builder / promoter / developer for residential projects. The decision rendered by the Tribunal in the above cases would squarely apply and the demand for the period prior to 01.07.2010 under Construction of Residential Complex Services cannot sustain. The same is set aside.

7. The Ld. Counsel has relied upon the decision in the case of *Real Value Promoters Pvt. Ltd.* [2018-TIOL-2867CESTAT-MAD]. The said decision was followed by the Tribunal in the case of *Jain Housing & Construction Ltd.*

Vs. Commissioner of Service Tax [2023 (10) Centax 170 (Tri.-Mad.)]. In the said case, it was held that demand of service tax under Construction of Residential Complex Services or Commercial or Industrial Construction Services cannot sustain when the works executed are composite in nature. In the present case, it is very much clear that the construction works carried out by the appellant are indivisible contracts which involve both supply of materials as well as rendition of service. In the Show Cause Notice, the Department has allowed abatement under Notification No. 1/2006 which would establish that all the works executed are composite in nature. The decision rendered by the Tribunal in the case of *Jain Housing & Construction Ltd. (supra)* will then squarely apply. The said decision has been confirmed by the Hon'ble Apex Court by dismissing the Department appeal as reported in [2023 10 Centax 171 (SC)].

8. Following the decision, in the case of *Jain Housing & Construction Ltd. (supra)*, we are of the opinion that the demand for the entire period cannot sustain being composite contracts.

9. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any, as per law.

(Order dictated and pronounced in open court)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)