

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41442 of 2016

(Arising out of Order in Appeal No. 220/2016 (STA-I) dated 23-3-2016 passed by
the Commissioner of Service Tax (Appeals-I), Chennai)

Jamals Enterprises Pvt. Limited

Mezzanine Floor, Mount Chambers,
758, Anna Salai, Chennai – 600 002

.... Appellant

VERSUS

Commissioner of GST and Central Excise

Chennai Outer Commissionerate
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

...Respondent

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Ms. Rajni Menon, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41464/2025

DATE OF HEARING: 01.09.2025

DATE OF DECISION:12.12.2025

Per AJAYAN T.V.

Jamals Enterprises Private Limited, the appellant
has taken exception to the Order in Appeal No. 220/2016 (STA-I)
dated 23-3-2016.

2. Brief facts are that the appellant is registered for payment of service tax on 'construction of residential complex' service and 'works contract' service. During the verification of the ST3 returns, it appears that the department noticed that the appellant who has been paying service tax on the residential complex built by them under works contract service, has stopped paying service tax by showing nil or zero receipts in the ST3 returns filed for the period from January 2009 to March 2010 in the ST3 returns for works contract service. Therefore, the appellant was asked to provide the details of amounts

received, if any, for the construction of residential building during the said period. Vide letter dated 08-09-2010, the appellant informed that they have received payment of Rs.7,25,90,238/- towards construction cost of flats during January 2009 to June 2010.

3. The department, after examining the definition of residential complex under section 65 (91a) and the taxable service under works contract service defined under section 65 (105) (zzzza) as well as the clarification in the Board's Circular No.108/02/2009 dated 29-01-2009, was of the view that from the definitions under the Finance Act 1994 and the clarifications furnished in the aforesaid Board's Circular, the exemption is available only in the case of self-service, which is not applicable to the appellant in as much as the appellant is providing service to their clients. Department was also of the opinion that exclusion from the definition of 'residential complex' is available only if a residential complex is constructed by a person for his personal use and the exemption is not available for construction of 'residential unit' which is part of a residential complex and that therefore the exclusion under the residential complex definition does not apply to the constructions done by the appellant.
4. The department therefore issued an SCN No.572/2010 dated 30.09.2010 invoking the extended period of limitation and demanded service tax on the amount of Rs.7,25,90,238/- that the appellant has received for construction service provided under works contract service. The demand of service tax proposed in the notice amounted to Rs.29,90,718/- along with applicable interest. The notice also had proposals for imposition of penalty under section 76 and 78 of the Finance Act, 1994. After due process of law, the adjudicating authority, vide OIO No.1/2012 dated 2-1-2012, confirmed the demand and appropriated an amount of Rs.29,90,718/- paid under "under protest", by vacating the protest. Interest was also demanded at appropriate rates and an equivalent penalty was imposed under section 78 of the Finance Act. Aggrieved by the order in original the appellant preferred an appeal before the appellate authority, who has rejected the appeal and upheld the order in original. Aggrieved by

the impugned order in appeal, the appellant having preferred this appeal, is now before this Tribunal.

5. Ms. Radhika Chandrasekhar, Ld. Advocate appearing on behalf of the appellant, submitted that the appellant is a developer engaged in development of residential projects and has undertaken various projects for construction of residential complex. It is submitted that the appellant being a developer of residential project, there is no liability to pay service tax for the period prior to 1-7-2010 as the Finance Act 2010, for the first time, brought developers into the ambit of service tax with effect from 1-7-2010 by way of an explanation to section 65 (105) (zzzh). She submits that this Tribunal in the case of ***Krishna Homes Vs. CCE, 2014 (34) STR 881*** has held that works contracts involving transfer of immovable property were brought within the purview of the taxable service by adding explanation to section 65 (105) (zzzh) w.e.f. 1-7-2010. Therefore, such works contracts were not covered by section 65 (105) (zzzh) during the period prior to 1-7-2010. She contended that the Tribunal has also held that during the period of dispute, there was no intention of the Government to tax the activity in terms of agreements between the builder/developer and the prospective customers for the construction of residential units against payments made in installments, in terms of which, possession of the residential unit is to be handed over to the customer on completion of the residential complex and on full payment. Reliance was also placed on the decision in ***Pragati Edifice Private Limited Versus Commissioner of Central Exercise and Service Tax vide Final Order No.31010-31011/2019***. Reliance was also placed in the case of M/s. Jamals, a partnership firm (the same partners are directors in the appellant herein) for the period April 2009 to June 2013, vide Final Order No.40306/2023 dated 26-04-2023 in Appeal No.ST/41858/2013.
6. Ms. Rajni Menon, Ld. Authorised Representative reiterated the findings of the Ld. Appellate Authority.
7. Heard both sides, perused the appeal records and the citations submitted.

8. We find that the issue is no more res integra and on facts similar to that obtaining in the instant case, this Tribunal has in Final Order No.40306/2023 dated 26-04-2023 held as under: -

"6. We have heard the rival contentions and have perused the impugned Order-in-Original.

7. We find that, at paragraph 19 of the impugned order, the Learned Commissioner has observed, after scrutinizing the agreements, that (i) the appellants are the builders of the concerned flats; (ii) the appellants are only constructing the flats to the respective allottees, etc., which, per se, makes it clear that the activity undertaken by the appellant in the capacity of a developer was in the nature of 'works contract service'.

8. We find that the above issue has been laid to rest by various co-ordinate Benches of the CESTAT wherein the decision of the Hon'ble Apex Court in the case of *Commissioner of C.Ex. & Cus., Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]* has been followed. We find that the co-ordinate Hyderabad Bench, in the case of *M/s. Pragati Edifice Pvt. Ltd. (supra)*, has held as under: -

"(n) To sum up, as far as construction of 'residential complexes' by the builders are concerned :

(i) Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view of the judgment of the Hon'ble Apex Court in the case of Larsen & Toubro (supra).

(ii) After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.

(iii) However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.

(iv) Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.

(v) *After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract."*

9. In the light of the above discussions and the order of the Hyderabad Bench, it is clear that no Service Tax could be levied on construction of residential complex on the appellant. The period of dispute here, as observed by us in the earlier paragraphs, is from April 2009 to June 2010 and hence, we are of the view that no Service Tax was exigible on the appellant.

10. For the above reasons and following the ratios laid down, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law."

9. We find no reason to take a different view. Hence respectfully following the decision of the coordinate bench cited above, we hold that the impugned order in appeal is liable to be set aside. Ordered accordingly.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 12.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M.AJIT KUMAR)
MEMBER (TECHNICAL)