

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH, COURT NO. 1

SERVICE TAX APPEAL NO. 53721 OF 2018

[Arising out of the Order-in-Appeal No. 126 (AK)/ST/JPR/2018 dated 25/06/2018 passed by Commissioner (Appeals), Central Excise & CGST, Jaipur.]

The Commissioner, CGST & Central Excise, **...Appellant**
New Central Revenue Building, Statue Circle, C-Scheme,
Jaipur (Raj.) – 302 005.

Versus

M/s Manglam Build Developers Ltd. **...Respondent**
6th Floor, Apex Mall, Lal Kothi, Tonk Road,
Jaipur (Rajasthan).

APPEARANCE:

Shri Harshvardhan, Authorized Representative for the
Department
Shri B.L. Narasimhan, Advocate for the respondent.

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50312/2022

DATE OF HEARING/DECISION : 30.03.2022

P.V. SUBBA RAO

This appeal has been filed by the Revenue assailing order-in-appeal dated 25.06.2018¹ passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur, whereby he allowed the appeal of the assessee and set aside the order-in-original passed by the Joint Commissioner.

¹ **Impugned order**

2. We have heard both sides and perused the records.

3. The respondent is engaged in providing construction services in respect of commercial or industrial building and civil structures and construction of residential complexes. It had collected "maintenance deposit" from the buyers which it agreed to transfer to the society of buyers once it was formed so that the society could use it for major repairs required in the complex. The respondent did not pay any service on this amount. It has recorded this collection as a liability in its books of accounts as it is meant to be transferred to the society. Until the society is formed the respondent maintained the complex by itself. As per the agreement it would be entitled to collect separate maintenance charges from the buyers during that period, but it had not collected any such amount. It also did not spend the amount collected as maintenance deposit from the buyers towards maintenance of the complexes. In other words, the respondent maintained the complexes on its own expense and kept the amount collected as maintenance deposit as a liability to be transferred in toto to the society of the buyers once it was formed.

4. Two show cause notices dated 15.10.2014 and 07.04.2016 were issued by the Additional Commissioner of Central Excise, Jaipur seeking to demand service tax on the maintenance security deposit alongwith the interest under Section 75 and also

proposing to impose penalty under Section 76 of the Finance Act, 1994.

5. The Joint Commissioner has, by his order 30.11.2016, confirmed the demand which has been set aside by the Commissioner (Appeals).

6. Revenue's appeal is on the following grounds :-

(i) Management, maintenance and repair services is taxable under Section 65 (105) (zzg) readwith Section 65 (64) of the Finance Act, 1994 upto 31.06.2012. It is also chargeable to service tax under Section 65B (44) w.e.f. 01.07.2012 it is not in the negative list ;

(ii) The respondent has collected a lump-sum amount from the buyer as security deposit and that amount is to be utilized for maintenance activity and the fact that the unutilized amount will be transferred to the society does not reduce their tax liability ;

(iii) The maintenance deposit will be transferred by respondent to the maintenance society as soon as the charge of maintenance is handed over to the society, therefore, the amount collected as security deposit has been wrongly held by the Commissioner (Appeals) as not a consideration towards providing any service.

7. It has, therefore, been prayed that the impugned order may be set aside and the order of the lower authority may be restored.

8. After hearing both sides and perusing the records, we find that the appeal is filed by the Revenue under the wrong assumption that the maintenance deposit taken by the respondent from the buyers is to be utilized for maintenance of the complexes and any unutilized amount will be transferred to the society after it is formed. It is, therefore, the contention of the Revenue that merely because unutilized amount will be subsequently transferred to the society, the respondent does not get exempted from paying service tax on the amounts collected by it as maintenance deposit.

9. After going through the records of the case, assisted by the learned Counsel for the respondent and the learned Authorized Representative of the Department, it is evident that no amount of the maintenance deposit was to be utilized for maintenance of the complex by the respondent and the entire amount was to be transferred to the society once it was formed and was then to be used for major repairs, etc. As far as the respondent is concerned, it only held the deposit for the society to be formed later. The maintenance done by the respondent during the intervening period was at its own cost. No amount was charged for such maintenance nor was any amount, out of the maintenance deposit, spent by the respondent on the

maintenance. In view of this factual position, we find that the respondent has not received any consideration for maintenance of the complexes and the maintenance deposit was only held by it in custody for subsequent transfer to the society.

10. In view of the above, there is no infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, the appeal is dismissed.

(Order pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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