

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

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51609 of 2018

(Arising out of Order-in-Appeal No. 216(SM)ST/JPR/2018 dated 27.03.2018⁷ passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur)

M/s. H.C. Buildcon Pvt. Ltd.

.... Appellant

C/o. Capital mall, plot no. 812/CP-4,
RIICO Industrial Area,
Sector-6, Bhiwadi,
Rajasthan

VERSUS

**Commissioner, Central Excise & CGST
Alwar**

....Respondent

APPEARANCE:

Shri Ashish Sharma, Advocate for the Appellant
Shri Harshvardhan, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing : April 05, 2023

Date of Decision: April 12, 2023

FINAL ORDER NO. 50458 /2023

JUSTICE DILIP GUPTA

M/s. H.C. Buildcon Pvt. Ltd.¹ has filed this appeal to challenge the order dated March 27, 2018 passed by the Commissioner (Appeals) by which the order dated August 11, 2016 passed by the Additional Commissioner has been upheld and the appeal has been dismissed.

2. The appellant is in the business of developing lands by construction of shopping malls and then selling the units in the

1. the appellant

shopping malls or leasing them out. For this purpose, the appellant acquired a plot of land measuring 9996 sq.mtrs from Rajasthan Industrial Investment Corporation² for an amount of Rs.6 crores and an allotment letter dated July 15, 2006 was issued by RIICO.

3. According to the appellant, after taking the requisite approval from RIICO and other Authorities it started the construction of property on the aforesaid land and named the mall as "The Capital Mall". The appellant further claims that the construction of the Mall was completed in June 2009 after which the appellant wrote a letter dated August 07, 2009 to an Architect registered with the Council of Architecture constituted under the Architects Act, 1972 to visit and inspect the construction site of the Capital Mall and certify whether the construction of Mall was completed as per the approved plans and whether the appellant could apply to RIICO for grant of the requisite statutory completion-cum-occupancy certificate. The appellant has also stated that the said Architect visited the site and thereafter, by a letter dated August 12, 2009 certified that the construction of the Mall had been completed as per the approved plans and that the appellant could apply to RIICO for grant of the completion-cum-occupancy certificate.

4. It transpires that after the appellant received the aforesaid communication from the Architect, the appellant sought approval from RIICO for using the Capital Mall for business activities and in response to the said communication the Regional Manager of RIICO sent a letter dated March 31, 2010 to the appellant to

2. RIICO

inform that the construction work carried out by the appellant was as per the sanctioned plan and RIICO norms and the Mall could be used for commercial activities as per the terms and conditions of allotment.

5. Section 65(25) of the Finance Act, 1994³ defines 'commercial or industrial construction' and section 65 (105) (zzq) that came into effect from July 01, 2010 of the Finance Act provides that any service provided or to be provided by any person to any other person, in relation to commercial or industrial construction shall be subjected to service tax. However, the Explanation to the said section 65(105)(zzq) provides as follows:

"Explanation: For the purpose of this sub clause, the construction of new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (exception in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."

6. The issue that arises for consideration in this appeal is as to whether the completion certificate for the Mall had been issued before July 01, 2010 because in that case no service tax would be leviable. The appellant had received the amount of Rs. 11,80,99,876/- after the issue of the completion certificate. For this purpose, Shri Ashish Sharma, learned Chartered Accountant appearing for the appellant laid emphasis on the certificate dated August 12, 2009 issued by the Architect certifying that the building had been completed as per the approved plans as also upon the certificate dated March 31, 2010 issued by the Regional

3. the Finance Act

Manager of RIICO stating therein that the construction carried out by the appellant was as per the sanctioned plan and RIICO norms and the building could be used for commercial activities as per the terms and condition of allotment.

7. To support the contention that the certificate dated August 12, 2009 issued by the Architect could be relied upon, learned Chartered Accountant placed reliance upon the Service Tax (Removal of Difficulty) Order 2010 that was issued on June 22, 2010. The relevant portion of the said order is reproduced below:

“ New Delhi, the 22nd June, 2010

M.F.(D.R.) ORDER NO. 1/2010

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 95 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, hereby makes the following Order, namely :-

1. (1) This Order may be called as the Service Tax (Removal of Difficulty) Order, 2010.

(2) This Order shall come into force on the 1st day of July, 2010.

2. For the purposes of sub-clauses (zzq) and (zzzh) of clause (105) of section 65 of the Finance Act, the expression 'authority competent' includes, besides any Government authority,-

(i) architect registered with the Council of Architecture constituted under the Architects Act, 1972(20 of 1972); or

(ii) chartered engineer registered with the Institution of Engineers (India); or

(iii) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

who is authorized under any law for the time being in force, to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.”

8. Shri Harshvardhan, learned authorized representative appearing for the Department, however, supported the impugned order passed by the Commissioner (Appeals).

9. The submissions advanced by the learned Chartered Accountant for the appellant and the learned authorized representative appearing for the Department have been considered.

10. The Commissioner (Appeals) has dealt with both the submissions advanced by learned Chartered Accountant for the appellant. In regard to the certificate dated August 12, 2009 issued by the Architect, the Commissioner (Appeals) rejected the plea of the appellant for the reason that the Removal of Difficulty Order 2010 would be prospective in nature and would not help the appellant because the certificate was issued by the Architect on August 12, 2009.

11. The second submission advanced by learned counsel for the appellant that the completion certificate dated March 31, 2010 should be relied upon was also not accepted by the Commissioner (Appeals) and the relevant paragraph is reproduced:

"The impugned order has challenged the letter dated 31.03.2010 of RIICO, and has not accepted the same to be a completion certificate, in view of another letter dated 18.10.2011 of Sr. DGM, RIICO wherein it has been intimated that there are no rules or practice regarding issuance of completion certificate and that their unit officer had issued a formal letter dated 31.03.2010 about level of construction upto 31.03.2010. Hence it cannot be said that the letter dated 31.03.2010 can be treated as a completion certificate. I observe that the letter dated 31.03.2010 mentions 'construction work done is as per sanction plan and RIICO norms which be used for commercial activities as per terms and condition of allotment'. A plain reading of the contents of letter dated 31.03.2010 might infer that the construction work is complete, but in view of categorical denial by a senior level officer of the same organization, the same cannot be said to be a completion certificate

12. As regards the first submission it needs to be noted that Government had issued the Service Tax (Removal of Difficulty) Order 2010. It may have come into force with effect from July

01, 2010 but it states that for the purpose of section 65(105)(zzq), the expression "authority competent" would include an Architect registered that the Council of Architecture constituted under the Architect Act, 1972. Since it is a Removal of Difficulty Order, the Commissioner (Appeals) was not justified in holding that it would be prospective in nature. The benefit of the certificate dated August 19, 2009 issued by the Architect would come to the aid of the appellant.

13. As regards the second submission regarding the certificate dated March 31, 2010 issued by the Regional Manager, RIICO, a perusal of the said certificate would show that it was issued by the Regional Manager RIICO in connection with the commercial plot allotted to the appellant. It states that the construction was done by the appellant as per the sanctioned plan and RIICO norms and the property may be used for commercial activities as per the terms and conditions of the allotment. This communication was sent by the Regional Manager pursuant to the communication dated August 19, 2009 sent by the appellant to RIICO seeking approval for use of the building "Capital Mall" for commercial/business purpose. The appellant had stated that the construction of the shopping mall named "Capital Mall" was completed on the allotted premises measuring 9996 sq. mtrs. and therefore, RIICO should issue the letter of approval for using the Capital Mall for business activities.

14. The Commissioner (Appeals) was therefore, not justified in placing reliance upon the subsequent statement made by an

officer of RIICO that the said letter dated March 31, 2010 should not be read as a completion certificate.

15. Thus, in either view of the matter, the completion certificate has been issued to the appellant before July 01, 2010. The payments were received by the appellant after the completion certificate was issued to the appellant. They could, therefore, not be subjected to levy of service tax. The impugned order dated March 27, 2013 passed by the Commissioner (Appeals), therefore, cannot be sustained and is set aside and the appeal is allowed.

(Order pronounced in the open court on **12.04.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana