IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 16.4.2012

Service Tax Condonation of Delay No.192 of 2008 and Cross Objection No. 181-183 of 2008 and 247 of 2008 in Service Tax Appeal No. 174-176 of 2008 and 333 of 2008

[Arising out of Order-in-Original No. 72-74/ST/CHD/07 dated 31.12.2007 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

For Approval & signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Chandigarh — Appellant

Vs.

M/s Amar Nath Aggarwal Builders Pvt. Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri Amrish Jain, A.R.
Appeared for Respondent : Shri J.K. Mittal, Shri Arugn Gulati, Advocates, Shri Nitesh Garg, C.A

Service Tax Appeal No. 124 of 2010

(Arising out of Order-in-Original No.18/Commr./PKL/2009-10 dated 30.11.2009 passed by the Commissioner of Central Excise & Custom, Panchkula)

M/s Amarnath Aggarwal Investments Pvt. Ltd. — Appellants

Vs.

CCE, Panchkula — Respondent

Appearance:

Appeared for Appellant : Shri J.K. Mittal, Shri Arugn Gulati, Advocates, Shri Nitesh Garg, C.A

Appeared for Respondent : Shri Amrish Jain, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Misc order No: ST/M/155/12-Cus

Final Order No. ST/A/352-356/12-Cus dated............

Per **Mathew John** :

Five appeals and four Cross Objections along with n application for condoning delay in filing one cross objection are being considered in this proceeding. The cross objections are in the nature of written submission and no separate relief other than what is granted by the Commissioner (Appeal) is prayed. Since there is no time frame for filing written submissions, the COD application is infructuous and it is disposed of accordingly.

2. There is one appeal filed by a builder of residential complex and the other four appeals are filed by Revenue.

3. The Builders in these appeals were constructing Residential complexes as defined in section 65 (91a) of Finance Act, 1994. The Builders were constructing such complexes in their land and selling the flats to buyers. But before selling the flats the Builders had entered into agreements for selling constructed flats and also had been taking advance money from the prospective buyers at stages. The clarification issued by CBEC during the relevant period were to the effect that in such cases the Builders were doing construction activity for their own benefit and not for the benefit of prospective buyer no service is involved in such situation.

4. The entry defining for taxing such activity was amended by Finance Act 2010 with effect from 1.7.2010 to add explanation reading as under in clause 65 (105) (zzzh) of Finance Act,1994:

> "***Explanation.*** — For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the 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;"

5. The contention of Revenue is that the explanation added only explains the meaning of the provisions as was in force in the past and is not creating a new legal position. So tax was leviable on impugned activities for periods prior to 1.7.2010 also. Demands for service tax were issued based on such reasoning and confirmed along with interest and penalties. On appeal the demands were set aside in four cases against which Revenue is in appeal. In one case the decision is against the Builder, against which order the Builder is in appeal.

6. The argument of the Counsel for Builders is that the explanation added on 1.7.2010 can have only prospective effect and cannot have retrospective effect because the explanation added creates tax liabilities for past periods against position clarified by CBEC itself. They rely on the decision of the Tribunal in the case of **Skymet Builders Developers Colonizers and Others** in appeal No. 463/2008 and other appeals vide Final order No. ST/A/190-197/12-Cus 13-03-12.

7. The Ld. A. R. for Revenue submits that the High Court of Punjab and Haryana decided in the case of **G. S. Promoters Vs. UOI** 2011 (21)STR 100 (P&H) has decided that in type of activity involved in this case there is service involved and therefore service tax is payable in the impugned cases.

8. Considered arguments on both sides. The decision of the case of G. S. Promoters is on the issue of constitutional validity of the explanation added by Finance Act, 2010. The decision does not examine the question whether the explanation has retrospective validity. This issue is examined in detail by the Tribunal in the case of **Skymet Builders** (supra). The Ld. A. R. for Revenue is not able to make any reason why the present cases should be treated differently. So following the reasoning given in the said decision of Skymet Builders we allow Appeal No. ST/124/2010 and reject the other appeals which are filed by Revenue.

9. The cross objections are also disposed off accordingly.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

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