CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO.4

Service Tax Appeal No. 50926 Of 2018

[Arising out of Order-in-Appeal No. 11(NG)ST/JPR/2018 dated 11.01.2018 passed by the Commissioner (Appeals) of Central Goods, Service Tax and Central Excise, Jaipur]

Rajendra Singh Gill : **Appellant**
302, Guru Jam Bheswar, Nagar-A
Gandhi Path, Vaishali Nagar, Jaipur (Rajasthan)

Vs

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, JAIPUR : **Respondent**
Statute, Circle C-Scheme, Jaipur

APPEARANCE:
Ms. Priyanka Goel, Advocate for the Appellant
Shri Anand Narayan, Shri S. K.Meena, Authorised Representative for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. A. K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. 51030/2025

Date of Hearing:11.07.2025

Date of Decision:11.07.2025

DR. RACHNA GUPTA

The appellant, herein, is engaged in providing for 'Construction of Complex Service' which are taxable as per Section 65 (105) ZZZH of Finance Act, 1994. The appellant was found to have received Rs. 4,36,95,034/- during the period 2005-06 to 2009-10 for providing construction services to Rajasthan Housing Board. However, the appellant had neither deposited the service tax nor the ST-3 Returns were filed. The matter was investigated based whereupon the Show Cause Notice No. 144/2010 dated 18.10.2010 was served upon the appellant proposing the demand of Service Tax amounting to Rs. 40,03,611/- along with the proportionate interest and appropriate penalties. The proposal was initially confirmed vide Order-in-Original No. 19/2012 dated 31.01.2012. The appeal against the said order has been rejected vide the impugned order i.e. Order-in-Appeal No. 11/2018 dated 11.1.2018. Being aggrieved, the appellant is before us.

2. We have heard Ms. Priyanka Goel, Advocate for the appellant and Shri Anand Narayan and Shri S. K. Meena for the Department.

3. Learned counsel for the appellant has submitted that during the disputed period, the appellant was engaged in supply of construction material and construction of public roads, local drainage to flow out the waste water of the area and in the construction of plinth of individual houses for which contracts were awarded to the appellant by the Rajasthan Housing Board. The activity of the appellant is wrongly alleged to fall under the taxable category. It is apparent from the show cause notice that roads are constructed at Indira Gandhi Nagar, Jagatpura i.e. outside the Construction of Road is otherwise a non taxable activity. The demand has wrongly been confirmed with respect to the said construction. Similarly, are exempted the construction work of drainage.

4. With respect to the Construction of plinth work of individual houses, it is mentioned that the work orders in that respect were completed prior 16.06.2005 i.e. prior the date on which service tax was levied on the activity of construction of residential complex.

5. It is further submitted that the demand with respect to the Act of supply of fixation of Flex Board, is also liable to be set-aside as

these were signing boards in the area which is outside the residential complex constructed by the appellants. Otherwise also the services were provided to the Government in discharge of sovereign function, hence, there was no tax liability for any of the activities rendered by the appellant to the Government.

6. It is also submitted that the entire activities of the appellant were not the services simpliciter of construction of residential complexes. Since, there was supply of construction material also involved that the activity is classifiable as 'Works Contract Service'. Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Customs, Kerala vs. Larsen & Toubro Limited reported in 2015 (39) STR 913 (S.C.)** has held that the service tax was not payable on composite of works contract service for development of residential complex prior to 01.06.2007. For post 2007, the demand if not raised under the specific works contract service, the demand is not maintainable. It is finally submitted that the extended period of limitation has wrongly been invoked while issuing the show cause notice. With the submissions, the order under challenge is prayed to be set-aside and the appeal is prayed to be allowed.

7. While rebutting the submissions, learned DR has submitted that the appellant is engaged in providing the taxable service of construction of residential complex services. Accordingly, the residential complex having 12 or more than residential complex, the construction thereof is taxable. In the present case, the appellant has constructed more than 12 villas in complex, hence, the activity is

taxable. Learned DR has impressed upon the interpretation vis-a-vis the meaning of residential complex and has submitted as follows:-

> “If we interpret a residential complex as each and every building should have more than twelve residential units, then the words "or buildings" in the definition under "residential complex" and the words "single house" in the definition under "residential unit" would become otiose. Otherwise there could be no situation wherein 12 or more single houses exist in a building. Hence, the explanation provided in respect of "residential unit" with word "single house" and also the phrase "building or buildings" in the main part of the definition, should be allowed to have its intended meaning as specified in the given case. Hence, by giving intended meaning to those phrases it has to be understood that if there are 12 or more residential units (either Single House or Single Apartment) spread across a single building or buildings as long as those building or buildings located in a premises having a common area; and any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law.
>
> The term 'residential complex' takes within its fold not only a building having more than twelve residential units or apartments but also buildings or houses numbering more than twelve and the term 'residential unit' as per the explanation

should be construed to mean not only a single apartment but also a 'single house'. It is nowhere mentioned that a person engaged in providing services only in a multi-storied building having more than twelve residential unit would be covered under the said service."

Based on the said interpretation, it is impressed upon that since the drain roads, plinth everything were within the residential complex that the demand is rightly been confirmed. The decision in the case of **Modi & Modi Constructions vs. Commr. Of Customs, Central Excise & Service Tax, Hyderabad-II reported as 2021 (45) GSTL 398 (Tri.-Hyd.)** as relied upon while praying for the dismissal of the present appeal.

8. Having heard both the parties and perusing the entire records, we observe that the demand has been raised as per Section 65 (105) (zzzh) of the Finance Act, 1994 i.e. the service tax liability qua Construction of Complex Services. The construction of residential complex is in question. Section 65 (91) (a) of Finance Act, 1994 defines residential complex as follows:-

> ***(91a). "residential complex"*** *means any complex comprising of-*
>
> *(i) a building or buildings, having more than twelve residential units;*
>
> *(ii) a common area; and*
>
> *(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and* ***the construction of such complex is intended for personal use as residence by such person.***
>
> *Explanation.-For the removal of doubts, it is hereby declared that for the purposes of this clause,-*

> ***(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;***
>
> *(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;*

From this definition, it becomes clear that the complex to be called as residential complex should be comprising of a building or buildings, having more than 12 residential units with all common facilities. In the present case, it is the contention of the appellant also as apparent work orders on record that the appellant was engaged for the following individual activities:-

(i) Construction of public utility roads not confined to any premises.

(ii) Construction of local drainage to flow out the waste water of area, not confined to any premises

(iii) Construction of foundation/plinth work of individual houses.

Construction of Road and drainage is out of the tax net, the Board's Circular No. B-1/6/2005-TRU dated 27.07.2005 clarifies that irrespective the road is being constructed for public utility purposes or as the part of commercial complexes, the construction of road for general public has specifically being excluded from the purview to the taxable services/construction services. The appellant's contention is that the roads & drains were not constructed within the residential complex, hence, were the roads for general public. Department has not produced any evidence to counter the said contention. Nothing is discussed in the impugned order/order under challenge. It is held that the service tax demand on activity of constructing roads and local drainage that too for flow of the waste water of the area, has wrongly been confirmed. We draw our support from the decision of this

Tribunal in the case of **Commissioner of Service Tax, Ahmedabad vs. Silpa Construction Private Limited reported in 2011 (23) STR 418 (Tri.-Ahd.)**.

9. Coming to the third activity of the constructing plinth of the individual houses, foremost there is a decision of this Tribunal in the case of **Macro Marvel Projects Limited vs. Commissioner of Service Tax, Chennai reported as 2008 (12) STR 603** wherein it has been held that law makers did not want construction of individual residential units to be the subject matter of levy of service tax. Otherwise also, such activity of construction if is covered under the definition of works contract service in terms of explanation under Section 65 (105) zzzza of the Finance Act, 1994, hence, the demand of such activity under the category of service simpliciter is not taxable. The said decision has been upheld by the Hon'ble Supreme Court vide the judgement reported as 2012 (25) STR J514 (S.C.). Hence, the issue of taxability vis-a-vis construction of individual houses is no more res-integra. It has been held that it is only if the building constructed or to be constructed has more than 12 residential houses in the building than only the activity of construction will be taxable. However, such levy will not apply in the cases where in one compound, there are many buildings and each of them is not having more than 12 residential units.

10. We also rely upon the outcome of **Larson & Toubro Limited (supra)** and hold that for the composite works contract as the one in the present case, service tax cannot be demanded under different service category being the service simpliciter. The construction activities are held to be taxable only under 'Works Contract Service'

category and not under construction of complex service. With these observations, we hold that the Commissioner (Appeals) has ignored the settled position of law with respect to the issue involved. The demand has wrongly been confirmed. We accordingly set-aside the order under challenge, consequently thereto, the appeal is allowed.

(Dictated & pronounced in the open Court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

G.Y.