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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/664 /2008 - CU[DB] Date **15/06/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S BEE GEE CONSTRUCTION COMPANY, Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/468/ 2012 CU[DB]** dated 06/06/2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S BEE GEE CONSTRUCTION COMPANY,
SCO 1, NEELKANTH SHOPPING
PLAZA, CHANDIGARH ROAD,
ZIRAKPUR DISTT. MOHALI.

2. Adv. / Consult

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No.664 of 2008

[Arising out of Order-In-Appeal No.462/CE/CHD/2008, dated 19.08.08 issued by CCE, Chandigarh]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Chandigarh — Appellant
Vs.
Bee Gee Construction Co. — Respondent

Coram :
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri B.L.Soni, AR for the Appellant
None for the Respondent

Date of Hearing/Decision : 06.06.2012

Final **ORDER NO. ST/A/ 468/12-Cus**

Per Ms. Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard ld. AR appearing for the Revenue. Nobody appeared for the respondents.

2. The respondents are developers/dealers and undertake activity of construction on their own land for residential plots which are ultimately sold by them to the prospective buyers.

3. Commissioner(Appeals) has relied upon the Hon'ble High Court of Guwahati's judgement in the case of Magus Construction P.Ltd. reported in 2008(TIOL)321HC-Guw-ST. For better appreciation, we reproduce the relevant paragraph as under :-

> *"Service Tax – Sale of flats – no service and so no service tax : The circular, dated August 1, 2006 is binding on the department and this circular makes is more than abundantly clear that when a builder, promoter or developer undertakes construction activity for its own self, then in such cases, in the absence of relationship of 'service provider' and 'service recipient', the question of providing taxable service to any person by any other person does not arise at all. In the present case too, the materials placed by the writ petitioners clearly show that the construction activities which the petitioners have been undertaking, are in respect of the petitioners' own work and it is only the completed construction work, which is sold by the petitioner company to the buyers who may have made agreements for sale before the construction had actually stated or during the progress of the construction activity or at the end or completion of the construction activity. Any advance, made by a prospective buyer, or deposit received by the petitioner company is against consideration of sale of the flat/building to such prospective buyer and not for the purpose of obtaining service from the petitioner company."*

4. In as much as there is no dispute on the factual position that the construction activities are being undertaken by the respondents on their own land for residential complexes, which are further sold by them to the prospective buyers, we find that the ratio of law declared by Hon'ble Guwahati High Court is fully applicable to the facts of the present case. No infirmity is found in the views of Commissioner(Appeals). Revenue's appeal is accordingly rejected.

(Pronounced in the open Court on)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I