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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/663/2008-CU[DB]

Dated: **23/08/2012**

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

GREEN VIEW LAND & BUILDCON LTD., (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/548/2012-CU[DB]** dated **06/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
GREEN VIEW LAND & BUILDCON LTD.,
SCO NO. 854, NAC MANIMAJRA,
CHANDIGARH.

2. Advocate(s) / Consultant(s):
Mr. Abhishek Jaju, Adv
F-78 FF Lajpat Nagar – II
New Delhi – 24

3. C.D.R

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

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

Date of Hearing : 6.8.2012

Service Tax Appeal No. 663 of 2008

[Arising out of the Order-in-Appeal No. 350/CE/Chd/2008 dated 24.7.2008 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?	Yes
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 Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

CCE, Chandigarh — Appellant

Vs.

M/s Green View Land & Buildcon Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri Govind Dixit, A.R.
Appeared for Respondent : Shri A. Jaju, Advocate

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

Final Order No. ST/A/548/12-Cus dated............

Per **Mathew John** :

The respondents were engaged in construction of residential complexes and selling the same to prospective buyers. During the period October 2005 to July 2006 they did not pay any service tax for consideration received for such activity. Revenue was of the view that service tax was payable on such activity under Section 65(105)(zzzh) of Finance Act, 1994 read with Section 65(30a) of Finance Act, 1994. A Show Cause Notice was issued in this regard and adjudicated confirming a demand for tax amount of Rs. 14,50,311/- along with interest and penalty. Aggrieved by the order, the respondents filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) set aside the adjudication order on the ground that the respondents were engaging their own labour and constructing buildings in land owned by them and in such situation there was no service provided by the respondents to the prospective buyers. He relied on the clarificatory letter issued by CBEC vide F. No. 332/35/2006-TRU dated 1.8.2006.

2. Aggrieved by the order of the Commissioner (Appeals), Revenue has filed this appeal. The submission of the Revenue is that the respondents were taking advances from the prospective buyers for construction of flats and therefore there was a service being rendered by the respondents to the perspective buyers of the flats. He argues that this position has been clarified by the explanation added under Section

65(105)(zzzh) by Finance Act, 2010. He also relies on the decision of Punjab & Haryana High Court in the case of **G.S. Promoters Vs. UOI** - 2011 (21) STR 100 (P&H).

3. The Counsel for respondent submits that the explanation added at by Finance Act, 2010 cannot have retrospective effect and this issue has already been decided by the Tribunal vide Final Order No. ST/A/190-197/2012-Cus. dated 13.3.2012 in Appeal No. ST/463/2008 (Delhi) and Others in the case of **CCE, Chandigarh Vs. M/s Skynet Builders, Developers, Colonizer and Others.**

4. We have considered arguments on both sides. We find that the decision of Punjab & Haryana High Court in the case of **G.S. Promoters** was about constitutional validity of the explanation added by Finance Act 2010. That decision did not examine service tax liability for the period prior to the date on which the explanation was added. The Tribunal has taken a view in Appeal No. ST/463/2008 (Delhi) and other appeals that the explanation cannot be have retrospective effect and that in view of the various clarifications issued by CBEC during the relevant time no service tax liability can be imposed on the respondent for this type of activity.

5. Therefore we reject the appeal filed by the Revenue.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM