CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 52205 OF 2018

[Arising out of Order-in-Original No. 28/PP/COMMR./CGST/AUDIT–II/2017–18 dated 28.03.2018 passed by the Commissioner, CGST, Audit–II, New Delhi]

Commissioner CGST ……... Appellant
Delhi South Commissionerate
2nd & 3rd Floor, Engineers India Limited (Annexe Building)
Bhikaji Cama Place
New Delhi–110066

vs.

M/s. Skylink Construction Private Limited ....Respondent
B-42 (Basement), Panchsheel Enclave
New Delhi–110017

APPEARANCE:

Ms. Jaya Kumari, Authorized Representative for the Revenue
Mr. Siddarth Malhotra, Advocate for the Respondent

CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing :01.07.2026
Date of Pronouncement :13.07.2026

FINAL ORDER NO. 51154/2026

PER: MS. BINU TAMTA

The present appeal has been filed by the Revenue, challenging the demand of service tax dropped by the impugned order[1].

2. M/s. Skylink Construction Pvt. Ltd.[2] is registered with the Service Tax Department for providing services of construction services other than residential complex, including commercial/industrial buildings or civil

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[1] Order-in-Original No. 28/PP/COMMR./CGST/AUDIT–II/2017–18 dated 28.03.2018
[2] the respondent/assessee

structures and construction of residential complex services and is regularly filing ST-3 Returns. On the basis of investigation carried out by the Department, show cause notice dated 22.04.2016 was issued raising demand of ₹5,29,39,121 along with interest and penalty. On adjudication, the learned Commissioner confirmed the demand limited to ₹66,38,753 only and dropped the remaining demand. The details thereof are as under:

Issue		Period	Demand proposed in SCN	Demand confirmed in OIO
I.	Service Tax Liability admitted by the Noticee on **construction of complex services**	2013–14 to 2015–16 (upto 12.05.2015)	87,81,780	**55,80,458**
II.	Service Tax payable on Advances received for providing **construction of complex services**	2010–11 to 2014–15	3,61,55,494	**Nil (Dropped)**
III.	Service Tax liability on Real Estate Agent Services (Meerut MDA Flats)	2010–11 to 2013–14	68,33,417	**NIL (Dropped)**
IV.	Service Tax on **Real Estate Agent Services** (other than Meerut MDA Flats)	2010–11 to 2012–13	11,68,432	**10,58,295**
TOTAL TAXABILITY			**5,29,39,121**	**66,38,753**
Interest under S. 75				**24,69,914**
Penalty under S. 77(1)(a)				**10,000**
Penalty under S. 77 (2)				**10,000**
Penalty under S. 78				**66,38,753**

3. Ms. Jaya Kumari, learned Authorised Representative for the Revenue made the following submissions:

> "(i) The AA has erred in extending the benefit of the cum-tax value by simply relying on the submission of the respondent without examining the relevant financial records. The respondent was paying service tax on the taxable values earlier as reflected in their ST–3 returns filed for the corresponding period and had admitted their liability on initiation of investigation against them.

> Some projects were inclusive of service tax and some exclusive.
>
> (ii) The completion certificate produced by the respondent is not completion certificate but an occupancy certificate and the statutory provisions only take cognizance of the completion certificate and not occupancy certificate.
>
> (iii) The AA has erred in dropping the demand on the issue of 'advances.' These 'Advances' were reflected under 'Current liabilities' instead of Short/Long term borrowings.
>
> (iv) The AA has erred in dropping the demand pertaining to the 300 houses at Sainik Vihar related to Meerut Development Authority without any scrutiny of the completion certificate."

4. Mr. Siddharth Malhotra, learned Counsel for the respondent has raised preliminary issue that the appeal has been filed beyond the period of four months which is time barred being beyond the period specified under Section 86 of the Finance Act, 1994 read with Section 35B of Central Excise Act, 1944 and no application for condonation of delay has been filed. Thus, the present appeal cannot be entertained by the Tribunal. On merits, with respect to the 'advances' received by the appellant, he submitted that the receipt of refundable advances does not constitute taxable consideration and no taxable service had been rendered. With regard to Real Estate Agent Service relating to Meerut Development Authority flats, it was submitted that the assessee had already acquired these flats and had become owner thereof. Therefore, subsequent sale was sale of his own property on which no tax was payable.

5. Considering the rival submissions and also the impugned order of the learned Commissioner evaluating the documentary evidence with reference to the statutory provisions, we do not find any error. The issues

which have been the subject matter before the Commissioner were as follows:

> "i. Service Tax liability on construction activities carried out in collaboration with landowners during the period 2013-14 upto 12.05.2015;
>
> ii. Service Tax liability on income shown under the head "advance against Booking of Flats" in balance sheet. Demand on these advances were raised treating the income against the construction activities rendered by the Noticee;
>
> iii. Service Tax liability on Real Estate Agent Services rendered by the Noticee in respect of Flats pertaining to Meerut Development Authority;
>
> iv. Service Tax liability on Real Estate Agent Services rendered by the Noticee in respect of Flats other than Meerut Development Authority;"

6. The Revenue has limited the arguments to the issues as specified in the synopsis as under:

> "Whether the party is chargeable to service tax on advances received which are mentioned in balance sheet as "advances against booking of property" under the category of "construction of Residential Complex Service" and whether the completion certificate produced by the respondent can be considered valid calculating service tax liability."

7. In the show notice, the allegation is that advances were received for various purposes and towards development or construction of the residential properties. We find that the Commissioner has considered the agreement, the chart reflecting the customer-wise and year-wise receipts, or repayments, the balance sheet for the FY 2010–11 to 2014–15, and also the bank statement. On the basis of these documents, it was concluded that the agreement specifying the conditions provided for payment of refundable security deposited for finding suitable property.

The chart reflected the repayment/refund of these loans/advances in large number of cases with categorical details of year wise and customer wise advances received and refunds made which are duly substantiated by the balance sheet and the bank statements. We do not find any error in the findings recorded and the Department has not substantiated anything contrary to it. It is a clear case, where the advance has been received by the assessee on account of providing the service of finding a property for their customers and in the event of non-fulfilment thereof, the amount received as advance was refunded back to the clients. Thus, no taxable service had been rendered and the amount received as refundable advance does not constitute taxable consideration. The submission of the Department that these 'advances' were reflected under 'current liabilities' instead of short/long-term borrowing does not have any merit. We, therefore, uphold the findings of the Commissioner on the said issue and reject the department's appeal on that ground.

8. The challenge to the benefit of cum-tax value extended to the appellant is also not sustainable in view of the provisions of Section 67(2) of the Act which specifically provides that where tax is not separately recovered, the gross amount shall be treated as inclusive of tax. It is not the case of the Revenue that separate recovery of tax has been made by the appellant.

9. The next issue raised by the Department is that the certificate relied upon by the assessee is merely an occupancy certificate and not the completion certificate. In this regard, we find that the learned Commissioner has specifically observed that the copy of the completion

certificate issued by MCD, Delhi was rejected by the investigating officer only on the ground of not producing the original certificate. Further, it has been noted that vide letter dated 25.03.2018, the appellant had produced the original certificate which was verified and thereafter it was returned. Therefore, it was rightly concluded that the benefit cannot be denied to the assessee.

10. The Revenue has challenged the demand being dropped towards 300 flats relating to Meerut Development Authority, which were classifiable under Real Estate Agent Service. The Revenue has completely ignored the transaction where the flats had already been acquired by the assessee and thereby become the owner of the said flats. The subsequent sale was not in the nature of any service but was sale of immovable property on which service tax is not leviable. Considering the agreement entered between the assessee, M/s SGC Engineers (I) Pvt. Ltd and M/s Core Builders (P) Ltd, the impugned order observed that it is a purchase agreement under which the assessee had purchased 300 flats of MDA from SGC Engineers and Core Builders since the flats were originally allotted in favour of SGC Engineers. The allotment cum instalment letter dated 20.11.2016 allotting 346 flats to SGC Engineers has been placed on record. In that view, it has been rightly concluded that the flats were first purchased by the assessee and thereafter being the owner, the flats were put for sale. The transaction being one of sale and purchase of one’s own immovable property, the same does not fall within the ambit of service tax and, therefore, the demand has been rightly dropped.

11. In view of the above findings, we do not find any error in the impugned order and the same is hereby affirmed. The appeal filed by the revenue is, accordingly dismissed.

[Order pronounced on 13.07.2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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