CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 50686 OF 2021
(Arising out of Order-in-Appeal No. 93(CRM)ST/JDR/2021 dated 24.03.2021 passed by the Commissioner (Appeals), CGST, Jodhpur)

M/s Lakecity Builders & Developers
5-Ashok Vihar, University Road,
Shastri Circle,
Udaipur - 313001 **Appellant**

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE
142-B, Hiran Magri, Sector-11
Udaipur **Respondent**

APPEARANCE:
Ms. J. Kainaat, advocate for the appellant
Mr. Anil Kumar, authorised representative of the department

Date of hearing/Decision: August 03, 2026

CORUM: DR. RACHNA GUPTA, OFFICIATING PRESIDENT
MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51336/2026

DR. RACHNA GUPTA:

M/s Lakecity Builders & Developers, the appellant herein, is engaged in construction of residential complex service. During the course of audit of record of appellant, it was observed that during the period financial year 2015-16 and 2016-17, the appellant had booked income under the head of Maintenance Fund and Corpus Fund but have not discharged service tax liability towards those amounts received. On being enquired, appellant mentioned that they were collecting those amounts from the buyers of flats for maintenance of the common area of residential complex but purely on behalf of the society. Department, however, observed that by the time of the audit, the society had not come into existence and the amount so collected by the appellant in the name of society charges remained in the possession of the appellant for being used towards the maintenance of the common area of residential complex. Relying upon rule 6 of the Service Tax Rules, 1994 and the provisions contained in Point of Taxation Rules, 2011, the department observed since at the time of charging the consideration it was the appellant who was providing maintenance and repair services, the appellant cannot claim itself to be the pure agent of the maintenance society of the said residential complex. With these observations, the show cause notice no. 15/2019-20/1380 dated 12.02.2020 was served uon the appellant proposing the demand of service tax amounting to Rs. 2,29,305/- along with interest at the appropriate rates and the proportionate penalties. The proposal has been confirmed initially vide Order-in-Original bearing no. 13/2020 dated 21.08.2020. The appeal against the said order has been rejected vide Order-in-Appeal bearing no. 348/2020 dated 01.122020. Being aggrieved, the present appeal has been filed.

2. We have heard Ms. J. Kainaat, learned counsel for the appellant and Shri Anil Kumar, learned authorised representative appearing for the department.

3. Learned counsel for the appellant submits that the amount in question, specifically the Corpus Fund was collected in terms of clause 3(g) of the sale deed executed with the buyers. The Maintenance Fund was collected purely on behalf of the society. Both the funds were to be dealt with by the society only and were to be transferred to the society immediately after formation thereof, It is further submitted that collection of Corpus Fund was never against rendering of any services. Learned counsel further mentioned that since the appellant is the developer/builders of residential flats while selling the same, one time maintenance deposit from each of the buyerwas being collected by the appellant.

The so constructed residential complex, since has to be maintained by the housing society to be formed by the owners/buyers of the flats that though the amount was collected by the appellant but was kept separately and was shown in the books of account as 'liability' till the formation of society. Out of the said amount only the appellants were expected to pay various charges such as common electricity bills, water charges, security charges etc. Whatever balance was left in the said account at the time when housing society was formed, the same was handed over to the said society. Any activity done prior to the formation of the said society was purely on behalf of the society. Hence, the demand has wrongly been confirmed on the amount of maintenance charges. Question does not arise for any demand on the amount of Corpus Funds as no service has at all been rendered out of the said amount. While relying upon the following decisions, learned counsel has prayed for the order in challenge to be set aside and the appeal to be allowed.

i) **Commissioner CGST vs. Mangalam Build Developers Ltd**[1]

ii) **CCE vs. Crescendo Associates**[2]

iii) **CCE vs. Shri Krishna Chaitanya Enterprises**[3]

iv) **Kumar Beheray Rathi vs. CCE**[4]

4. While rebutting the submissions, learned DR has reiterated the findings arrived at by the Commissioner (Appeals) and even the findings of the original adjudicating authority. It is submitted that the society Maintenance Fund and the Corpus Fund collected by the appellant from the buyers of the flats constructed by them is nothing but the consideration received by the appellant towards

1. 2022 (4) TMI 255 (ND)
2. 2019 (28) GSTL 216 (BOM)
3. 2018 (14) GSTL 532 (BOM)
4. 2014 (34) STR 139 (TRI-MUM)

providing maintenance services till the housing society comes into existence. Relying upon the decisions in the case of **Satya Prakash Builders Pvt. Ltd vs. Commissioner of C. Ex., Jaipur**[5] and **M/s Mahima Real Estate Pvt. Ltd. vs. Commissioner of Customs, Central Excise, Jaipur**[6] the order under challenge is prayed to be upheld and the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the records, it is observed to be an undisputed fact that the appellant was collecting two different funds from the flat owners while selling them the flats constructed by the appellant, namely, the Maintenance Fund and the Corpus Fund. It is also coming as an undisputed fact that at the time of collection of those funds by the appellant, the housing society of owners/buyers of the flats was not in existence. Thus during the period in dispute (2015-16 and 2016-17), the appellant had collected these amounts from the flat buyers for taking care of maintenance of their residential complex (the common area maintenance) till those owners/buyers form their own society.

6. Since the said activity of the appellant is alleged to be the taxable service we have perused the definition of service in section 65(B)44 of the Finance Act which reads as follows:

> "(44)"service" means any activity carried out by a person for another for consideration, andincludes a declared service, but shall not include-
> (a) an activity which constitutes merely,-
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any othermanner; or
> (ii) a transaction in money or actionable claim;
> (b) a provision of service by an employee to the employer in the course of or in relation tohis employment;
> (c) fees taken in any Court or tribunal established under any law for the time being enforce.

5. 2017(4)G.S.T.L.393(Tri.Del.)
6. 2019(9) TMI 123 - CESTAT NEW DELHI

7. The perusal of the provision reveals that section 66B of the Act provides for levy of service tax on all services other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another against the consideration collected.

8. When the aforesaid definition is seen in the light of the above observed undisputed facts it becomes clear that the appellant was collecting certain amounts to be utilised by the appellant towards maintenance of the common area and the amenities of the residential complex constructed by them. The said activity is not in the negative list. The appellant has agreed to be responsible for providing said services till the housing society comes into existence. Admittedly, the housing society was not in existence during the period in dispute. It is held that the appellant was providing taxable services of maintenance, management and repair. Hence we do not find any infirmity in the order when the demand of service tax has been confirmed on the amount of Maintenance Fund received by the appellant during the disputed period (Rs. 655306/-). Therefore, to the extent was utilised by the appellant, the service tax demand on the utilised amount therefore, sustains.

9. The decision in the case of **Mangalam Build Developers** (supra) relied upon by the appellant does not support the appellant because in the said case no amount of the maintenance amount paid by the buyers was utilized by the builders towards maintenance of the residential complex constructed by the builders, which is not the fact of the present appeal.

10. With respect to the amount of Corpus Fund (Rs. 900000/-), it is an undisputed fact that the entire amount, without being utilised at all, was transferred by the appellant to the society when the said

housing society came into existence. No doubt in terms of rule 6 of Service Tax Rules 1994 and the provisions contained in the Point of Taxation Rules, 2011, the taxability of consideration is decided at the time of its receipt or at the time when the invoice for service agreed to be provided is issued. But unlike the Maintenance Fund, although the Corpus Fund was received before the formation of the housing society, but it was never utilised for rendering any service of section 65B(44).

11. Further it is observed as brought to notice by the appellant in terms of clause (g) of the sale agreement between the appellant and the prospective buyers, the Corpus Fund was to be transferred as such and out of the Maintenance Fund, the balance thereof was to be transferred. It is clear that while receiving the Corpus Fund, the appellant had not agreed to render any service against the said funds. Hence it is held that the service tax liability on the amount of Corpus Fund has wrongly been confirmed. The order under challenge is liable to be set aside to that extent.

12. In totality of entire above discussion, the order under challenge is set aside with respect to confirming service tax demand on the amount of Corpus Fund and on the amount of Maintenance Fund as transferred by the appellant to the housing society. The penalty imposed also stands reduced to proportionate rate. The demand on utilized amount in Maintenance Fund is hereby upheld. As a result, the present appeal stands partly allowed.

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

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

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