IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. ST/1740/2011-CU [DB]

[Arising out of Order in Appeal No. IND/CEX/000/APP/343/2011 dated 17.08.2011, passed by the Commissioner (Appeals) of Central Excise, Indore]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Shri Narendra Singh Panwar ....Appellant

Vs.

CCE & ST, Indore ....Respondent

Appearance:

None for the Appellant
Shri Sanjay Jain, AR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing: 27.12.2016

Date of Pronouncement: 30.12.2016

FINAL ORDER NO. 56203 /2016-ST [DB]

Per B. Ravichandran

The appellants were engaged in providing construction service to various Government departments. Proceedings were initiated against the appellants for demanding service tax under construction service. The Original Authority confirmed the demand of Rs. 3,24,250/- and imposed penalties under section 76, 77 and 78 of the Finance Act, 1994. On appeal, the Commissioner (Appeals), vide impugned order, reduced the demand to Rs. 2,68,740/- relating to construction of Residential Complex Service. He accordingly modified the penalties imposed on the appellant.

2. We have heard the ld. A.R. for Revenue. None appeared on behalf of the appellant. However, a letter dated 27.10.2016 has been received from Chartered Accountant on behalf of the appellant stating that the appeal may be decided based on the submissions made earlier.

3. We have examined the case records and the submissions made in the appeal by the appellant. Admittedly, the appellants provided construction service for girls hostel for Adim Jati Kalyan Vibhag of M.P. Government. The hostel is for use by inmates, in terms of facility provided by the State Government. We find that the impugned order considered the said hostel as residential complex having more than 12 units. We find that such inference, based on the number of rooms in hostel, is fallacious. The hostel for girls can neither be covered under the category of Commercial Construction nor under the category of Residential Complex. We note that hostel is a composite building and simply based on the number of rooms which can be occupied by the inmates in hostel it cannot be called as residential complex. We also note that the definition of "residential unit" refers to "single house or a single apartment intended to use as a place of residence." Hostel rooms cannot be considered as residential house for the purpose of service

tax. The hostel is apparently meant for accommodation of girl students during the course of their studies. We find, the individual rooms in the said hostel cannot be equated to a residential house or a flat which are covered under the category of Construction of Complex service for the purpose of service tax. We find no legal justification for such interpretation applied by the lower authorities. Accordingly, we set-aside the impugned order. Appeal is allowed.

[Pronounced in the open Court on 30/12/2016]

Justice Dr. Satish Chandra	**B. Ravichandran**
President	**Member (Technical)**

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