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

Date of Hearing/Decision: 8.2.2017

Appeal No. ST/4048/2012- DB

(Arising out of Order-in-Appeal No. 152/BPL/2009 dated 26.2.2009 passed by the Commissioner of Customs, Central Excise & Service Tax, Bhopal)

Shri Santosh Katiyar Appellant

Vs.

CCE, Bhopal Respondent

Appearance

Shri Sanjay Kr. Tiwari, Advocate - for the appellant

Shri Ranjan Khanna, D.R. - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50805/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 152/2009 dated 26.2.2009.

2. The brief facts of the case are that the appellant during the period under consideration (10.9.2004 to 31.3.2007) were engaged in the business of construction services for Bhopal Vikas Pradhikaran. The pradhikaran under Rajiv Awas Yojna and Jawaharlal Nehru Urban Renewal Mission had provided the small units to the juggi dwellers without any cost or highly subsidised cost.

The department opined that the activity of the appellant is covered under the taxable service of construction of complex as defined under Chapter 5 of the Finance Act, 1994 with effect from 16.6.2005. So, the Department has demanded service tax which was confirmed by the impugned order in original. Being aggrieved, the appellant has filed the present appeal.

3. With this background we heard Shri Sanjay Kr. Tiwari, ld. Advocate for the appellant and Shri Ranjan Khanna, ld. D.R.

4. From the record, it appears that during the period under consideration, the appellant neither took credit nor paid any service tax on the impugned services. The department is of the view that the said services are subject to service tax as per Chapter 5 of the Finance Act, 1994. But the fact remains that Section 65(91)(a) of the Finance Act provides the meaning of complex where the building have more than 12 residential units with the common area.

In the explanation for the removal of doubts, it was declared that for the purposes of this clause:

a. 'Personal use' includes permitting the complex for use as residence by another person on rent or without consideration.
b. 'residential unit' means a single house or a single apartment intended for use as a place of residence.

In the instant case, the allottee is paying the nominal rent or without consideration.

5. From the record, it appears that the Notification No. 28/2010-ST dated 22nd June, 2010, clarified that the services is provided to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana are exempted from the clutches of service tax. Further, vide F. No. 137/26/206-CX-4 dated 5th July, 2006, it was clarified that service tax would not be leviable on construction of complexes under question if their lay out does not require approval by an authority under any law for the time being in force. From the letter dated 30.1.2004 issued by the M.P. Urban Development department, it appears that the said construction was made under "Rajiv Gandhi basti Vikas karyakram" which was the Central sponsored scheme and the same is exempted from service tax as per Circular No. 125/2010-ST dated 30th July 2010.

5. In the light of above discussion and by considering the facts and circumstances of the case, we are of the view that the M.P Government has constructed the accommodation for the gandi basti people under the Central sponsored scheme which is attempted to clean India as per Prima Minister's mission.

6. When it is so, then we find no merit in the impugned order as no service tax is leviable in the instant case. Hence, the impugned order is set aside. The appellant will get the relief accordingly.

7. Appeal filed by the appellant is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya) (Justice Dr. Satish Chandra)
Member (Technical) President

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