IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/56691/2013-ST [DB]

[Arising out of Order-in-Original No.51/2012-13(ST)-COMM. Dated 28.12.2012 passed by the Commissioner - I, Customs, Central Excise and Service Tax, Jaipur]

M/s.Kumawat Contractor …Appellant

Vs.

C.C.E., Jaipur … Respondent

Present for the Appellant : Ms.Rinki Arora, Advocate.
Present for the Respondent: Mr. Amresh Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 06/06/2017

FINAL ORDER NO. 53947/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 28.12.2012 of Commissioner of Central Excise, Jaipur-I. The appellants are engaged in construction of Commercial / industrial building as well as residential complex. The dispute in the present appeal is restricted to their tax liability with reference to construction of residential complex for Rajasthan Housing Board. The appellants claimed that these are constructed in terms of agreement with Housing Board for individual houses and as such, are not liable to tax under Section 65 (105) (zzzh) of the Finance Act, 1994. The Revenue held a view that the individual houses are part of residential complex having common facilities and as such, the appellants are liable to tax. Proceedings initiated against the appellant, resulted in the impugned order confirming service tax liability of Rs.2,40,24,509/-. Penalty of equivalent amount under Section 78 and further penalty under Section 76 of the Finance Act, 1994 were also imposed.

2. We have heard both sides and perused the appeal records.

3. We note that the contracts executed by the appellants in relation to construction of residential complex were subjected to service tax under 'construction of complex service' prior to 01.06.2007 and under 'works contract services' after 01.06.2007. Admittedly, these contracts are of composite nature, involving supply of materials as well as provision of service. In terms of the decision of Hon'ble Supreme Court in the case of Larsen and Tubro Ltd.-2015 (39) S.T.R. 913 (S.C.) such composite contracts are liable to service tax only w.e.f.

01.06.2007, under the category of "works contract services". Further, we also note that the original authority confirmed the service tax liability under residential complex service/ works contract service on the ground that the appellants constructed residential units having common area and facility in the colony, in terms of agreement with Rajasthan Housing Board. This aspect is being contested by the appellant. A perusal of the impugned order indicates that the original authority examined the general scope of the terms "Residential Complex" and inferred that generally housing colonies built by State Housing Boards will have large common area, common approach, water supply, park, community centre and any other common facilities. We find that the original authority also distinguished the decision of the Tribunal in Macro Marvel Projects Ltd. – 2008 (12) S.T.R 603 (Tri. – Chennai). The observation of the original authority is that when there are common facilities, the appellants are liable to tax even for individual houses. We find that the factual details relevant to the present case has not been brought out with supporting evidence. Without inferring the fact regarding applicability of the tax entry in the present case, it is necessary to examine as to whether the residential complex, having individual houses, is in fact, having common areas as mentioned in the statutory definition. This can be verified from the approved layout and other supporting documents. In the absence of specific finding in this regard, it will not be correct to conclude on a particular tax entry.

4. In view of the above discussion and analysis, we find that the impugned order as it stands with reference to tax liability of the appellant for construction of residential complex, is not sustainable. Accordingly, that portion of the finding is set aside and the matter is remanded back to the original authority for a fresh decision, keeping in view the law laid down in the Hon'ble Supreme Court in the case of Larsen and Trubro Ltd. (supra) as well as regarding factual details for construction of residential complex with specific reference to availability of common facilities within the approved layout, in terms of statutory definition to the work executed by the appellant. The appellant shall be provided adequate opportunity to place their side of the case, before a fresh decision is taken by the original authority. The appeal is allowed to this extent, by way of remand.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita