CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 28.06.2017
Date of Pronouncement:07.07.2017

Cross Application No. ST/Cross/58260, 58261, 58263, 58624/2013
Appeal No. ST/56772, 56773, 56775, 56776/2013-ST[DB]

[Arising out of the Order-in-Appeal No. 217-225-RDN-ST-JPR-II-2012 dated 31/12/2012 and passed by the Commissioner of Central Excise, Bhopal]

C.C.E. & S.T. Jaipur-II … Appellant

Vs.

M/s. Mohd Sayeed Quereshi & Sons,
Jatan Construction Co.,
C D Construction Co.
Jeet Construction CO. ... Respondent

Appearance:

Present Shri Sanjay Jain, DR for the appellant
Present Shri O.P. Aggarwal, Advocate for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 54786-54789 /2017

Per V. Padmanabhan:

The appeals are filed by the Revenue against the order in appeal no. 217-225/2012 dated 31.12.2012 in which the service tax demand against the above three assesses were dropped. The respondents are engaged in the construction of residential complex services as defined under section 65 (105) (zzzh) of the Finance Act 1994 made taxable w.e.f. 16.06.2005. The original authority vide his order dated 02.02.2012 confirmed the demand of service tax by taking a view that the respondents have carried out construction of complex services. However, vide the impugned order, the Commissioner (A) set aside the demands by taking the view that activities carried out by the respondents are not covered by service defined in section 65 (105) (zzzh) in as much as the respondents have carried out the construction of single and independent house for Rajasthan Housing Board. He has held that since these independent house do not have any common area, such houses cannot be considered as part of complex. Aggrieved by the impugned order Revenue is in appeal.

2. With the above background, we have heard Shri Sanjay Jain, DR for the appellant and Shri O.P. Aggarwal, Advocate for the respondent.

3. Heard both the sides and perused the appeal records.

4. The demand against the respondents covers the period from 16.06.2005 to 31.03.2010. The original authority confirmed the demand of service tax under the construction of complex services for the entire period, which have been set aside in the impugned order.

5. We note that the nature of construction carried out by the respondents is of composite nature involving supply of materials as well as provision of services. In terms of decision of the Hon'ble Supreme Court in the case of ***Larsen & Toubro 2015 (39) STR 913 (SC),*** such composite constructions 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 assessee 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 Revenue. A perusal of the impugned order indicates that the original authority examined the general scope of the term "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 the case of ***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 respondents 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. The Commissioner (A) has however set aside the demand by relying on the case of ***Macro Marvel Projects Ltd.*** 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.

6. In view of the above discussion and analysis, we find that the impugned order dropping the entire tax liability of the respondents for construction of residential complex, is not sustainable. Accordingly, it 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 Toubro 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 respondents. The respondent shall be provided adequate opportunity to place their side of the case, before a fresh decision is taken by the original authority.

7. The appeals of the Revenue are allowed to this extent, by way of remand. Cross objection also disposed of.

[Order Pronounced in the open court on 07.07.2017]

(V. Padmanabhan) (Justice Dr. Satish Chandra)
Technical Member President

Bhanu