CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 18.09.2017

Appeal No. ST/51476/2014-CU[DB]

[Arising out of the Order-in-Appeal No. 264/OPD/ST/JPR-II/2013 dated 30.09.2013, passed by the Commissioner of Central Excise, Jaipur]

M/s. R.K. Builder and Developers … Appellant

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Shri Kumar Vikram, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

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

FINAL ORDER No. 56995/2017

Per Justice (Dr.) Satish Chandra:

The appeal is against the order in appeal no. 194-196/2017 dated 03.04.2017. The period of dispute is 2006-07 to 2009-10.

2. Brief facts of the case are that during the period under consideration, the appellant was engaged in construction of houses for Rajasthan Housing Board. The appellant 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. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Kumar Vikram, learned Advocate for the appellant and Shri Sanjay Jain, learned DR for the Revenue.

4. After hearing both the parties and perusal of material on record, it appears that identical issue has come up before the Tribunal in the cases of ***CST, New Delhi vs. Gandharva Infrastructure & Projects Ltd. [Final Order No. 55040-55041/2017 dated 11.7.2017***] and ***M/s. Kumawat Contractor vs. CCE Jaipur [Final Order No.53947/2017 dated 06.06.2017]*** wherein it was observed as under:

> *"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."*

5. By following our earlier order (supra), we remand the matter to the adjudicating authority with the same directions (supra).

6. In the result, appeal filed by the appellant is allowed by way of remand.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu