IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/60292/2013-CU [DB]

[Arising out of Order-in-Original No.JAI-EXCUS-002-COM-058-13-14 dated 20.08.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Khurana Construction …Appellant

Vs.

C.C.E., Jaipur(I) … Respondent

Present for the Appellant : Mr.B.L.Narasimhan , Advocate & Mr. Narender Singhvi, Advocate

Present for the Respondent: Mr.R.K. Maji, D.R.

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

Date of Hearing / Decision : 21/11/2017

FINAL ORDER NO. __58141/2017___

PER: B.RAVICHANDRAN

The appeal is against order dated 20th August, 2013. The impugned order confirmed a service tax liability of Rs.1,00,71,480/- on the appellant alongwith penalties. The period involved is April 2006 to March, 2009. The tax liability is confirmed on the construction activities of the appellant with reference to construction of building meant for boys' hostel and residence of faculty of Sir Padampath Singania University.

2. Contesting the impugned order the ld. Counsel submitted that the appellants carried out these constructions in terms of an agreement with the University. The boys' hostel cannot be considered as a residential complex in terms of the tax entry meant for service tax. The residences built for faculty members of the university are meant for self occupation and for the own use by the University. On these basis, the ld. Counsel submitted that the appellants are not liable to Service Tax. He relied on various decided cases to support his contention.

3. The ld. AR reiterated the findings of the original authority.

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

5. Admittedly, the boys' hostel built by the appellant cannot be subjected to service tax under the category of construction of complex service. The Tribunal in the case of Shri Narender… Singh Panwar vide Final Order No. 56203/2016 dated 30.12.2016 held that hostel rooms cannot be considered as residential house for the purpose of service tax . These rooms are used by the students for accommodation during the course

of their study. Such individual rooms of the hostels 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.

6. On the issue relating to construction of residence for faculty members of the University, we note that the said buildings are for personal use of the University. The University got the construction done for the usage of their faculty members. We note similar dispute came before the Tribunal and in the case of Khurana Engineering Ltd. - 2011 (21) STR 115 (Tri. Ahmd.) it was held that construction of employee quarters for Income-tax Department cannot be subjected to service tax as the same is for own use by the Department. In the present case, we note the University is building the faculty residences for personal use and as such no tax liability will arise on such activity. In view of the above discussion and analysis, we allow the appeal by setting aside the impugned order.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita