**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
West Block No.2, R.K.Puram, New Delhi

**COURT-IV**

**Date of hearing/decision: 01.12.2017**

**Appeal No. ST/50752/2014- [DB]**
[Arising out of the Order-in-Appeal No. 201/VC/ST/JPR-I/2013 dated 21/11/2013 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur-I]

Hari Narayan Khandelwal … Appellant

Vs.

CCE Jaipur-I …Respondent

Appearance:
Present Shri Rinki Arora, Advocate for the appellant
Present Shri Ranjan Khanna, AR for the respondent

**Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
**Hon'ble Mr. B. Ravichandran, Member (Technical)**

**FINAL ORDER No. 58259/2017**

## Per B.Ravichandran

1. The dispute in the present case relates to tax liability of the appellant who had undertaken construction of 4 HIG houses for Rajasthan Housing Board in pursuance of work order dated 17/12/2008. The lower Authorities confirmed tax liability of the appellant under the category of Construction of Complex Service.

2. The Ld. Counsel appearing for the appellant submitted that they have built only four stand alone house along in terms of the said agreement. They have not built any residential complex. Accordingly, it is prayed that Service Tax liability confirmed against the appellant may be set aside. Reliance was placed on the decision of the Tribunal in the appellant's own case vide Final Order No. 53308/2017 dated 16/05/2017.

3. The Ld. AR submitted that construction of part of the residential complex is also liable to tax. Apparently, the appellant undertaken such part construction in a complex having more than 12 residential units. As such they are liable to tax. These residential units shares common facilities as recorded by the Original Authority.

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

5. Admittedly, the appellants constructed only four residential units. The question is whether such four residential units are part of a residential complex as defined under Section 65 (30 a) of Finance Act, 1994. We note that the lower Authorities made general observation regarding availability of common facilities. In fact, the impugned order recorded that Rajasthan Housing Board develops and constructs large residential complexes comprising more than 12 residential units over an area having common facilities and the appellants have not produced any evidence to the contrary. We note that such inference based conclusions are not legally sustainable. In order to tax the appellant, under Residential Complex Service, it is necessary to categorically establish that the complex are part thereof, was constructed by the appellant are having common facilities in case the residential units are individual hoses. The Original Authority recorded in general terms to the effect that the houses constructed at Pratap Enclave and the common facilities like roads, street lights, sewerage line, park and common water supply are situated in a close proximity in a common area. We note that similar set of facts in appellant's own case came up for decision before the Tribunal. The Tribunal vide Final Order No. 53308 dated 16/05/2017 observed as below:-

*More importantly, the complexes should be located within a premises and lay out of such premises should have been approved by an authority under any law for the time being in force. It is clear that there should be a premise sharing common facilities and common area as approved by a lay out. In the present case, we find that the lower Authorities stated that there were common facilities like roads, street lights, sewerage line, park, common water supply situated in close proximity in a common area. There is no finding to the effect that these common facilities are within the approved lay out by the local Authorities and they are for the houses of such residential complexes within the location. In other words, various residential units built independently but sharing roads, street lights, sewerage line, park in close proximity do not by themselves come under the taxable category of residential complex. It is apparent that all housing units in any urban colony do share roads, street lights, sewerage lines, water supply, which are provided by the local Authorities. It does not mean that any residential unit built in any colony having such common roads, street lights, water supply or nearby park will be liable to tax under construction of complex service. The common area and common shared facilities should be with reference to the approved lay out of a particular location and the residential units should be located in such approved lay out. Sharing facilities provided by local Authorities available to all residential units by way of road, street lights, park, water supply unit does not make the residential unit covered by the tax entry under Section 65 (91a) of the Finance Act, 1994. As such, we find that the impugned order failed to justify the categorization of the construction carried out by the appellant, with reference to 10 independent houses, as construction of residential complex in terms of the above tax entry.*

6. The facts of the present case are similar to the one which was decided as above. Accordingly, following the said ratio we find the impugned order cannot be sustained.

Accordingly, the same is set aside and appeal is allowed.

[Order dictated and pronounced in the open court]

**(S.K.Mohanty)**
**Member (Judicial)**

**(B.Ravichandran)**
**Member (Technical)**

Rekha