IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:11.12.2017

Service Tax Appeal No.324/2012-DB

[Arising out of Order-in-Original No.71/2011-ST dated 9.12.2011 passed by the Commissioner, Central Excise, Jaipur]

M/s.Lekh Ram Arya Appellant

Vs.

CCE, Jaipur Respondent

**<u>Appearance</u>**:

Rep. by Ms. Rinki Arora, Advocate for the appellant.
Rep. by Shri Pradeep Juneja, AR for the respondent.

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

**Final Order No.58379/2017**

**<u>Per B. Ravichandran:</u>**

The appellant is aggrieved by the order dated 9.12.2011 of Commissioner of Central Excise, Jaipur-II.

2. The appellants are engaged in construction activities. They have entered into an agreement with Rajasthan Housing Board for construction of individual houses. The Revenue initiated proceedings against them for non-payment of service tax for such activity. It was held that the appellants are liable to tax under the category of "construction of complex service". Though the appellants have built less than 12 individual houses, the Revenue entertained a view that these are part of a common

residential complex and as such, liable to tax. An amount of Rs.11,299/- was also proposed to be recovered under GTA service as the appellant received such services.

3. The Original Authority confirmed tax liability under both the categories totaling amounting to Rs.10,65,184/- . He also imposed penalties under Section 76 and 78 of the Finance Act, 1994.

4. Ld. Counsel appearing for the appellant submits that they have constructed less than 12 individual houses in pursuance to contracts executed with Rajasthan Housing Board. The original order confirmed the tax liability without examining applicability of the scope of tax entry for residential complex service. The existence of common approach road by itself will not make a complex liable to tax. Regarding GTA service, the ld. Counsel submitted that they have availed service from individual truck owner, who did not issue consignment note for transport. There is no service tax liability for such activities of transport under GTA service.

5. Ld. AR supported the findings of the Original Authority and submitted that the Housing Board constructed residential colonies having common facilities and as such, even if the appellants built less than 12 independent houses, when these are part of a common housing colony (residential complex), the same should be subjected to tax.

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

7. On the first issue, we note that the appellants, admittedly, constructed less than 12 houses in terms of the contract for Rajasthan Housing Board. To establish that these houses are part of a residential complex of having more than 12 houses sharing common facilities like community hall, water supply, etc., it is necessary to have categorical evidences. In the impugned order, we note that certain inferences were made based on common knowledge. Further, onus was put on the appellants to produce the evidences to the contrary. We found such course of action is not sustainable. Since the demand under construction of complex service is issued to the appellant, it is necessary to establish that their activities are clearly falling under the said tax entry. When the construction of independent houses is below 12 nos., it is necessary to establish that these houses are a part of residential complex, sharing common facilities as mandated in this statutory tax entry. In the present impugned order, no such evidences are adduced, only the inferences have been made. We find construction of individual house for Rajasthan Housing Board has been a subject matter of various appeals before the Tribunal. It has been consistently held that to tax the appellant under "construction of complex service", it is necessary to record that the construction are of residential complex of having 12 or more dwelling units or parts thereof. These complexes, should share common facilities, even if they are independent houses. Such categorical finding is required to satisfy the statutory provisions of Section 65(91a) of the Finance Act, 1994. We find that in the present case, the evidences are lacking. The Tribunal in the case of

**Hari Narain Khandelwal vide Final Order No.53308/2017 dated 16.05.2017** held as under:-

> "5. We have perused the impugned order which held that the individual houses built by the appellant will be liable to be taxed under the above said category. We find that the lower Authorities came to the conclusion on the ground that the appellants built 10 numbers of individual HIG quarters at Takshak Colony, Section 25, Pratap Nagar, Jaipur where total 69 numbers of quarters have been constructed by various contractors. The lower Authorities further recorded that the Takshak Colony had more than 12 houses in these premises and also have common facilities like roads, street lights, sewerage line, park and common water supply etc. and are situated in close proximity in a common area. We find that he reasoning adopted by the lower authorities is devoid of legal merit. The statutory definition of residential complex is very clear, that there should be more than 12 residential units with common area and any one or more facilities or services such as park, lift, parking space, community hall, water supply and affluent treatment system. 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."

8. In the present case also, the impugned order fails to justify the demand.

9. On the second issue, we note that the appellants have hired the service of individual truck owners, who did not issue consignment notes. As such, these activities are not covered by tax liability under GTA service.

10. In view of the above discussions and analysis, we find that the impugned order is not sustainable and accordingly, the same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

( B. Ravichandran )
Member (Technical)

Ckp.