CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 23.11.2017

S. T. Appeal No. 50170 of 2014
(Arising out of order in appeal No. 260(OPD)ST/JPR-II/2013 dated 10.10.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur-II).

Dau Singh Sisodia Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Sh. R. Khanna , AR for the Respondent

Coram:

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

Final Order No. 58404/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in appeal No. 260(OPD)ST/JPR-II/2013 dated 10.10.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur-II. The period of dispute is 01.04.2005 to 31.03.2011.

2. Brief facts of the case are that the appellant are engaged in the business of construction of houses for the Rajasthan Housing Board. The department has demanded the service tax under the construction of complex services. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Ms. Rinky Arora, ld. Advocate for the appellant and Sh. R. Khanna, ld. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***Kumawat Contractors vs. CCE, Jaipur*** (Final Order No. 53947/2017 dated 06.06.2017) where it was observed that-

> "3. *We note that the contracts executed by the appellants in relation to construction of residential complex were subjected to service tax under 'construction of complex service' prior to 01.06.2007 and under 'works contract services' after 01.06.2007. Admittedly, these contracts are of composite nature, involving supply of materials as well as provision of service. In terms of the decision of Hon'ble Supreme Court in the case of Larsen and Tubro Ltd.-2015 (39) S.T.R. 913 (S.C.) such composite contracts 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 appellants 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 the appellant. A perusal of the impugned order indicates that the original authority examined the general scope of the terms "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 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 appellants 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. 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.*
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> *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 Tubro 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 order (supra), we set aside the impugned order and remand the matter to the adjudicating authority alongwith the similar direction (supra).

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

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant