IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 59916 of 2013

[Arising out of Order-in- Original No. 68/2013 dated 28.6.2013 passed by the Commissioner of Central Excise & Customs, Raipur (CG)]

M/s. Aarti Infrastructure and Buildcon — **Appellant**

Vs.

Commissioner of Central Excise Raipur — **Respondent**

Appearance:

Shri Rupender Singh, Advocate for the Appellants
Shri Sanjay Jain, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 2.2.2018

FINAL ORDER NO.50694 /2018

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed by the appellant against order-in-Appeal No. 68/2013 dated 28.6.2013. Period of dispute is from 2007-2008 to 2010-2011.

2. After hearing Shri Rupender Singh and Shri Sanjay Jain, learned representatives of the parties and perusal of material available on record, it appears that the operative demand which stands confirmed by the impugned adjudication order dated 28.06.2015 passed by the Commissioner, Central Excise and Customs, Raipur is Rs. 6,20,00,084/- apart from interest and penalties thereon. The period involved is 01.06.2010 to 30.06.2010. The activity on which the demand was confirmed against the petitioner/ appellant is for rendition of works contract service pertaining to construction of residential complexes on the petitioner's own property, developed by it for the purpose of sale to third party/ prospective purchasers, from whom the appellant collected advances.

3. The Ld. Commissioner confirmed the demand on the assumption that the act of the petitioner developing its own property but for sale to prospective purchasers falls within the ambit of works contract service, in particular under sub-clause(c) of Explanation (ii) of Section 65(105)(zzzza) of the Finance Act, 1994, as introduced w.e.f. 01.06.2007, by the Finance Act, 2007. This sub-clause brings within the ambit of works contracts, 'Construction of a new Residential Complex or part thereof'. This phrase is not defined in clause (zzzza) but is defined in Section 65 (91a) and is enumerated to be a taxable service in Section 65(105) (zzzh) of the Act.

4. With effect from 01.07.2010 an explanation is inserted in Section 65(zzzh) to bring within the ambit of the taxable construction of complex service, transactions where construction of complex is undertaken for sale and where the builder or a person authorised by the builder, before during or after construction receives any sum from a prospective buyer, before the grant of a completion certificate issued by the authority competent to do so under any law for the time being in force.

5. In context of works contract service executed prior to 01.06.2007, the issue whether construction of a complex intended for sale to prospective buyers and where the builder receives any advance, was liable to service tax was the subject matter of regnant litigation. The issue came to be settled in ***Maharashtra Chamber of Housing Industry vs. Union of India - 2012 (25) STR 305 (Bombay***) and in ***Magus Construction Pvt. Ltd. vs. Union of India 2008 (11) STR 225 (Guj.).*** The judgment of the Bombay High Court was followed by this Tribunal in ***Krishna Homes vs. CCE, Bhopal 2014 (34) STR 881 (Tri. Del.)***. The extent declaration of law is that the Explanation to Section 65(105)(zzzh) is prospective and development/ construction on one’s own property for raising a residential complex even where advances are collected from third party purchasers would not amount to the taxable service of

construction of residential complex nor would such advances be liable to tax, under this category.

6. Following the ratio of above decisions, we are of the view that development and construction of one's own property would not constitute a taxable service prior to 1.7.2010 as per section 65 (105)(zzzh) of the Finance Act. Hence, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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