CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing/Decision:15.10.2018

Service Tax Appeal No.55170/2013-Cus(DB)

[Arising out of Order-in-Original No.38/2012-13(ST)JPR-I dated 28.09.2012 passed by the Commissioner of Central Excise, Rajasthan]

M/s. IP Singh Construction Co. …..Appellant
Rep. by Shri O.P.Agarwal, CA for the appellant

Vs.

CCE, Jaipur-I …Respondent
Rep. by Shri R.K. Majhi, DR for the respondent

CORAM **:** HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No.

PER ANIL CHOUDHARY :

The issue in this appeal is whether, in the facts and circumstances, the appellant has rendered services under the category of "Work Contract Service" and whether they are liable to service tax w.e.f 1.6.2007 under the category of "Construction of Complex Service" for the construction of residential houses.

2. Heard the parties.

3. On perusal of the impugned order, we find that the ld. Commissioner has recorded the following findings:-

" On scrutiny of the details of some work orders submitted by the noticees, I find that they has undertaken various types of works including construction of LIG, MIG houses for Rajasthan Housing

Board and all these types of works were covered by single work order. It is observed that the service provided in relation to construction of MIG and HIG houses/complex to Rajasthan Housing Board falls under the definition of 'Construction of Complex' service as the said buildings/complexes satisfy the conditions of the 'Construction of Complex' service as the scheme developed by the Rajasthan Housing Board, "normally having more than 12 residential units along with a common area and the facility like parking space, community hall, common water supply etc." The noticees have vehemently argued that the houses constructed by them were standalone houses whereas a complex require more than 12 residential units in building or buildings. It is not in dispute that the number of LIG/MIG/HIG houses constructed by the noticees in various colonies of the Rajasthan Housing Board was not less than thirteen units but the noticees have argued that they do not constitute a complex. It is a common knowledge that the State Housing Board constructs housing colonies which have a large number of houses *in a large common area, having common approach road, water supply, park, community centre and many other common facilities. The noticees are under a mistaken notion that each building should have at least 13 residential units whereas the legal requirement is that the building or buildings should have more than 12 residential units. In fact each building itself may constitute a single residential unit. Therefore, if in a common area, there are more than 12 independent houses in a particular colony/scheme/complex having some common facilities; it would qualify to be called a residential complex and liable to service tax. Since the Rajasthan Housing Board develops and constructs large residential complexes comprising more than twelve residential units over an area having common facilities and the noticees have not produced any evidence to the contrary, I hold that they had provided construction of complex services.*

In this case, I have also gone through the Hon'ble CESTAT order in the case of Shri A.S. Sikarwar and Macro Marvel Project Ltd. relied by the noticees. I observe that in the given case laws the taxability of construction of individual houses is discussed. It is also observed that these cases are related to construction of individual houses without having any one or more facilities as defined under 'Construction of Complex Service', whereas in the present case the noticees have constructed building/buildings/complexes having some common area and also some common facility like park, parking space, community hall etc. In fact from the work orders itself, it is evident that they were required to construct HIG/MIG/LIG houses in housing scheme in various sectors/zones of housing schemes of Rajasthan Housing Board. Each colony was given a distinct name such as Gharonda, Kuri Bahagtasani, etc."

5. Having considered the rival contentions, we find that it is an admitted fact that the appellant had rendered the services under the heading "Works Contract Service", for which there is no proposal in the show cause notice for payment of tax. The demand of tax in this case is under the heading "Construction of Complex Service" as defined under Section 65(91a) read with Section 65(30a) read with Section 65(105)(zzzh). This is also clear from para-41 of the impugned order, where the ld. Commissioner has, for the same activity, held that prior to 1.6.2007, the appellant/assessee is taxable under the category "Construction of Complex Service" and further held that w.e.f. 1.6.2007, the same work will appropriately be taxable under "Works Contract Service" as under all these contracts executed during the disputed period, the transfer of property in goods is involved in the execution of contract and as such the goods were liable to sales tax under the Sales Tax Act and accordingly, the conditions for classifying the goods under the heading "Works Contract Service" were satisfied. It is further found in para-42 of

the impugned order that the ld. Commissioner has also allowed the benefit of abatement of 67% towards the material component from the gross value of work done in terms of Notification No.15/2004-ST, as amended by the notification no.1/2006-ST.

6. We find that the confirmation of demand for the period post 1.6.2007 under the category of “Works Contract Service” is bad, as there is no proposal in the show cause notice for payment of service tax under this category. Admittedly, the demand in the show cause notice was under the category of “Construction of Complex Service”.

7. In this view of the matter, we allow the appeal and set aside the impugned order. The appellant is entitled to consequential benefit as per law.

(Dictated & pronounced in the open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp.