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

Date of hearing: 11.09.2018
Date of pronouncement:14.11. 2018

Appeal No ST/58238/2013 (DB)

(Arising out of order-in-original No. 04/COMMR/IND/ST/2013 dated 26.03.2013 passed by the Commissioner of Service Tax, Indore).

M/s Jethanand Arjundas & Sons Appellant

Vs.

CCE & ST. Indore Respondent

Appearance:

Ms. Rinki Arora, Advocate for the appellant
Sh. Vivek Pandey, AR for the Respondent

Coram:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. C. L. Mahar, Member (Technical)

Final Order No. 53288/2018

Per: **Anil Choudhary**:

The appellants were engaged in construction of houses for slum people under two government scheme i.e. Jawaharlal Nehru National Urban Renewal Mission (JNNURM) & Valmiki Ambedkar Awas Yojana (VAMBAY), Awasi Vishwavidyalaya for MP Laghu Udyog. The appellant also provided services to SEZ units and were engaged in construction of stadium for MP Cricket Association. A SCN dt 13.01.2012 was issued demanding service tax to the tune of Rs.1,80,80,651/- alongwith interest and penalty on the ground that the appellant had provided Commercial or

Industrial Construction Service and Construction of Complex service but failed to pay service tax thereon. The matter was adjudicated by Commissioner who vide order O-I-O dt 23.03.2013 reduced the service tax demand to Rs.94,23,765/- observing that there is exemption from service tax on construction of complex service provided to JNNURM after 01.07.2010 in terms of Notification No. 28/2010 dt 22.06.2010.

2. Aggrieved by the said order the appellant is before this Tribunal.

3. With this background, we heard Ms. Rinki Arora, Ld. Advocate for the appellant and Shri G. R. Singh, ld. AR for revenue.

4. The ld. Counsel for the appellant contended that the appellants has constructed houses for economically weaker section under JNNRUM & VAMBAY schemes in terms of contract awarded to them by Indore Development Authority. It is pertinent to mention that the above schemes are Government scheme under which the units are allocated to slum people on subsidized rate and it is for the uplifitment of poor people in India as such, not liable to service tax. It is also clear from the allotment letters that the beneficiary is not allowed to sell, gift or transfer by any other way the allotted unit to a third person that is to say that the units are only for personal use of the beneficiary and as such false under the exclusion clause of definition of residential complex under Section 65 of the Finance Act. In support of her contention she relied on the following case laws-

(i) CCE & ST vs Ganesh Yadav 2017(6) GSTL 428(Tri. Alld.),

(ii) B.L. Mehta Construction P. Ltd. Vs CCE & ST 2018(8) GSTL 92(Tri. Chan.),

(iii) Santosh Katiyar vs CCE (F. O .No. 50805/2017 dt 08.02.2017

(iv) CCE vs Bahadur and Company (F. O. No. 71570-71571/2018 dt 18.07.2018) and M/s Dharmdas Tirathdas Construction Pvt. Ltd. OIO dt 28.03.2016.

5. As regards the services provided to SEZ units she contended that no service tax is payable on services provided to SEZ unit in terms of provisions of Section 26(1)(e) of SEZ Act read with Rule 30(10) of the SEZ Rules 2006. Further, Section 51 of SEZ act also makes an overriding provision that SEZ act shall have effect even if there is anything in consistent there with contained in other law for the time being in force. In support of her contention, she relied on ***Reliance Port And Terminals Ltd. Vs CCE & ST 2015 (40) STR 200 (Tri. Ahmd.***). Regarding construction of stadium for MP Cricket Association she contended that the said construction is not for Commercial or Industrial Purpose and the services are for public welfare and as such not taxable under CICS. In support of her contention she relied upon the following case laws-

(i) B.G Shirke Construction Technology Put Ltd. Vs CCE 2014(33)STR 77 (Tri. Mum.)

(ii) BCC Developers & Promoters Put Ltd. Vs CST (F. O. No. 2017 dt 13.12.2017).

As regards construction of Vishwavidyalay for M. P. Laghu Udyog she contended that the said construction is for public welfare and not for commercial purposes in terms of Circular No.80 /2004 dt 17.09.2004 and as such not taxable.

6. The ld. AR relied upon the findings of the ld. Commissioner.

7. After hearing both sides, we find that the activity of constructing houses for slum people under the government schemes is not taxable under Construction of Complex Services/ Works Contract/ CICS as it is intended for personal use. The issue is no longer *res integra* as squarely covered by Tribunal decision in the case of ***CCE & ST vs Ganesh Yadav*** (Supra). As regards services to SEZ we find that this issue is also covered by the decision of the Tribunal in the case of ***Reliance Port and Terminals Ltd. Vs CCE & ST*** (Supra). Regarding construction of stadium we find that identical issue has been decided by the Tribunal in favor of the assessee in the case of ***B. G. Shirke Construction Technology Put Ltd. Vs CCE*** (Supra). The construction of Vishwavidyalay for M. P. Laghu Udyog is also for public welfare and not for commercial purpose, hence not taxable in terms of Circular No.80/2004 dt 17.09.2004. In view of above, we set aside the impugned order and allow the appeal in favor of the appellant with consequential relief.

(Pronounced on 14.11.2018).

(Anil Choudhary)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

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