IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/715/2012-ST [DB]

[Arising out of Order-in-Appeal OIA-6-ST-RPR-II-2012 dated 02/03/2012 passed by the Commissioner of Central Excise and Service Tax-RAIPUR(Appeal)]

Chhattisgarh Steel Castings (P) Ltd. …Appellant

Vs.

C.C.E. & S.T.-Raipur, … Respondent

Present for the Appellant : Mr.Pulkit, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 25.10.2018

FINAL ORDER NO. 53508 /2018

PER: RACHNA GUPTA

The appellant herein is registered under the category of GTA Service and business auxiliary service. During the course of audit of appellant's books of accounts, the Department observed that they had shown Rs.1,84,132/- during the year 2006-07 and Rs.2,50,00,000/- for the year 2005-06 as other income. On being enquired, it was informed that agreement dated 24.07.2006 qua an agricultural plot was entered into between Hukum Chand Jain & M/s. Raipur Entertainment World

Pvt. Ltd., Mumbai for consideration of Rs.32,00,000/-. Rs.1,00,000/- thereof was paid as earnest money and remaining Rs.31,00,000/- was prayed to be paid before the Sub-Registrar at the time of registration of sale deed. However, the appellant made another agreement dated 02.02.2007 with Raipur Entertainment World Pvt. Ltd. and got the sale deed in their favour on payment of Rs.1,93,81,450/- out of which Rs.1,61,81,450/- was received by the appellant and remaining Rs.32,00,000/- was to be paid to the landlord. Finally, the land was transferred to ultimate purchaser on 15.02.2007 as per the sale deed for Rs.32,00,000/- only.

2. It was also revealed that during the year 2005-06 earned the income of Rs.2,50,00,000/- out of the transaction relating to 22.58 Acres of land vide an agreement to sale deed dated 01.04.2004 between the owner thereof i.e. M/s. Ken Electricals and the appellant for sale consideration of Rs.2,76,25,625/- permitting the appellant to sell the property to someone else. Pursuant thereto appellant got sale deed dated 05.04.2004 executed between M/s. Ken Electricals, M/s. Chattisgarh Steel Casting and M/s. Hari Yog Builders Pvt. Ltd. vide which M/s. Ken sold the property to M/s. Hari Yog Builders Pvt. Ltd. for sale consideration of Rs.5,26,25,625/- out of which Rs.2,76,25,625/- was retained by M/s. Ken Electricals and differential amount of Rs.2,50,00,000/- was received by the appellant.

2.1 On the basis of said information, Department while alleging that appellant has provided the services of real estate agent had issued a show cause notice bearing No.462 dated 21/22 January, 2010 proposing the recovery of Service tax of Rs.25,00,000/- on the transaction of the year 2005-06 and Service Tax of Rs.19,41,774/- as received towards the services rendered as real estate agent during the year 2006-07. The total Service Tax of Rs.45,30,609/- was proposed to be recovered alongwith the interest at the appropriate rate and the proportionate penalties under Section 76, 77, 78 of the Finance Act, 1994. The said proposal was confirmed except for the penalty under Section 76 of the Act vide the order of Additional Commissioner bearing No. 52 dated 31.03.2011. An appeal thereof was preferred, which has been rejected vide the order of Commissioner (Appeals) bearing No.16/679 dated 02.03.2012. Still being aggrieved thereof the appellant is before this Tribunal.

3. We have heard Mr. Pulkit, ld. Advocate for the appellant and Mr.G.R. Singh, ld. DR for the Department.

4. It is submitted that the appellant has not provided any services as that of real estate agent. Rather he has dealt with the subject matter in the capacity of a buyer and seller. Hence, there cannot be any Service Tax liability. The decision of this Tribunal in the case of **Binlas Duplux Ltd. vs.**

Commissioner of Central Excise, Meerut 2007 (7) STR 561 (Trib.- Del.) has been relied upon to impress that contract and documents not indicating rendering of services cannot be read for the said services. It is impressed upon that services like purchase or hiring of real estate cannot be classified as real estate agent services.

5. Finally, objecting the show cause notice as being barred by time for want of any intention of the appellant to evade the duty, the order under challenge is prayed to be set aside. Appeal is prayed to be allowed.

6. While rebutting, ld. DR has justified the order impressing upon that the transactions entered into by the appellant letting him to earn the income are duly covered under the definition of real estate agent as has been described in detail by the adjudicating authorities below. Appeal is accordingly, prayed to be dismissed.

7. After hearing both the parties and perusing the appeal record, we are of the opinion as follows:-

Appellant herein generated income of Rs.1,62,81.450/- from the sale of Agricultural plot and in support of which appellant submitted copy of agreement and sale deed for same transfer of land of 0.405 hectors/43560 Sq.ft. of village Jara, Tehsil & District, Raipur from Shri Hukum Chand Jain

(Landlord) to M/s. Raipur Entertainment World Pvt. Ltd., of Phoenix House, Mumbai. As per agreement dt.24.07.2006 with the landlord for sale or transfer of land on behalf of purchaser for consideration of Rs.32 Lakhs and paid Rs.1.00 Lakhs and agreed to pay the remaining amount of Rs.31.00 Lakhs before the sub-registrar at the time of Registering of sale deed. Later Appellant made another agreement dated 02.02.2007 with Raipur Entertainment World Pvt. Ltd., and got the sale deed in favour of them on payment of Rs.1,93,81,450/- out of which Rs.1,61,81,450/- was received by Appellant and remaining Rs.32.00 Lakhs was to be paid to the landlord. Finally the land was transferred to the ultimate purchaser on 15.02.2007 as per sale deed for Rs.32.00 Lakhs only. During the year 2005-06 earned income of Rs.2,50,00,000/- out of transaction relating to 22.58 acres of land at village Chorhat in Distt. Rewa vide agreement to sale dated 01.04.2004 between the owner M/s. Ken Electricals and Appellant for consideration of Rs.2,75,25,625/-. Pursuant to this another sale deed dated 05.04.2004 was signed between M/s. Ken Electricals, M/s. Chhattisgarh Steel Castings and M/s. Hariyog Builders (P) Ltd., Rewa as per which the property was sold by M/s. Ken Electricals to M/s. Hariyog Builders (P) Ltd. for consideration of Rs.5,26,25,525/- out of which M/s. Ken Electricals retained Rs.2,76,25,625/- and differential amount of Rs.2,50,00,000/- received by Appellant as income out of the sale of the property.

8. Thus, the moot question to be considered is as to whether in the said two transactions entered into by and in between the appellant, amounts to rendering of the services of real estate agent by the appellant.

9. For the purpose, following provisions need to be glanced:

(i) **Section 65 (88) of the Finance Act, 1994:**

It defines real estate agent to mean a person, who is engaged in rendering any service in relation to sale, purchase, leasing or renting of real estate and includes a real estate consultant.

(ii) **Section 65 (105) (v) of the Act:**

It defines taxable service to mean any service provided or to be provided to any person by a real estate agent in relation to real estate.

10. From the facts mentioned above, it is observed that appellant has earned the income amounting to Rs.1,61,81,625/- and Rs.2,50,00,000/- out of the sale deed/agreement with the owner of the property to first purchase the land at a fixed price and thereafter making another deal with the prospective customers to sell the property at much higher amount by actually and finally getting sale-deed registered in the name of said prospective customers. Thus, it becomes clear that though appellant initially got an agreement executed by the owner of the

property in his favour holding him to be the purchase of the land. But immediately thereafter he entered into another agreement, on behalf of the owner for re-sale of the plot in favour of someone else that too at much higher prices. This fact is sufficient to hold that appellant has not merely entered into an agreement as a party thereto, but in fact has engaged himself in rendering the services of sale of the property in favour of someone else irrespective that agreement to sell was initially executed in his favour.

11. The aforesaid definition of real estate agent in Section 65 (88) of the Act makes it clear that it is not merely the real estate consultant but any person who facilitates getting any property /real estate sold, purchased, leased out or rented out shall be called as real estate agent and the services rendered by him under said capacity shall be taxable under Section 65 (105) (v) of the Act. Thus, the arguments of the appellant are not sustainable. Nothing is apparent on record that the adjudicating authority below has failed to consider the submission of the appellant.

12. On the other hand, the casual conduct of the appellant is apparent on record i.e. after filing the impugned appeal on 1st April, 2012 alongwith the stay application, the application was disposed of vide order dated 02.12.2013 directing the pre-deposit of entire service tax assessed plus the proportionate interest and the penalties. However, the appellant instead of

complying with the said order had approached the Chhattisgarh High Court. Meanwhile, the appeal was rejected vide order dated 07.02.2004 due to the aforesaid non-compliance. Being aggrieved, the appellant again moved the High Court of Chhattisgarh, who vide order dated 15.04.2014 had remanded the matter back to the Tribunal directing to decide the stay application afresh without being influenced by any observation of the said High Court decision and of the orders passed by Tribunal on 02.12.2013 and 07.02.2014. In view thereof the application for waiver of pre-deposit was reheard and was allowed vide order dated 07.05.2013 and 16.05.2015. When the matter thereafter was fixed for final hearing of the appeal, but the appellant failed to appear and the appeal was dismissed for non-appearance vide Final Order dated 19th June, 2018. However, on Miscellaneous Application restoration of order was announced on 01.10.2018 subject to the cost of Rs.5000/- to Kerala Relief Fund. The compliance though has been made, but the facts are sufficient to reflect that appellant is inclined to just gain time to avoid the liability of the payment of Service Tax as has been adjudicated against him. Thus, the observations of the Department "it is categorically clear that the conduct of the petitioner in failing to obtain registration, in filing returns, and in remitting Service Tax on the two transactions as *inter alia* in violation of the provisions of act with an intent to evade tax" are opined to have cogent and correct basis.

13. In the result, there seems no justification for any bonafide misapprehension/ misconception on the part of the appellant as far as the definition of real estate agent is concerned. The order under challenge is therefore, held to have no infirmity and accordingly is upheld. Appeal stands dismissed.

[Operative part pronounced in the open Court]

(C.L. MAHAR) **MEMBER (TECHNICAL)**	**(RACHNA GUPTA)** **MEMBER (JUDICIAL)**

Anita