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

Date of Hearing/Decision: 29.01.2019

Appeal No. ST/55288/2014-DB
[Arising out of Order-in-Original No. OIO-JAI-EXCUS-001-COM-21-14-15 dated 16/07/2014 passed by Commissioner of Central Excise and Service Tax-JAIPUR-I (Appeal)]

Giriraj Construction Company Appellants

Vs.

C.C.E. & S.T.-Jaipur-i Respondent

Appearance:
Ms. Rinki Arora, Advocate for the Appellant
Shri R.K. Majhi, DR for the Respondent

CORAM:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

FINAL ORDER NO. 50229/2019

Per Anil Choudhary:

1. The appellant-Giriraj Construction Company are registered with Service Tax Department and engaged in providing services under the heading 'Construction of Complex Service, 'Rent a Cab Service'. It appeared to Revenue that appellant have not paid service tax amounting to Rs. 1,43,65,325/- and Rs. 19,914 totalling Rs. 1,43,85,239/- during the period October, 2007 to September, 2010. Accordingly SCN dated 23rd April, 2013 invoking extended period of limitation alleging that during the course of audit it was found that the appellant has been providing construction of residential complex service to Rajasthan Housing Board but have not paid Service Tax. It is further alleged that the services provided are recovered under the definition of 'Construction of Residential Complex Service' and alternatively under 'Works Contract Service' it was further alleged that as

the appellant have not given any option for paying tax under Works Contract Composition Scheme nor have availed input credit towards payment of Service Tax thus Service Tax is chargeable on the total amount received by them. We also notice that appellant have provided 'Rent-a-Cab Service' to M/s Avas Vikas Ltd., but have not paid Service amounting to Rs. 19,914/-. It also appeared that the appellant have not availed ST-3 return for September, 2009 to March, 2010 and September 2010 as required under the rules readwith the Act. It is further stated in the SCN that from perusal of work orders it appears that the said work involves transfer of property in goods in exclusion of such contract and such transfer were leviable to sales tax. It is further alleged that had the audit not been conducted said facts would not have come under the knowledge of the Department. As regards non-payment of tax as such the payment the material facts of the Department with intent to evade payment of tax.

2. SCN was adjudicated on contest and demand was calculated and confirmed a follows:-

Period	Gross Taxable value (Cum-Tax)	Value after abatement	Net Taxable Value	Rate of ST	ST Payable
10/2007 to 03/2008	24920855	NA	24920855	12.36%	3080218
2008-09	64942685	NA	64942685	12.36%	8026916
2009-10	21979278	NA	21979278	12.36%	2716638
2010-11 (up to 09/10)	4381494	NA	4381494	12.26%	541553

TOTAL	**116224312**		**116224312**		**14365325**

RENT A CAB SERVICE

Period	Gross Taxable Value (cum-Tax)	Value after abatement	Net Taxable Value	Rate of ST	ST payable
2009-10	193347	77339	77339	10.30%	7966

3. Being aggrieved with demand confirmed adjudicating authority incorporated following findings:-

i. The correct classification of services provided to the RHB for construction of MIG, HIG, LIG and EWS houses, Construction of Drain and Construction of park boundary wall for the period from 1.06.2007 is under 'Works Contract' service since in respect of all these contracts executed during the period, transfer of property in goods involved in the execution of contract was leviable to the tax as sale of goods and the activities carried out by the notices fall under the sub-clause (a) to (e) of clause (ii) of the definition of works contract service.

ii. Service provided to Avas Vikas Limited for construction of Police Quarters will also be taxable.

iii. Benefit of abatement under Notification No. 15/2004-ST dated 10.09.2004 and 1/2006-ST dated 01.03.2006 is not available to the notices as the Services for the period from 1.06.2007 is classified under the 'Works Contract' service.

iv. Benefit under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 issued under notification No. 32/2007 dated 22.5.2007 for payment of service tax at compounded rate is held to be inadmissible to the notices.

v. Benefit of cum duty under Section 67(2) of Finance Act, 1994 is not available to the notices under the work contract service.

vi. The notices are liable to pay service tax on amount received from Avas Vikas Limited on account of providing of Rent-a-cab Service.

Further penalty of equal amount was imposed under Section 78 and penalty was also imposed under Section 76 of the Act.

4. Heard the parties.

5. Being aggrieved the Ld. Counsel assailing the findings in the impugned order pointed out that as regards construction of single houses or row houses (MIG, HIG, LIG and EWS) for Rajasthan Housing Board it has been held that the said activity falls under construction of complex services as the scheme differ by Rajasthan Housing Board and awarded to appellant are normally having more than residential units along with common order and facilities like parking service, community hall, common water supply etc. Further observing that each building should have at least 12 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 single residential complex, however the service tax liability will still arise if it

has more than 12 such residential units. Thus, it was concluded that even in case of row houses under the facts and circumstances being more than 12 under one scheme of Rajasthan Housing Board having common water supply, park, community centre thus will qualify under 'Construction of Residential Complex Service' and accordingly held liable to Service Tax. Similarly, construction of Police Quarters for Avas Vikas Ltd. (Government of Rajasthan) was held liable to Service Tax under 'Construction of Residential Complex Service'. Further work of construction of park, boundary wall at New Housing Scheme, Baswada awarded by Rajasthan Housing Board was also held classifiable under 'Construction of Complex Service'.

6. The Ld. Counsel states that the findings are misplaced and fit to be set aside. So far the construction of row housing for Rajasthan Housing Board for Avas Vikas is concerned the said issue is covered by ruling of Hon'ble Supreme Court in favour of the appellant-assessee in the case of ***Macro Marvel Projects V/s CST, Chennai reported in 2008 (12) STR 603 (Tri. Chennai)*** affirmed by ***Supreme Court in Civil Appeal No. 2012 (25) STR J-154 (S.C.).*** In this judgment it has been held that service tax is not applicable for construction of row houses whether each building does not contain more than 12 residential units. Following said ruling we hold that Service Tax is not exigible under the category of 'Construction of Residential Complex Service'.

7. So far the Service Tax on construction of park, boundary wall is concerned, we find that the said issue was considered by a coordinate Bench of this Tribunal in Final Order No. 52034/2018 dated 22/05/2018 in Appeal No. ST/50226/2015 where it has been held that work in the nature of

construction of boundary wall, construction of rain water drains is not liable to Service Tax as part of residential complex and also does not qualify as facility for the residents of the quarters. Such works in the nature of infrastructure development or external development. Further the said work is also not taxable under 'Works Contract Service' under sub para (b) of para (ii) of sub-clause (2) of the (zza) of section 65 (25) of Finance Act, 1994, as not used for commercial purpose. Accordingly we hold that no Service Tax is exigible on construction of boundary wall of park in the housing scheme.

8. In view of our findings we set aside the impugned order so far as the demand have been confirmed under 'Construction of Residential Complex Service' and also set aside the penalty under Section 76 and 78 of the Act. Thus, the appeal is allowed, with consequential relief.

(*Operative portion of the order pronounced in the open court*)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha