

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court - I

Appeal No. ST/21865/2015

(Arising out of Order-in-Original No.HYD-EXCUS-004-COM-005-15-16 dated 25.5.15
passed by CCCE, Hyderabad-IV)

PNR Infra India Pvt Ltd **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - IV **Respondent(s)**

Appearance

Shri Ch. Nageswara Rao, Advocate for the Appellant.

Shri Dass Thavanam, Superintendent/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23.10.2018

Date of Decision: 21.12.2018

FINAL ORDER No. A/31603/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No. HYD-EXCUS-004-COM-005-15-16 dated 25.05.2015.
2. The relevant facts that arise for consideration are that the appellant herein had rendered services of construction of complex services for the period 2008-09 to 2012-13. The demand was raised for the amounts received over and above the sale deed value; that during the period in question, the appellant was issued a show cause notice for demand on the amounts notionally arrived at for consideration for area shared to the land owner in a tripartite agreement. Show cause notice was adjudicated and by impugned order, demands raised were confirmed along with interest and penalties are imposed. This order is in challenge.
3. Learned counsel submits that as regards the demand of Rs.37,65,110/- for the period 2008-09 to 2012-13, the Order-in-Original itself accepts that for the period prior to 07.07.2010, demand is of Rs.10,91,396/- for which the

activity of construction of residential premises is outside the scope of taxable services on the amounts received over and above the sale deed. He relies upon the decision of the Tribunal in the case of CCE, Chandigarh Vs UB Constructions Pvt Ltd [2013 (32) STR 738] seeking to set aside the demands raised. It is his further submission that for the balance amount of Rs.26,73,714/- for the period after 01.07.2010, appellant had accepted the duty liability and remitted the same before the issuance of show cause notice along with interest. Hence, their prayer is for setting aside the penalty.

4. As regards the demand of Rs.1,73,17,823/-, it is the submission of learned counsel that it is on the amount notionally considered as to be received from the owners of the land. It is the submission that they are not contesting the taxability but are only contesting valuation of the services rendered. It is his submission that appellant had in fact included the cost of land over and above the value of the flats constructed and sold and paid the service tax on that. He draws our attention to the Certificate issued by the Chartered Accountant on this point which is annexed to the written submissions made which were also produced before the lower authorities. It is his further submissions that on identical set of facts, this Bench in the case of Vasantha Green Projects in Final Order No. A/30559/2018 dated 11.05.2018 accepted the Chartered Accountant's Certificate and set aside the demands so raised; it has been followed in the case of Ohm Sree Builders & Developers and others in Final Order No. A/30852-30854/2018 dated 26.07.2018.

5. Learned departmental representative reiterates the findings of the lower authorities.

6. We have considered the submissions made at length by both sides and perused the records. The issue involved in this case is in three parts which we decide as under:

- I. Demand of Rs.10,91,396/- on the amounts received over and above the sale deed value for rendering construction of complex services prior to 01.07.2010. On perusal of records, it is noticed that this demand of service tax liability is for the period 2008-09 to 2009-10 up to 30.06.2010. We find strong force in the submissions made by the learned counsel that identical issue has been decided by the Principal Bench in Delhi in the case of UB Constructions Pvt Ltd wherein in Para 5 & 6 the Bench, following the judgment of the Hon'ble High Court of Bombay in the case of Maharashtra Chamber of Housing Industry held that amount received prior to 01.07.2010 over and above the sale deed cannot be taxed under construction of commercial complex services. Respectfully following the same, we hold that impugned order to that extent is liable to be set aside and we do so. Since, the demand is set aside, the question of interest and penalty does not arise.
- II. As regards demand of Rs.26,73,714/- for the period after 01.07.2010 on the amounts received over and above the sale deed, we find that the explanation clause included in the definition of construction of complex services will cover the said amount and appellant is liable to pay service tax. It is brought to our notice that they had paid the entire service tax liability along with interest. We perused the challans attached to the appeal memoranda at Page 128-131 and find it so. It is also seen that this payment is done before the issuance of show cause notice hence, the plea of the appellant's counsel that penalties be set aside is an acceptable one. We find that since, the issue involved in this case was being litigated and appellant would have entertained a bonafide belief that tax liability need not be discharged, we find that provisions of

Sec.73(3) could be made applicable to the situation in hand and penalties need to be set aside and we do so.

III. As regards demand of Rs.1,73,17,823/-, we find that issue involved in this case is regarding the amounts notionally attributed as consideration to the area shared to the land owner for the construction undertaken on development basis. We find that identical issue has been decided by this Bench in the case of Vasantha Green Projects and Om Sree Builders & Developers and others (cited as in above).

7. In the case in hand also we find that Chartered Accountants have given a detailed Certificate as to the inclusion of the value of the amounts attributed to the value of the lands has been considered in addition to the value that is to be charged to the flat owners who purchased the flats from the appellant. Since, identical issue is already decided by this Bench, we find no reason to deviate from such a view already taken. Accordingly, demand on this point also is unsustainable. Demands are set aside and consequently, interest and penalties also stand set aside.

8. Appeal stands disposed of as indicated herein above.

(Pronounced in the Open Court on 21.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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