

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

Division Bench
Court - I

| Appeal No. | Appellant | Respondent | Impugned Order No. & Date |
|--------------|--------------------------|--------------------------|---|
| ST/1236/2011 | VERTEX NIRMAN | CCCE&ST, Hyderabad-IV | O-I-O No. 06/2011-Adjn. (Commr.) ST, dt. 27.01.2011 passed by CCCE, Hyderabad- IV. |
| ST/1237/2011 | VERTEX HOMES PVT. LTD | CCCE&ST, Hyderabad-II | O-I-A No. 02/2011 (H-IV) ST, dated 31.01.2011 passed by CCCE&ST (Appeals-II), Hyderabad. |

Appearance

Shri V.S. Sudhir, Chartered Accountant for the Appellant.

Shri Mir Anwar Mohiuddin, Asst. Commissioner/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: 19.12.2018
Date of Decision: 19.12.2018

FINAL ORDER No. A/31615 - 31616/2018

[Order per: Mr. M.V. Ravindran)

1. These two appeals are directed against Order-in-Original No. 06/2011-Adjn. (Commr.) ST, dt. 27.01.2011 and Order-in-Appeal No. 02/2011 (H-IV) ST, dated 31.01.2011.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding taxability of the services rendered by the appellant in respect of construction of residential units during the period October 2007 to February 2008.

4. Ld. Counsel submits that the entire issue is regarding demand of duty on appellant under the category of 'Works Contract Service' and appellant had paid the service tax in accordance with the composition scheme but it is the claim of the Revenue that appellant herein needs to pay service tax liability on the construction of residential units prior to 01.07.2010. It is his submission that Revenue authorities have issued show cause notices on presumption that appellant has rendered the services under the category of works contract service in the construction of residential units. It is his further submission that the issue is regarding service tax liability on promoters/builders/developers prior to 01.07.2010 and the issue is no more *res-integra*. He submits that the same issue is decided by this Bench by Final Order No. A/31197/2018, dated 27.08.2018 in the case of Kolla Developers & Builders vs. CCCE&ST, Hyderabad-II. It is his submission that the same view has been taken by various Benches of the Tribunal in the case of Krishna Homes vs. CCE Bhopal [2014 (34) STR 881 (Tri.-Del.)]. It is also his further submission that construction of individual villas cannot be treated as construction of complexes and consequently no demand arises as per the law settled by the Tribunal in the case of Macro Marvel

Projects Ltd. [2008 (12) S.T.R. 603 (Tri.-Chennai)]. He produces copies of such decisions of the Tribunal.

5. Ld. DR reiterates the findings of the lower authorities.

6. On consideration of the submissions made, we find that appellants are builders of residential complexes and entered into/sale deeds/agreements for construction with the buyers. We find that the demand in the case in hand is prior to 01.07.2010 and the services provided were for construction of residential complexes by the builder. We find that the ratio of the decision in the case of Kolla Developers & Builders of this Bench (supra) is directly on the same issue and hence covers the issue in favour of the appellant herein. Respectfully following the same, we hold that the impugned orders are unsustainable and liable to be set aside and we do so.

7. Impugned orders are set aside and appeals are allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)