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

Division Bench

Court – I

Service Tax Appeal No. 26126/2013

(Arising out of Order-in-Original No. 52/2013-Adjn-ST (Commr) dt.31.12.2012 passed CCCE & ST, Hyderabad-II)

M/s Aditya Homes (P) Ltd
8-2-332/8/A, Road No.3,
Banjara Hills, Hyderabad – 500 034 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad - II **......Respondent**
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004

Appearance
Shri Y. Srinivasa Reddy, Advocate for the Appellant.
Shri A.V.L.N. Chary, AR for the Respondent.

Coram:
HON'BLE MR. S.S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/31012/2019

Date of Hearing: 11.07.2019
Date of Decision: 18.09.2019

[Order per: P. VENKATA SUBBA RAO]

1. This appeal is filed against Order-in-Original No. 52/2013-Adjn-ST (Commr) dt.31.12.2012.

2. Heard both sides and perused the records. The facts of the case in brief are that the appellant is a builder engaged in construction of residential complexes and have been issued a show cause notice dt.22.10.2010 demanding service tax along with interest as follows.

Sl.No.	Demand	Amount	Period
1	Construction of Residential Complex Services	97,55,315	1.4.05 to 31.3.10
2	Landowners portion of Construction of Complex Services	37,29,463	1.4.08 to 31.3.10
3	Renting of Immovable Property	1,24,916	2007-08 to 2009-10
4	Management, Maintenance or Repair Services	7,83,177	2007-08 to 2009-10

3. Interest was also demanded on the above demands. Further, penalties were proposed to be imposed upon the appellant. After following due process, the learned Commissioner confirmed the demands and interest as proposed and imposed penalties under Section 78 & 77 of the Finance Act, 1994.

4. Learned Counsel for the appellant submits that of the aforesaid four demands, Sl.No.1 & 2 pertain to demands on Construction of Residential Complex Services which are chargeable to service tax with effect from 01.07.2010 on insertion of an explanation to the definition of taxable service under Section 65(105)(zzzh) of the Finance Act, 1994. He further submits that even advances received prior to this date are exempted vide notification 36/2010-ST dt.28.6.2010. He further submits that they have undertaken all these constructions only as works contracts i.e., they not only provided the services but also provided the materials required for rendering these services. He would argue that if at all service tax has to be charged on these services, they can be charged only under works contract service. Therefore, the demand of service tax under Construction of Complex Services or Construction of Residential complex service is not sustainable under the law in view of the judgment of the Hon'ble Apex Court in the case of Larsen & Toubro Ltd [2015 (39) STR 913 (SC)]. On the second question of renting of immovable property services (S.No.3 of the aforesaid list of demands), he submits that this became chargeable to service tax as per Section 65(105)(zzzz) substituted vide Finance Act, 2010 dt.08.5.2010 with retrospective effect from 01.6.2007. Prior to this substitution, this clause read as "service rendered to any person by any person in relation to renting of immovable property for use in the course or furtherance of business or commerce." After the amendment this read as "service rendered to any person by any other person by renting of immovable property or any other service in relation to such renting, for use in the course of or furtherance of business or commerce." The key difference, he explains is prior to this amendment the renting of immovable property was per se not taxable but any service rendered in relation to renting of immovable property only was taxable. After the amendment made with retrospective effect, renting itself became a taxable service. This amendment was made with retrospective effect with effect from 2007. He would argue that it is a well settled position

of law that where the amendment is made with retrospective effect, extended period of limitation alleging fraud, collusion, wilful misstatement, suppression of facts, etc., cannot be invoked because the assessee could not have anticipated the legislative change and paid tax. With specific reference to renting of immovable property, he relies on the following case laws to say that extended period of limitation cannot be invoked to give effect to the retrospective levy and demand.

1) Shri Thadi Satya Ramalinga Reddy v CCE & ST, Visakhapatnam [2017 (4) TMI 1024 – CESTAT Hyderabad]
2) M/s Nagpal Traders v CCE, Meerut – II [2017 (7) TMI 260 – CESTAT New Delhi]

5. With regard to the third demand of management, maintenance or repair services (S.No.4 of the aforesaid list of demands), he submits that this demand has been raised by the revenue based on their own books of accounts in which an amount of other income was shown as management, maintenance or repair services. Accordingly, the demand has been made by the revenue. He would urge that although an amount of Rs.7,83,177/- has been levied as service tax on this amount, it has been wrongly mentioned in their ledgers that this amount pertains to management services when in fact, it includes other income such as income on interest, etc. Lastly, he would argue that the entire demand is time barred and therefore, needs to be set aside.

6. Learned departmental representative reiterates the findings in the Order-in-Original and asserts that the demands have been correctly raised and the impugned order calls for no interference and needs to be upheld.

7. We have considered the arguments on both sides and perused the records. The demands are under four heads; (1) Construction of Residential Complex Services, (2) Landowners portion of Construction of Residential Complex Services, (3) Renting of immovable property and (4) Management, Maintenance or Repair Services.

8. The first two services pertain to the services allegedly rendered by the appellant in construction of the complexes. The appellant obtains land from

land owners and constructs complexes on the same. In consideration of the land, some flats are built and given to the land owners. Remaining flats are sold by the builder in semi-constructed form along with the undivided share of the land to the customers. Thereafter, he enters into a contract with the customers to complete the flats. The demand at Sl.No.1 above is with respect to the services rendered in relation to construction of flats purchased by the customers. The demand at Sl.No.2 is with respect to the services rendered to the builder’s share of the flats.

9. Before proceeding further, it will be pertinent to state that in both the cases, the construction was done as composite works contract i.e., the appellant had not only provided the services but also supplied all the materials required for such construction. At this stage, it would be pertinent to discuss various judicial decisions with regard to taxability of services rendered by builders as works contract services and as services simpliciter.

10. The Constitution of India divided the legislative powers between the Union and States listing them in three lists of the Seventh Schedule. Service Tax is levied by the centre as per its legislative competence under Article 265 read with Entry 97 of List I of this Schedule. Tax on sale or purchase of goods, falls in the competence of States as per List II. Initially, Constitution of India (as well as its predecessor Government of India Act, 1935) did not provide for taxing the goods used in executing composite, indivisible works contracts treating such use of goods as sale. The State’s attempt to tax in such a manner was struck down by the Constitutional bench of Hon’ble Supreme Court in the case of State of Madras vs Gannon Dunkerley & Co. (Madras) Ltd. 1959, SCR 379. After examining this judgement, the Law Commission of India, in its 61st Report suggested three alternative amendments to the Constitution to bring the goods used in execution of works contracts within the legislative competence of the States to tax. Accepting one of these alternatives, the Parliament passed the 46th Amendment to the constitution in 1983 by inserting sub-clause (29A) to Article 366, the definition clause as follows:

366 (29A) "tax on the sale or purchase of goods" includes -

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

11. This 46^{th} Constitutional amendment was challenged in *Builders' Assn. of India* v. *Union of India*, (1989) 2 SCC 645 and it was upheld by the Apex court. Thus, the goods component of the indivisible works contracts fell within the legislative competence of the states to tax.

12. The legislative competence of the Union to tax works contract services itself is not in doubt because the service tax itself is under the residuary power under entry 97 of List I (Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists).

13. The question as to whether such taxation is covered by the charging section of the Service Tax provisions (Finance Act, 1994) or otherwise was examined by the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs vs Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)]. The charging sections in this Act are Section 66 and 66A. While Section 66 provides for charging services within India, 66A provides for charging the recipient of a service for services received from outside India.

14. Section 66 reads as follows:

"There shall be levied a tax (hereinafter referred to as the Service tax) at the rate of ten percent of the value of taxable services referred to in sub-clauses............ of clause (105) of section 65 and collected in such manner as may be prescribed."

15. The sub-clauses of clause (105) of Section 65 listed various services. With effect from 1^{st} June 2007, 'Works Contract Service' has been introduced in this clause by sub-clause (zzzza) of clause 105 of section 65. Even before the introduction of this, Revenue sought to charge service tax under various other heads in the case of composite contracts allowing abatement towards the cost of materials as per applicable notifications. Hon'ble Apex court held that 'works contract is a separate species of contract distinct from the contract for services simpliciter recognized by the

world of commerce and law as such, and has to be taxed separately as such. It was further held that prior to the introduction of clause (zzzza) of clause 105 of Section 65, there was neither any charging section nor machinery to levy and assess service tax on indivisible works contracts. The relevant paras of this landmark judgement are as below:

> ***17.*** *We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In Gannon Dunkerley, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows :-*
>
> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)*
>
> ***27.*** *In fact, the speech made by the Hon'ble Finance Minister in moving the Bill to tax Composite Indivisible Works Contracts specifically stated :-*
>
> *"State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the works contract."*
>
> *42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by Mcdowell's case.*
>
> *43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.*
>
> *44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.*
>
> *45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue.*

16. **Thus, the established legal position is that 'Works Contract Service' can be charged as 'works contracts' only under Section 65 (105) (zzzza) and only with effect from1.6.2007.**

17. In the case of **Real Value Promoters Pvt Ltd and others as reported in 2018 (9) TMI 1149-CESTAT, Chennai**, the question which arose was whether a demand can be made on 'commercial and industrial construction service' under Section 65 (105) (zzzh) of the Finance Act, 1994 after 1.6.2007 where the nature of contract is a composite contract involving both supply of materials and rendition of services. It has been held that " *For the period post 1.6.2007, service tax liability under the category of 'commercial or industrial construction service' under Section 65 (105) (zzzh), 'Construction of complex service' under Section 65 (105(zzzq) will continue to be attracted only if the activities are in the nature of services simpliciter*.

18. **Thus, if the services rendered are in the nature of composite works contracts, they cannot be charged to service tax prior to 1.6.2007 and can be charged post this date only under this head 65 (105) (zzzza) and not under any other head.**

19. In the case of M/s. Krishna homes vs CCE Bhopal and CCE Bhopal vs M/s. Raj Homes as reported in 2014 (3) TMI 694- CESTAT Ahmedabad, the scope of taxing 'Composite Works Contracts' rendered in connection with construction of complex services prior to 1.7.2010 was examined. 'Construction of complex services' was covered in Section 65 (105) (zzzh) and in this clause an explanation was added wef 1.7.2010. This reads as follows:

> *(zzzh) to any person, by any other person, in relation to construction of complex;*
>
> *"Explanation. - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."*

20. The definition of 'Works Contract Service' is as follows:

> *(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*
> *Explanation : For the purposes of this sub-clause, "works contract" means a contract wherein,*
> *(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
> *(ii) Such contract is for the purposes of carrying out, -*
> *(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
> *(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
> *(c) Construction of a new residential complex or a part thereof; or*
> *(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
> *(e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"*

21. Before the introduction of the explanation in (zzzh) w.e.f 01.07.2010, in all cases where the builder entered into an agreement to sell flats and collected advances, but the actual transfer of the property took place only after the completion certificate is issued, the service was considered as self service by the builder only and not the service provided to the customer and hence was not taxable. Similarly, where the semi-built flats are sold and then the customer enters into an agreement with the builder for its completion, such agreement, being in the nature of service for a flat for personal use, was also excluded from the definition of 'residential complex' under Section 65 (91a) which reads as follows:

> *"(ii) "Residential Complex" means any complex comprising of—*
>
> *(i) a building or buildings, having more than twelve residential units;*
>
> *(ii) a common area; and*
>
> *(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.*
>
> *Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause, —*
>
> *(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;*

> *(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;*
>
> *(Section 65(91a) of the Finance Act, 1994)"*

22. Thus, as far as service tax, under 'construction of complex service' in respect of residential complexes is concerned, prior to 1.7.2010 (when the explanation was inserted), no tax could be levied. This was also clarified by the CBEC in circular No. 108/2/2009-ST dated 29.1.2009. The question as to whether this limitation on taxation prior to insertion of the explanation in 'construction of complex services' also extends to cases where such services are rendered as 'works contract service' was examined and answered in affirmative in the case of Krishna Homes (supra) by the Tribunal. This ratio has been followed in subsequent orders including by this bench. The relevant portion of the order in the case of Krishna Homes v CCE Bhopal (2014 (34) STR 881 (Tri-Del) is as follows:

> *"Coming first to the question as to whether the activity of M/s. Krishna Homes and M/s. Raj Homes was taxable during the period of dispute or not, by Finance Act, 2005, Clause (zzzh) was introduced into Section 65(105) of Finance Act, 1994, so as to bring within the purview of the term 'taxable service', a service provided or to be provided to any person by any other person "in relation to construction of complex". The expression "construction of complex" was defined in sub-section (30a) of Section 65 and accordingly this expression covered - "(a) construction of a new residential complex or a part thereof or (b) completion of finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex". The expression residential complex was defined in Section 65(91a) of the Finance Act, 1994 as any complex comprising of - "(i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by any authority under law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person". There is no dispute that the complex constructed by both the assessees in these appeals are covered by the definition of "residential complex" as given in Section 65(91a). There is also no dispute that both the assessees had engaged contractors for construction of the complexes. The dispute in these appeals is as to whether the assessees would be liable to pay Service Tax on the amounts charged by them from their customers with whom they had entered into agreements for construction of the residential units and whose possession was to be handed over on completion of the construction and full payment having been made by the customers. It is seen that on this point, the Tax Research Unit of the Central Board of Excise & Customs, which is a wing of the C.B.E. & C. dealing with legislation work, had vide Circular No. 332/35/2006-TRU, dated 1-8-2006 clarified that in case where a builder, promoter, developer builds a residential complex having more than 12 residential units by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay Service Tax on the gross amount charged for the construction service provided to the builder/promoter/developer under construction of complex service falling under Section 65(105)(zzzh) of the*

Finance Act, 1994 and that if no person is engaged by the builder, promoter, developer for construction work who undertakes construction work on his own without engaging the services of any other person than in such cases, in absence of the service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise. W.e.f. 1-7-2010 an explanation was added to Section 65(105)(zzzh) which was as under :-

"Explanation. - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."

Thus, in terms of this explanation, when a builder/promoter/developer got a residential complex constructed for his customers with whom he had individually entered into agreements, in terms of which the prospective customers were required to make payments for the residential units to be constructed in instalments and the possession of the residential units was to be given to the customers on completion of the complex and full payment having been made, the builder/promoter/developer was to be treated as a deemed provider of construction of residential complex service to his customers. Thus, by this explanation, the scope of the Clause (zzzh) of Section 65(105) has been expanded and this amendment by adding an explanation has been held by this Tribunal in the case of CCE, Chandigarh v. U.B. Construction (P) Ltd. (supra) as prospective amendment. In this regard, para 5 of this judgment is reproduced below :-

"5. In Maharashtra Chamber of Housing Industry v. Union of India - (Bom.), the validity of the 'Explanation' added to Sections 65(105)(zzq) and (zzzh) was challenged on several grounds. The Bombay High Court, also considered the issue whether the explanation was prospective or retrospective in operation and ruled that the explanation inserted by the Finance Act, 2010 brings within the fold of taxable service a construction service provided by the builder to a buyer where there is an intended sale between the parties whether before, during or after construction; that the 'Explanation' was specifically legislated upon to expand the concept of taxable service; that prior to the explanation, the view taken was that since a mere agreement to sell does not create any interest in the property and the title to the property continues to remain with the builder, no service was provided to the buyer; that the service, if any, would be in the nature of a service rendered by the builder to himself; that the explanation expands the scope of the taxable service, provided by builders to buyers pursuant to an intended sale of immovable property before, during or after the construction and therefore the provision is expansive of the existing intent and not clarificatory of the same; and is consequently prospective".

9. *In view of the above, though in view of the Apex Court judgment in the case of M/s. Larsen & Toubro Limited and Others v. State of Karnataka & Others (supra), the agreements entered into by a builder/promoter/developer with prospective buyers for construction of residential units in a residential complex against payments being made by the prospective buyers in instalments during construction and in terms of which the possession of the residential unit, is to be handed over to the customers on completion of the residential complex and full payment having been made, are to be treated as works contracts, it has to be held that during the period of dispute, there was no intention of the Government to tax the activity in terms of such contracts a builder/developer with prospective customers for construction of residential units in a residential complex. Such works contracts involving transfer of immovable property were brought within the purview of taxable service by adding explanation to Section 65(105)(zzzh) w.e.f. 1-7-2010, and therefore, it has to be held that such* *contracts were not covered by Section 65(105)(zzzh) during the period prior to 1-7-2010."*

23. To sum up, as far as construction of 'residential complexes' by the builders are concerned:

1. Prior to 1.6.2007, if it is a composite works contract, no service tax is leviable in view of the judgment of the Hon'ble Apex Court in the case of Larsen & Toubro (supra).
2. After 1.6.2007, it is chargeable as 'works contract' only if it is a composite contract and under Construction of complex services' if it is a service simpliciter.
3. However, after 1.6.2007 but prior to 1.7.2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.
4. Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no service tax is payable in view of the exclusion in the definition of residential complex service.
5. After 1.7.2010, service tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.

24. In view of the above legal position as the services in this case with respect to construction of complex services were rendered prior to 01.7.2010, no service tax is chargeable and the demand to this extent needs to be set aside and we do so.

25. As far as the issue of demand of service tax on renting of immovable property is concerned, the relevant period is 2007-08 to 2009-10 and the show cause notice was issued on 22.10.2010 invoking extended period of limitation. Renting of immovable property per se was not taxable prior to 08.5.2010 but only services rendered in relation to renting of immovable property. After the amendment, renting itself became taxable with retrospective effect from 01.6.2007 itself. When the law itself did not cover taxation of renting of immovable property services, it is inconceivable that

the assessee could have anticipated the retrospective amendment and paid service tax accordingly. Failure to pay service tax in this manner cannot be alleged to be fraud or collusion or wilful misstatement or suppression of facts with intent to evade payment of service tax. Respectfully following the case laws of Shri Thadi Satya Ramalinga Reddy (supra) and M/s Nagpal Traders (supra), we therefore, hold that the demand on this head is not sustainable beyond the normal period of limitation.

26. As regards the last demand of management, maintenance or repair services, this demand was made based on the information available in the books of accounts of the appellant themselves and their ledgers which show the amounts as having been received from management services. The audited balance sheets of the appellant themselves show that they have earned income on maintenance and repair services. They cannot now claim that the income is not so. Learned counsel for the appellant tried to impress upon the bench that the income is actually income from interest etc. However, from the papers presented before us, he could not establish that the income which was recorded in their audited balance sheets as maintenance and repair services was not so and in fact, it has been misdeclared by their auditor and it pertains to interest income. It is also not in dispute that the appellants have neither declared these amounts as services rendered by them nor have they paid service tax nor have they filed their ST-3 returns with these amounts. In view of the above, we find that the demand under the head management, maintenance and repair services invoking extended period of limitation is sustainable and needs to be upheld.

27. On the question of extended period of limitation, we find this is invokable in the case of management, maintenance and repair services and is irrelevant in respect of the construction of residential complex services and construction of complex services as the same has been held to be not taxable at all. As far as renting of immovable property is concerned, the extended period of limitation, as discussed above, cannot be invoked. Consequently, the amount on interest, if any, is payable and the penalties under Section 77 & 78 also need to be upheld. In view of the above, the appeal is disposed of as follows.

1) The demand under Construction of Residential Complex Services is set aside.
2) The demand under the head of Construction of Complex Services on the Landowners portion is set aside.
3) The demand of service tax on Renting of immovable property is upheld within the normal period of limitation and the demand of extended period of limitation is set aside.
4) The demand on Management, Maintenance or Repair Services is upheld for the extended period of limitation.
5) Interest is upheld on the demands modified as above.
6) Penalty under Section 78 needs to be re-calculated in view of the above.
7) Penalty under Section 77 is reduced to Rs.20,000/-.

28. Appeal is remanded to the original authority for the limited purpose of computation as above.

(Order pronounced in the open court on 18.09.2019)

(S.S. GARG)
MEMBER (JUDICIAL)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda