CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 488 of 2012

(Arising out of **Order-in-Original** No.17/2011(S.T.) dated 30.11.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Srinivaas Constructions .. **APPELLANT**
233, Chinna Bazar Street,
Tirupati,
Andhra Pradesh – 517 507.

VERSUS

Pr. Commissioner of Customs (Preventive) - Tirupati .. **RESPONDENT**
No. 9/86, West Church Complex,
Amaravathi Nagar, MR Palli Road,
Thirupathi, Chittor,
Andhra Pradesh – 517 502.

APPEARANCE:

Shri K. Vijay Kumar, Advocate for the Appellant.
Shri W C Prakash, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30236/2023

Date of Hearing:04.08.2023
Date of Decision:04.08.2023

[ORDER PER: BENCH]

The issue involved in this appeal is whether the appellant assessee is liable to service tax for the period 2005-06 to 2009-10 (upto 31.03.2010).

2. Admitted fact is that, the activity of the appellant is that of constructing real estate (flats/buildings) on their own account. After completion of construction, the appellant sells such completed properties.

3. Heard both the parties.

4. We find that the issue involved herein was considered by the Board and the Board issued clarificatory Circular No. 108/02/2019-ST dated 29.01.2009, wherein it was clarified that in such cases, the property remains under the ownership of the seller (promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum, that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner/buyer. Therefore, in such cases

being in the nature of self service, and thus does not attract levy of service tax.

5. This issue was further clarified by the Board by subsequent Circular No. 151/2/2012-ST (F.No.332/13/2011/TRU) dated 10.02.2012, wherein in para 2.1A with respect to taxability of construction service for the period prior to 01.07.2010, it was provided that construction service provided by the builder, developer will not be taxable in terms of Board Circular No. 108/2/2009-ST.

6. We find that the issue is squarely covered in favour of appellant. Accordingly set aside the impugned order, with consequential relief, if any, in accordance with the law.

7. Appeal allowed.

(Order dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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