

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

**Service Tax Appeal No. 22443 of 2014**

(Arising out of **Order-in-Original** No. VIZ-STX-001-COM-031-14 dated 14.03.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**M/s MVV Builders** .. **APPELLANT**  
Door No. 4-62-1,  
Near Post Office,  
Lawsons Bay Colony,  
Visakhapatnam,  
Andhra Pradesh – 530 017.

*VERSUS*

**Commissioner of Central Excise and Service Tax Visakhapatnam - I** .. **RESPONDENT**  
Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

**AND**

**Service Tax Appeal No. 22488 of 2014**

(Arising out of **Order-in-Original** No. VIZ-STX-001-COM-031-14 dated 14.03.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

**Commissioner of Central Tax Visakhapatnam - GST** .. **APPELLANT**  
Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

*VERSUS*

**M/s MVV Builders** .. **RESPONDENT**  
Door No. 4-62-1,  
Near Post Office,  
Lawsons Bay Colony,  
Visakhapatnam,  
Andhra Pradesh – 530 017.

**APPEARANCE:**

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri B. Sangameshwar Rao, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)  
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30517-30518/2025**

Date of Hearing: 04.09.2025

Date of Decision: 25.11.2025

**[ORDER PER: ANGAD PRASAD]**

M/s MVV Builders (hereinafter referred to as appellant) are engaged in the business of construction of residential complex. Appellant has filed this appeal against the Order-in-Original No. VIZ-STX-001-COM-031-14 dated 14-03-2014 and Department has also filed an appeal against the same Order-in-Original against dropping of demand.

2. Show Cause Notice dated 28.09.2012 was issued demanding service tax of Rs. 5,10,81,932/- under Works Contract Services (WCS) for the period from 2007-08 to 2011-12. The SCN was adjudicated by Order-in-Original dated 30.01.2013, wherein the total demand was confirmed along with equal penalty. Appellants had filed an appeal against the said Order-in-Original as appeal no. ST/26627/2013, wherein, vide Final Order No. 26885/2013 dated 31.10.2013 remanded back the case. The Adjudicating Authority extended the Works Contract Composition Scheme and confirmed the demand to the extent of Rs. 1,60,75,412/- and dropped an amount of Rs. 3,50,06,520/-.

3. The Learned Counsel for the appellant submits that the demand of Service Tax in respect of construction of residential complex service is not sustainable for the following reasons:

(a) The Adjudicating order in the impugned order dated 14.03.2014 referring to the earlier order 30.01.2013 is not correct. The Hon'ble Tribunal set aside the said order dated 30.01.2013 and referring to non-existing order and not considering the submissions made by the Appellant is not maintainable.

(b) Construction of residential apartment is not liable to service tax as per the definition of the term 'residential complex' under Section 65(91a) of the Finance Act, 1994. Such construction is not liable to tax

prior to 01.07.2010 i.e., prior to insertion of explanation to Section 65(91a) in Finance Act, 1994.

(c) Construction of residential building for personal use is not liable to service tax.

(d) The demand is barred by limitation and penalty is not leviable, since the issue is of difference in interpretation of legal provisions.

4. Learned Counsel for the appellant submits that Construction of Residential Complex Service is either under the Construction of Complex Service (CCS) or under the category of Works Contract Service (WCS) prior to 01.07.2010, as per the settled decisions in the following cases:

(a) Aditya Homes Pvt Ltd., Vs Commissioner of Central Excise, Hyderabad [2019 (9) TMI 793-CESTAT Hyderabad]

(b) Aditya Construction Company India Pvt Ltd., Vs Commissioner of Central Tax, Hyderabad – CESTAT Final Order No. A/30040-30021/2016 dated 28.01.2025.

(c) Krishna Homes Vs Commissioner of Central Excise, Bhopal [2014 (34) S.T.R. 881 (Tri-Del)]

5. Learned Counsel for the appellant also submits that even after 01.07.2010, Construction of residential complex for personal use is not taxable, as clarified by the CBEC in Circular No. 108/2/2009-S.T., dated 29.01.2009 and as held in the following cases:

(a) Modi & Modi Constructions Vs CCE, Hyderabad-II [2021(45) GSTL 398 (Tri-Hyd)].

(b) M/s Rani Meyyammai Towers Vs The Commissioner of Service Tax, Chennai [2023 (4) TMI 1135-Cestat Chennai]

6. Learned Counsel for the appellant submits that the appellant is selling the undivided share of the land and semi-constructed house and then entering into an agreement with the buyer for construction of flat. Therefore, the construction of flat under individual works contract, entered individually for each buyer of the flat is for personal use and hence, not taxable. The Hon'ble Tribunal in its earlier order set aside the Order-in-Original and remanded back for consideration which were taken by the appellant but Adjudicating Authority not considered the contention of the appellant. The demand prior to 01.07.2010 is without jurisdiction and also on the ground of limitation. In this regard, Learned Counsel for the appellant relied on the following decisions:

(a) State of Orissa and others Vs Brundaban Sharma & another reported in [1995 Supp(3) Supreme Court Cases – 249].

(b) Commissioner of Customs, kandla Vs Linke Enterprises [2015 (315) E.L.T. 359(Guj)].

7. Learned Counsel for the appellant also submits that the demand was confirmed for the period beyond limitation in a case wherein tax was paid by the appellant prior to 01.07.2010, though not required and in a case involving interpretation of legal issue of taxability on construction of complex, it is a settled legal position that when issue involves difference in interpretation, extended period cannot be invoked. He relied on the following decisions in this regard:

(a) ITW Signode India Ltd Vs Collector of Central Excise (2004) 3 SCC 48.

(b) Nulsi Neville Wadia Vs Ivory Properties & others 2019 (10) TMI 1314-Supreme Court.

8. Learned Counsel for the appellant submits regarding the Department appeal that extending composition scheme without opting for the same is not correct. Learned Counsel for the appellant on this issue relied on the following case laws:

(a) Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam – I Vs M/s Pragati Edifice Pvt Ltd., (Vice-Versa) [2019 (9) TMI 792 – CESTAT Hyderabad].

(b) NCC Ltd., Vs Commissioner of Central Tax, Hyderabad – GST [2023 (10) TMI 590 – CESTAT Hyderabad].

9. Learned Counsel for the appellant also submits that imposition of penalties when the issue involves interpretation of legal provisions, the appellant was paying service tax and filing returns but under CRCS claiming statement as per the clarifications issued in D.O.F.No. 334/03/2010-TRU dated 01.07.2010 and as per industry practice. Further, the issue of taxability is decided in his favour, no any suppression with intent to evade the service tax. Therefore, imposition of penalties is not correct.

10. Learned Counsel for the appellant relied on the following decisions.

(a) Commissioner of Central Excise & Customs Vs Reliance Industries Ltd., [2023 (7) TMI 196-Supreme Court].

(b) Commissioner of Central Excise & Service Tax, Bangalore (Adjudication) Vs Northern Operating Systems Pvt Ltd., [2022 961) G.S.T.L. 129 (SC)].

11. Learned AR for the Department reiterates the findings of the Commissioner except dropping of the demand.

12. Heard both the sides and perused the records.

13. The four issues to be decided in these two appeals are:

a) Did the Commissioner err in allowing payment of service tax on composition scheme and consequently dropping part of the demand as asserted by the Revenue?

b) Did the Commissioner err in confirming the demand for the period prior to 1.7.2010 when service tax could not have been imposed on services rendered by the builder before issue of completion certificates as asserted by the assessee appellant?

c) Did the Commissioner err in confirming demands on that portion of the service charges received by the assessee appellant for completion of flats under contracts entered into by individual flat owners?

d) Did the Commissioner err in confirming the demand invoking extended period of limitation under section 73 of the Finance Act, 1994?

### **Allowing the composition scheme**

14. The appeal by the Revenue is on the limited point that the Commissioner wrongly allowed Works Contracts (Composition) Scheme when the assessee- appellant had not opted for it. Learned AR for the Department argued that composition scheme cannot be extended without the exercise of option by the assessee, which is contrary to Rule 3 of Works Contract (Composition Scheme for payment of Service Tax) Rules 2007. Whereas Learned Counsel for the appellant submits that Learned Adjudicating Authority extended the composition rate after following the decisions of this

Bench viz- M/s Pragati Edifice Pvt Ltd., supra & NCC Ltd., supra, in which it was held that even without opting the Composition Scheme, the same is permitted. Therefore, there is no illegality regarding this issue. Hyderabad Bench in the case of M/s Pragati Edifice Pvt Ltd., in this regard held that "*the assessee has the option of paying service tax under the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007, if he chooses to do so. The mere fact that they have not opted for this earlier does not reduce their entitlement to opt for this scheme now. The demand of service tax needs to be recomputed as above, after following principles of natural justice and giving the assessee an opportunity to present their case including, indicating if they desire to avail the benefit of composition scheme*". The Department's appeal has no force and is liable to be dismissed.

#### **Confirmation of demand prior to 1.7.2010**

15. It is the submission of the learned counsel for the appellant that section 65 (105) (zzzh) read with section 65 (91a) of the Finance Act, 1994 levied service tax on construction of residential complexes. However, if the construction which was undertaken before issue of completion certificates, it was self-service of the builder and only such services which were rendered after issue of completion certificates and transfer of the property to the buyer were chargeable to service tax. From 1.7.2010, an explanation was inserted 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.'*

Thus, from 1.7.2010, even if the builder constructed the building before selling it, such service shall be deemed to be service to the buyer if the buyer had received some amount from the prospective buyers for such construction. Before this amendment, such service was only self service because the builder was constructing his own building and hence service was not provided to any other person. Therefore, no service tax was payable as per section 65 (105) (zzzh).

16. The Appellant was in the business of construction of residential complex and constructed several residential complexes during the period 2007-08 to 2011-12 and sold them to buyers. There is no dispute that "Construction of Residential Complex Service" or under the category of "Works Contract Service" prior to 01.07.2010 is not taxable as settled in the cases of Aditya Homes Pvt Ltd., Aditya Construction Company India Pvt Ltd., and Krishna Homes, supra. In the case of Aditya Homes Pvt Ltd., it was held that *"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 – thus, 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".*

17. This submission of the assessee appellant deserves to be accepted because of the explicit legal position and the ratio of the precedent decisions. Therefore, the demand of service tax for services rendered before 1.7.2010 deserves to be set aside.

**Confirmation of demand on that portion of the services which were rendered as per individual contracts**

18. It is the submission of the learned counsel that the appellant had built and sold semi-finished residential complexes to buyers under a sale deed. Thereafter, it entered into individual contracts to complete the construction and finish the flats as per the requirements and desire of the individual flat owners. All construction and completion work done as per the contracts with individual buyers was fully exempt as per section 65 (91a) of the Finance Act, 1994 which reads as follows:

*(91a) "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;*

19. Since the definition of residential complex itself excluded construction by a person for personal use, to the extent the demand of service tax has been made on the consideration received by the appellant for completion of flats as per contracts with individual buyers, is clearly out of the section 65 (91a).

20. It is also an admitted fact that appellant sold the undivided share of land and semi-constructed house and then entered into an agreement with

the buyer for construction of flat. Therefore, the construction of flat under individual works contract entered individually for each buyer of the flat for personal use. In the case of M/s Modi & Modi Constructions, supra, it was held that *"The explanation to section 65(91a) categorically states that personal use includes permitting the complex for use as residence by another person on rent or without consideration. Therefore, it does not matter whether the individual buyer uses the flat himself or rents it out. There is nothing on record to establish that the individual buyers do not fall under the aforesaid explanation – thus no service tax is chargeable from the appellant on the agreements entered into by them with individual buyers for completion of their buildings"*. Therefore, services rendered for construction of residential complex for personal use even after 01.07.2010 is not taxable.

#### **Invocation of extended period of limitation**

21. If some service tax escapes assessment and is not paid or short paid or not levied or short levied, the remedy available to the department to recover such service tax is by issuing a Show Cause Notice under section 73 of the Finance Act, 1994. This remedy itself is subject to some limitations including the limitation of time within which the SCN can be issued. During the relevant period, the time was 18 months. However, if there were some aggravating factors, an extended period of limitation of five years is prescribed. These factors are that the non-levy, non-payment, short levy or short payment of service tax is due to:

- (a) Fraud; or
- (b) Collusion; or
- (c) Wilful mis-statement; or
- (d) Suppression of facts; or
- (e) violation of provisions of Act or Rules with an intent to evade payment of service tax

22. The reasons for invoking extended period of limitation in para 8 of the SCN are that the appellant had undertaken 'works contract service', received

payments from prospective customers and wrongly classified the services under 'construction of residential complex' service in their half yearly ST-3 returns and thereby failed to pay tax. It is further stated that these facts came to light only during the investigation and therefore, extended period of limitation was invocable. In the impugned order, the Commissioner did not record any specific reasons for invoking extended period of limitation.

23. The SCN completely ignored the fact that once the assessee files the ST-3 Returns, it is the responsibility of the Range officer to scrutinise them and that he could for that purpose, call for any records of the assessee and that he could also resort to Best Judgment Assessment under section 72. What is evident is that the appellant had filed returns but the range officer did not scrutinise them as he had to, call for records, as he could and raise a demand within time. It is this lapse of the range officer which resulted in some tax escaping assessment. As far as the classification of the services is concerned, the assessee can only classify them as per his understanding which may or may not be correct. The Range officer who is an expert in taxation should have examined and determined the correct classification. We do not find any grounds at all for invoking extended period of limitation. **Therefore, the demand of service tax can only be confined to the normal period of limitation.**

24. We further note that this Tribunal, by its earlier order dated 31.10.2013 set aside the Order-in-Original dated 30.01.2013 in toto and remanded for fresh adjudication after submission of signed copy of worksheet and signed copy of CA certificate. Learned Counsel for the appellant submitted that tax was paid prior to 01.07.2010, though not required and in case involving interpretation of legal issue of taxability on construction of complexes. Hon'ble Supreme Court in the case of ITW

Signode India Ltd., and Nulsi Neville Wadia, supra, held that when issue involves difference in interpretation, extended period cannot be invoked.

25. In the factual matrix of this case, we find that the penalties imposed on the appellant deserve to be set aside invoking section 80 of the Finance Act, 1994.

26. In view of the above discussions, we find that Department's appeal is liable to be dismissed and the party's appeal is liable to be partly allowed as follows:

- (i) The demand for the period up to 1.7.2010 is set aside as it was deemed to be self-service during the period in addition to being time barred.
- (ii) The entire demand for extended period of limitation, i.e., before 18 months from the date of issue of SCN, i.e., 28.9.2013 is set aside being time barred.
- (iii) For the period within 18 months from the date of the SCN, the demand of service tax on any amounts received by the appellant for services rendered under contracts with home buyers for completing and finishing the unfinished flats is set aside as such services would fall outside the scope of the 'construction of residential complex' service.
- (iv) Interest as applicable needs to be paid on the amount of service tax determined as above.
- (v) All penalties are set aside invoking Section 80 of the Finance Act, 1994.

27. Department's appeal is dismissed. Party's appeal is allowed as above and the impugned order is modified to the extent indicated above. The matter is remitted to the Commissioner for the sole purpose of computing

the amount of service tax and interest as above. The party will be entitled to consequential relief, if any.

(Pronounced in open court on 25.11.2025)

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**

Jaya