CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30913 of 2018
(Arising out of **Order-in-Appeal** No.TTD-EXCUS-000-APP-014-18-19 dated 31.05.2018 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Dharani Properties .. **APPELLANT**
Ground Floor,
Sri Charana Residency,
Kothapalem Layout,
200 Feet Bypass Road,
Tiruchanoor, Tirupati,
Chittoor District,
Andhra Pradesh – 517 503.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Tirupati – GST
No. 9/86, West Church Compound,
Amaravathi Nagar, MR Palli Road,
Thirupathi, Chittor,
Andhra Pradesh – 517 502.

APPEARANCE:
Shri P. Guru Prasad, Managing Partner for the Appellant.
Shri B. Sangameshwar Rao, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30069/2026

Date of Hearing: 03.02.2026
Date of Decision: 03.02.2026

[ORDER PER: ANGAD PRASAD]

M/s Dharani Properties (hereinafter referred to as appellant) are in appeal against the Order-in-Appeal dated 31.05.2018, whereby, the Commissioner (Appeals) has upheld the order of the Adjudicating Authority amounting to Rs. 4,20,725/- and also confirmed demand of interest under Section 75 of the Finance Act, 1994 as well as imposed penalty of Rs. 2,10,363/- under Section 78. He also gave an option to pay the said penalty within a period of 30 days from the date of communication.

2. The brief fact of the case is that the appellants are engaged in construction of complex etc., and had entered into a registered Development Agreement cum General Power Attorney on 19.03.2013 with the land owner. In terms of the said agreement, the land owner share was to be 35% of the

constructed built-up area was to be given to the land owners. The Department felt that in this case, date of agreement being on 19.03.2013, Point of taxation 31.03.2013, the Service Tax should have been discharged by them on the said date.

3. Shri P. Guru Prasad, Managing Partner for the appellant primarily submitting that they are not contesting the amount of Service Tax leviable towards the construction of the complex to the land owners and in fact they have also paid an amount of Rs. 3,74,444/- taking the total value as CUM tax value and therefore the total payment of Rs. 4,20,725/- came down to an amount of Rs. 3,74,444/-. He is further submitting that it is clear from the Circular: 151/2/2012-S.T. dated 10.02.2012 that the Service Tax is liable to be paid on construction service on the complex to be given to the land owner only at the time when the possession or right in the property of said complexes are transferred to the land owner by entering into a Conveyance Deed or similar instrument (Ex: Allotment Letter). In this case, the land owner share was conveyed to the land owner by way of Memorandum of Final Allotment and Handing Over Deed dated 09.01.2018 and therefore, the duty payable would occur only on that day or subsequent thereto and not prior to as alleged in the Show Cause Notice. He also submits that the amount has been paid on 25.01.2018. He further submits that he is not contesting the payment of service tax as such and the only limited request is to allow him the CUM duty in respect of said demand and since he has calculated his liability in terms of said demand after treating the said value as CUM duty value, he has already paid the entire duty liability in respect of said transfer. He is only contesting the imposition of penalty and demand of interest.

4. Learned AR on the other hand reiterates the findings of the Adjudicating Authority.

5. Heard both the sides and perused the records.

6. We find that the CBEC has clarified various situations including the time at which the Service Tax required to be paid in respect of land owner’s share in a case where there is a business model involving land owner’s share involving land owner and provider of the construction service, vide Circular: 151/2/2012-ST dated 10.02.2012. We find that in para 2.1(B)(i) there is clear provision that it is to be paid only at the time of transfer of said share

of constructed flat etc. Since, in this case the transfer has been affected only on 09.01.2018, the liability to pay the subjected Service Tax would arise only on the said date. Admittedly, the amount (after taking CUM duty benefit) in terms of Section 67 of Finance Act, 1994 has already been paid on 25.01.2018. We, therefore, find that there is no ground for levy of any interest in this case. Moreover, the fact that they have already paid the confirmed demand within a reasonable time from the date when the said payment would have been required to be made, thus, we find that this would also not call for any imposition of penalty under Section 78 also. We also find that the benefit of CUM duty can be extended as there is nothing on record that the said benefit cannot be extended to the appellant and therefore the amount of service tax calculated and paid already is correct.

7. In view of the discussions, supra, we do not find any merit in the order of the Commissioner (Appeals) and therefore set aside the same. We also make it clear that there shall be no refund to duty already paid by them which has not been contested by them.

8. Appeal allowed.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Jaya