
(2023) 10 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41584 Of 2015

M/s. Varma Constructions Private Limited

APPELLANT

Vs

Commissioner Of Central Excise

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Finance Act, 1994 — Section 65(91a), 73(1)

Citation : (2023) 10 CESTAT CK 0003

Hon'ble Judges : P. Dinesha, Member (J); M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : S. Jayanth, P.R.V. Ramanan

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. This appeal is filed against the Order-in-Original No. 05/2015-Denova (ST-Commr.) dated 30.04.2015 passed by the Commissioner of Central Excise, Salem. The lower authority has confirmed the levy of Service Tax on the activity of the assessee under construction of residential complex services.

2. It is the case of the Revenue, as could be gathered from the impugned order, that the assessee had provided services of construction of residential complex without obtaining registration under the said service, had thus failed to pay Service Tax under the said category and that they also had not filed their S.T.-3 returns. A Show Cause Notice was issued, dated 22.10.2010, proposing the demand of Service Tax under the above category, covering the period from 16.06.2005 to 31.03.2009, along with applicable interest and penalty. The demand having been confirmed under construction of complex services for the said period in the impugned Order-in-Original, the same have been assailed in this appeal by the appellant. The Commissioner has also observed that the Service Tax on construction of residential complex service was brought into Service Tax net with effect from 16.06.2005, the assessee was providing the

above service even prior to that date, they also had not obtained Service Tax registration under the above head and hence, has held that the same was a justifiable reason to invoke the extended period of limitation under the proviso to section 73 (1) of the Finance Act.

3. It is the case of the assessee that it had formed a layout consisting of plots for 74 individual houses, had entered into a tripartite agreement involving itself, owners of the land and the customers/buyers, but sale deeds were executed for selling sites/plots with individual buyers only. It is their case that the layout plan was approved by the authority and that the construction of the complex was in horizontal and not vertical.

4.1 When the appeal was taken up for hearing, Shri S. Jayanth, Ld. Chartered Accountant, would primarily contend that the activity of the appellant could not be taxable under construction of complex service in view of the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)] wherein only service simpliciter has been mandated for taxability and collection of Service Tax for composite contracts under construction of complex service has been held to be bad for the period prior to 01.06.2007 by the Hon'ble Apex Court.

4.2 He would submit that the lower authority has, without understanding the facts in the proper perspective, gone by the tripartite agreements and other irrelevant facts to charge the assessee by holding that the activity of the assessee was liable to be taxed under construction of complex services. He pleaded that only the plots were sold to the allottees, such allottees/buyers would get plans for the individual units sanctioned and the construction of such units was undertaken by the appellant by entering into a separate agreement for construction; the said construction was as per the approved plan of the municipality and therefore construction of one residential unit in each approved plot was carried out by the appellant, it is also a fact borne on record that each site was of different size and the construction activity was therefore as approved by the municipality.

4.3 He also argued that common roads and common water facility were provided for the entire layout as such only as a matter of convenience, but however, the fact remains that there was no question of construction of residential complex having more than 12 units, but only a single unit and hence, the charging of Service Tax under 'construction of complex service' was incorrect and hence, the demand thereunder is not justifiable.

4.4 In this regard, he would take us through the sample sale deeds, which were registered for the sale of approved plot, executed between the owners of the land and the buyer and the approval given by the local authority for putting up construction as per the building plan in the allotted plot.

4.5 He would further submit that the agreement is with such allottees/buyers only and for the construction of his dwelling unit alone, the fact that there may be

several such construction activities within the said layout, but the same is as per individual sanctioned plans.

4.6 He would thus conclude by arguing that at no stretch of imagination could it be understood that the assessee had constructed a residential complex having more than 12 units whereas, what the assessee carried out was only construction of individual residential houses as per the approved plans of such individual houses in the said layout.

In this regard he has placed reliance on an order of the Principal Bench of the Tribunal in the case of *Prakash Wadhwani v. Commissioner of Central Excise, Customs and Service Tax, Bhopal* [Final Order No. 50617 of 2020 dated 13.03.2020 in Service Tax Appeal No. 52243 of 2016 – CESTAT, New Delhi].

5. Per contra, Shri P.R.V. Ramanan, Ld. Special Counsel, has relied on the findings in the impugned order.

6. We have considered the rival contentions and we have gone through the documents placed on record.

7. The sample of the registered sale deed placed on record reveals that what was sold was only a site. The joint development agreement required the construction activity to be entrusted to the appellant only, ipso facto does not mean that they were involved in the construction of residential complex as such. It may be one of the conditions prescribed in the deed, but however, if the buyer refused to hand over the construction activities to the appellant, the appellant could not have taken any legal action since, discernibly, such condition is not binding legally on the buyer.

8. The definition of “residential complex” as per Section 65(91a) of the Finance Act, 1994, reads as under: -

“(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;"

10. The Ld. Consultant has argued that after selling individual sites to the individual buyers, it is undisputed that the assessee entered into a construction agreements of residential unit with individual owners as per the individual plans and such construction agreements are in the nature of composite contracts, involving transfer of property in goods used for the construction as well, that the very fact that the demand worked out in the Show Cause Notice wherein abatement was provided also conclusively proves that the activity involved a composite contract.

11. Before going into the merits of the case, we examine the preliminary contention of the appellant that their activities are not taxable under construction of complex service as per the ratio of the Hon'ble Apex Court in the case of Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]. We find that Revenue has not disputed the provision of construction service in terms of contract between the parties and the said activity was carried out in a composite manner and hence, there is no possibility to sustain demand up to 01.06.2007 on the above contract. For the subsequent period i.e., post 01.06.2007, in view of the very fact that the demand has been worked out after allowing abatement, no Service Tax could be demanded under construction of complex services simpliciter. Hence, in the light of the decision of Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)] which has followed by the co-ordinate Hyderabad Bench of the CESTAT in the case of Commissioner of Customs, Central Excise and Service Tax, Visakhapatnam-I v. M/s. Pragati Edifice Pvt. Ltd. [2019 (31) G.S.T.L. 241 (Tri. – Hyd.)] and by this Bench in the case of M/s. Jain Housing & Construction Ltd. v. Commissioner of Service Tax, Chennai [Service Tax Appeal No. 562 of 2012 & ors. – Final Order Nos. 40077-40079 of 2023 dated 24.02.2023 – CESTAT, Chennai] and various other Benches of the CESTAT, no Service Tax as confirmed in the impugned order is justified.

12. In the light of the above discussions, the demand confirmed in the impugned order cannot sustain, for which reason we set aside the same.

13. Resultantly, the appeal is allowed with consequential benefits, if any, as per law.