(2024) 05 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.41859 Of 2014

M/s.Vijay Shanthi Builders Ltd — APPELLANT

Vs

Commissioner Of CGST & Central Excise — RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:
Finance Act, 1994 — Section 65(105)(zzzh), 76, 77, 78

Citation : (2024) 05 CESTAT CK 0011

Hon'ble Judges : Sulekha Beevi.C.S Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Hari Radhakrishnan, Anoop Singh

Final Decision : Partly Allowed

Judgement

Sulekha Beevi.C.S., Member (J)

1. Brief facts are that the appellant is engaged in construction of residential complex and are registered with the Service Tax Department. During the course of audit of accounts conducted by the officers of the Department, it was noted that the appellant did not pay service tax during the period April 2009 to March 2011 in respect of construction of residential complexes provided by them. During investigation appellant explained that on the basis of Board’s circular No.108/2/2009-ST 29.1.2009, they have not paid service tax for the period April 2009 to June 2010. It was also stated that appellant has paid service tax for the period July 2010 and March 2011 though belatedly but had not paid interest on such belated payment. They had not filed periodical returns for the period April 2009 to March 2010 and filed returns belatedly from April 2010 and March 2011. Therefore, the show cause notice dt. 11.04.2012 was issued to the appellant proposing to demand service tax for the period April 2009 to June 2010 along with interest and for imposing penalties. The show cause notice also proposed to impose penalty for non-filing of returns. After due process of law, the original authority confirmed the demand of service tax for the period April 2009 to June

2010 along with interest and imposed penalties. Penalties under Section 76, 77 as well as 78 of the Finance Act, 1994 were imposed by the original authority. The original authority also confirmed demand of interest for the period July 2010 to March 2011 for the reason that the appellant had paid service tax belatedly. Aggrieved by such order, the appellant is now before the Tribunal.

2. Ld. Counsel Shri Hari Radhakrishnan appeared and argued for the appellant. It is submitted that the services provided by a Builder/Promoter/Developer is not subject to levy of service tax for the period prior to 1.7.2010. The matter has been clarified by the Board vide circular No.108/02/2009 dt. 29.1.2009. So also, further circular was issued by Board No.334/1/2010 dt. 26.2.2010 wherein it was clarified by the Board that builders and the apartment owners have to be treated as seller and buyer as there is no rendition of service by the builder/promoter/developer. Therefore, the activity of Developer/Promoter/Builder cannot be subject to levy of service tax.

2.1 It is submitted that the Tribunal in the case of Krishna Homes Vs CCE, Bhopal - 2014 (34) ST.R. 881 (Tri.-Del.) had considered the very same issue and held that a developer/builder/promoter is not liable to pay service tax in respect of construction of residential units even against installment payments. The said decision is followed in CC, CE & Service Tax, Visakhapatnam-I Vs Pragati Edifice Pvt. Ltd. (vice versa) as reported in 2019 (31) G.S.T.L 241 (Tri.-Hyderabad).

2.3 It is submitted that the appellant has paid the service tax from July 2010 onwards though belatedly. The appellant is liable to pay interest on the said amount. Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Shri Anoop Singh appeared for the Department and reiterated the findings in the impugned order.

4. Heard both sides.

5. The demand contested by the appellant in this appeal is for the period from April 2009 to June 2010. The Appellant was engaged in the business of construction of residential complex and sale thereon. The Board vide its circular has clarified that a builder/promoter/developer is not liable to pay service tax prior to 1.7.2010.

6. The said issue has been decided by the Tribunal in the case of Krishna Homes (supra). In the said case, the Tribunal has applied Board's circular and discussed the very same issue after taking note of the Explanation introduced in Section 65 (105) (zzzh) of the Finance Act, 1994. The Board has specifically stated that developer/builder/promoter would be liable to pay service tax only after 1.7.2010. The relevant part of the decision in the case of Krishna Homes (supra) is reproduced as under :

"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."

7. The view expressed in the case of Krishna Homes was reiterated by the Tribunal in the case of Pragati Edifice Pvt. Ltd. (supra).

8. From the discussions above, we are of the view that demand of service tax for the period prior to July 2010 cannot sustain and requires to be set aside which we hereby do. For the period after July 2010 to March 2011 the appellant has paid the service tax though belatedly the impugned order has confirmed the demand of interest for the said period. The appellant is liable to pay the same.

9. In the result, the impugned order is set aside to the extent of demand of service tax, interest thereon and penalties for the period upto 1.7.2010. We make it clear that we do not disturb the interest demand confirmed for the period after 1.7.2010. The appeal is partly allowed with consequential reliefs in above terms.