

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11548 of 2013

(Arising out of OIO-32/SERVICETAX/2012 dated 28/02/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

D H Patel

.....Appellant

14, 1st Floor, Golden Plaza,
Ankur Char Rasta, A.K.Road, Varachha,
SURAT, GUJARAT

VERSUS

C.C.E. & S.T.-Surat-I

.....Respondent

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:

Shri S J Vyas, Advocate for the Appellant
Shri Ghanasyam Soni, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. A/ 10853 /2023

DATE OF HEARING: 02.03.2023
DATE OF DECISION: 10.04.2023

RAMESH NAIR

The issue involved in the present case is that whether the construction of complex service provided to Surat Municipal Corporation for construction of houses under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and construction of housing for Gujarat State Police Housing Corporation Ltd. is liable to service tax under Construction of Residential Complex Service.

02. Shri S J Vyas, learned counsel appearing on behalf of the appellant submits that this issue is no more under dispute as the same has been decided in various cases. He placed reliance on the following judgments:-

- M/S GANPATI MEGA BUILDERS (INDIA) PVT. LTD.VERSUS COMMISSIONER, CUSTOMS, CENTRAL EXCISE & SERVICE TAX, -2021 (8) TMI 294 – CESTAT, ALLAHABAD
- M/S JETHANAND ARJUNDAS & SONS VERSUS CCE & ST. INDORE 2018 (11) TMI 757 - CESTAT NEW DELHI

- C.C. & C.E. & S.T. ALLAHABAD VERSUS GANESH YADAV 2017 (5) TMI 1251 - CESTAT ALLAHABAD.
- MS KHURANA ENGINEERING :LIMITED. VERSUS COMMISSIONER OF SERVICE TAX, AHMEDABAD - 2022 (12) TMI 1053 CESTAT AHMEDABAD
- SHRI SANTOSH KATIYAR VERSUS CCE, BHOPAL 2017 (3) TMI 1371 CESTAT NEW DELHI
- M/S. SIMA ENGINEERING CONSTRUCTIONS, S. RAJANGAM, T.M. SARAVANAN, M/S. MARIMUTHU GOUNDER & SONS VERSUS CCE, TRICHY 2018 (5) TMI 405 CESTAT CHENNAI.
- CR Patel Tribunal Order
- R D CONTRACTOR & COMPANY vide Final Order No. A/10313-10314/2023 dated 22.02.2023

03. Shri Ghanasyam Soni, learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that this identical issue has come up in many cases before this tribunal and this tribunal taking a consistent view that the Construction of Residential Complex under JNNURM Scheme and construction of residential housing for Gujarat State Police Housing Corporation Ltd. is not liable to service tax. In one of the recent judgment considering various judgments, this tribunal has passed the following order:-

The issue involved in the present case is that the construction service provided to Gujarat State Police Housing Corporation Limited for construction of residential complex for the police staff is liable to service tax or otherwise.

2. Shri Mrugesh Pandya, learned Counsel appearing on behalf of the assessee submits that the issue is no longer res-integra as the same has been decided in catena of case laws. He placed reliance on the following judgments:-

(a) R.B. Chy Ruchi Ram Khattar & Sons vs. Commr of ST., New Delhi - 2015 (38) STR. 583 (Tri - Del)

(b) Khurana Engineering Limited vs. Commr of C. Ex., Ahmedabad - 2011 (21) S.TR. 115 (Tri-Ahmd.)

(c) Tax Appeal No.926 of 2011 in the case of Commissioner of Central Excise & Customs Versus Khurana Engineering Ltd. Order dated 14.09.2018

(d) Sh.DH. Patel and Sh. RN Dobariya vs. CCE & ST, Surat-2013 (10) TMI 815 -CESTAT, AHMEDABAD

(e) *Shri. S. Kadirvel vs. CCE & ST, Trichy vide Final Order No.41504/2018 dated 11.05.2018*

(f) *Brahma Developers vs. Commissioner of Central Excise, Tirunelveli - 2018 (10) GSTL 27 (Tri-Chennai)*

(g) *Commissioner of C EX, Aurgangabad vs. Mall Enterprises-2016 (41) S.TR. 199 (Tri-Mumbai)*

(h) *Mittal Construction Versus Commissioner of C. EX. & Service Tax, Jaipur-1- 2018 (11) G.S.T.L 334 (Tri-Del.)*

(i) *Kanubhai Ramjibhai Makwana vs. CCE & ST-Vadodara-1-2022 (8) TMI 645 CESTAT Ahmedabad*

(j) *Sima Engg Constructions vs. Commissioner of C. EX. Trichy - 2011 (21) STR. 179 (Tri-Chennai)*

3. *Shri Kalpesh P Shah, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order in the assessee's appeal and reiterates the grounds of appeal in the Revenue's appeal.*

4. *We have carefully considered the submissions made by both the sides and perused the record. We find that lower authorities have contended that Gujarat State Police Housing Corporation Limited is not a Government of Gujarat organization whereas the same is an independent Company registered under the Company's Act therefore, service provided to Gujarat State Police Housing Corporation is liable to service tax. We find that the Gujarat State Police Housing Corporation Limited is 100% owned by Government of Gujarat under the Ministry of Home Affairs therefore the same was held to be a government organization in various judgments. This very issue pertains to Gujarat State Police Housing Corporation Limited has been considered by this Tribunal in following judgments:-*

(a) *In the case of Sh. DH Patel and Sh. RN Dobariya vs. CCE, Surat (supra), this Tribunal passed the following order:-*

" 3. *The above said amounts are confirmed against the appellant on the ground that they have not discharged the service tax liability for the work undertaken by them for Gujarat State Police Housing Corporation Ltd. (GSPHCL) during the period 2007-2008 to 2011-2012. Adjudicating authority has confirmed the dues on the ground that GSPHCL is Government of Gujarats public purpose vehicle or Company, hence ineligible to avail any exemption granted for any work which is done for or on behalf of Government.*

5., 6.

7. *On perusal of the records, we find that the adjudicating authority has confirmed the demands on the appellants on the ground that they are providing services of Commercial or Industrial construction services which are covered under section 65(30 a) of the Finance Act, 1994 as amended and subsequently amended as per section 65. We find that there is no dispute as to the fact that buildings constructed by the appellant herein are allotted to the police personnel and the personnel working in jail department of the Government of Gujarat, the only point which requires to be considered in this case is whether the appellant herein has rendered*

services to a personnel who has not occupied the said dwellings. We find that an identical issue in respect of Tamilnadu Police Housing Corporation Ltd. case came up before the Tribunal in the matter of S. Kadirvel (*supra*). In that stay order, the bench held as under :-

4. After considering the submissions, we have found *prima facie* case for the appellant inasmuch as it is not in dispute that the houses constructed by the Tamil Nadu Police Housing Corporation Ltd., are owned by the State Government and were allotted to police personnel by the Government. The Police Housing Corporation appears to have worked as an extended arm of the Government. Some of the decisions cited by the learned counsel are apparently supportive of his point that the houses that were constructed should be constructed to be in the personal use of the State Government in this view of the matter, we grant waiver and stay against the impugned demand and connected penalties.

It can be seen that the issue involved in the case in *S Kadirvel vs. CCE. Tiruchirapalli* as was before the South Zonal Bench, Chennai is the same, hence, respectively following view already taken by the bench, we hold that the appellant has made out a case for the complete waiver of the pre-deposit of the amounts involved. Application for the waiver of pre-deposit of the amounts involved is allowed and recovery thereof stayed till the disposal of appeals."

(b) Similarly in the case of *Shri S. Kadirvel vs. CCE & ST, Trichy* (*supra*) which was relied upon in above decision, the Chennai Bench passed the following order:-

"5.1 The period involved is from 16.06.2005 to 31.08.2007. As rightly argued by the Ld. Counsel for the appellants, demand for the period prior to 11.06.2007 cannot sustain on application of the decision laid down by the Hon'ble Apex Court in the case of *Larson & Toubro Ltd.* (*supra*) and requires to be set aside, which we hereby do. 5.2 A small portion of the demand value is after 01.06.2007. TNPHCL engaged the appellant for construction of Police Quarters and the ownership of the houses constructed vested with the Govt. of Tamilnadu which is nothing but an extended arm of the Govt. Section 65 (91) (a) of the Finance Act, 1994 defines residential complex. The said definition excludes personal use. The Tribunal in a similar set of facts had considered the issue and set aside the demand vide Final Order in *SIMA Engineering & Constructions* (*supra*). The relevant portion is noticed as under:- "7. Undisputedly, the appellants have entered into an agreement with TNPHCL for providing services in relation to construction of residential complex. However, these are meant for use of police personnel. The said issue was considered by the Tribunal in the case of *Nithesh Estates* (*supra*), wherein the Tribunal has observed as under:-

"7.1 In this case there is no dispute and it clearly emerges that the residential complex was built for M/s. ITC Ltd. and appellant was the main contractor. Appellant had appointed sub-contractors all of whom have paid the tax as required under the law. The question that arises is whether the appellant is liable to pay service tax in respect of the complex built for ITC. From the definition it is quite clear that if the complex is constructed by a person directly engaging any other person for design or planning or layout and such complex is intended for personal use as per the definition, service tax is not attracted.

Personal use has been defined as permitting the complex for use as residence by another person on rent or without consideration. In this case what emerges is that ITC intended to provide the accommodation built to their own employees. Therefore it is covered by the definition of 'personal use' in the explanation. The next question that arises is whether it gets excluded under the circumstances. The circular issued by C.B.E.&C. on 24-5-2010 relied upon by the learned counsel is relevant. Para 3 of this circular which is relevant is reproduced below :

"3. As per the information provided in your letter and during discussions, the Ministry of Urban Development (GOI) has directly engaged the NBCC for constructing residential complex for Central Government officers. Further, the residential complexes so built are intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministers). As such the GOI is the service receiver and NBCC is providing services directly to the GOI for its personal use. Therefore, as for the instant arrangement between Ministry of Urban Development and NBCC is concerned, the Service Tax is not leviable. It may, however, be pointed out that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay Service Tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use."

It can be seen that if the land owner enters into a contract with a promoter/builder/developer who himself provided service of design, planning and construction and if the property is used for personal use then such activity would not be subject to service tax. It is quite clear that C.B.E.&C. also has clarified that in cases like this, service tax need not be paid by the builder/developer who has constructed the complex. If the builder/developer constructs the complex himself, there would be no liability of service tax at all. Further in this case it was different totally, the appellant, has engaged subcontractors and therefore rightly all the sub-contractors have paid the service tax. In such a situation in our opinion, there is no liability on the appellant to pay the service tax"

The above definition specifically excludes construction undertaken for personal use and such personal use includes permitting the complex for use as residence by another person. We find that the above exclusion clause covers the construction activity undertaken by the assessee. Following the said decision, we are of the view that the demand after 01.06.2007 also cannot sustain and requires to be set aside, which we hereby do.

6. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any."

5. In view of the above decisions, which are directly related to the same service recipient, we are of the considered view that the issue is no longer res-integra. The other judgments cited by the learned Counsel also support their case. Accordingly, the assessee's Appeal No. ST/10464/2015-DB is allowed and Revenue's Appeal No. ST/11498/2016 is dismissed.

05. This issue is no longer res integra in the light of the judgments relied upon by the appellant accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 10.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Mehul