CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41936 of 2016

(Arising out of Order-in-Appeal No.355/2016 (STA-I) dated 14.06.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai)

Dugar Housing, **...Appellant**
Dugar Towers, 34 Marshall Road,
Egmore,
Chennai-600 008.

Versus

Commissioner of GST and Central Excise **..Respondent**
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Ms. G. Krupa, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41319/2025

DATE OF HEARING: 11.11.2025
DATE OF DECISION: 13.11.2025

Per Mr. Ajayan T.V.

Dugar Housing, the appellant, has assailed the impugned Order-in-Appeal to the extent the Appellate Authority has upheld the Order-in-Original of the Lower Authority demanding Service Tax for the period 01.06.2007 to 31.03.2008 along with appropriate interest and penalty imposed under Section 77 of the Finance Act, 1994.

2. The brief facts are that the appellant is a partnership firm stated to be engaged in the business of development of

residential complex and registered with the Service Tax Department. The department being of the view that the appellant has short paid Service Tax in respect of "Construction of Complex Service" provided by the appellant in construction of the Residential Complex 'Dugar Estate' for the period from 01.110.2005 to 31.03.2008, issued a Show Cause Notice proposing demand of Service Tax along with appropriate interest and imposition of penalties.

3. After due process in law, the Original Authority confirmed the proposals in the Show Cause Notice. Aggrieved by the same the appellant preferred an appeal contending, among other things, that (i) they are not liable to pay service tax in respect of construction of residential complex prior to 01.07.2010 in view of Board's Circular No.108/2/2009-St dated 29.01.2009 and insertion of Explanation to Section 65(105) (zzzh) ; (ii) that the amounts received from the customers that is alleged to have been not included in the taxable value are not includible and (iii) that there is no suppression and hence the extended period of limitation is not invokable and penalty is not imposable.

4. The Appellate Authority, placing reliance on the Apex Court decision in CCE v. Larsen & Toubro Ltd, 2015 (39) STR 913 held that the impugned construction of complex service is liable to service tax only under Works Contract Service with effect from 01.06.2007 and went on to confirm the demand and imposition of penalties to the extent aforementioned. Aggrieved, the appellant having preferred this appeal is now before this forum.

5. Ld. Counsel Ms. Radhika Chandrasekhar appearing for the appellant contended that the appellant being a developer was not liable to pay service tax for the period prior to 01.07.2010 as Finance Act, 2010 for the first time brought developers

within the ambit of service with effect from 01.07.2010 by way of an explanation to Section 65 (105) (zzzh). That the issue stands settled in their favour vide a series of Tribunal Decisions, one such earliest decision ***being Krishna Homes v. CCE, 2014 (34) STR 881***. The ratio of the said decision has since been followed in subsequent tribunal decisions such as *Pragati Edifice Pvt Ltd v CCE & ST, Final Order No.31010-31011/2019 dated 18.09.2019* and in *Chaitanya Builders & Leasing Pvt ltd v Commissioner of GST & Central Excise, Final Order No.410868/2025 dated 26.09.2025*. Ld. Counsel would submit that the impugned OIA has also travelled beyond the SCN since the Appellate Authority has held that the construction of residential complex service is liable to service tax under works contract service and gone onto confirm the demand for the period post 01.06.2007, whereas the proposal in the SCN was to demand service tax under construction of residential complex service and the Order in Original also has confirmed the demand under the same service. It is submitted that service tax demanded under one category in the show cause notice cannot be confirmed under the category works contract service which was not proposed in the show cause notice The Ld. Counsel submits that when the appellant is not liable to pay service tax as a developer itself, the demand for non inclusion of ancillary charges also does not survive. The Ld. Counsel submits that the extended period is also not invocable as none of the ingredients such a fraud, collusion, wilful misstatement, suppression, etc exists.

6. Ld. A.R Ms. G. Krupa, appeared for the Respondent and reiterated the findings of the Appellate Authority in the Impugned Order-in-Appeal.

7. We have heard the rival submissions, perused the appeal records and the citations submitted.

8. The only issue that arises is whether the demand of Service Tax on the appellant as upheld by the Appellate Authority is tenable.

9. We find that it is undisputed that the appellant is engaged in a composite contract involving provision of service as well as transfer of property in goods. The Appellate Authority has taken cognizance of the fact that the SCN has allowed the benefit of 67% abatement vide Notification No.1/2006-ST and the tax was demanded @ 4%(@ 12% on 33% of the value) and that VAT was also collected by the appellant. However, the appellate authority despite finding that the appellant was liable to service tax only under works contract service has yet gone on to uphold the demand of service tax for the period from 01.06.2007 as confirmed in the order in original impugned before the appellate authority along with the penalty imposed under Section 77.

10. As rightly contended by the appellant, the impugned order in original has confirmed the demand as per the proposals in the show cause notice which was under 'Construction of Complex' Service.

11. In this regard, it is apposite to reproduce the findings in the decision of the Tribunal in the case of ***Krishna Homes v. CCE, 2014 (34) STR 881.*** The relevant portions are as below***:***

> **"8.** Coming first to the question as to whether the activity of M/s. Krishna Homes and M/s. Raj Homes was taxable during the period of dispute or not, by Finance Act, 2005, Clause (zzzh) was introduced into Section 65(105) of Finance Act, 1994, so as to bring within the purview of the term 'taxable service', a service provided or to be provided to any person by any other person "in relation to construction of complex". The expression "construction of complex" was defined in sub-section (30a) of Section 65 and accordingly this expression covered - "(a)

construction of a new residential complex or a part thereof or (b) completion of finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex". The expression residential complex was defined in Section 65(91a) of the Finance Act, 1994 as 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 any authority under 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". There is no dispute that the complex constructed by both the assessees in these appeals are covered by the definition of "residential complex" as given in Section 65(91a). There is also no dispute that both the assessees had engaged contractors for construction of the complexes. The dispute in these appeals is as to whether the assessees would be liable to pay Service Tax on the amounts charged by them from their customers with whom they had entered into agreements for construction of the residential units and whose possession was to be handed over on completion of the construction and full payment having been made by the customers. It is seen that on this point, the Tax Research Unit of the Central Board of Excise & Customs, which is a wing of the C.B.E. & C. dealing with legislation work, had vide Circular No. 332/35/2006-TRU, dated 1-8-2006 clarified that in case where a builder, promoter, developer builds a residential complex having more than 12 residential units by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay Service Tax on the gross amount charged for the construction service provided to the builder/promoter/developer under construction of complex service falling under Section 65(105)(zzzh) of the Finance Act, 1994 and that if no person is engaged by the builder, promoter, developer for construction work who undertakes construction work on his own without engaging the services of any other person than in such cases, in absence of the service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise. W.e.f. 1-7-2010 an explanation was added to Section 65(105)(zzzh) which was as under :-

"*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, in terms of this explanation, when a builder/promoter/developer got a residential complex constructed for his customers with whom he had individually entered into agreements, in terms of which the prospective customers were required to make payments for the residential units to be constructed in instalments and the possession of the residential units was to be given to the customers on completion of the complex and full payment having been made, the builder/promoter/developer was to be treated as a deemed provider of construction of residential complex service to his customers. Thus, by this explanation, the scope of the Clause (zzzh) of Section 65(105) has been expanded and this amendment by adding an explanation has been held by this Tribunal in the case of *CCE, Chandigarh* v. *U.B. Construction (P) Ltd.* (supra) as prospective amendment. In this regard, para 5 of this judgment is reproduced below :-

"5. In *Maharashtra Chamber of Housing Industry* v. *Union of India* - 2012 (25) S.T.R. 305 (Bom.), the validity of the 'Explanation' added to Sections 65(105)(zzq) and (zzzh) was challenged on several grounds. The Bombay High Court, also considered the issue whether the explanation was prospective or retrospective in operation and ruled that the explanation inserted by the Finance Act, 2010 brings within the fold of taxable service a construction service provided by the builder to a buyer where there is an intended sale between the parties whether before, during or after construction; that the 'Explanation' was specifically legislated upon to expand the concept of taxable service; that prior to the explanation, the view taken was that since a mere agreement to sell does not create any interest in the property and the title to the property continues to remain with the builder, no service was provided to the buyer; that the service, if any, would be in the nature of a service rendered by the builder to himself; that the explanation expands the scope of the taxable service, provided by builders to buyers pursuant to an intended sale of immovable property before, during or after the construction and therefore the provision is expansive of the existing intent and not clarificatory of the same; and is consequently prospective".

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." **(emphasis supplied)**

12. We find that the said decision has since been followed in the subsequent decisions relied upon by the Appellant, i.e., in *Pragati Edifice Pvt Ltd v CCE & ST, Final Order No.31010-31011/2019 dated 18.09.2019* and in *Chaitanya Builders & Leasing Pvt ltd v Commissioner of GST & Central Excise, Final Order No.410868/2025 dated 26.09.2025.*

13. In the light of the ratio of the aforesaid binding decisions of the coordinate benches of the Tribunal, we hold that the services provided by the appellant in respect of the projects executed by them for the relevant period, being in the nature of composite works contract cannot be brought within the fold of "construction of complex" service and thus the impugned OIA to the extent it upholds the impugned OIO confirming the demand along with applicable interest and imposing penalty, cannot sustain and is liable to be set aside on merits.

14. We also note that the issue whether service tax could be levied on Composite Works Contract prior to the introduction of the Finance Act, 2007, by which the Finance Act, 1994 came to be amended to introduce Section 65(105)(zzzza) pertaining to Works Contract, being a subject matter of litigation during the relevant period, evidences that the issue involved interpretational disputes. As such, no malafide can be attributed to the appellants warranting invoking of the extended period of limitation and the appellants' contentions against invoking of extended period of limitation is also tenable.

15. In the light of our deliberations above, the impugned Order in Appeal to the extent it upholds the impugned OIO confirming the demand along with applicable interest and imposing

penalty under Section 77 of the Finance Act, 1994, cannot be sustained and is hereby set aside.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 13.11.2025)

(AJAYAN T.V.)
Member (Judicial)

(M.AJIT KUMAR)
Member (Technical)

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