

No Service Tax liability when the construction of flat is for the personal use of the service recipient

The CESTAT, Chennai in *M/s. Rani Meyyammai Towers v. Commissioner of Service Tax [Final Order No. 40307-40308 of 2023 dated April 26, 2023]* has set aside the order demanding Service Tax on construction of flats under the category of Construction of Complex Service (“**CC Services**”). Held that, projects executed prior to June 01, 2007, which were in the nature of composite works contract, could not be brought within the fold of commercial or industrial construction service or CC services and for the period post June 01, 2007, the liability to pay Service Tax could be fastened under CC services only if the activities were in the nature of service simpliciter. Further held that, there is no Service Tax liability as and when the construction of flat is for the personal use of the service recipient.

Facts:

M/s. Rani Meyyammai Towers (“**the Appellant**”), a real estate developer started construction of flats in November 2006. The Revenue Department (“**the Respondent**”) conducted an audit of the Appellant's accounts and it was alleged that the Appellant had not paid Service Tax on the construction of flats under CC Services. Further, it was noticed that the Appellant had started paying Service Tax under Works Contract Services from December, 2007.

Accordingly, Show Cause Notices dated October 17, 2011 and October 31, 2010 (“**the SCNs**”) were issued to the Appellant demanding Service Tax under CC Services on construction of flats along with applicable interest and penalty, for the period from February 01, 2007 to June 30, 2010 and July 2010 to March 2011 (“**the Impugned period**”), for which, the Appellant filed reply to both SCNs denying the Service Tax liability. However, the Respondent passed a common Order-in-Original Nos. 10 & 11/2013 on June 19, 2013 (“**the Impugned Order**”) confirming the demand of Service Tax for the Impugned period.

Being aggrieved, this appeal has been by the Appellant, on the grounds that for the period prior to June 2007 since the project was in the nature of composite works contract therefore could not be taxed under CC Services and for the period post June 2007, the Service Tax under CC Services could be fastened only on activities in the nature of services, since the Appellant was providing services of construction of flats which is a works contract and was correctly discharging Service Tax under works contract services.

Issue:

Whether construction of flats would be liable to service tax under the category of CC Services?

Held:

The CESTAT, Chennai in ***Final Order No. 40307-40308 of 2023*** held as under:

- Noted that, projects executed prior to June 01, 2007, which were in the nature of composite works contract, could not be brought within the fold of commercial or industrial construction service or CC services and for the period post June 01, 2007, the liability to service tax could be fastened under CC services only if the activities were in the nature of service simpliciter.
- Observed that, the Appellant was rendering typical works contract service, for which reason they had started paying Service Tax w.e.f. December 2007
- Relied on the judgment of CESTAT, Hyderabad in ***Commissioner, CCE & ST, Visakhapatnam v. M/S Pragati Edifice Pvt Ltd [2019 (31) G. S. T. L. 241 (Tri. - Hyd.)]*** and noted that, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service. Further, after July 01, 2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.

- Further, observed that, by virtue of agreements entered into by the Appellant with the prospective buyers, the construction of flats was for the service recipients per se, therefore, there is no Service Tax liability, when the construction of flat is for the personal use of the service recipient.
- Held that, since the Appellant was a developer and was rendering typical works contract service, as per the construction agreements entered into with their prospective buyers. Therefore, the Appellant was correctly remitting the Service Tax under works contract service.
- Set aside the Impugned Order.

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