NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 57 of 2017

Commissioner, Customs, Central Excise And Service Tax, Bilaspur At- Central Excise Bhawan, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh.

---- Appellant

Versus

M/s Shubh Projects And Constructions Pvt. Ltd. 81, Shubhash Chowk, Post Box No. 4, Raigarh, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant	: Shri Vinay Pandey, Advocate.
For Respondent	: Shri Amrito Das, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

19/03/2019

Per Ajay Kumar Tripathi, Chief Justice

1. Heard counsel for the parties.

2. Revenue is aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in Appeal No.ST/A/54774/2016-CU[DB] dated 02.11.2016.

3. The matter travelled to the Appellate Tribunal on behalf of the Revenue itself when the Commissioner (Appeal) ruled in favour of the assessee in matter of payment of service tax on residential complex constructed for M/s Jindal Power Limited for occupation of its employees. The Commissioner took note of the Boards Circular No.332/35/2006 TRU dated 01.08.2006 and reproduced the essence thereof in following terms :

> ***"****7.1.3 The implication of the above ruling to my mind is that JPL were well within their right to use the residential units in whatsoever manner as long as the prescribed stipulations governing the term 'residential use' are not getting violated. That the quarters were used as a dwelling units for the stall of JPL for furtherance of their business and/ or commercial consideration is of the no concern or consequence to the department. The Noticee have ably agitated their issue in this regard by citing the case of M/s VMT Spinning Company Ltd. vs. Commissioner of Central Excise, Chandigarh, passed by the Authority for Advance Rulings, Central Excise Customs & Service Tax, New Delhi, wherein it was held:-*
>
> > *"Provision of buildings for housing, schooling, recreation etc. of workers improves their quality of life and is a welfare measure but they have no nexus with the manufacture, storage or sale of the final product. Services used for construction buildings for housing workers and staff do not have a nexus with the manufacture, storage or sale of the final product."*
>
> *9. Thus in respectful agreement to the legal position alucidated above, I find the demand of Service Tax from the Noticee as sought vide SCN cum Demand F. No. V(ST)15-349/Commr/Bill/2009/ADJ/9693 dated 17.11.09 is not tenable and maintainable under the Service Tax Law."*

4. While appreciating the submission, the Tribunal not only took into account the rational and reasons provided by the Commissioner for granting relief to the assessee, but also certain decisions which had been rendered in similar matters by different Benches, details of which as recorded by the Tribunal are follows :

> "4. Apart form the fact that commissioner has relied upon the Tribunal decision, we also note that the issue stand covered by other decisions of the Tribunal also, apart from the Tribunal decision in the case of VMT Spinning Company Ltd. vs. CCE Chandigarh. Reference can be made to the decision of Tribunal in the case of **Commissioner of Central Excise, Aurangabad vs. Mall Enterprises** as reported in **[2016 (41) STR 119 (Tri-Mumbai]** as also to the decision in the case of **Nithesh Estates Ltd. vs. CCE & ST & Cus., Bangalore [2015 (40) STR 815]."**

5. Submission of the counsel for the Revenue is based on Annexure A/5 i.e. clarificatory kind of notification which has been issued and issues were sought to be explained by giving examples thereof.

6. Such clarification by itself will not form the basis for adjudication in relation to applicability of the original notification. In our opinion, not only the Tribunal took note of the issue already settled in this regard, but also the rational and reasons as to why it was not necessary to collect service tax for construction of residential units which are required to be used by the employees of the Company. Such construction of building or houses are to enhance the quality of life of the workers and is part of the responsibility of a Company as a welfare measure. The distinction therefore between construction carried out for commercial reasons and purposes for sale etc. and construction of such housing facilities for a Company has to be understood and maintained and that is why the Board had indicated in its circular dated 01.08.2006, the non-applicability of the service tax in such a situation.

7. In view of the same, Revenue has no case for interference in the order of the Tribunal.

8. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu