

GIB/MH/COMMISSIONER/25.01.2018/HC-240

High Court Category : LEVY OF SERVICE TAX

State : Maharashtra

Order No.: GIB/MH/COMMISSIONER/25.01.2018/HC-240

Name of Entry :
THE COMMISSIONER OF SERVICE TAX

Date : 25-01-2018

Breif Issue :

FACTS OF THE CASE:

In this case the assessee was engaged in providing works contract service during the period October, 2008 to March, 2013 and was not discharging the service tax liability. The service tax of ₹ 9,57,98,251/- under the category of works contract service, ₹ 25,77,710/- under the category of management, maintenance or repair Service, totally amounting to ₹ 9,83,75,962/- was due and payable by the assessee for the aforesaid period. The assessee applied for service tax registration on 28-11-2011, for construction of residential complex service and after the visit of the Officers of the Anti-Evasion Cell. The assessee was granted registration.

A Show Cause Notice dated 28-2-2014, alleging as above, was issued and the demand was raised on the basis that the service tax amount collected from customers during the period 1-7-2010 to 31-3-2011 but not paid in the Government treasury, is the subject matter and that was quantified at ₹ 1,23,68,420/-The assessee admitted that it had not applied for service tax registration even though it provided taxable service since 2009-10.

ISSUE OF THE CASE :

Whether the CESTAT was right in holding that the assessee was not providing Management, Maintenance or Repair Service by collecting amount from prospective flat buyers, for maintaining the building, in the guise of deposits which is not returnable?

Whether the CESTAT has erred in holding that assessee is providing statutory service and has rendered definition provided under Section 65(105)(zzg) of Finance Act as null and void by accepting that he is not providing Management, Maintenance or repair service by maintaining the building and collecting amount for that or not?

Decision of Advance Ruling Authority :

DECISION:

Management, maintenance or repair means any service provided by any person under a contract or an agreement, or a manufacturer or any person authorised by him, in relation to, the management of properties, whether immovable or not, maintenance or repair of properties, whether immovable or not, or maintenance or repair including reconditioning on restoration, or servicing of any goods, excluding a motor vehicle. Then, there is an explanation which clears doubts and it declares that for the purposes of this clause, namely, 65 (64), goods includes computer software and properties include information technology software. The words “Taxable service” is defined in Section 65, Clause (105) to mean any service provided or to be provided to any person by any person in relation to management, maintenance or repair.

Since the MOFA has been referred by the counsel appearing before us, we would be required to make a reference to its provisions. The MOFA is an Act to regulate in the State of Maharashtra, the promotion of the construction of the sale and management, and the transfer of Flats on ownership basis. It was brought to the notice of the State Government that, consequent on the acute shortage of housing in several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of construction, and the sale and management and transfer of Flats taken on ownership basis exist and are increasing.

The Act must, therefore, receive an interpretation consistent with its object and purpose. This Court, on several occasions, had emphasised the aims and objects of the Act.

The deposit or the monies themselves are held and appropriated towards payment of taxes, etc., popularly known as outgoings. The building and the Flats therein has to stand intact till all the Flats or units are sold and the statutory obligations are fully discharged. This is not a service of the nature understood by Section 65 (64) of the Finance Act, 1994. It is not a contractor simpliciter of maintenance of immovable property. It is not as if there is a existing building comprising of Flats, fully occupied, the maintenance and upkeep of which is handed over under a contract. It is a statutory obligation superimposed on a contract to sell a Flat/unit in a building to be constructed on a piece or parcel of land. That cannot be confused with a taxable service as defined under the Finance Act, 1994. The day-to-day upkeep, maintenance and repair is till the statutory duty is fully performed.

Thus, the provisions of Sections 5 and 6 and eventually the further provisions right upto Section 13 of the MOFA would make it clear that builder and developer maintains and repairs the property till it is conveyed or the title in the same is conveyed to the Flat purchasers or the legal entity which would ultimately be formed by him. Thus, a cooperative housing society or a company would have to be formed of all those Flat purchasers who have purchased the Flats prior to or under construction, namely, subsequently purchased Flats. The completion of the building or it being rendered fit for occupation is one of the duties and obligation of the builder and promoter under this law. For them to be conveyed he has to maintain the property.

Appeal dismissed - decided against Revenue.