

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
CHENNAI**

<b>S.No.</b>	<b>Appeal No.</b>	<b>Appellant</b>	<b>Respondent</b>
1.	ST/258/2012	Prince Foundations Ltd.	Commissioner of Service Tax, Chennai
Arising out of Order-in-Original No.53/2011 dt. 25.11.2011 passed by the Commissioner of Service Tax, Chennai			
2.	ST/259/2012	Prince Foundations Ltd.	Commissioner of Service Tax, Chennai
Arising out of Order-in-Original No.54/2011 dt. 25.11.2011 passed by the Commissioner of Service Tax, Chennai			
3.	ST/1/2012	Prince Foundations Ltd.	Commissioner of Service Tax, Chennai
Arising out of Order-in-Original No.23/2011 dt. 26.08.2011 passed by the Commissioner of Service Tax, Chennai			
4.	ST/40901/2014	Prince Foundations Pvt. Ltd.	Commissioner of Service Tax, Chennai
Arising out of Order-in-Original No.01/2014 dt. 04.02.2014 passed by the Commissioner of Service Tax, Chennai			

Appearance :

Shri G. Natarajan, Advocate  
For the Appellant

Shri A.Cletus, ADC (AR)  
For the Respondent

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of hearing / decision : 06.12.2018

**FINAL ORDER No. 43205-43208 / 2018**

**Per Bench**

All these appeals since relating to same appellants involving same / identical issues are taken up for common disposal.

2. The facts of the case are that appellants had engaged in construction of residential and commercial complex in and around Chennai area. Pursuant to

audit and other investigations carried out by department, it appeared that appellants had not paid / short paid service tax liability in respect of the various projects undertaken by them. Accordingly, the following proceedings were initiated :

(i) SCN No.256/2009 dt. 24.06.2009, for the period April 2007 to 31.03.2008 proposing total demand of Rs.1,18,81,711/- as per the four annexures to the SCN along with interest as also imposition of penalty under various provisions of law.

(ii) SCN No.597/2009 dt. 23.10.2009, for the period 2008-09, proposing total demand of Rs,5,91,38,314/- as per the four annexures to the SCN along with interest as also imposition of penalty under various provisions of law.

(iii) In adjudication of both the SCNs, the Commissioner vide a common Order-in-Original No.53 & 54/2011 dt. 25.11.2011 confirmed the aforesaid demands along with interest and imposed penalty Section 78 in respect of SCN dt. 24.06.2009 and penalty under Section 76 in respect of SCN dt. 23.10.2009. He also imposed penalty of Rs.5000/- under Section 77 *ibid*. Hence Appeals ST/258/2012 & ST/259/2012.

2.2 When the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri G. Natarajan submitted that most of the demands confirmed in the aforesaid impugned order to these appeals now stands covered by the decision of Supreme Court in the case of *CCE Vs Larsen & Toubro Ltd.* – 2015 (39) STR 913 (SC) and of the Tribunal decision in *Real Value Promoters Pvt. Ltd. Vs CCE* - 2018-TIOL-2867-CESTAT.

2.3 Ld. Advocate's contentions in respect of the item wise / annexure wise demands that were confirmed in respect of ST/258/2012 is as under :

(i) Demand of service tax of Rs.94,62,842/- under Commercial or Industrial Construction Service (CICS) is not sustainable being composite contract involving transfer of property in goods prior to introduction of Works Contracts Service in view of Hon'ble Supreme Court's decision in *L&T* (supra).

(ii) Demand of service tax of Rs.11,68,534/- under Renting of Immovable Property Service (RIPS) has been raised in the order. Commercial buildings are rented out immediately after construction and thereafter the same would be sold in some cases. But registration of the property in the name of the buyer may take some time, after which new lease deed would be entered into by the tenants with the buyers. Till such time, the rent would be paid by them to us only, which would be received by the appellant and paid to the owners. Thus the service tax paid by the owners would be availed as cenvat credit by appellant and they would pay the service tax liability to Government. The demand has been confirmed without extending the benefit of such cenvat credit. Ld. Advocate prayed that this issue may be remanded to the original authority to substantiate their claim.

(iii) Demand of Rs.7,32,183/- under Management, Maintenance and Repair Service (MMRS), for the period April 2007 to March 2008 relates to amounts received from buyers and would be passed on to the owner's association when it is formed. Hence it is not a consideration for service. He relies on the following case laws :

(i) Vijayashanti Builders Ltd. Vs CST 2018 (9) GSTL 257 (Tri.-Chennai)

(ii) Kumar Beheray Rathi Vs CST 2014 (34) STR 139 (Tri.-Bom.)

(iii) CCE Vs Sri Krishna Chaitanya Enterprises – 2018 (14) GSTL 533  
(Bom.)

(iv) Demand of Rs.5,18,152/- is towards short payment made under Construction of (Residential ) Complex Service (CCS) in respect of one buyer which stands covered by the decisions of *L&T* (supra) and *Real Value Promoters Pvt. Ltd.* (supra). He therefore prayed that the total demand of Rs.1,18,81,171/- with interest and equal penalty under Section 78 as well as Section 77 penalty disputed in ST/258/2012 is not sustainable.

2.4 So also in Appeal ST/259/2012, the details of SCN, period of dispute, disputed amounts etc. as furnished by Ld. Advocate are tabulated as under :

S.No.	SCN No. & Date	Period of Demand	Details of Demand	Amount confirmed in the order Rs.
i.	597/2009 dt. 23.10.2009	2008-09	Demand under CICS	59,08,138
ii.	-do-	-do-	Demand under CCS	1,06,22,800
iii.	-do-	-do-	Demand under CICS	7,39,011
iv.	-do-	-do-	Demand under CCS	3,45,27,514
v.	-do-	-do-	Alleged adjustment of excess service tax paid, which is not permissible.	61,04,851
			Total	<b>5,79,02,314/-</b>

He submits that aforesaid demands raised vide Sl.No. (i) to (v) under the category of CICS / CCS are for the period pre-1.6.2007 and post-1.6.2007, hence the issue stands squarely covered by Apex Court decision in *L & T Ltd.* (supra) and this Bench decision in *Real Value Promoters Pvt. Ltd.* (supra). He prays that following the ratio already laid down in these decisions, Appeal ST/259/2012 may be allowed.

2.5 So also in Appeal ST/40901/2014, the details of SCN, period of dispute, disputed amounts etc. as furnished by Ld. Advocate are tabulated as under :

S.NO.	SCN NO & DATE	PERIOD	DETAILS OF DEMAND	OIO	AMOUNT CONFIRMED
1	124/2013 Dt. 20.04.2013	April 2009 to March 2012	Annexure I to SCN – Demand of ST under CICS – Service provided to landowners – Prince Infocity II, Kottivakkam (abatement denied on the ground that the appellants had availed cenvat credit)	STC/001/2014- C(LTU) dt. 4.2.2014	Rs.9,20,20,954
2	-do-	April 2009 to May 2011	Annexure I to SCN – Demand of ST under CICS – Service provided to buyers – Prince Infocity II, Kottivakkam (abatement denied on the ground that the appellants had availed cenvat credit)		Rs.3,14,06,336
3	-do-	April 2009 to March 2012	Annexure III to SCN – Demand of ST under CCS – Service provided to landowners – Prince Residenza,		Rs.93,38,878

			(abatement denied on the ground that the appellant had availed cenvat credit)		
4	-do-	April 2009 to September 2011	Annexure IV to SCN – Demand of ST under CCS – Service provided to buyers – Prince Residenza (abatement denied on the ground that the appellant had availed cenvat credit)		Rs.2,66,03,013
5	-do-	October 2011 to March 2012	Annexure V to SCN – Demand of differential ST under CCS for the period Oct 2011 to Mar 2012 – Service provided to buyers – Prince Residenza (abatement denied on the ground that the appellant had availed cenvat credit)		Rs.77,28,508
6	-do-	April 2010 to March 2012	Annexure VI to SCN– Prince Village I – Residential Demand of interest for delayed payment of ST – Apr 10 to Mar 12		Rs.3,69,76,010 (Since paid and not disputed) Rs.57,41,432 (Interest)
7	-do-	April 2009 to March 2012	Annexure VII to SCN – Prince Village I& Prince Residenza – Residential - Demand of interest for delayed payment of ST – Apr 09 to Mar 12 and Jan 10 to Mar 10		Rs.33,54,564 (Interest)
8	-do-	April 2009 to August 2011	Annexure VIII to SCN – Prince Greenwoods – Residential – Non payment of ST		Rs.43,49,793

			from Apr 2009 to Mar 2010; Short payment of ST under CCS, by claiming 75%, instead of 67%, during the period Apr 2010 to Nov 2010		
9	-do-	April 2011 to November 2011	Annexure IX to SCN – Short payment of ST under RIPS		Rs.2,01,305
10	-do-	July 2010 to March 2012	Annexure X to SCN – Non payment of ST under MMRS – Amount collected from tenants for Electricity, Water, Diesel, etc.		Rs.16,19,255
11	-do-	October 2011 to March 2012	Annexure XI – Non payment of ST under WCS, RIPS and MMRS		Rs.11,57,491
					<b>Rs.21,14,01,543</b>

2.6 Ld. counsel submits that demands mentioned in Sl.No.1 to 5, 8 are in respect of CICS / CCS are for the period post-1.6.2007, hence the issue stands squarely covered by this Bench decision in *Real Value Promoters Pvt. Ltd.* (supra). He prays that following the ratio already laid down in these decisions, Appeal ST/40901/2014 may be allowed on these issues for the said demands.

2.7 Counsel submits that demand in respect of Sl.No.6 is not disputed by appellant and paid by them. However, interest amount in respect of Sl.No.6 (Rs.57,41,432) and Sl.No.7 (Rs.33,54,564) relates to calculation of interest for the delayed payment of service tax which needs verification by lower authority. Sl.No.9 (Rs.2,01,305/-) also requires remand as the demand is not clearly

mentioned. Hence he prays for remand of the matter on the issue of interest liability of these amounts.

2.8 As regards SI.No.10 (Rs.16,19,255/-) pertaining to reimbursable expenses collected from tenants for electricity, water, diesel etc., he placed reliance on Apex Court's judgment in *UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd.* - 2018 (10) GSTL 401 (SC).

2.9 As regards demand amount of Rs.11,57,494/- shown in SI.No.11 above, they are not disputing this demand and have paid the same with interest of Rs.37,448/-.

3.1 So also in Appeal ST/1/2012, the details of SCN, period of dispute, disputed amounts etc. as furnished by Ld. Advocate are tabulated as under :

S. N O.	SCN NO & DATE	PERIOD	DETAILS OF DEMAND	OIO	AMOUNT CONFIRMED
1	148/2007 DT. 23.08.2007 corrigendum dt.04.1.2008	October 2004 to July 2006	Annexure I to SCN – Demand of ST under CICS – Project Prince Infocity (after allowing 67% abatement)	23/2011 dt. 26.8.2011	Rs.8,67,749
2	-do-	October 2006 to July 2006	Annexure II to SCN – Demand of ST under CCS – Prince Greenwoods (after allowing 67% abatement)		Rs.41,65,692
3	-do-	November 2005 to March	Annexure III of SCN – Demand		Rs.24,09,527



		2007	of Service tax under MMRS on the amount collected as "corpus fund"		
4	-do-	March 2007 & April 2007 (Annex IV) Nov 2006 to March 2007 (Annex VI)	Annexure IV & VI of SCN – Demand of ST under CCS / CICS In respect of PGW and ASTP, on amounts collected for TNEB, CMWSSB deposits, etc. (After allowing abatement)		Rs.12,26,638
5	-do-	Oct 2005 to Dec 2005	Annexure V to SCN – Short payment of Service tax in respect of KSTP project – CICS (After allowing abatement)		Rs.66,363
6	-do-	-	Annexure VIII to SCN – Demand of interest for delayed payment Rs.1,07,419		1,07,419
7	-do-	-	Annexure IX to SCN – Demand of ST under CICS – Service provided to		Rs.33,75,598

			landowners under JD agreement (After allowing abatement)		
8	-do-	April 2007	Annexure XI to SCN – Demand of ST under CCS – PGW – Demand only for the month of April 2007 (After allowing abatement)		Rs.10,11,386
			<b>Total</b>		<b>Rs.1,31,22,953</b>

3.2 Ld. Advocate submits that demands and interest raised vide Sl.No. 1, 2, 4 to 8 under the category of CICS / CCS are for the period pre-1.6.2007, hence the issue stands squarely covered by Apex Court decision in *L & T Ltd.* (supra). He prays that following the ratio already laid down in these decisions, Appeal ST/1/2012 may be allowed in respect of these demands.

3.3 As regards amount of Rs.24,09,527 (Sl.No.3), allegedly collected as 'corpus fund', he submits that the said amounts are received from buyers of flats and it would be passed on to the owner's association and hence it is not a consideration for service. He relies on the following case laws :

- (i) Vijayashanti Builders Ltd. Vs CST – 2018 (9) GSTL 257 (Tri-Chennai)
- (ii) Kumar Beheray Rathi Vs CST - 2014 (34) STR 139 (Tri.-Bom.)
- (iii) CCE Vs Sri Krishna Chaitanya Enterprises - 2018 (14) GSTL 533 (Bom.)

3. On the other hand, Ld. A.R Shri A. Cletus supports the impugned orders.

4. Heard both sides and have gone through the facts.
- 5.1 We intend to take the issues appeal wise.
- 5.2 Demands made under category of CICS / CCS :
- (i) Appeal ST/258/2012  
Demand Rs.94,62,842/- under CICS on composite contract with interest  
SCN No.256/2009 dt. 24.06.2009  
Impugned Order-in-Original No. 53/2011 dt. 25.11.2011  
Period : Post-01.06.2007  
Project : Thoraipakkam STP, Ambattur STP and PGW
- (ii) Appeal ST/258/2012  
Demand : Rs.5,18,152/- on alleged short payment of service tax in respect of building sold to Mr. Hariharan Padmanabhan – Project “Prince Infocity” with interest  
Impugned OIO No.53/2011 dt. 25.11.2011

We find that the Ld. Advocate is correct in his assertion that the demands in these impugned orders which relate to composite contract will not be liable to service tax prior to 1.6.2007 by virtue of the Apex Court judgement in *L & T Ltd.* (supra) and even for the period post-1.6.2017 as held in *Real Value Promoters* (supra). In the event, the demand of Rs.94,62,842/- with interest and Rs.5,18,152/- towards short payment of service tax relating to composite works contract cannot be sustained and therefore that portion of the impugned order to the contrary will require to be set aside, which we hereby do. Appeal ST/258/2012 on this issue is allowed with consequential benefits, if any, as per law.

- 5.3 Demand made under MMRS:  
Appeal No.ST/258/2012  
Demand Rs.7,32,183/- with interest under MMRS  
SCN No.256/2009 dt. 24.06.2009  
Impugned Order-in-Original No. 53/2011 dt. 25.11.2011  
Period : Post-01.06.2007 (April 2007 to March 2008)

It is submitted by the Ld. counsel that relates to amounts received from buyers and would be passed on to the owner's association when it is formed. Hence it is not a consideration for service. We find that the Ld. Advocate has correctly relied upon the following case laws which have consistently held that such amount received from buyers which would be passed on to the owner's association formed, will not be consideration for any service :

- (i) *Vijayashanti Builders Ltd. Vs CST 2018 (9) GSTL 257 (Tri.-Chennai)*
- (ii) *Kumar Beheray Rathi Vs CST - 2014 (34) STR 139 (Tri.-Bom.)*
- (iii) *CCE Vs Sri Krishna Chaitanya Enterprises – 2018 (14) GSTL 533 (Bom.)*

Hence, following the ratio laid down in the case laws cited supra, that part of the order to the contrary is set aside and appeal is allowed on this score with consequential benefits, if any, as per law.

5.4 Demand made under RIPS:

Appeal No.ST/258/2012

Demand Rs.11,68,534/- with interest under RIPS

SCN No.256/2009 dt. 24.06.2009

Impugned Order-in-Original No. 53/2011 dt. 25.11.2011

Period : Post-01.06.2007 (June 2007 to March 2008)

As regards this demand raised under Renting of Immovable Property Service, we find merit in the Ld. Advocate's plea for remand of the matter to the original authority to substantiate their claim that they are entitled to avail cenvat credit of service tax paid by the owners of the property. Appeal ST/258/2012 is remanded only on this score to original authority. However, considering that the matter was mired in litigation for quite some time, penalties imposed in relation to this demand under the provisions of Finance Act, 1994 are set aside.

## 5.5 Demands made under CICS / CCS :

(i) Appeal ST/259/2012

Demand Rs.59,08,138/- under CICS with interest  
SCN No.257/2009 dt. 23.10.2009  
Impugned Order-in-Original No. 54/2011 dt. 25.11.2011  
Period : Post-01.06.2007  
Project : Shrotrium Project, Kottivakkam

(ii) Appeal ST/259/2012

Demand Rs.1,06,22,800/- CCS with interest  
SCN No.257/2009 dt. 23.10.2009  
Impugned OIO No.54/2011 dt. 25.11.2011  
Period : Post-01.06.2007  
Project : Sriperumbudur Project

(iii) Appeal ST/259/2012

Demand Rs.7,39,011 under CICS with interest  
SCN No.257/2009 dt. 23.10.2009  
Impugned OIO No.54/2011 dt. 25.11.2011  
Period : Post-01.06.2007  
Project : Kottivakkam Project

(iv) Appeal ST/259/2012

Demand Rs.3,45,27,514/- under CCS with interest  
SCN No.257/2009 dt. 23.10.2009  
Impugned OIO No.54/2011 dt. 25.11.2011  
Period : Post-01.06.2007  
Project : Residential Construction

(v) Appeal ST/259/2012

Rs.61,04,851/- short paid amount towards adjustment of excess ST  
Paid –demand under CICS.  
SCN No.257/2009 dt. 23.10.2009  
Impugned OIO No.54/2011 dt. 25.11.2011  
Period : Post-01.06.2007

As already held above, the aforesaid demands relating to composite works contract along with interest in respect of Appeal ST/259/2012 for the period 2008-09 cannot sustain in view of this Bench decision in *Real Value Promoters*

(supra) and same will require to be set aside, which we hereby do. Although there is an allegation that appellants have wrongly adjusted excess service tax paid, it has been clarified by the appellants that they have not adjusted any excess service tax paid by them, rather, they have not paid service tax on the amounts received during the period from May 2008 to March 2009 as these amounts have been appropriated towards cost of the land sold. In the circumstances, the allegation of the department that irregular adjustment has been done by the appellants fails to convince us. Be that as it may, as per the abstract of demand annexed to the show cause notice, an amount of Rs.61,04,851/- has been sought to be demanded as “differential service tax on commercial construction”. This being the case, the ratio of the decision in *Real Value Promoters* (supra) will also apply to this demand. In the result, that portion of the impugned order confirming the above demands in respect of Appeal ST/259/2012 will not sustain and will require to be set aside, which we hereby do. Appeals ST/259/2012 on the above issues is allowed with consequential benefits, if any, as per law.

#### 5.6 Demands made under CICS / CCS :

- (i) Appeal No.ST/40901/2014  
Demand Rs.9,20,20,954 with interest under CICS (short payment)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2009 to March 2012  
Project : Prince Info City-II [landowner share]
- (ii) Appeal No.ST/40901/2014  
Demand Rs.3,14,06,336 with interest under CICS(short payment)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014

Period : April 2009 to March 2011  
Project : Prince Info City-II [builders share]

- (iii) Appeal No.ST/40901/2014  
Demand Rs.93,38,878 with interest under CICS  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2009 to March 2012  
Project : Prince Info City-II [landowner share]
- (iv) Appeal No.ST/40901/2014  
Demand Rs.2,66,03,013 with interest under CICS(short payment)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2009 to Sept 2011  
Project : Prince Info City-II [builders share]
- (v) Appeal No.ST/40901/2014  
Demand Rs.77,28,508/- with interest under CICS(short payment)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : Oct 2011 to March 2012  
Project : Prince Residenza
- (v) Appeal No.ST/40901/2014  
Demand Rs.43,49,793/- with interest under CCS(short payment)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2009 to August 2011  
Project : Prince Garden Woods Project

In respect of the above demands, the appellants have come in Appeal against denial of abatement on the ground that the appellant had availed cenvat credit. As discussed in the preceding paragraphs, demands relating to composite works contract along with interest in respect of Appeal ST/40901/2014 for the period 2009-10 to 2011-2012 cannot sustain in view of this Bench decision in *Real Value Promoters* (supra) and same will require to be set aside, which we hereby do. In the result, that portion of the impugned order confirming the above demands with

interest in respect of Appeal ST/40901/2014 will not sustain and will require to be set aside, which we hereby do. Appeals ST/40901/2014 on this issue is allowed with consequential benefits, if any, as per law.

- 5.6 (i) Appeal ST/40901/2014  
Demand Rs.3,69,76,010 under WCS  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2010 to March 2012  
Project : Prince Village  
Interest liability : **Rs.57,41,432/-**
- (ii) Appeal ST/40901/2014  
  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : April 2009 to Sept 2011  
Project : Prince Residenza  
Interest liability : **Rs.33,54,564/- [according to assessee]**  
**Rs.32,13,230/- [as per Annex to SCN]**

Appellants are not contesting these demands and have paid up the same also. However, interest liability of Rs.57,41,432/- and Rs.33,54,564/- has apparently not been paid up. Appellants have submitted that there are some errors in the computation of interest liability and pleaded for a remand of the matter for quantification of the correct interest liability. We also note that Annexure VI of the connected SCN indicates the interest liability as Rs.32,13,230/-, against Rs.33,54,564/- conveyed in the synopsis submitted by Ld. Advocate. However, Para 19.3 of the impugned O-I-O dt.04.02.2014 indicates separate amounts of **Rs.32,13,230/-** and **Rs.33,54,564/-** towards interest liability remains to be paid by the appellant in respect of two projects – Prince Residenza, Sriperumbudur and Prince Village-I Tondiarpet. Therefore, the prayer of the appellant is acceded to. Accordingly, while no interference is made with regard to the connected demands, as regards the interest liability the issue is remanded to the



adjudicating authority for limited purpose of re-quantification. Appeal ST/40901/2014 in respect of these demands is allowed by way of remand to the adjudicating authority. However, considering that the matter was mired in litigation for quite some time, penalties imposed in relation to this demand under the provisions of Finance Act, 1994 are set aside.

- 5.7 i) Appeal ST/40901/2014  
Demand Rs.16,19,255/- under MMRS(non inclusion of electricity, diesel charges etc.)  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : July 2010 to March 2012

The said dispute amount relates to expenses towards electricity, diesel and water expenses incurred by the appellants over and above the maintenance charges received from their clients. Counsel has placed reliance in *UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd. - 2018 (10) GSTL 401 (SC)*. From the facts on record, it is evident that these amounts have been reimbursed by the clients and hence the ratio of Hon'ble Supreme Court judgement in *Intercontinental Consultants and Technocrats (supra)* would apply in all fours to the issue at hand. The said demand cannot then survive and is set aside in toto. Appeal ST/40901/2014 is allowed on this issue with consequential benefits, if any, as per law.

- (ii) Appeal ST/40901/2014  
Demand Rs.2,01,305/- short payment under RIPS  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : July 2011 & November 2011

This demand has been raised under RIPS on the ground that certain amounts received from the tenants are not included for the payment of service tax. Ld. Advocate has contended that grounds for this demand is not clear. However, from para-6 of the SCN No.124/2013 dt.20.4.2013 (page 9), *raison d'etre* of the said demand has been amplified and it has been clearly mentioned that demand relates to short payment of service tax under Renting of Immovable Property Service (RIPS) under the category of letting out of premises by assessee to their clients namely 3i Infotech, CSS Corp, Optimus Global Syntel etc. In consequence, the plea of the appellants that '*demand not clear*' does not have any merit. We therefore do not find any reasons to interfere with the said demand. Appeal in this regard is therefore dismissed.

- (iii) Demand of service tax under WCS,RIPS & MMRS.  
Appeal ST/40901/2014  
Demand Rs.11,57,494 under MMRS with interest Rs.37,448/-  
not disputed and already paid.  
SCN No.124/2013 dt. 20.04.2013  
Impugned OIO No.1/2014 dt. 04.02.2014  
Period : July 2010 to March 2012

Appellants have not disputed the tax liability and have paid up the entire tax liability as also part of interest amount of Rs.37,448/-. They are only seeking waiver of penalty. The fact of payment of tax liability as well as the part of interest liability is confirmed in para-8 of the SCN No.124/2013 dt. 20.4.2013. Taking into account that the issue of taxability in all these categories relating to construction renting, repair etc. were mired litigation, for quite some time, there is a case for waiver of penalty in the matter. The penalties imposed *vis-a-vis* this demand is therefore set aside, subject to appellants having discharged entire interest liability in respect of the demand. Appeal is partly allowed to this extent.

- 5.8 (i) Appeal No.ST/1/2012  
Demand Rs.8,67,749 with interest  
SCN No.148/2007 dt. 23.08.2007 read with  
corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Period : October 2004 to July 2006  
Project : Prince Infocity, Kandanchavadi
- (ii) Appeal No.ST/1/2012  
Demand Rs.41,65,692 with interest  
SCN No.148/2007 dt. 23.08.2007 read with  
corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Period : October 2006 to April 2007  
Project : Prince Green Woods
- (iii) Appeal No.ST/1/2012  
Demand Rs.9,15,831 (under CON) + Rs.3,10,807 (under CCS) =  
Rs.12,26,638 with interest (short payment of tax – car parking,  
contingent and TNEB, CMW charges)  
SCN No.148/2007 dt. 23.08.2007 read with  
corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Periods : March 2007 & April 2007,  
November 2006 to March 2007.  
Project : PGW and ASTP
- (iv) Appeal No.ST/1/2012  
Demand Rs.66,363/- with interest  
SCN No.148/2007 dt. 23.08.2007 read with  
corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Period : October 2005 to December 2005.  
Project : KSTP Project
- (v) Appeal ST/1/2012  
Demand : Rs.1,07,419 short payment of interest.  
SCN No.148/2007 dt. 23.08.2007 read with  
corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011
- (vi) Appeal No.ST/1/2012  
Demand Rs.33,75,598/- with interest under CCS service provided to  
landowners under joint agreement.  
SCN No.148/2007 dt. 23.08.2007 read with corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Project : Kandanchavadi Project

- (vii) Appeal No.ST/1/2012  
Demand Rs.10,11,386/- with interest under CCS  
SCN No.148/2007 dt. 23.08.2007 read with corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Period : April 2007  
Project : Prince Green Wood

As already held above, the aforesaid demands relating to composite works contract along with interest in respect of Appeal ST/1/2012 for the period 10.09.2004 to 30.04.2007 cannot sustain in view of this Bench decision in *Real Value Promoters* (supra) and same will require to be set aside, which we hereby do. In the result, that portion of the impugned order confirming the above demands in respect of Appeal ST/1/2012 will not sustain and will require to be set aside, which we hereby do. Appeals ST/1/2012 on this issue are allowed with consequential benefits, if any, as per law.

- (vii) Appeal No.ST/1/2012  
Demand Rs.24,09,527/- with interest under MMRS on the amount collected as corpus fund.  
SCN No.148/2007 dt. 23.08.2007 read with corrigendum dt. 4.1.2008  
OIO No.23/2011 dt. 26.08.2011  
Period : April 2007  
Project : Prince Green Wood

It is submitted by the Ld. counsel that relates to amounts received from buyers and would be passed on to the owner's association when it is formed. Hence it is not a consideration for service. We find that the Ld. Advocate has correctly relied upon the following case laws which have consistently held that such amount received from buyers which would be passed on to the owner's association formed, will not be consideration for any service :

- (i) *Vijayashanti Builders Ltd. Vs CST 2018 (9) GSTL 257 (Tri.-Chennai)*
- (ii) *Kumar Beheray Rathi Vs CST - 2014 (34) STR 139 (Tri.-Bom.)*

- (iii) *CCE Vs Sri Krishna Chaitanya Enterprises – 2018 (14) GSTL 533 (Bom.)*

Hence, following the ratio laid down in the case laws cited supra, that part of the order to the contrary is set aside and appeal is allowed on this score with consequential benefits, if any, as per law.

All the four appeals are disposed of in above terms.

(operative part of the order pronounced in court)

**(P. Dinesha)**  
**Member (Judicial)**

**(Madhu Mohan Damodhar)**  
**Member (Technical)**

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