

Brief note on the recent Hon'ble CESTAT, Hyderabad decision on the applicability of the service tax on the landowner's share:

Hon'ble CESTAT, Hyderabad vide Final order No. A/30559/2018 dated 11.05.2018 (in case of M/s. Vasantha Green Projects v. CCT, Rangareedy) held that **developer is not liable for service tax on the built-up area allotted to land owner pursuant to JDA.**

What are the facts of the case?

1. M/s. Vasantha Green Projects (developer) has entered JDA with landowner and has allotted certain villas in lieu of land foregone by the landlord. Landlord has retained all the villas so allotted to them.

What is the reasoning of the decision?

2. Decision has been rendered on the following reasoning.
 - a. The **construction cost of the land owner share was also included in the sale price of villas sold by developer to his customer on which service tax was duly paid** and hence again making the payment of landowner share duplicates the tax.
 - b. The villas allotted to landowner was retained and not sold, thereby differentiating CESTAT decision in case of LCS City Marker.
 - c. There was interpretation of section 67 involved and amount received from the customers were duly declared in service tax returns and hence there was no suppression.

3. What is the advantage that can be gained from the above judgment?

The above decision helps in contesting the pending service tax demands, if any and also the future tax demands made either under service tax or GST.

4. What about the taxes that are paid earlier?

Assessees' can file refund claim under section 11B of the Central Excise Act, 1944 which is made applicable to service tax vide section 83 of the Finance Act, 1994 for the taxes paid earlier. The time limit of 1 year applies and also

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the service tax incidence should not have been passed on to the landowners (i.e. ST should not have been collected) Further in case the amount was paid on intervention of the department the said time limit may not apply.

5. Are there decisions on similar issue and if yes, what it says?

Yes, there are decisions on the similar issue notably the Hon'ble CESTAT, Chennai decision in case of LCS City Makers Pvt. Ltd. v. Commissioner — 2013 (30) S.T.R. 33 (Tribunal) expressing contrary view i.e. holding that service tax is liable to be paid on the built-up area shared with the landowners. However this has been differentiated since landowner has retained the villas and not sold.

There is also Government Circular No. 151/2/2012-S.T., dated 10-2-2012 clarifying that flats given to the landowners are liable for service tax. However, this circular has been ruled as inappropriate reasoning.

(Disclaimer: This is only a brief note on the cited decision and general statutory provisions of service tax as applicable. This cannot be considered as our legal opinion/advice, Hiregange and Associates would not be responsible for any action taken based on this note without further consultation with Hiregange and Associates)