IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 40870/2016

(Arising out of Order in Original No. CHN-SVTAX-001-COM-95-2015-2016 dated 29.01.2016 passed by the Principal Commissioner of Service Tax– I, Chennai)

M/s. Green Avenue Homes & Gardens **Appellant**
No. 305-E/170, TTK Road
Alwarpet, Chennai – 600 002.
"Sruthi" No. 21, Second Main Road
Gandhi Nagar, Chennai – 600 020.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Shri S. Rajagopalan, Advocate and
Shri R. Balachandar, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40662/2026

Date of Hearing: 03.02.2026
Date of Decision: 01.06.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant Order in Original No. CHN-SVTAX-001-COM-95-2015-2016 dated 29.01.2016 passed by the Principal Commissioner of Service Tax– I, Chennai (impugned order).

An Apercu of the Facts

2. Brief facts are that the appellant, was engaged in constructing residential complexes, apartments, and villas. Its activities were investigated by the Survey, Intelligence and Research Branch of the Commissionerate. On scrutiny, it was found that from April 2009 to December 2012, the appellant developed eight villa projects, including

one under joint development, each having more than 12 units, with common gated community facilities for the owners of villas in the project. According to the department the services allegedly were 'works contract service' as defined under section 65(105)(zzzza) of the Finance Act, 1994 (**FA, 1994**), and covered specifically under 'Construction of Complex' as defined under section 65(30a) of the FA, 1994. The department computed service tax liability at Rs.4,04,98,480/- (after adjusting Rs.58,46,024/- already recovered), based on project sale values and records seized during investigation. The appellant's VCES declaration for part of the period failed due to non-payment of the required amount within time. Accordingly, a show cause notice dated 24.10.2014 was issued demanding tax, interest, and penalties. The adjudicating authority confirmed the demand with interest, imposed equal penalty under Section 78, and Rs.10,000/- penalty under Section 77 for non-filing of ST-3 returns. Hence, the present appeal.

3. The learned Advocates S/Shri S. Rajagopalan and R. Balachandar appeared for the appellant and Smt. O.M. Reena, Ld. Authorized Representative appeared for the respondent.

Submissions made by the Appellant

3.1 The Ld. Advocate Shri S. Rajagopalan submitted on behalf of the appellant that:

A. Each buyer was allotted a specific plot, obtained plan approval in his own name, and separately engaged the Appellant to construct his villa. There was no single agreement to construct a residential complex. The case is plainly one of independent construction for individual owners, a fact the Respondent has never disputed.

B. Common amenities such as a clubhouse, pool, security or internal roads do not, by themselves, convert independent villas into a "residential complex." The impugned order proceeds on that erroneous assumption that shared amenities means a residential complex and ignores the statutory definition and settled case law.

C. The Respondent wrongly treated each villa as a unit in a complex, ignoring the essential requirement of a single arrangement and a common approval by the competent authority for construction of the complex as such.

D. In **M/s. Modi & Modi Construction Vs Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II**, Appeal No. ST/27013/2013 dated 03.10.2019, CESTAT held that where plots are sold and separate agreements are entered into with individual buyers for construction of their houses, no service tax is leviable as construction of a residential complex.

E. That principle was reaffirmed in **Commissioner of Central Tax, Hyderabad-GST Vs CSK Realtors Ltd.**, Service Tax Appeal No. 30265 of 2017 dated 06.03.2024, where the Revenue's appeal was dismissed on materially identical facts. These decisions rest on **Macro Marvel Projects Ltd.** [2008 (12) STR 603 (Tri.-Chennai)], affirmed by the Apex Court [2012 (25) STR J154 (SC)].

F. Revenue's reliance on **Madhukar Mittal Vs CCE, Panchkula** [2015 (40) S.T.R. 969 (Tri.-Del.)] is inapplicable. That case concerned a project with more than 12 units under a common plan. Here, each villa had a separate approval and there was no common agreement to construct a complex.

G. In **Jay Pee Enterprises Vs Commissioner of CGST & Central Excise, Salem** (FINAL ORDER Nos.40488-40489/2025, dated 02.05.2025), this Tribunal held that the requirements of Section 65(91a) are cumulative, that construction of individual houses does not amount to construction of a residential complex, and that post-01.07.2012 exemption is available under Sl. No. 14(b) of Notification No. 25/2012. The finding that the Appellant constructed a "residential complex" is therefore unsustainable. Accordingly, no service tax is payable up to 30.06.2012, as the activity falls outside Section 65(91a), and for the period from 01.07.2012 the Appellant is entitled to exemption under Sl. No. 14(b) of Notification No. 25/2012 dated 20.06.2012.

H. Without prejudice, the issue is purely interpretational. The extended period is therefore unavailable, the SCN is time-barred, and penalty under Section 78 is wholly unsustainable. Accordingly, the demand, interest and penalties imposed under the impugned order are liable to be set aside in full.

The Ld. Counsel prayed that the impugned order be set aside and the appeal be allowed with consequential relief.

Submissions made by the Respondent-Revenue

3.2 Smt. O.M. Reena the Ld. Authorized Representative submitted on behalf of Revenue that:

A. The assessee's projects qualify as a "residential complex" because they comprise more than 12 residential units, are developed under a single layout approval, bear a common project identity, and include shared amenities/common areas for which buyers pay.

B. From the records available, it is seen that the assessee themselves refer each project as a single project/ gated community with various common amenities and the units are collectively referred to with a specific name which shows that the individual units are situated in a common area.

C. The assessee's reliance on decisions concerning independent residential houses is misplaced, as the facts here are materially different. The plinth area included the share of common areas. The prospective buyers are to pay for the common amenities. Thus, the requirement in the definition that to be categorized as a 'residential complex' there should be 'common facilities' is fully satisfied by the impugned projects.

D. In the case at hand, each project consists of more than 12 units, has common area/amenities and has a single lay-out approval and project name. The activity is rightly classifiable as Works Contract Service relating to construction of a residential complex, and the service tax demand is therefore sustainable.

E. The decision of Tribunal, Principal Bench, New Delhi, in the case of **Madhukar Mittal Vs. CCE, Panchakula** [2015(40) S.T.R. 969 (Tri. Del)] is more appropriate. applying the ratio of the decision of the Tribunal, it is evident that the activity of assessee is squarely covered under the definition of 'Residential Complex.

F. Further, the benefit of Notification No. 36/2010 and Circular dated 01.07.2010 is unavailable since the service was already taxable from 16.06.2005 and was not a newly introduced taxable service from 01.07.2010. Accordingly, the assessee is liable to pay service tax of Rs. 4,04,98,483/- for the period April 2009 to December 2012.

G. The appellant was also aware of the taxability of the service due to which he filed a declaration under the Voluntary Compliance Encouragement Scheme, 2013 (**VCES**). The decleration failed because it did not pay the required initial 50% within time, making it ineligible for the Scheme under section 107(5) of the Finance Act, 2013.

H. The proviso to section 73(1) is rightly invoked because the appellant, did not file ST-3 returns and did not pay Service Tax, while he was aware of the taxability of the service provided. These facts support suppression with intent to evade tax and hence punitive action under the Act was legal and proper.

The Ld. A.R. prayed that the appeal may be rejected.

Discussion & Analysis

4. We have carefully considered the rival submissions, perused the records and examined the statutory scheme as well as the decisions cited at the Bar. The principal issue that arises for determination is whether the construction undertaken by the Appellant in respect of villas/individual houses, though situated in a larger layout having common amenities, can be brought within the ambit of "construction of residential complex" so as to attract Service Tax.

5. We find from the facts of the case that the dispute relates to eight projects, each of which has more than 12 units, with gated community features involving common utilities for the owners of the villas. The construction of villas are in two categories (i) outright construction and (ii) joint development. In outright construction the appellant enters into agreements with individual owners by paying advance towards the cost of land/ purchase the land. As and when prospective buyer approach the appellant they enter into an agreement

of sale-cum-construction for the sale of undivided share of land and construction of villa. In joint development the appellant and the land owner enter into agreement by which the land owner hands over the land to appellant for the purpose of construction of villas. The appellant in turn agrees to handover the sale proceeds of villas equivalent to 40% of the constructed area and the remaining portion of built up area is allotted to the prospective buyer of constructed area as per Agreement for sale-cum-construction for the sale of undivided share of land and construction of villas.

6. The Appellant has stated that each purchaser was first allotted an identified plot by the Appellant. The purchase then obtained plan approval in his own name and thereafter entered into a separate construction arrangement with the Appellant for construction of a villa on such plot. Thus, the basic factual matrix is not one of a developer constructing a residential complex as a single composite project for purchasers under one common construction agreement. What is evident, instead, is a series of independent constructions undertaken for individual owners. Accordingly, the project is a layout of individual residential houses, not a residential complex comprising buildings with more than 12 units.

6.1 They have further asserted that under Section 65(91a) of the Finance Act, 1994, a “residential complex” must comprise a building or buildings having more than 12 residential units, together with common area and one or more specified facilities. In the present case, they constructs only individual villas, each on a separate plot and under separate approval. Since no building comprises more than 12 dwelling

units, the activity falls outside the scope of "construction of residential complex" and no service tax is attracted.

6.2 The Appellant states that the mere existence of common amenities such as a compound wall, swimming pool, play area, club house or gym does not alter this position. Such facilities become relevant only if there is first a qualifying residential complex; where that foundational requirement is absent, common facilities by themselves cannot bring individual villas within the tax net.

6.3 Further the roads within the premises cannot be treated as common area of the project, as they have been gifted to the Panchayat for public use under a registered Gift Deed. This shows that the project does not answer the statutory description of a taxable residential complex. The appellant states that this position is supported by **Macro Marvel Vs Commissioner of Service Tax,** 2008 (12) S.T.R. 603, where the Tribunal held that construction of individual residential houses does not amount to construction of a residential complex for service tax purposes. The said Order was affirmed by the Hon'ble Supreme Court in 2012 (25) S.T.R. J154. Hence it is clear that individual residential units were never intended to be taxed under the category of "residential complex".

6.4 The Appellant submits, without prejudice to their earlier submissions, that developers were brought within the service tax net only with effect from 01.07.2010 through the Explanation inserted in Section 65(105)(zzzh) by the Finance Act, 2010. That Explanation created a deeming fiction treating construction intended for sale, where consideration is received before completion certificate, as a taxable

service. Prior to 01.07.2010, no such charge existed against developers.

6.5 The Appellant states that the amendment is prospective, as clarified by the TRU letter dated 26.02.2010 and Circular dated 01.07.2010, both of which state that activities covered only by the 2010 changes become taxable from that date. The Supreme Court in **Union of India Vs Martin Lottery Agencies Ltd.** [(2009) TIOL 60-SC-ST], held that where an explanation widens the tax net by introducing a new concept of levy, it cannot be treated as retrospective. The same principle applies here.

6.6 The Tribunal has consistently applied this position. In **Krishna Homes Vs CCE** [(2014) TIOL-402-CESTAT-DEL] and **CCE Vs Flowmore Builders** [(2014)-TIOL-1436-CESTAT], it was held that builder/ developers were not liable to service tax under construction of residential complex service prior to 01.07.2010. Hence, even on this independent ground, the impugned demand for the prior period is unsustainable.

7. On a careful appreciation of the facts, we find considerable force in the submissions advanced on behalf of the Appellant. Critically, the SCN does not rely on any Agreement that set out the foundational facts, nor has the department refuted the submissions made by the appellant. Revenue has heavily relied upon the circumstance that the villas formed part of a single layout approval, carried a common project identity and provided common amenities which the buyers paid for. **In our considered view, these factors, taken either singly or collectively, are not determinative of taxability. A common project name is only a matter of commercial description and**

common amenities are often features of any organized housing layout. None of these on their own, displace the foundational facts that the plots stood identified separately, approvals were obtained individually and construction was contracted for separately by each buyer. The statutory definition cannot be expanded by inference merely because the development was marketed as a gated community.

8. We find that the issue has been examined by Coordinate Benches of this Tribunal in a large number of appeals and answered against Revenue. In **Macro Marvel** (supra) a similar matter was examined and it was held as under:

> "2. The appeal is against demand of service tax of Rs.15,63,145/- for the period 16-6-2005 to 30-11-2005 under the head "construction of complex" service under Section 65(30a) of the Finance Act, 1994. The lower authorities have also imposed a penalty on the assessee under Section 76 of the said Act. The impugned demand is on the amount collected by the appellants from their clients as consideration for construction and transfer of residential houses. It is the case of the appellants that the work done by them fell within the ambit of 'works contract', which became taxable only with effect from 1-6-2007 vide Section 65(105)(zzzza) of the Finance Act, 1994. It is also submitted that service tax cannot be levied from the appellants under any other head for any period prior to 1-6-2007. We have heard the learned Jt. CDR also, who submits that the case may at best be remanded to the authorities below, who apparently did not examine all the submissions of the party. After examining the records of the case, we do not think that a remand is warranted in this case inasmuch as the authorities below chose to sustain the demand of service tax raised in the show-cause notice, regardless of the fact that construction of individual residential units was not included within the scope of "construction of complex" defined under Section 65(30a) of the Finance Act, 1994. The definition reads as follows:-
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> "Construction of complex" means -
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> (a) construction of a new residential complex or a part thereof; or

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

'Residential complex' stands defined under clause (91a) of Section 65 of the Act, which is as follows :-

"(91a) "residential complex" means any complex comprising of -

(i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person."

It is abundantly clear from the above provisions that construction of residential complex having not more than 12 residential units is not sought to be taxed under the Finance Act, 1994. For the levy, it should be a residential complex comprising more than 12 residential units. Admittedly, in the present case, the appellants constructed individual residential houses, each being a residential unit, which fact is also clear from the photographs shown to us. In any case, it appears, the law makers did not want construction of individual residential units to be subject to levy of service tax. Unfortunately, this aspect was ignored by the lower authorities and hence the demand of service tax. In this view of the matter, we are also not impressed with the plea made by the appellants that, from 1-6-2007, an activity of the one in question might be covered by the definition of 'works contract' in terms of the Explanation to Section 65(105)(zzzza) of the Finance Act, 1994 as amended. 'According to this Explanation, 'construction of a new

> residential complex or a part thereof' stands included within the scope of 'works contract'. But, here again, the definition of "residential complex" given under Section 65(91a) of the Act has to be looked at. By no stretch of imagination can it be said that individual residential units were intended to be considered as a 'residential complex or a part thereof'. **These observations of ours with reference to 'works contract' have been occasioned by certain specific grounds of this appeal and the same are not intended to be a binding precedent for the future.**
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> 3. For the reasons already noted, we set aside the impugned order and allow this appeal. The stay application also gets disposed of."
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> **(emphasis added)**

The above judgment was affirmed by the Hon'ble Apex Court in **Commissioner Vs Marco Marvel Projects Ltd**, - 2012 (25) STR J154 (SC).

8.1 The issue including the applicability/ non-binding nature of the Order in **Macro Marvel** (supra), came up for consideration by a Coordinate Bench of this Tribunal at Hyderabad, in the case of **Commissioner of Central Tax Hyderabad Vs C.S.K. Realtors Ltd.** [FINAL ORDER No. A/30185-30186/2024, dated: 06.03.2024]. The Tribunal held:

> "19. It is further urged that the ruling of M/s Macro Marvel Project is not applicable in the facts of the instant case as the said case only deals with the construction of individual houses, and it is not a case of construction of group of individual houses with common facilities. The same have been distinguished by this Tribunal in **Esha Homes Vs Commissioner** [2012 (25) STR 465 (Tri-Chennai)] in the **Interim Stay** Order dated 20.10.2011. Reliance is also placed on the ruling of Co-ordinate Bench in the case of **M/s Modi and Modi Constructions** [2021 (45) GSTL 398 (Tri-)] wherein the dispute under similar facts was for the period January 2009 to December 2011. This Tribunal have held that "the construction of houses in a gated community, being more than 12 with common facilities, will qualify as a residential complex, observing that in the case of Micro Marvel Projects, the full definition under Section 65(91a)" was not considered, as is evident from the Final Order of the said case. Further, in that case the Tribunal held that the show cause notice itself states that the plots along with

semi-finished buildings were sold to the buyers under sale agreement/deed. Thereafter, a separate agreement was entered with the individual plot/home owners for completion of the building. In other words, there is no agreement for completion of the entire complex, but there are a number of agreements with each individual owner for completion of their building. In other words, the individual owner is engaging the assessee for construction of the complex for his personal use as residence, which activity is categorically excluded under the definition in Section 65(91a). **Accordingly, the Tribunal set aside the demand allowing the appeal of Modi and Modi Constructions.**

20. In the said judgment, the Learned Member (Judicial) differed with the observations of the Member (Technical) - that in case of houses in a gated community, the same being held taxable by the Member (Technical), inspite of ruling in Macro Marvel Projects of Apex Court.

21. Accordingly, Learned AR for Revenue prays for allowing their appeal and to confirm the taxing proposal in the show cause notice.

22. Opposing the appeal, Learned Counsel for the respondent assessee states that the issue in appeal is no longer res-integra. Admittedly, the Order of this Tribunal in **M/s Macro Marvel Projects Ltd.,(**supra) have been approved by the Apex Court by dismissing the appeal of Revenue. There is no presumption in law, that explanation to Section 65(91a) was not considered by Apex Court in Macro Marvel Projects Ltd. Further urges that in similar facts and circumstances, in the matter of **Baba Construction Pvt Ltd.**, the Allahabad Bench also held that where individual houses are constructed in a gated community, the same is excluded under the definition in Section 65(91a) as reported at [2018 (15) GSTL 345]. The said ruling was also upheld by Apex Court against Revenue and the appeal was dismissed, reported at [2018 (15) GSTL J120 (SC)]. Accordingly, prays for dismissing the appeal of Revenue.

23. **Having considered the rival contentions, we find that there is no significant change in the definition of residential complex as defined in Section 65(91a) of the Act both before and after 01.07.2012. Admittedly, the Respondent have sold developed plots to the buyers. Thereafter they have entered into agreement with the buyer/owner of plot to construct single house or residential unit. The house plan is also approved in the name of owner/buyer of the plot. Thus the activity is excluded or exempt both before and after 01.07.2012.** Further, we find that the said issue is no longer res integra, in view of the ruling of this Tribunal in **Macro Marvel Projects Ltd., & Baba Construction** (supra) and which have been approved by the Apex Court.

> 24. In view of our findings and observations, we find no merit in these appeals by Revenue, and we dismiss the same."
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> (emphasis added)

8.2 A Coordinate Bench of this Tribunal at New Delhi, recently, in the case of **M/s. Priyadarshini Constructions Vs Commissioner of Central Goods and Service Tax, Excise and Customs, Bhopal** [FINAL ORDER No. 50419/2025, Dated: 20.03.2025] while examining a similar issue including the judgment of **Madhukar Mittal** (supra), relied upon by Revenue, held:

> "5.5 . . . The refund of service tax paid under protest vis-à-vis 'Construction of Residential Complex' also stands adjudicated by this Tribunal in an appeal titled as **M/s. Quality Builders & Contractor Vs. Commissioner of Central Goods & Service Tax**, in Service Tax Appeal No. 53481 of 2018 vide Final Order No. 50809 of 2022 dated 05.09.2022, wherein also it has been held -
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> > 14. **The definition of a "residential complex" leaves no manner of doubt that it would be a complex comprising of a building or buildings, having more than twelve residential units. In other words a complex may have a building having more than twelve residential units or a complex may have more than one building each having more than twelve residential units. Independent buildings having twelve or less than twelve residential units would not be covered by the definition of "residential complex".**
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> Based on these findings, the Principal Bench of this Tribunal held that the Commissioner was not justified while rejected the refund claim."
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> (emphasis added)

8.3 In **Jay Pee Enterprises** (supra) the Department was of the view that, though the appellant had built individual houses, the appellant had constructed residential complexes consisting of more than 12 units with common area and common facilities for which the appellant had collected amount separately apart from the construction cost and

hence the services rendered by the appellant fell under the category of "Construction of residential complex services under Section 65 (105) (zzzh) of Finance Act. The Bench speaking through one of us [Shri Ajayan T.V. – Ld. Member (Judicial)], held:

> "11) We find that, to come within the ambit of the definition of "residential complex" as defined in Section 65(91a), the complex should comprise of a building having more than twelve residential units, or the complex should comprise of buildings having more than twelve residential units. Such building or buildings having more than twelve residential units should have a common area and any one or more of the facilities stipulated therein. That the building or buildings should have more than twelve residential units, should have a common area and should have any one or more of the facilities stipulated therein are cumulative requirements. The definition also states what is excluded. **A complex may satisfy all the requirements as stated above, yet if the complex is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person, then such a complex is excluded from being considered a "residential complex" under Section 65(91a).** From the appeal records, it is also evident from the photographs produced that these are individual houses that were constructed by both the appellants and not building or buildings having more than twelve residential units. Therefore, by virtue of these individual houses not being a building or buildings having more than twelve residential units, they do not satisfy clause (i) of Section 65 (91a) and are therefore straightaway ousted from the ambit of the definition."
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> (emphasis added)

Judicial discipline requires that we follow the decisions of Benches of co-equal strength. Revenue has not submitted or referred to any subsequent development by which the legal position has been changed or varied by a superior court.

9. In view of the foregoing discussion, we hold that the activity undertaken by the Appellant does not amount to construction of 'residential complex' for the purpose of levy of service tax. The impugned order, having proceeded on an erroneous premise that

common amenities and a common layout are by themselves sufficient to attract the statutory definition, cannot be sustained.

10. In the light of the above discussions the other issues pertain to retrospectivity, limitation, interest and penalty do not survive and the Appellant filing a declaration under the VCES scheme is also of no avail as it does not automatically mean that the activity rendered by them was taxable, more so when the issue has been decided in their favour on merits.

Conclusion

11. In the circumstances discussed, the impugned order demanding Service Tax, along with interest and penalties, is set aside. The appeal is allowed with consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 01.06.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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