CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51031 of 2020

[Arising out of Order-in-Original No. 10 to 12/TPS/PC/CGST/DSC/2019-20 dated 04.03.2020 passed by the Principal Commissioner of Central Goods & Service Tax, Delhi South Commissionerate, New Delhi]

M/s. Gandharva Infrastructure and Projects Ltd. **...Appellant**
305, Mercantile House, 15,
Kasturba Gandhi Marg,
Connaught Place, New Delhi-110001

VERSUS

Principal Commissioner of CGST – Delhi South **...Respondent**
Plot 2-B. 3rd Floor, EIL, Annexe,
Bhikaji Cama Place, Delhi South,
New Delhi - 110066

WITH

Service Tax Appeal No. 51032 of 2020

[Arising out of Order-in-Original No. 03/TPS/PC/CGST/DSC/2020-21 dated 23.06.2020 passed by the Principal Commissioner of Central Goods & Service Tax, Delhi South Commissionerate, New Delhi]

M/s. Gandharva Infrastructure and Projects Ltd. **...Appellant**
305, Mercantile House, 15,
Kasturba Gandhi Marg,
Connaught Place, New Delhi-110001

VERSUS

Principal Commissioner of CGST – New Delhi **...Respondent**
Plot 2-B. 3rd Floor, EIL, Annexe,
Bhikaji Cama Place, Delhi South,
New Delhi - 110066

AND

Service Tax Appeal No. 51038 of 2020

[Arising out of Order-in-Original No. 06-07/TPS/PC/CGST/DSC/2020-21 dated 31.07.2020 passed by the Principal Commissioner of Central Goods & Service Tax, Delhi South Commissionerate, New Delhi]

M/s. Gandharva Infrastructure and Projects Ltd. **...Appellant**
305, Mercantile House, 15,

Kasturba Gandhi Marg,
Connaught Place, New Delhi-110001

VERSUS

Principal Commissioner of CGST – New Delhi …Respondent
Plot 2-B. 3rd Floor, EIL, Annexe,
Bhikaji Cama Place, Delhi South,
New Delhi - 110066

APPEARANCE:
Shri Atul Gupta, Advocate for the Appellant
Shri Sunil Narayan, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 29.04.2026
DATE OF DECISION: **12.08.2026**

FINAL ORDER NO. 51329-51331/2026

DR. RACHNA GUPTA

The present order disposes off three appeals pertaining to the same appellant with respect to three Orders-in-Original involving the same issue for the different periods. The details of three of the appeal is tabulated as below : -

Appeal No.	Period	SCN	Demand Proposed	Issue	Order-in-Original	Appeal	CESTAT's Final Order	De-novo order
ST/51031/2020	23.03.2007 to 04.03.2010	SCN dated 23.08.2010	1,81,70,358	Tax demand on first service	OIO dated 30.11.2011 Dropped entire demand	Department appeal [ST/380/2012-CU(DB)]	Final Order No. 55040-55041/2017 dated 11.07.2017 Demand in respect of Internal Development Works & Construction of boys hostel dropped. Demand	Impunged OIO dated 04.03.2020 Demand re-confirmed on 1st 3 acitivities of the Appellant amounting to Rs. 1,36,92,357 falling under 1st SCN.

							in respect of remaining activity remanded back*	
	05.03.2010 to 30.09.2010	SCN dated 27.06.2011	18,56,080	Tax demand on 4th& 5th services i.e., Internal Development Work & Construction of boys hostel	OIO dated 30.11.2012 Dropped entire demand	Department appeal [ST/56952/2013-CU(DB)]		
	01.10.2010 to 30.09.2011	SCN dated 23.04.2011	53,00,419					
ST/51032/2020	01.10.2011 to 30.06.2012	SCN dated 22.04.2013	63,60,502	Tax demand on 2nd, 5th, &6th service (i.e., c/o 146 houses, hockey pavilion &boys hostel)	Impunged OIO dated 25.06.2020 Demand in respect of Construction of boys hostel & hockey pavilion dropped. Demand in respect of c/o 146 houses confirmed – Rs. 3,13,784/-	Appeal filed by Assessee	N/A	N/A
ST/51038/2020	01.04.2014 to 31.03.2015	SCN dated 07.04.2016	23,08,924	Tax demand on various services like construction of roads, boys hostel, hockey pavilion of flats, etc.	Impunged OIO dated 31.07.2020 Demand in respect of all services except booking of flats dropped.. Demand confirmed – Rs.12,53,571/- out of which Rs .10,44,643/- already paid by the Appellant via ST-3 returns.	Present appeal Filed by assessee	N/A	N/A

1.1 The facts which culminated into these appeals are that the assesseeis engaged in the construction of residential complex for Greater Noida industrial development authority. The Department investigated into the allegation that the respondent has not paid service tax and on completion of investigation, show cause notices were issued covering different periods.

1.2 Alleging the activity of the appellant to be under the category of construction of complex services, which is taxable, five show cause notices as tabulated above were served upon the appellants vide order in original dated 30.11.2012, the entire demand of three show cause notices was dropped. The department appeals against the same has been adjudicated by this tribunal vide final order dated 11.07.2017 (asmentioned in the tableabove). Pursuant to the direction of the demand, the demand has been confirmed on the three activities of the appellant vide order in original dated 04.03.2020. The demand of remaining two show cause notices has also beenconfirmed vide order in original dated 25.06.2020 and 31.07.2020 (as mentioned in the table above). Aggrieved of three of those orders, the present three appeals have been filed by the appellant.

2. We have heard Shri Atul Gupta, learned Chartered Accountant for the appellant and Shri Suni Narayan, learned Authorized Representative for the respondent.

3. Ld. Chartered Accountant for the appellant has submitted that the service in disputes falls under 'Works Contract Service', (WCS) and hence the classification has been wrongly adopted under the head of Construction of Complex Services in the show cause notices as well as in the impunged order. The department had already

allowed 67% abatement at the stage of issuing show cause notice itself. This is the clear indication that the department also considered the services of the appellant to be of composite nature. The adjudicating authority below has still denied the classification under Works Contract Service. This is in total disregard and utter violation of this tribunals final order dated 11.07.2017. The tribunal had categorically directed to re-adjudicate in view of the decision of Hon'ble Supreme Court in the case of **Commissioner, Central Excise and Customs, Kerala and Ors. Vs Larsen and Toubro Ltd and Ors. reported as 2015(39) STR 913 Supreme Court.** Ld. Chartered Accountant further submitted, that according to the said decision no service tax can be imposed prior to 1.06.2007 on the composite services while for the period after 01.06.2007, the demand of construction of complex service has to be classified under WorksContract Service, for the demand to be confirmed. Since all the show cause notices in the present appeal have proposed demand under service simpliciter of 'Construction of Complex Service^instead of Work Contract Service', the demand has wrongly been confirmed.

3.1 With respect to the service tax collected from GNIDA, the service recipient of the appellant it is submitted that the amount was deposited, under protest, with government ex-chequer.However, on being held that the appellant is not liable to pay Service tax on account of incorrect classification by the department, Appellant undertakes that either –

(a) The said amount will be refunded back to the GNIDA (service recipient) once refund is sanctioned by the tax department; or,

(b) GNIDA may directly seek refund (from the department) of said tax paid by the Appellant under protest.

3.2 Finally it was submitted that the entire information about nature of business of appellant was already available with the department. Hence it is wrongly held in the orders under challenge that the supporting documents were not provided. The penalty has also been wrongly imposed. Ld. Chartered Accountant has relied upon the following decision: -

- **Commissioner of Service Tax, Ahmedabad v. Bachafinlease, cited in 2016 (343) E.L.T. 108 (Guj.) (Para 5)**
- **Coastal Diagnostic Services Ltd. v. Commissioner of Cus., Chennai, cited in 2004 (174) E.L.T. 110 (Tri. Bang.) (Para 4)**
- **Kanwal Pal Singh & Ors. v. Collector of Customs, Kanpur, cited in 1988 (35) E.L.T. 725 (Tribunal) (Para 3)**
- **Central India Engineering Co. v. Commissioner of C. Ex., Nagpur, cited in 2016 (44) S.T.R. 657**
- **Khandwala Securities Ltd. v. Commissioner of Service Tax, Mumbai - I, cited in 2015 (40) S.T.R. 738**
- **Pushpam Pharmaceuticals Co. v. CCE, Bombay, cited in 1995 (78) ELT 401**

With these submissions, the orders under challenge in three of the appeals are prayed to be set aside and all three appeals are prayed to be allowed. Ld. DR on the other hand has reiterated the findings of the order under challenge while praying for dismissal of three of the appeals.

4. Learned Departmental Representative on the other hand has reiterated the findings of the Commissioner in the impugned order and has prayed for dismissal of all three appeals.

5. Having heard both the parties and perusing the entire records, it is observed that the demands for service tax were made vide the impugned show cause notices as mentioned in the table above in respect of the following works carried out by the respondent:

> 1) Construction of individual independent residential houses for Greater Noida, Industrial Development Authority (GNIDA) in respect of:
>
> i. 60 separate houses in Sector Omicron-II (Part-E), 146 houses in sector XU-1(Package-I) & 48 in Sector Omicron 1A for GNIDA, and
>
> ii. Internal development work for Omicron (II) Part A including roads, drinking water, sewerage system, water supply system, cattle, etc.
>
> 2) Construction of boys hostel in Guatam Budh University Greater Noida. The demand for service tax was made under the category of construction of complex falling within section 65 (30a) of the Finance Act 1994 read with section 65(91a) ibid.

The original adjudicating authority vide the Orders-in-Original as mentioned above set aside the demand for service tax entirely for the following reasons:

> i) The respondent has undertaken construction of single storey houses in three different localities. The adjudicating authority has taken the view that these will not be covered

within the definition of construction of complex for the reason that in one block of land only one single story. house has been constructed. For the activity to fall within the construction of complex service, a single building having at least 13 residential units should be constructed. He has also relied upon the decision of the Tribunal in the case of **Macro Marble Projects ltd. 2008 (12) STR 603 (SC)** which has been upheld by the Hon'ble Supreme Court.

ii) With reference to the internal development works including construction of roads, and other infrastructure, the adjudicating authority has taken the view that these infrastructure development works cannot be classified under the category of residential complex. These activities would fall under the commercial or industrial construction on which no service tax can be levied since these are in the nature of civic amenities provided by authority constituted under the law and are not commercial activities of GNIDA.

iii) In respect of construction of boys hostel for Gautam Budh University, he has dropped the demand for the reason that the construction of boys hostel cannot be categorized under construction of residential complex. No service tax can be levied on such construction since it is meant for the use of Guatam Budh University which is an institution established solely for educational purpose being non commercial in nature.

6. This Tribunal vide Final Order No. 55040-55041/2017 dated 11.07.2017 has already held as follows:

i. Each of the cluster of houses constructed by the appellant will form a residential complex comprising of several individual residential houses with common area and various facilities. Hence the construction is a taxable activity however the nature of construction carried out by the appellant is held to be of composite nature involving supply of materials as well as provision of services subject to verification. Hence the matter was remanded back to the original authority for a fresh decision, keeping in view the law laid down by Hon'ble Apex court in Larsen and Tubro (Supra) decision

ii. We are of the view that these are in the nature of civic amenities being provided by the authority constituted under law on above commercial activities of GNIDA. Such welfare activities cannot be covered by the construction of complex services and the adjudicating authority has rightly dropped the demand for service tax.

iii. A hostel cannot be considered as a residential unit and hence cannot be covered within the construction of complex services. In any case, such construction activity has been done for the use of Gautam Budh University which is an institution established solely for educational purpose. We uphold the adjudicating authority's findings that no service tax will be payable on construction of boys hostel.

7. The department is not in appeal against the dropping of demand on said two grounds. Thus the only issue is about the construction of residential houses which tribunal has already held to be the composite service. The adjudicating authority has still confirmed the demand under Construction of Complex Service. The authority was directed to decide afresh in terms of decision in the case of **Larsen & Toubro Ltd. v. State of Kamataka, reported**

as (2014) 1 SCC 708 . In said case the hon'ble Supreme Court stated : -

> *"In our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "work contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr. K.N. Bhat that the term "works contract" in Article 366(29-A) (b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366", (at para 72).*

8. The Hon'ble Supreme Court has finally settled the issue as to whether a composite contract involving provision of service as well as transfer of property in goods could be covered under CICS and CCS from the date of introduction of service tax levy on such services.The Apex Court has observed that in as much as section 67

of the Act, dealing with valuation of taxable services, refers to the gross amount charged for service, the services of CICS and CCS would cover only pure service activities, as any contrary view would imply that the Union Government can levy service tax on the gross amount, including the value of transfer of property in goods also, which is constitutionally impermissible. The exemption notifications issued at the discretion of the executive are not sufficient to sustain the levy.The Hon'ble Apex Court has also observed that only with the introduction of WCS as a separate taxable service, statutory mechanism to exclude the value of transfer of property in goods has been prescribed.The effect of the above decision is that CICS and CCS, as defined under clauses (zzq) and (zzzh), respectively, of sub section (105) of the section 65 would cover only pure service contracts, without any transfer of property in goods.

9. In various decisions the importance of classification of services has been laid down and it has been held that once the show cause notice proposes demand of service tax under a particular category of taxable service, the adjudicating/appellate authorities cannot travel beyond the scope of allegations in the show cause notice and confirm the demand under a different category of taxable service as the assessee was not at all put on notice on the category of taxable service. As already observed and submitted by Ld. Chartered Accountant for appellant also that according to the said decision in Larsen & Toubro case no service tax can be imposed prior to 1.06.2007 on the composite services while for the period after 01.06.2007, the demand of construction

of complex service has to be classified under Works Contract Service, for the demand to be confirmed. The impunged activity of appellant is already held to be of composite nature involving supply of goods as well as supply of service by the Tribunal earlier final order qua the impunged SCN and department has accepted the same, it is held that demand has wrongly been confirmed under Construction of Complex Service, the service simpliciter, The adjudicating Authority is held to have violated the Principle of Judicial Protocol while not properly following the directions of remand.

10. In light of entire above discussions the orders under challenge in three of the present appeals are hereby set aside and three of the appeals are hereby allowed.

[Order pronounced in the open court on **12.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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