CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO.3

Service Tax Appeal No.56719 of 2013

[Arising out of Order-in-Original No.52-53/2012-13(ST)-COMMR. dated 27.12.2012 passed by the Commissioner, Customs, Central Excise & Service Tax, Jaipur.]

M/s. Gyarsilal Mohanlal — **Appellant**
83, Karni Vihar, Ajmer Road, Jaipur, Rajasthan.

Vs.

Commissioner-I , Customs, Central Excise & Service Tax, Jaipur — **Respondent**
New C.R. Building, Statue Circle, Jaipur, Rajasthan

WITH

Service Tax Appeal No.56720 of 2013

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M/s. Gyarsilal Mohanlal — **Appellant**
83, Karni Vihar, Ajmer Road, Jaipur, Rajasthan.

Vs.

Commissioner-I , Customs, Central Excise & Service Tax, Jaipur — **Respondent**
New C.R. Building, Statue Circle, Jaipur, Rajasthan

Appearance:
Present for the Appellant : Shri Bipin Garg and Ms.Kainaat, Advocates
Present for the Respondent: Shri Aejaz Ahmed, Authorized Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 51037-51038/2025

Date of Hearing : 06.06.2025
Date of Decision: 17.07.2025

RAJEEV TANDON :

The appellant is a contractor and registered as service tax assessee for rendition of "Commercial or Industrial Construction Service". The appellant was awarded work for construction of residential complex by Rajasthan Housing Board (RHB) at Pratap Apartments and construction of Office building at Panchsheel, Ajmer by Ajmer Vidyut Vitran Nigam Limited (AVVNL). The present dispute arises as a consequence of the department seeking payment of service tax for the said activities undertaken.

2. The facts of the case are that the appellants vide request from the department vide letters dated 28.03.2011 and 20.09.2011 forwarded certain documents relating to RHB, balance sheet copy, work orders and calculation chart for the amounts received during 2009-10 and 2010-11 (relating to AVVNL). On the basis of the scrutiny of the said documents, two show cause notices dated 01.07.2011 and 12.10.2011 for the period 2009-10 and 2010-11 were issued to the appellant demanding service tax for an amount of Rs.1,04,91,715/- and Rs.69,12,709/-. Following due process, the adjudicating authority however confirmed the two show cause notices vide common order-in-original No.52-53/2012-13 (ST)-COM dated 27.12.2012. It is against this order that the appellants are aggrieved with and have filed the present appeal.

3. The appellant submits that the two show cause notices in the first instance do not survive on grounds of limitation, since on an identical issue show cause notice dated 02.07.2010 for the period 2005-06 to 2008-09 was already issued and therefore any subsequent show cause notice incorporating extended period of limitation would not survive as no ground for willful suppression can thereafter be fastened. It be noted here that the dispute in the present show cause notice concerns for the period 2009-10 and 2010-11. In the light of the Hon'ble Apex Court's decision in the case of **Nizam Sugar Factory v. CCE [2006 (197) ELT 465 (SC)]**, it is apparent

that no grounds of suppression can be sustained, in view of the fact that the department was already seized of the matter and had already issued show cause notice to the appellant in this regard. That is to say that the alleged violation in law was already in the knowledge of the department and therefore for any second/third (or a subsequent) show cause notice the said ground of suppression of facts would not be available to the department, as all relevant facts were known to the authorities. On merits he submits that the issue stands settled in their favour by a plethora of decisions and the clarifications issued by CBEC in the matter.

4. The learned AR for the Revenue however justifies the order and reiterates the findings rendered.

5. We have heard the two sides and perused the records.

6. On the merits of the case it is not disputed that the appellant constructed ground + three floors i.e. less than 12 independent residential unit in a building for RHB. That being the fact the appellant would not be covered within the definition of construction of residential complex as stipulated under section 65(105)(zzzza)(ii)(c), which reads as under:

> (zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.
>
> *Explanation :* For the purposes of this sub-clause, *"works contract"* means a contract wherein, -
>
> *(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
> *(ii) Such contract is for the purposes of carrying out, -*

(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

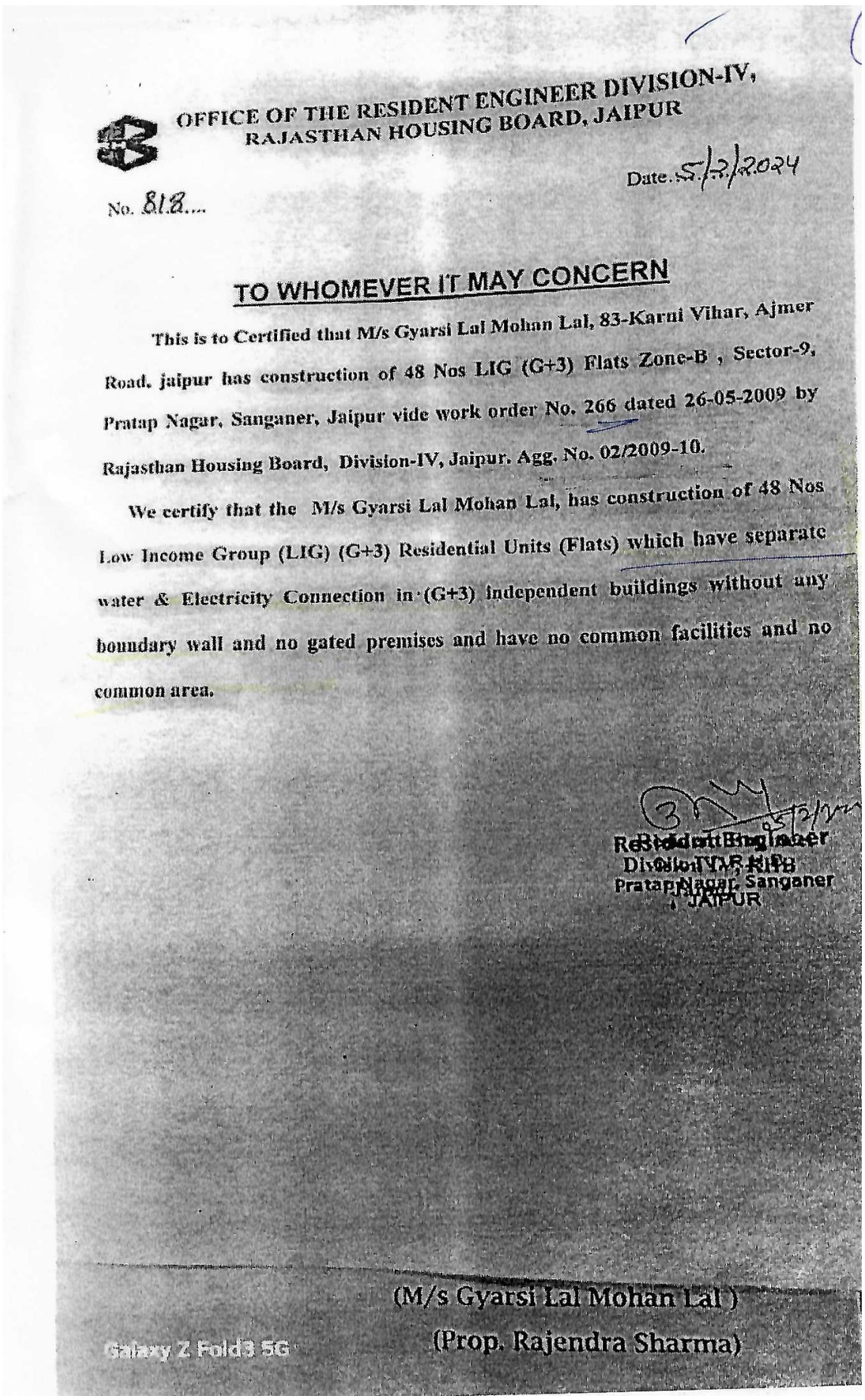
(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) Construction of a new residential complex or a part thereof; or

(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, I relation to (b) and (c); or

(e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

In this regard, Certificate dated 05.02.2024, issued by RBH (reproduced below) is very pertinent and material to the issue involved as it clarifies the work order No.266 dated 26.05.2009 awarded to the appellant which is impugned in the present matter.



OFFICE OF THE RESIDENT ENGINEER DIVISION-IV,
RAJASTHAN HOUSING BOARD, JAIPUR

No. 818....

Date. 5/12/2024

TO WHOMEVER IT MAY CONCERN

This is to Certified that M/s Gyarsi Lal Mohan Lal, 83-Karni Vihar, Ajmer Road, jaipur has construction of 48 Nos LIG (G+3) Flats Zone-B , Sector-9, Pratap Nagar, Sanganer, Jaipur vide work order No. 266 dated 26-05-2009 by Rajasthan Housing Board, Division-IV, Jaipur. Agg. No. 02/2009-10.

We certify that the M/s Gyarsi Lal Mohan Lal, has construction of 48 Nos Low Income Group (LIG) (G+3) Residential Units (Flats) which have separate water & Electricity Connection in (G+3) independent buildings without any boundary wall and no gated premises and have no common facilities and no common area.

5/12/2024

Resident Engineer
Division-IV, RHB
Pratap Nagar, Sanganer
JAIPUR

(M/s Gyarsi Lal Mohan Lal)
(Prop. Rajendra Sharma)

Galaxy Z Fold3 5G

7. We find that the subject issue of construction of the dwelling units, is no more res integra and has been decided in a slew of cases. Reliance in this regard can be placed on the decision in the following case laws. :

a) Onkar Lal Saini v. CCE –
[F.O. No.ST/A/51134/2022 CU (DB) dt.23.11.2022]

b) Prakash Builders v. CCE
[2020 TIOL 636 CESTAT – DEL]

c) Hari Narain Khandelwal v. CCE & ST
[2017 (5) GLTL 277 (Tri)]

d) A.S. Sikarwar v. CCE
[2012 TIOL 2017 – CESTAT – DEL]

e) Macro Marvel Projects Ltd. v. Commr. of Service Tax, Chennai
[2008 (12) STR 603 (Tri)]

(as maintained by the hon'ble apex court 2012 (25) STR J 154 (SC)])

8. The following findings rendered by the Tribunal, in the case of **Macro Marvel Pvt.Ltd. v. Commr. of Service Tax, Chennai [2008 (12) S.T.R. 603 (Tri.-Chennai)]** are relevant to the issue at hand and hence to be taken note of :

> **"2.** *…….. 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 :-*
>
> *"Construction of complex" means -*

(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."

9. We find that in view of the aforesaid clarification there could be no levy of service tax for construction of the said residential building, as it would squarely fall within the ambit of the clarification issued by the department; as independent buildings having twelve or less than twelve residential units would not be covered by the definition of *"residential complex".* In the present case the appellant has constructed independent buildings having G+3 residential units that are separate and independent of each other.

10. It is also brought out from records, that the Government of Rajasthan had issued a Gazettee Notification unbundling Rajasthan State Electricity Board to five different companies, namely :

a) Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (RRVUN), Generation Company.

b) Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RRVPN), Transmission Company.

c) Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), Distribution Company

d) Ajmer Vidyut Vitran Nigam Ltd. (AVVNL), Distribution Company

e) Jodhpur Vidyut Vitran Nigam Ltd. (JDVVNL), Distribution Company.

The appellant had executed the work of construction of corporate office building construction for AVVNL (Sr(d) above refers). CBIC's Circular No.80/10/2004-ST dated 17.09.2004 clarifies the aspect of Service Tax leviability based on the nature of usage of the construction. The said Circular reads as under :

Construction Service (commercial and industrial buildings or civil structures)

"13.1 ……..

13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax."

11. In view of the aforesaid clarification and the binding precedents as held by Courts/Tribunal, no tax as such would be payable in the aforesaid circumstances. Tax is leviable on a commercial nature of the building constructed. AVVNL being a semi-government body engaged in the provisioning of civil amenities for the citizens and this project of

theirs not venturing into commercial space would not be chargeable to service tax.

12. Further, in view of Board's Notification No.11/2010-ST and 45/2010-ST dated 27.02.2010 and 20.07.2010 respectively, services provided for transmission and distribution of electricity are exempt from levy of Service Tax under Section 66 of the Finance Act, 1944. For the aforesaid reasons too the appellant is entitled for exemption from payment of service tax for services provided to AVVNL who are engaged in the distribution of electricity. In addition, the ratio of the law as emanates out of the following case is also attributable to the present matter :

(i) Vivek Construction & Ors. v. CCE & CGST, Jodhpur
[2021 (10) TMI 304 – CESTAT New Delhi]

(ii) Vraj Construction v. CCE
[2024 (9) TMI 406 – CESTAT – Ahmedabad]

wherein it has been categorically held that the nature of service rendered being exempt, no case of contumacious conduct or breach of law could thus be made out. Further, in the case of **Kedar Construction [2014 (11) TMI 336 – CESTAT Mumbai]**, the Tribunal had held that the *"confirmation of Service Tax demand in respect of construction, maintenance or repair activities undertaken by the appellant so far as it relates to the transmission/distribution of electricity cannot be sustained in law."*

13. While reiterating the findings of the lower authority, the learned AR for the Revenue also pointed out that no ST-3 Returns were filed by the appellant for the period 2009-10. Be that as it may, it be noted that in view of our finding that the service rendered was not liable to tax and was exempted. We find no infirmity, warranting any

consequential action in law, in the appellant's act of non-filing of the ST-3 Returns.

14. On the aspect of limitation as discussed in earlier paras, we find merit in the stance and arguments of the appellant. The impugned show cause notice is thus not maintainable on the said ground as well.

15. In view of our findings aforesaid, we are of the view that the order of the lower authority being not in accordance with law, is not maintainable both on merits as well as limitation. The same is therefore liable to be set aside and thus quashed. The appeals filed by the appellant are allowed, with consequential relief, if any, as per law.

[Order pronounced on **17.07.2025**]

(RAJEEV TANDON)
MEMBER (TECHNICAL)

(BINU TAMTA)
MEMBER (JUDICIAL)

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