



CHAPTER VI LAND OWNER'S SHARE

6. Service tax liability on the land owner's share of apartment

Section 67(ii) of the Finance Act, 1994 (as amended) provides for payment of service tax on money or "consideration" received for providing the service. Explanation below the section provides that "consideration" includes any amount that is payable for the taxable services provided or to be provided. Rule 3(a) of the Service Tax (Determination of Value) Rules defines criteria for determining the equivalent money value of such consideration received, where the value cannot be determined otherwise.

We have studied the category of construction where a developer constructs buildings and transfers them free of cost because he receives a consideration in return. This is the form of a right to construct more buildings on same tract of land which does not belong to him and thereafter he sells the constructed property. As per definition in the Finance Act, this consideration is liable to service tax as it is received by the person providing taxable services of CON/CCS to the person who receives the cost free constructed premises.

We found several cases where contractors received considerations in the form of right to use land and sell but did not pay service tax on these considerations.

6.1 We observed that M/s Gopalan Enterprises Pvt. Ltd., in Bangalore ST commissionerate, engaged in CCS, was paying service tax on the consideration on land usage received from the land owner. While calculating the amount of consideration, the assessee had considered only the proportionate built up area pertaining to land owner's portion. However, the remaining portion of the land on which the assessee had constructed flats and the portion which had been developed as common area were also a part of the project. Therefore, that land was also a part of the consideration but the assessee did not add the value of that portion of land. Consequently, the assessee paid service tax of ₹ 13.55 lakh against ₹ 1.33 crore payable. This resulted in short payment of ₹ 1.19 crore. The assessee was also liable to pay interest of ₹ 15.47 lakh and penalty of ₹ 1.19 crore.

6.2 M/s Shyamaraju & Co. Pvt. Ltd in Bangalore ST commissionerate, had not paid service tax of ₹ 51.39 lakh on the consideration received towards the land valued at ₹ 12.47 crore. The assessee was also liable to pay interest of ₹ 6.68 lakh and penalty upto ₹ 51.39 lakh.

6.3 M/s. Almark Housing Co. (P) Ltd. Ernakulam, in Cochin commissionerate, engaged in developing properties and constructing multi storied buildings entered into agreements with the land owners, where the properties of land owner were developed and multi storied buildings for residential as well as commercial complexes were constructed by the company. In consideration, a specified portion of the constructed building

was to be handed over to the land owner. Thus, the company was providing services to independent customers as well as the land owner by constructing commercial or residential complexes in the properties of the land owner. However, the assessee paid service tax only on the amount received from the customers. The gross value of the buildings handed over to the land owner amounted to ₹ 36.40 crore during 2007-08 and the non-payment of service tax amounted to ₹ 1.48 crore on the net taxable value of ₹ 12.01 crore after allowing abatement of 67 per cent on the gross value. The assessee was also liable to pay interest of ₹ 19.41 lakh and penalty upto ₹ 1.48 crore.

6.4 In Mumbai, Slum Rehabilitation Authority (SRA) was set up in 1995 to rehabilitate the 'slums' as identified by the State Government. To rehabilitate the slums, an agreement is signed by the builder/contractor with each slum dweller authorising the builder to develop the said slum plot where the builder/contractor constructs a building in the said plot and after its completion, dwelling units of specific carpet areas are allocated free of cost to each slum dweller.

In return, the builder/contractor gets the right to develop dwelling units at the same plot and sell them in open market or he gets the Transfer Development Right (TDR) in another area, which can be consumed by the builder himself or could be sold to another builder.

Details were obtained from SRA in respect of TDR of 563912 sq. mtrs. recommended for 94 builders/contractors during the year 2006-07 and 2007-08. The TDR rate in Mumbai during December 2007 was around ₹ 2500/- per sq. ft. Thus the value of such TDR worked out to ₹ 1517.47 crore, on which service tax of ₹ 60.09 crore was payable after allowing the admissible abatement, which was not paid by the builders/contractors.