

Harekrishna Developers (Through Vs. Commissioner of Service Tax

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Court : Authority for Advance Rulings

Decided On : Apr-07-2008

Judge : P Reddi, A Sinha, C Saha

Appellant : Harekrishna Developers (Through

Respondent : Commissioner of Service Tax

Judgement :

Appellants: Harekrishna Developers (through Jayantibhai Jermabhai Korat)Raheja Development Corporation v. State of Karnataka.

Service tax Liability - Construction of residential housing complex - Applicant, a partnership firm, wants to set up a joint venture with a non-resident, to develop a residential housing complex - Residential complex will be constructed by the Applicant itself and said units in complex will be sold to third parties - Whether the Applicant is liable to Service tax under section 65(105)(zzzh) of the Finance Act, 1994 under the notified taxable service of construction of Complex Held, the preamble of Agreement shows that actual sale of land together with the constructed residential unit takes place after the completion of construction, subject to the purchaser/booker paying the sale consideration - Construction of complex in Sub-clause (zzzh) is qualified by the preceding phrase in relation to - This expression In relation to is used by the legislature to widen the scope and dimension of the sub-clause so to establish a greater nexus between the construction and the services implicit in such construction hence said expression is of wide import - It is not merely the construction part of the activity that matters;

the correlated and incidental services are all embraced within the scope of Sub-clause (zzzh) - Whole purpose of inserting Sub-clause (zzzh) in Section 65(105) appears to be to bring the services in connection with the construction of residential complexes by the developers/promoters within the net of taxable services. Fact that the ownership and possession remains with the Applicant throughout the process of construction and that the constructed residential unit can only be transferred to the booker/buyer on receipt of entire sale consideration does not have a real bearing on the question whether any services in relation to the construction of complex are required to be rendered by the Applicant.

[para 18] Classification - Construction of residential housing complex Proposed activity to be given to sub-contractor Whether said proposed activities could fall under Sub-clause (zzzza) Held, proposed activities could fall under Subclause (zzzza) Though service in question can be appropriately classified under Sub-clause (zzzh)- That classification will stand irrespective of the fact whether the service could also be brought within the ambit of Sub-clause (zzzza) -Hence answers to questions framed by the Applicant answered in the affirmative and accordingly Applicant is liable to pay Service tax in respect of the proposed activity 1 and 2 under Sub-clause (zzzh) of Section 65(105) of Finance Act, 1994. [para 25]

1. The Applicant, which is a partnership firm wants to set up a joint venture with a non-resident named in the application, to develop a residential housing complex in Gujarat. As per the proposed activities Nos. 1 & 2, the residential complex will be constructed by the applicant itself in activity 1 and through a contractor in activity

2. The residential units in the complex will be sold to third parties. The following questions of law are framed by the applicant for seeking advance ruling under Section 96-C of the Finance Act, 1994:

1. Whether the activity of booking the residential units to be undertaken by the applicant is a taxable service liable to Service Tax under the provisions of Section 65(105) of the Finance Act, 1994?

2. Whether the applicant is liable to service tax under Section 65

(105) (zzzh) of the Finance Act, 1994 under the notified taxable service of construction of Complex in case of Proposed Activity No. 1

3. Whether the applicant is liable to service tax under Section 65

(105) (zzzh) of the Finance Act, 1994 under the notified taxable service of construction of Complex in case of Proposed Activity No. 2?

2. Details about the proposed activities 1 & 2 have been submitted in Annexure 1 to the Application. After the first hearing, further written submissions were filed through the applicant's communication dated 5.12.2007. Along with the above letter, the applicant has forwarded a draft of the Agreement for the proposed activities 1 and 2 that would be entered into with the buyers at the time of booking of residential units in the Complex

3. The following are broadly the nature of proposed activities, as stated by the applicant: Through the proposed activities 1 & 2, the applicant intends to develop a residential complex on its own land at its expense. The complex will have more than 12 residential units, as also a club house and other common facilities. The applicant will book the residential units in favour of a particular buyer after taking a token booking amount and executing an agreement in the format filed along with the applicant's letter dt.5-12-2007. The full value of the residential unit will be indicated to the buyer at the time of booking. The sub-plot on which the building has to be constructed is also specified in the Agreement. The physical possession of the residential unit will be given to the buyer after the construction activity is completed and the full payment is received. The construction material will be bought by the applicant in both the activities. The only difference between the activities 1 & 2 is that while in activity 1, the construction will be carried out by the applicant itself through its own labour, in activity 2, the construction will be carried out by engaging labour contractors/petty contractors who will carry out the work under the applicant's supervision and control.

4. The applicant contends that it is not providing to the prospective buyer any 'taxable service' falling within the ambit of Section 65 (105) of the Act. The applicant states that it is itself developing the residential complex on its own land

utilizing its own material. The construction is carried out by the applicant itself either by employing own labour or by engaging contractors working under its control. The ownership and possession remains with the applicant till the unit is handed over to the applicant on completion and on receipt of entire consideration. Since the complex is being developed for self, i.e., for the applicant, the service provider and service recipient are one and the same. Since service tax is attracted only when a taxable service is provided by one person to another, no levy is attracted in the instant case. In support of its contention, the applicant has referred to CBEG's circular No. 96/7/2007-ST dated 23/8/2007. The applicant also contends, relying on the decision of Allahabad High Court in Assotech Realty case 2007 (7) STR 129 that the proposed activities 1 and 2 do not amount to 'works contract'. According to the learned authorized representative of the applicant, only the contractor's services entrusted with construction are covered by either of the sub-clauses relied upon by the Department, but not the activities of a person like the applicant who constructs for ultimately selling the built up unit.

According to the applicant, the answers to all the questions posed for ruling should be in the negative.

5. It is the contention of the Department that the construction and allied activities proposed to be undertaken by the applicant amount to "service in relation to the construction of residential complex" coming within the purview of Sub-clause (zzzh) of Section 65 (105) or alternatively it is service "in relation to the execution of works contract" within the meaning of Sub-clause (zzzza) of Section 65 (105).

Considering the fact that the service referred to in (zzzh) contains more specific description of the proposed activity than the service specified in (zzzza) and also because the Sub-clause (zzzh) occurs first, this earlier sub-clause, namely, (zzzh), is attracted in the instant case by virtue of the rule of Interpretation laid down in Section 65 A of the Act. It is also submitted by the learned Departmental Representative that a clarification issued by the Deptt.

of Revenue (TRU), Ministry of Finance in its circular dated 23/8/07 does not enure to the benefit of the applicant as the Circular details a case where the residential complex is constructed by a builder/developer on his own and on completion

thereof the transaction is entered into with the buyer resulting in the sale of an already constructed unit. It is pointed out that the decision of the Allahabad High Court relied upon by the applicant is not in accordance with the enunciation of law by the Supreme Court in *Raheja Development Corporation v. State of Karnataka* activity No. 2, it is submitted that the sub-contracting of the work does not in any way alter the position of the main service provider vis-a-vis the buyer as clarified by the Deptt. of Revenue (TRU), Ministry of Finance in the circular dated 23/8/07.

6. These rival contentions have to be resolved by us by making reference to the salient features of the proposed activity as reflected in the Draft Agreement and the relevant provisions contained in Chapter V of the Finance Act, 1994.

7. Section 66 which is the charging section ordains that the service tax shall be levied at the rate of 12% on the value of taxable services referred to in various sub-clauses (commencing from (a) to (zzzzd) of clause 105 of Section 65 and be collected in such manner as may be prescribed. The methods of valuation of taxable services is provided for by Section 67 read with the Rules framed in this regard. As to how the taxable services should be classified where prima facie a given service is taxable under two or more sub-clauses is laid down in Section 65 A.8. Clause (105) of Section 65 is part of the definition section.

"Taxable service" is defined to mean "any service provided or to be provided" as spelt out in various sub-clauses. The relevant sub-clauses with which we are concerned, namely, (zzzh) and (zzzza) are extracted below: (zzzh) to any person, by any other person, in relation to construction of complex, Construction of complex", according to clause 30(a) of Section 65, means construction of a new residential complex or a part thereof or completion and finishing services in relation to residential complex or renovation, alteration or similar services in relation to residential complex. The phrase residential complex' is defined by Section 65 (91a) to mean "any complex comprising of: (i) a building or buildings, having more than twelve residential units; (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 II

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. 'Personal use', according to the Explanation, includes permitting the use of the complex as residence on rent or without consideration. 'Residential unit' means a single house or a single apartment intended for use as a place of residence (vide Clause (b) of the Explanation).

"(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 construction wherein, (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and (a) erection, commissioning or installation of plant, machinery, equipment or structures, prefabricated....

(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 (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or 9. The applicant admits in his application that the complex to be constructed by him conforms to the definition of "residential complex" which is, of course, meant for sale to the prospective buyers as part of its business activity. It may be noted that, as explicitly laid down in Clause (91a) of Section 65, it does not include a complex which is constructed by a person directly engaging the services of any other person for designing or planning of the lay out if it is meant to be used for residential purpose either by him or his lessee or a person permitted by him. Such a construction gets excluded from the purview of the residential complex and does not therefore fall either within the ambit of Sub-clause (zzzh) or Clause (ii)(c) of the Explanation to Sub-clause (zzzza). In contrast, take a case where instead of the owner of the land directly building the house with the assistance of an architect or engineer, entrusts the construction work to a contractor, as in the case of proposed activity No. 3 (dealt with in Application No. AAR/10(ST)/2007 and decided vide Ruling No. AAR/04(ST)/2008). In such a case, there is a clear liability on the part of the

contractor i.e. the applicant in relation to proposed activity No. 3, to pay service tax because he becomes service provider in relation to the execution of the works contract entrusted to him. However, the controversy arises in a situation where the builder or developer who owns the land takes up the construction work either before or after the booking from the prospective purchasers is accepted. It is on this controversy we have to focus attention to while deciding whether in the instant case, there is a taxable service within the meaning of Sub-clause (zzzh) of Section 65 (105). We shall now proceed to consider this aspect. In order to do so, a reference to the recitals and salient terms of the Agreement proposed to be entered into by the applicant need to be looked into and analysed.

10. The Agreement bears the caption "Agreement for booking/sale of residential units in the self-developed housing project". In the preamble, it is stated that the booker (prospective purchaser) has shown interest in "booking of a residential house to be built up on subplot No. _____ admeasuring _____ sq.mts". It is then recited that the builder/developer (applicant) "has started to build and self-develop its own sub-plots by constructing thereon residential houses and also to build and develop the common infrastructure and amenities of the housing project irrespective of its bookings". It is then stated that the land, super structure/constructed unit is subject to sale after completion of construction. It is then recited that the Booker "wants to book the residential unit as a precautionary measure so that the very residential unit can be handed over to him only after the completion of the construction of the unit".

11. It is clear from the preamble part of the Agreement that the plot or sub-plot on which the residential unit has to be built up and handed over to the prospective purchaser is identified and the same cannot be diverted to others so long as the purchaser is ready and willing to pay the agreed instalments of consideration. It admits of no doubt that the construction on the said plot may or may not have started by the date of booking. It is also clear that the actual sale of land together with the constructed residential unit takes place after the completion of construction, subject, of course, to the purchaser/booker paying the sale consideration.

12. The relevant terms of the Agreement may now be noticed in more detail: i. The construction will be according to the approved plan and all the facilities shall be provided as per the specifications, design and drawings prepared in consultation with the architect of the housing project. [vide 1(a)] ii. The construction will be carried out in accordance with the approved plan under the control and supervision of the builder/developer. [vide 1(b)] iii. The construction shall be at the risk and cost of the builder/developer, notwithstanding that the booking has been done earlier. Right, title and interest in the land and construction will remain with the builder/developer until the delivery of possession of the residential unit. [vide 1(c)] iv. The amount of total consideration and the timing of installments by which it has to be paid are specified in clause 3 of the Agreement.

v. Clause 4 provides that the booker (prospective purchaser) shall become a member in the "Service Cooperative Housing Society" that will be set up to provide the maintenance and utility services to the members of the housing project and make necessary contribution to the Society. The booker is also required to pay towards the common infrastructure facilities like internal roads, common plot etc. developed by the builder/developer and the amount payable for such common facilities (to the builder) shall be decided on actual basis as per the valuation by an approved valuer [vide clause 4].

vi. The consequences of the booker committing default or delay in paying the instalments as per the Agreement are set out in clause 6 and 7. In clause 7(b), it is stated that under no circumstances, the possession of incomplete residential units will be handed over to the booker. However, the booker is duty bound to deposit the agreed amount to the builder/developer.

vii. As per clause 7(d), if the booker is not interested in ultimately buying and taking possession of the property, he can cancel the booking at any stage and the amounts paid will be refunded to him with interest @ ... per cent.

There is an apparent contradiction between this clause and clause 7(a) which says that if the booker commits delay or default in depositing any amount under the agreement, the builder/developer shall be at liberty to cancel the agreement in which event the amount deposited by the booker shall stand forfeited as

compensation or liquidated damage for the breach of the agreement.

viii. Clause 8 enjoins that it is only on receipt of the entire amount, the builder/developer shall vacate the developed sub-plot of land. The time within which the housing scheme is expected to be completed is specified in clause 9(a).

ix. In clause 9(b) it is stipulated that the responsibility of the builder/developer will extend to obtaining requisite permission for building use, drainage, water connection, and electric power connection and the booker shall sign the relevant papers for this purpose.

x. Service-tax, if any, is liable to be paid by the booker on demand [vide clause 10].

xi. The schedule gives the description of the sub-plot and the net plot area.

13. In the light of the above factual position and the legal provisions referred to supra, we have to record an answer to the questions furnished. The answer to the first question mainly depends on the answers to question No. 2 and 3. Question 3 is practically the same as question No. 2. We shall, therefore, proceed to discuss question No. 2 at the beginning.

14. Question No. 2 in substance is whether in respect of the proposed activity No. 1, any service "in relation to the construction of complex" is provided by the applicant to the booker/prospective buyer of the residential unit constructed and ultimately sold by the applicant.

15. We are of the view that the question has to be answered in the affirmative upholding the contention of the Revenue. It must be noted that the words "construction of complex" in (zzzh) is qualified by the preceding phrase "in relation to". This expression - 'in relation to' is advisedly used by the legislature to widen the scope and dimension of the sub-clause so to establish a greater nexus between the construction and the services implicit in such construction. The expression 'in relation to' is of wide import. The Supreme Court had occasion to construe the same expression in the case of Doypack Systems Ltd. v. Union of India . At paragraph 48, it was observed thus: The expression "in relation to" (so

also "pertaining to") is, a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *State Wakf Board v. Abdul Aziz A.I.R. 1968 Madras 79*, 81 paragraphs 8 and 10, following and approving *Nitai Charan Bagchi v. Suresh Chandra Paul* 66 C.W.N. 767, *Shyam Lal v. M. Shyamlal* and 76 *Corpus Juris Secundum* 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then, these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction.

In the division Bench decision of the Madras High Court referred to by the Supreme Court, the words "in every suit or proceeding relating to title to Wakf property" employed in Section 57(1) of the Wakf Act, 1954 were construed. It was held that the second suit instituted by a third party for a declaration that the decree in the previous suit was fraudulent and collusive would necessarily have bearing on the declaration of title to the property claimed as Wakf property in the earlier suit and therefore the subsequent suit is also a suit or proceeding "in relation to" Wakf property. *N S Nayak & Sons v. State of Goa*, the Supreme Court, at paragraph 13, construed the phrase 'in relation to' as follows: The phrase "in relation to arbitral proceedings" occurring in Section 85(2)(a) cannot be given a narrow meaning to mean only pendency of the proceedings before the arbitrator. It would cover not only proceedings pending before the arbitrator but would also cover the proceedings before the court and any proceedings which are required to be taken under the old Act for the award becoming a decree under Section 17 thereof and also appeal arising thereunder.

16. Thus, it is not merely the construction part of the activity that matters; the correlated and incidental services are all embraced within the scope of Sub-clause

(zzzh).

17. Coming to the expression "service", while dealing with the provisions of Consumer Protection Act, the Supreme Court, in the case of Lucknow Development Authority v. M.K. Gupta , made certain observations as regards the meaning of the word "service." The Supreme Court pointed out that the concept of service is very wide and how it should be understood and what it means depends on the context in which it has been used in the enactment.

18. The whole purpose of inserting Sub-clause (zzzh) in Section 65(105) appears to be to bring the services in connection with the construction of residential complexes by the developers/promoters within the net of taxable services. By introducing such a specific provision and defining the term 'residential complex', incidentally, the legislature wanted to obviate any controversy on the point whether the services of the nature involved in proposed activity No. 1 could at all fall within the scope of (zzzza) dealing with works contract. The net of taxation is intended to be spread out so as to reach the entire gamut of Complex construction activities which are part of a commercial venture. The activity of building a residential unit on an earmarked plot in the Complex and making construction thereon as per the plan, design and specifications, obtaining various permissions and providing amenities as contemplated by clause 9(b) of the Agreement, apart from the provision of common infrastructural facilities before handing over the building to the customers would undoubtedly constitute 'services provided or to be provided' by the applicant. A host of facilities and amenities have to be or are contemplated to be provided under the terms of the agreement, apart from construction. Some or many of them may be common amenities which will be available to others who inhabit in the complex but they cannot be dissociated from the construction of the residential unit for the benefit of the booker/buyer. Package of services is necessarily involved in the activity viewed as a whole and that is the reason why the phrase "in relation to" has been used. The fact that the ownership and possession remains with the applicant throughout the process of construction and that the constructed residential unit can only be transferred to the booker/buyer on receipt of entire sale consideration does not have a real bearing on the question whether any services in relation to the construction of complex are required to be

rendered by the applicant. The applicant, in our view, has laid undue stress on the aspect of ownership remaining with it till completion and on the element of control over construction. If the contention of the applicant is to be accepted, the entire purpose of Sub-clause (zzzh) will be defeated or at any rate, it may become otiose. We do not think that the point of time at which the ownership gets transferred will be determinative of the applicant's liability to pay service tax. Viewing from another angle, though in one sense, the applicant can be said to be constructing the residential unit on its own and not exactly on behalf of the booker, yet, the fact remains that the applicant does everything to honour its commitment to the customer(booker) from whom it receives valuable consideration in instalments. The construction and allied services, it must be noted, is referable to the agreement with the prospective buyer and cannot be viewed in isolation. The possibility of the booker defaulting in payments of instalments and the agreement being terminated in that event is really not material in evaluating the true nature of the transaction.

19. We find it difficult to accept the contention of the applicant that the proposed activities No. 1 and 2 tantamount to self-service and that there is no recipient. We find no loyal or factual basis for such argument in light of the foregoing discussion.

20. The authorized representative of the applicant has drawn our attention to para 79.01 of the Circular No. 96/7/2007-ST dated 23/8/07 (issued by CBLC) in an apparent bid to draw support to his contention by invoking the principle of contemporaneo expositio. The relevant part of the query posed and answered in the said paragraph of the Circular is as follows: Whether service tax is liable under construction of complex service (zzzh) on builder, promoter, developer or any such person (a)... (b) who builds the residential complex on his own by employing direct labour.

(b) If no other person is engaged for construction work and the builder/promoter/developer/any such person undertakes construction work on his own without engaging the services of any other person, then in such cases, (i) service provider and service recipient relationship does not exist, Hence, in the absence of service provider and service recipient relationship and the services

provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.

20.1 Obviously, as contended by the learned Departmental Representative, the transaction contemplated in the query is one of outright sale of a residential unit after the construction, the construction having been done without reference to any agreement with the customer/buyer. The recipient of service is not in the picture at all at any stage of construction. The developer and the buyer come face to face after the entire process of construction is complete and the building ready for occupation is offered for sale. In such a situation, it cannot be said that any services were extended by the developer to the buyer. The relationship between the developer and the buyer is purely one of seller and buyer. But, the factual position is qualitatively different in the case of proposed activity No. 1.

21. There is no material difference between the proposed activity No. 1 and 2. The factual matrix in relation to the proposed activity No. 2 is almost the same except that the applicant, instead of directly building the residential unit itself, will be sub-contracting the work. The applicant is accountable to the bookers/buyers and remains to be a service provider vis-a-vis the buyer. The engagement of subcontractor to do a substantial part of the construction work does not absolve the applicant of the responsibility of providing services in relation to the construction of residential unit agreed to be sold to the customer ultimately. Question No. 3 is therefore answered in the affirmative and in favour of the Revenue. However, it is made clear that we are not concerned here with the liability if any of the subcontractor to pay service tax.

Whether the activity of booking the residential units to be undertaken by the applicant is a taxable service liable to service tax under the provisions of Section 65 (105) of the Finance Act, 1994? 23. It seems that the question as framed lacks in clarity. The question, if literally read, is confined to the first step of 'booking' the residential unit but not the series of activities that follow the booking and entering into the agreement. However, it is clear from what is stated in the application and also the arguments of the learned authorized representative that the applicant wants a ruling on the broader question whether the service tax liability is fastened

on it by reason of undertaking the construction on an identified plot and handing over the constructed unit to the customer on receipt of the entire consideration. While discussing the question No. 2 and 3, we have recorded the conclusion that the proposed activities 1 and 2 undertaken in accordance with the terms of the draft agreement attracts service tax liability under Section 65 (105) (zzzh) of the Finance Act, 1994. Therefore, it is unnecessary to give a separate ruling on this question.

24. We would like to clarify one aspect. Arguments were advanced before us on the point whether the proposed activities 1 and 2 could fall under Sub-clause (zzzza) which makes the services in relation to the execution of a works contract exigible to service tax. The alternative contention raised by the Department has given rise to these arguments.

The contention of the learned authorized representative appearing for the applicant was that no works contract is involved in such activities. The Departmental Representative placed heavy reliance on the case of *Raheja Development Corporation v. State of Karnataka*, and argued that the said judgment is a complete answer to the applicant's contention. The authorized representative, on the other hand, relies on the decision of the Division Bench of the Allahabad High Court in *Assotech Realty Pvt. Ltd. v. State of UP* 2007(7)S.T.R. p. 129, wherein the decision in *Raheja's* case was distinguished by the learned judges. Referring to the Allahabad decision, the learned Departmental Representative has argued that the point of distinction made out by the High Court is not valid and the ratio of the Supreme Court's decision was not correctly appreciated by the learned judges. Though we find some force in this contention of the Departmental Representative, we do not want to dilate on this point further in view of the rules of interpretation contained in Section 65 A of the Act. Section 65 A reads as follows: (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the Sub-clauses of Clause (105) of Section 65.

(2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of Clause (105) of Section 65, classification shall be effected as

follows: (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description; (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in Clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable; (c) when a service cannot be classified in the manner specified in Clause (a) or Clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.

25. We have already expressed the view that the service in question can be appropriately classified under Sub-clause (zzzh). That classification will stand irrespective of the fact whether the service could also brought within the ambit of Sub-clause (zzzza). That is the result which follows whether we apply the rule laid down in Clause (a) or clause(e) of Sub-section (2) of Section 65 A. The alternative contention of the Revenue need not therefore be gone into.

26. In conclusion, we record our answers to questions 2 and 3 in the affirmative and accordingly we rule that the applicant is liable to pay service tax in respect of the proposed activity 1 and 2 under Sub-clause (zzzh) of Section 65 (105) of Finance Act, 1994. The first question need not be specifically answered as indicated in paragraph Pronounced in the open Court of the Authority on this 7th day of April, 5008.

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