CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.516 of 2012

(Arising out of Order-in-Original No.26/COMMR./LKO/ST/2011-12 dated 08.12.2011 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Sainath Developers, **.....Appellant**
(3/130, Vikas Nagar, Lucknow, U.P.)

VERSUS

Commissioner of Central Excise &
Service Tax, Lucknow **....Respondent**
(7-A, Ashok Marg, Lucknow, U.P.)

WITH

Service Tax Appeal No.697 of 2012

(Arising out of Order-in-Original No.10/COMMR./M-II/2011-12 dated 31.01.2012 passed by Commissioner of Central Excise & Service Tax, Meerut-II)

M/s Balaji Associates, **.....Appellant**
(22D, Suncity Vistar, Pilibhit Road, Bareilly, U.P.)

VERSUS

Commissioner of Central Excise &
Service Tax, Meerut-II **....Respondent**
(Commissionerate, Meerut-II)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs.- 70238 - 70239/2026

DATE OF HEARING : 09.03.2026
DATE OF DECISION : 09.03.2026

P. K. CHOUDHARY:

Since the issues in both the appeals are common the same are taken up together for hearing and disposal. In the case of M/s Sainath Developers being Service Tax Appeal

No.516/2012, vide Interim Order No.27/2024 dated 12.11.2024 and in the case of M/s Balaji Associates, being Service Tax Appeal No.697/2012, vide Interim Order No.26/2024 dated 12.11.2024, both the matters were referred to the President for placing the same before the Larger Bench of the Tribunal by observing as under:-

> *"4.5 However, Counsel for the appellant have sought to distinguish the above referred decisions and have argued that the facts of the present case are covered by the decisions referred by him, specifically the decision in the case of M/s Premium Real Estate Developers Vs CGST, Delhi south 2019 (22) GSTL 373 (Tri.-Del.). However we do not subscribe to the said view and taking note of the fact that Hon'ble Chattisgarh High Court has already taken a view in respect of this decision we are of inclined to reject the submissions made by the appellant.*
>
> *4.7 In our view the facts of the present case are identical in the case of M/s Premium Real Estate Developers and Chhattishgarh Steel Castings (P) Ltd. (supra). However, taking note of the different opinion expressed by the Delhi Bench in similar cases we find it fit to refer this matter to Hon'ble President with following question of law for placing the same before the Larger Bench of the Tribunal:-*
>
> > ***"Whether the appeal of the appellant needs to be allowed by following the decisions referred by the Learned Counsel for the appellant; or The same needs to be decided in accordance with the view expressed by Delhi Bench and Allahabad Bench in cases of Chhattisgarh Steel Castings (P) Ltd. and R.K. Builders."***

2. Accordingly, a Larger Bench was constituted and vide Interim Order No.24/2025 dated 17.12.2025, the Larger Bench held that the Appellants had not provided 'Real Estate Agent' and 'Real Estate Consultant' services to M/s Sahara India and so

Service Tax could not have been levied on the Appellants. Relevent paragraphs are reproduced for ready reference:-

> *"12. The issue that arises for consideration in the present appeal is whether the appellant provided real estate agent services to Sahara India.*
>
> *13. "Real estate agent" has been defined in section 65(88) of the Finance Act to mean:*
>
>> *"**65(88).** "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant"*
>
> *"14. "Real estate consultant" has been defined in section 65(89) of the Finance Act to mean:*
>
>> *"**65(89).** real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in Relation to evaluation, conception, design. Development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate."*
>
> *15. Section 65(105)(v) of the Finance Act provides that taxable service means any service provided or to be provided to any person, by a real estate agent in relation to real estate.*
>
> *16. "Site formation and clearance, excavation and earthmoving and demolition" has been defined in section 65(97a) of the Finance Act, as follows:*

> *"**65(97a).** site formation and clearance, excavation and earthmoving and demolition" includes, —*
>
> *(i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or*
>
> *(ii) soil stabilization; or*
>
> *(iii) horizontal drilling for the passage of cables or drain pipes; or*
>
> *(iv) land reclamation work; or*
>
> *(v) contaminated top soil stripping work; or*
>
> *(vi) demolition and wrecking of building, structure or road, but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies"*

17. Section 65(105)(zzza) of the Finance Act provides that taxable service means any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation, earthmoving and demolition and such other similar activities.

*18. The controversy in the present case, stands decided by the Supreme Court in favour of the appellant in **Commissioner of Service Tax** vs. **M/s. Elegant Developers**[1].*

XXXXXXXXX XXXXXXXXXX XXXXXXXXX

19. It would be seen from the aforesaid judgment of the Supreme Court that the Memorandum of Understanding

---

[1]. **Civil Appeal No. 11744 of 2025 decided on 10.11.2025**

between Elegant Developers and Sahara India Commercial Corporation for the acquisition of land parcels was similar. The Supreme Court held that Elegant Developers was not engaged by Sahara India Commercial Corporation for any real estate agent or real estate consultant service and the terms of the Memorandum of Understanding did not indicate that there existed any relationship of principal and agent between the two. The Memorandum of Understanding merely referred to a fixed rate per plot which Sahara India Commercial Corporation would pay to for every chunk of land provided and the gains accruing to Elegant Developers would arise from the difference of sale consideration over and above the fixed sale price settled in the Memorandum of Understanding. Thus, the contract was not for providing services based on commission or in any other form. The profitability of Elegant Developers was contingent upon the rate at which land was procured by it from the sellers. The Supreme Court ultimately held that the transactions were not undertaken for service charges, commission, agency or consultancy but were plain and simple transactions of sale of land.

20. In view of the aforesaid judgment of the Supreme Court in ***Elegant Developers*** *it has to be held that the appellant had not provided real estate agent service or real estate consultant service to Sahara India and so service tax could not have been levied on the appellant.*

21. The papers may now be placed before the Division Bench of the Tribunal for deciding the appeal on merits."

3. Since the matter which was referred to the Larger Bench has been decided in favour of the Appellants, we concur with discussions and findings of the Larger Bench and accordingly, both the appeals are allowed with consequential relief, if any, as per law.

(Operative part of the Order pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS