CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2743 of 2012

[Arising out of Order-in-Original No. 41-43/AKM/2012 dated 31.05.2012 passed by the Commissioner (Adjudication) of Service Tax, New Delhi]

Commissioner of Service Tax, Delhi ......**Appellant**
IAEA House, 17B, IP Estate,
New Delhi 110002

VERSUS

Vatika Ltd ......**Respondent**
Vatika Triangle, Block A,
Mehrauli-Gurgaon Road,
Gurgaon 122002

WITH

Service Tax Appeal No. 3070 of 2012

[Arising out of Order-in-Original No. 49/AKM/CST(Adj)/2012 dated 28.06.2012 passed by the Commissioner (Adjudication) of Service Tax, New Delhi]

Commissioner of Service Tax, Delhi ......**Appellant**
IAEA House, 17B, IP Estate,
New Delhi 110002

VERSUS

Vatika Ltd ......**Respondent**
Vatika Triangle, Block A,
Mehrauli-Gurgaon Road,
Gurgaon 122002

AND

Service Tax Miscellaneous Application No. 60235 of 2024
in
Service Tax Appeal No. 60130 of 2016

[Arising out of Order-in-Original No. DLI-SVTAX-004-COM-039-15-16 dated 29.02.2016 passed by the Commissioner of Service Tax, Delhi-IV, Gurgaon]

Vatika Ltd **......Appellant**
7th Floor, Vatika Triangle,
MG Road Block A, Sushant Lok,
Phase-I, DLF Qutub Enclave,
Gurugram 122001

VERSUS

Commissioner of Service Tax, Delhi-IV **......Respondent**
Plot No. 36-37, Sector 32,
Gurgaon, Haryana

APPEARANCE:

Present for the Appellant-Assessee: Sh. Tarun Sharma, CA

Present for the Respondent-Revenue: Sh. Pawan Kumar (Asst. Commr.), Sh. Aneesh Dewan (Supdt.), Authorized Representatives

CORAM:

HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60092-60094/2024

DATE OF HEARING: 12.03.2024
DATE OF DECISION: 12.03.2024

PER : P. ANJANI KUMAR

M/s. Vatika real estate developers and are engaged in provision of services like interior decorator services, architect services, renting of immovable property services and goods transport services agency services and are registered for the same. The Ms. Vatika Limited have been collecting transfer/administrative charges for providing services in relation to change/substitution of the names in cases where the property were transferred by original customers. Revenue issued show cause notices dated 22.04.2009, 16.04.2010 & 27.01.2011; 01.03.2012 and 26.03.2013. Commissioner (adjudication) dropped show cause notices dated 22.04.2009, 16.04.2010 & 27.01.2011 Vide order-In-Original no. 41-43/AKM/2012. Commissioner also dropped the show cause notice dated 01.03.2012, vide order in original no. 49/AKM/CST(Adj.)/2012. Revenue is in appeal against the above dropping vide appeal No. ST/2743/2012 & ST/3070/2012. Commissioner confirmed the demand issued vide notice dated 26.03.2013 placing reliance on the decision of CESTAT in the case of ***M/s Ajay enterprises Private Limited 2016 (42) (STR) 471 (Tri.-Delhi)*** M/s Vatika Limited filed appeal no. ST/60130/2016 against the above order. As the issue involved in all the cases is identical the same were heard together and are considered for a common decision.

2. Shri Pawan Kumar (Asst. Commr), authorised representative appearing for revenue reiterates the grounds of appeal and submits that as per the definition under Setion 65 (88) a 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; the word "engaged" means to take part to devote attention and effort, to employee oneself; the respondent were doing the activity of changing and updating the names owners of real estate "in relation to" sale, purchase of real estate; Apex Court in the case of ***Doy pack systems (R) Ltd. Vs. Union of India 1998 (36) E.L.T. 201 (SC)*** observed that anything which has a direct or indirect connection with the specified services has to be treated to be "in relation" to that specified service; therefore, "transfer charges" on account of service provided by M/s Vatika and therefore are

chargeable to service tax. Learned authorized representative submits in respect of appeal no. 60130/2016 that the adjudicating authority has rightly confirmed the demand following the decision of CESTAT in the case of Ajay Enterprises (Supra).

3. Shri Tarun Sharma, CA appearing for the M/s Vatika Limited submits that the pre-requisites for levying service tax under real estate agent services are that the service provider should be in relation to real estate; primary activity undertaken by M/s Vatika Limited is that a sale of units constructed by them to the prospective buyers; the transfer/administrative charges received from the buyers were towards administrative charges to change the records; they are not rendering any service relating to sale or purchage of property; the appellant has no role in the negotiations between the seller and buyer and therefore the activity cannot be texed under real estate agent services. Learned counsel further submits that the issue is no longer *res integra*; CESTAT, New Delhi, in the case of ***Ansal Property and infrastructure Ltd 2018 (8) GSTL 58 (Tri.-Delhi),*** held that transfer charges are not exigible to service tax; the above decision was followed in the case of ***Bestech India Pvt. Vs. CCE, New Delhi - 2019 (3) TMI 867 - CESTAT, New Delhi;*** this bench in the case of ***DLF Ltd. Vs. CST-Delhi- 2019 (3) TMI 671*** also held the similarly. He also relies on as under :

- ***Ansal Housing & construction Ltd. Vs. CST, New Delhi - 2017 (11) TMI 546-CESTAt***

- ***RIICO Ltd. &Anr. Vs. CCE, Jaipur- II -2017 (5) TMI 673-CESTAT, New Delhi.***
- ***Ansal Buildewell Ltd. Vs. CST-2019 (25) G.S.T.L. 96 (Tri.-Del)***
- ***Prestige Estates Projects Pvt. Ltd Vs. Commr. of central Tax, 2018 (9) TM/259-CESTAT Banglore.***
- ***CST, New Delhi Vs. Today Homes & Infrastructure - 2018 (2) TMI 1413 - CESTAT, New Delhi.***
- ***CST, Delhi Vs. Omaxe Ltd. - 2018 (2) TM/1042-CESTAT New Delhi.***

4. Learned counsel further submits that though the adjudicating authority relied upon the case of M/s Ajay Enterprises pvt. Ltd, in a subsequent decision in their own case CESTAT, New Delhi set aside the demand on transfer/administrative charges 2023 (6) TMI 461 CESTAT, New Delhi. Learned counsel further submits that in case the service tax is confirmed the amount received by the should be treated to be inclusive of service tax and benefit of cum-duty price should be extended as held in ***Commissioner Vs. Advantage Media Consultant - 2009 (14) S.T.R. J 49 (S.C.)***. Ld. Counsel further submits that as there was no fraud, collusion, willful statement are suppression of facts or contravention of any of the provisions of act which intent to evade payment of tax, extended period cannot be invoked. He submits also that when the demand is not sustainable there is no question of imposing any penalty.

5. Heard both sides and perused the record of the case.

6. We find that M/s Vatika Ltd. have charged administrative/transfer expenses for incorporating the name of the new buyer in their records in case of any sale by the original buyer to others; it is not brought on record as to whether M/s Vatika Ltd. were involved in any sale/purchase of the property as a mediator or in any capacity. They have not involved themselves in the negotiations between the purchaser and seller. We find that Tribunal has been consistent in holding that such transfer/administrative charges are not chargeable to service tax. We find that Tribunal held in the case of ***Ansal properties and Infrastructures Ltd. (Supra)*** that:

> ***"10.*** *The Revenue contended that the respondent received certain considerations for change of name of the owners of the flats, by way of substitution of the name by new buyer in place of earlier owner of the flat, was in relation to sale or purchase of such property and accordingly liable to service tax. To levy service tax first of all the provider of service should be a real estate agent and second while acting as such agent the person concerned should have provided service in relation to sale, purchase, leasing or renting of real estate. There is nothing in the show cause notice or the relied upon documents to show that the respondent acted in a capacity of "real estate agent" between the earlier owner and the new buyer of the flat. The changes made in the records of the respondent are not causative factors for such sale or purchase. We are in agreement with this observation of the Original Authority. In RIICO - 2017-TIOL-1725-CESTAT-DEL., the Tribunal held that the*

transfer charges received by the appellant for permitting the transfer of allotted land from one person to another cannot be taxed as real estate agent service because they were custodians of land and were dealing with the allottee on principal to principal basis, not as an agent of either party. We note that the reliance placed by Revenue on Ajay Enterprises Pvt. Ltd. v. CST, Delhi - 2016 (42) S.T.R. 471 (Tri. - Del.)is not appropriate. In the said case it was admitted that the appellant was a real estate agent registered with the Department. Here in the present case the respondent is a real estate developer selling their constructed flats. They are dealing with the buyers, old or new, on principal to principal basis. Accordingly, we are in agreement with the impugned order that no service tax liability can be confirmed against the respondent under this category."

7. We also find that CESTAT has followed the above decision in various cases. In view of the same we are of the considered opinion that transfer/administrative charges received by M/s Vatika Ltd. are not exigible to service tax. Accordingly, we find that there is no merit in the contention of the revenue in respect of appeal No. ST/2743/2012 and ST/3070/2012; they are liable to be set aside. The appeal No. ST/60130/2016 succeeds on merits.

8. The Revenue has moved an application for change of cause title of the respondent in appeal no. ST/60130/2016. The Ld. DR for the Revenue prays that name of the respondent i.e. "Commissioner of Service Tax, Delhi-IV" may be changed to "**Principal Commissioner**

of CGST, Gurugram". Prayer is allowed; accordingly, the miscellaneous application is disposed of.

9. In the result, the appeals ST/2743/2012 and ST/3070/2012 filed by the Revenue are dismissed and the appeal ST/60130/2016 filed by M/s Vatika Ltd is allowed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash