CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO.3

SERVICE TAX APPEAL NO.50258 OF 2017

[Arising out of Order-in-Original No.JAI-EXCUS-000-COM-86-14-15 dated 28.02.2015 passed by the Commissioner of Central Excise & Service Tax, Jaipur]

M/s. Rajasthan Tourism Development Corporation Limited
Hotel Swagatam Campus,
Opp. Railway Station, Jaipur
.....Appellant

Vs.

The Commissioner of Central Excise and Service Tax, Jaipur
NCRB, Statue Circle, C-Scheme, Jaipur
.....Respondent

Appearance:
Present for the Appellant : Shri Shafiq Khan, Advocate
Present for the Respondent: Shri Manoj Kumar, Authorised Representative

CORAM :
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 26.05.2025
Date of Decision: 25.09.2025

FINAL ORDER No.51356/2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Rajasthan Tourism Development Corporation Limited[1] against the impugned Order-in-Original No. JAI-EXCUS-000-COM-86-14-15 dated 28.02.2015 passed

1. **the Appellant**

by the Commissioner of Central Excise & Service Tax, Jaipur wherein the demand of service tax of Rs.1,52,99,438/- was confirmed along with interest under section 75 and penalty of Rs.10,000 under section 77 (2) and section 78 of the Finance Act, 1994[2] for the period 01.10.2008 to 31.03.2014 against Renting of Immovable Property to M/s. Jal Mahal Resorts Private Limited and M/s. Neemrana Hotels P. Limited.

2. Brief facts are that the State Government appointed the Appellant to act as Nodal Agency for leasing out land adjoining Mansagar Lake under Jal Mahal Tourism Project. On conclusion of the bidding process, the said land was leased out to M/s. Jal Mahal Resorts Pvt. Ltd.[3] vide Agreement dated 22.11.2005. The lease rental money was credited in a separate Escrow Account maintained with Indian Bank, vide a separate license Agreement dated 22.11.2005. The Jal Mahal Monument was also leased out at license fee of Rs.1 Per Annum to M/s. JMRPL under a specific agreement that the Monument shall not be used for commercial purpose. The Appellant being the Nodal Agency was authorized by Department of Tourism to lease Tijara Fort to M/s. Neemrana Hotel Pvt. Ltd. New Delhi in 2009, against Lease amount of Rs.6,00,000/- per annum. The clearance was finally granted vide Order dated 09.11.2015. Information was gathered by officers of DGCEI, Jaipur, Regional Unit that considerable amount has been received by the Appellant on account of renting out of Tijara Fort and 100 acres of land around Mansagar Lake, but Service Tax thereon

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2. the Finance Act
3 . JMRPL

had not been paid. Enquiries were conducted and in compliance to summons dated 05.12.2013, learned counsel for the Appellant appeared before Investigating Officials on 10.12.2013 and stated that appellant was not liable to pay any service tax. Learned counsel for the of Appellant also apprised the Adjudicating Authority that three Public Interest Litigations had been filed against the said project allotment and the Hon'ble High Court of Rajasthan, Jaipur Bench, vide order dated 17.05.2012 had dismantled the entire project and declared the allotment ab initio void and illegal. On appeal, the Hon'ble Supreme Court of India vide its judgment dated 25.04.2014 in SLP No. 17701/2012 reduced lease period to 30 years and at Para 124 of the judgment ordered for lease period to commence from 25.04.2014. In the matter of Tijara Fort the Appellant had not accepted any rent from M/s. Neemrana Hotels Pvt. Ltd. as the No Objection and clearance from Forest Department was not received. The matter was pending for decision before the High level committee headed by the Chief Sectary of the State of Rajasthan. However, the adjudicating authority confirmed the demand and imposed penalty under section 78 of the Act. The appellant is before this Tribunal against the said order.

3. Learned counsel for the appellant submitted that the impugned Order-in-Original was incorrect and unsustainable in law, as the Adjudicating Authority had not considered the peculiar facts and circumstances. As the Nodal Agency of State Government of Rajasthan, the appellant had discharged their sovereign duty and in

view of section 65(90a) read with 65(105) (zzzz) defining Renting of Immovable Property" that the Rented Land/ Property to be used in the course or furtherance of business or commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service. He submitted that the Hon'ble Supreme Court in SLP No. 17701/2012 at Para-124 had reduced the period of lease from 99 years to 30 years and it was ordered that the lease period would commence from the date of judgment i.e. 25.04.2014. As regards the renting of Tijara Fort, learned counsel contended that the Appellant had not accepted any rent from Lessee i.e. M/s. Neemrana Hotels Pvt. Ltd., as the No Objection and clearance from the Forest Department was not received. He stated that the matter was pending decision before the High level committee headed by the Chief Secretary, State of Rajasthan.

4. Learned counsel further submitted that the Hon'ble Supreme Court in the judgment dated 25.04.2014 has observed as follows:-

> "The deteriorating condition of the Lake and the Monument compelled the Government to find ways and means to restore the two components to their original glory"

4.1 He contended that over 30 years, attempts were made by various Government agencies and departments to restore the ecological and environment condition of the lake and its adjoining area. However, none of these attempts yielded very positive results because of paucity of resources to take up and sustain the restoration. Learned counsel further submitted that the benefits of the project would result in the restoration of the Mansagar Lake and the Jal Mahal monument, and development of eco friendly tourism. Learned counsel relied on the Delhi High Court judgment in the case of **Home Solution Retail India Ltd vs. UOI & Ors**[4] in support of his contention that no service tax was liable to be paid on the renting of immovable property service.

> "35. From this analysis, it is clear that we have to understand as to whether renting of immovable property for use in the course of furtherance of business or commerce by itself is a service, There is no dispute that any service connected with the renting of such immovable property would fall within the ambit of Section 65(105)(zzzz) and would be exigible to service tax. The question is whether renting of such immovable property by itself constitutes a service and, thereby, a taxable service. We have already seen that service tax is a value added tax. It is a tax on the value addition provided by some service provider. In so far as renting of immovable property for use in the course or furtherance of business or commerce is concerned, we are unable to discern any value addition. Consequently, the renting of immovable property for use in the course or furtherance of business of commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service. Of course, if there is some other service, such as air conditioning service provided alongwith the renting of immovable property, then it would fall within Section 65(105)(zzzz). Section 65(105) (zzzz) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act."

5. Learned Counsel further contended that the Adjudicating authority had not recognized that in the present transaction, there was no relationship of landlord and a tenant. As per Section 105 of the

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4. WP (C). 1659/2008

Transfer of Property Act, 1882, lease is defined as Right to enjoy property for certain time, but if the same is for a period more than 20 years, then in the light of Rajasthan Stamp Act, 1998, the schedule notified under section 3 at Sr. No. 33, the same will constitute as a transfer of ownership and the duty will be charged based on the market value of the property subjected to lease and the same would be termed as perpetual lease, wherein, the landlord and tenant relationship ceases to be in effect. Learned counsel further submitted that in the absence of landlord-tenant relationship, and being transfer of property, the classification of service is devoid of any merit under the head "Renting of Immoveable Property". Learned counsel stated that it is an admitted fact that the Appellant was a Nodal Agency for carrying out the functions under the directions of the State Government of Rajasthan under **PPP**[5] concept, as is evident from para 27, and 28 of the Apex Court judgment. Further, he stated that the Supreme Court in its judgment dated 25.04.2014 (supra), the petitioner had contended that **MoEF**[6] had granted administrative approval and expenditure sanctioned only for the lake restoration components and there was absolutely no consideration by the MoEF to the lake side development component of the Jal Mahal Tourism Project. Further it is a fact that the National Lake Conservation Plan did not contemplate any such commercial venture on the lakes to be restored under the plan. Hence, learned counsel stated that the State Government had authorized the appellant to

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5. Public Private Partnership
6. Ministry of Environment and Forest

undertake the project.

6. Learned counsel further stated that despite the Apex Court judgment brought on record, and the pleas made during the course of hearing, the facts submitted in course of the investigation, the adjudicating authority had passed a non speaking and ex parte order by overlooking the relied upon documents. Further, he stated that the demand had been confirmed under proviso to section 73(1) of the Finance Act, 1994, invoking the extended period from October 2008 to 01.01.2014. This, he contended was not maintainable as there was no suppression nor there any intention to evade payment of duty. He prayed that the impugned order may be set aside.

7. Learned Authorized Representative reiterated the discussions and findings given in the impugned order. Learned Authorized Representative further submitted that the term 'Leasing' is specifically included in the definition of 'Renting of Immovable Property Service under Section 65(90a) of the Finance Act, 1994, and the definition nowhere implies that long terms leasing would fall outside its ambit. Further, the appellant did not fall within the exclusion clause of definition under Section 65(90a) and Section 65(105)(zzzz) of the Act. Learned Authorised Representative further stated that the General Manager, Sh. Emmanuel Johnson in his statement had admitted that the Tijara Fort, Alwar had been leased out to M/s. Neemrana Hotels Pvt Ltd @ Rs.6 lakhs per annum. Even though the cheque were issued, the same were not accepted due to the objection of the Forest Department of the State Government. In respect of M/s. Jal Mahal Pvt

Ltd, he admitted that the lease money upto July, 2012 was received in the Escrow Account of the appellant and thereafter due to litigation, the cheque received was not deposited in their account. Further, Sh. Bharat Kudal, Authorized Representative of M/s. Jal Mahal Resorts Pvt. Ltd. in his statement had admitted payment of rent as per Lease agreement. Further, due to litigation, the rent from Tijara Fort was not credited to the account of the appellant. As evidenced from the letters dated 12.10.2012, 30.03.2013 and 10.08.2013 of M/s. Neemrana Hotels Pvt Ltd, the cheques for rent of Tijara Fort was given to the appellant from Aug-2011 to March-2014. Therefore, rental cheques were given regularly by both the parties to the appellant towards provision of 'Renting of Immovable Property Service'. Further, as per Rule 6 of Point of Taxation Rules, 2011, for a continuous supply of service, service tax is payable either on issuance of invoice or receipt of payment or completion of service whichever is earlier, hence w.e.f. 01.07.2011, service tax is payable on the due date of payment as per the rent agreements.

8. Learned Authorized Representative also submitted that the appellant was registered with the service tax department and despite that they had provided taxable services without discharging service tax. Further, the appellant had failed to inform the taxable receipts from M/s. Neemrana Hotels Pvt Ltd and M/s. Jal Mahal Resorts Pvt Ltd, thus had deliberately suppressed the value with an intent to evade payment of tax. Consequently, the extended period under proviso of Section 73(1) of the Act had been correctly invoked. In light of the

above, he is prayed that the appeal may please be dismissed.

9. We have heard Shri Shafiq Khan, learned counsel for the appellant and Shri Manoj Kumar, learned authorised Representative for the department. The issue for consideration is whether the appellant is liable to pay service tax on the renting of immovable property in respect of Jal Mahal Tourism Project and Tijara Fort to M/s Neemrana Hotel Pvt. Ltd. A quick recap of the facts are that the Revenue issued Show Cause notice dated 21.04.2014 demanding service tax of Rs. 1,52,99,438/- for the period 1.10.2008 to 31.03.2014. As regards the Jal Mahal and Mansagar project, the matter was under litigation and it was settled vide the Supreme Court's judgment in May, 2014. The matter relating to Tijara Fort remained suspended as a clearance from the Forest Department was not received. The matter, as submitted by the learned counsel for the appellant, is that presently it is pending before a High level committee headed by the Chief Secretary, Rajasthan.

10. Before we examine the issues, the admitted facts of the agreement in respect of **Jal Mahal Monument** and Mansagar Lake restoration project are as follows:

1. The appellant entered into an agreement with Jal Mahal Resorts P. Ltd in 22.11.2005 for development of precincts area of the Mansagar Lake and Jal Mahal Monument.
2. Separate escrow account was created and money received on this account was credited to the said account.

3. 3 PILs were filed against the grant of the Jal Mahal project. The Rajasthan High Court vide its order dated 17.05.2012 cancelled the said project and ordered for dismantling of the project.

4. The Supreme Court vide its order dated 25.04.2014 set aside the High Court order and reduced the period of lease from 99 years to 30 years and it was ordered that the lease period would commence from the date of judgment i.e. 25.04.2014.

10.1 The admitted facts in respect of the Agreement in respect of **Tijara Fort** is as follows:

1. The appellant entered into a lease agreement with M/s Neemrana Hotels for lease amount of Rs 6,00,000/- per annum in the year 2009.

2. The said rental income was withheld owing to non-availability of clearances from the Forest Department, Government of Rajasthan.

3. The Forest department clearance was received vide Order dated 09.11.2015.

4. The matter is pending decision before the High-level committee headed by the Chief Secretary, State of Rajasthan

11. We will now consider each issue independently.

11.1 Restoration of Mansagar lake and Jal Mahal Monument

At the outset we will consider the submissions of the Ld Counsel that the Revenue had invoked the extended period and had overlooked the Supreme Court decision in the case of Jal Mahal Resorts Pvt Ltd vs R.P. Sharma in Civil Appeal No. 4912 of 2014. He drew our attention to Para 124 of the said judgment which is reproduced below:

> "124. Thus, **the lease deed although was executed for a period of 99 years shall pursuant to this decision, run for a period of 30 years which shall commence from the date of this judgment and order and may be extended by the State Government for such other period as may be considered legally viable based on the rules and regulations at the relevant period………**"

11.2 In this context, we note that the impugned order has held that the appellant had raised the invoice for the service indicating that the service had been provided by the appellant. In order to consider this position taken by the Commissioner, we need to understand what is taxable service. For a service to be taxable, there has to be service provider, service recipient, taxable service provided with the taxable territory for a consideration. In this context, we note that under the Finance Act, 1994, a taxable service refers to any service on which service tax is leviable as specified in Section 65(105) (prior to 2012) and, thereafter, under Section 66B of the Act. This means any activity carried out by a person for another for consideration, including declared services, except for those listed in the "negative list" outlined under Section 66D. In addition, the Act defines "service" as any activity carried out by a person for another for consideration, but not including a transfer of title in goods or immovable property, a mere transfer, delivery, or supply of goods considered as a sale, and transactions in money or actionable claims. In the instant case, it is a fact that the original agreement had leased the land for 99 years to Jal Mahal Resorts. Learned counsel, in this context, has drawn our attention to the Section 105 of the Transfer of Property Act, 1882 wherein lease has been defined as a right to enjoy property for a certain period of time. However, when the lease period is beyond 20 years, which in this case is 99 years, then as per schedule notified under section 3, sl no.33, of the Rajasthan Stamp Act, 1998, the same will constitute as transfer of ownership. Further, it is noted that the landlord-tenancy relationship and registration charges are missing as per schedule 33(iii) of section 3 for lease pertaining to more than 20 years. The relevant legal provisions of the Rajathan Stamp Act is reproduced hereinafter:

> **"3. Instrument chargeable with duty** - Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the Schedule as the proper duty therefore respectively, that is to say,-
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> (a) every instrument mentioned in that Schedule, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;
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> (b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State:
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> Provided that no duty shall be chargeable in respect of, -
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> (i) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;
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> (ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1958 (Act No. 44 of 1958), as amended by subsequent Acts.
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> [**3-A, Certain instruments chargeable with surcharge** - (1) All instruments of conveyance, exchange gift, settlement, partition, agreement to sale, composition,

mortgage, release, power of attorney and lease of immovable property, and agreement or memorandum of an agreement relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, or development of, **[or sale or transfer (in any manner whatsoever) of,]** any immovable property, chargeable with duty under

xxxx xxxx xxxx

(3) Except as otherwise provided in sub-section i), Provisions of this Act shall so far as may be apply in relation to the surcharge, chargeable under sub-section i) as they apply relation to the duty chargeable under-section 3.**"**

11.2.1 The schedule notified under Section 3 is reproduced below:

33. Lease- Including as under lease, or sub lease and any agreement to let or sub let;-	
(a) Where, by such lease, the rent is fixed and no premium is paid or delivered;-	
(i) Where the lease purports to be a term for less than one year;	The same duty as on bond (No.14) for the whole amount payable under such lease.
(ii) Where the lease purports to be for a term of not less than one year but not more than twenty years;	The same duty as on a conveyance (No. 21) for a consideration equal to the amount or value of the average rent of two years.
(iii) Where the lease purports to be for a term in excess of twenty years or in perpetuity or where the term is not mentioned	The same duty as on a conveyance (No. 21) on the market value of the property which is the subject matter of the lease.

Hence, we are in agreement with the learned counsel's submissions that there was no landlord-tenant relationship between the appellant and Jal Mahal Resorts. Further, post negative list with effect from 1.07.2012, such transfer of property would clearly stay out of the purview of Service Tax.

11.3 In addition, we take note of the clear and unambiguous directions of the Supreme Court in their judgment in Jal Mahal Resorts Pvt Ltd (supra). For better understanding, we reproduce the relevant paras of the said judgment hereinafter:

> "121. However, we have noted that the period of the lease deed had been finally fixed as 99 years which in our view could not have been done by the State Government as that clearly converts the lease deed into a perpetual lease. In fact we have noted that when the tender was floated for granting the lease deed, the maximum period for the lease deed as per the Rule could not have been more than 30 years yet the tender was floated for a period of 60 years which was later extended to 99 years. This in our view could not have been done by the State Government as one can infer even at a glance that the same being contrary to the rules, could not have granted it for a period of 99 years.
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> 122. **We, therefore, set aside the period of lease which has been granted in favour of the appellant for a period of 99 years and the same shall stand reduced to a period of 30 years only** which could be the maximum period of the lease for the land under the rules which should start ordinarily from the date of its execution so as to expire on or before the period of 30 years. But we are conscious of the fact that much time has lapsed after execution of the lease deed in 2005 due to which only Phase-I of the project could start after which it got stuck and the project is in a state of limbo due to delay on account of the litigation started at the behest of the respondent/PIL petitioners who questioned the validity of the lease deed executed and finally succeeded in getting it set aside. We are, therefore, of the view that the lease deed which could not be made effective in view of the intervening litigation due to which the Project got delayed, **it is legally just and appropriate to direct that the period of 30 years of the lease shall now be counted from the date of this judgment and order**."

11.4 In view of the above categorical directions of the Supreme Court, it is established that the lease for the Jal mahal and the Mansagar lake was effective from 25.04.2014 only. This, therefore, clearly negates any demand confirmed under the 'Renting of immovable property' service for the period prior to this date. It has also been categorically submitted that all lease payments received were credited in an escrow account, which was not utilised in view of the continued litigation in this matter. In view of the above discussions, it is clearly established that no service was provided prior to the decision of Supreme Court, and consequently, we hold that the demand for the period October 2008 to March 2014 cannot be upheld.

12. We now consider the demand in respect of leasing out Tijara fort to Neemrana Hotels Pvt Ltd. In this context, Ld Counsel has submitted that owing to non-receipt of requisite clearance from the Forest Department, the rental cheques were not accepted. It is also on record that the said certificate was received on 09.11.2015, much beyond the period of demand. Although the agreement between the appellant and Neemrana Hotels was signed in 22.07.2009, it did not become operational till November, 2015 consequent to the receipt of clearance from the Forest Department. We also note that it has been submitted that the rental cheques were withheld till the receipt of the said clearance. Even though cheques were received initially, the consideration so received was not encashed. So, it was equivalent to no payment or receipt of consideration, and does not satisfy the four limbs of provision of taxable services. There was a service provider, service recipient but no taxable service was provided for the period prior to November 2015. Hence, the demand in this regard also cannot be sustained.

13. The invocation of the extended period and penalties imposed on the appellant cannot be sustained in view of the discussions above.

14. Accordingly, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on **25.09.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana