CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 51181 Of 2020
With
Service Tax Cross No. 50444 of 2021

[Arising out of Order-in-Appeal No. DDN/EXCUS/000/APP/101/2020-21 dated 31.08.2020 passed by the Commissioner (Appeals) of CGST, Dehradun]

Commissioner of CGST-Dehradun : **Appellant**
2nd & 3rd Floor, Shree Palace, Nathanpur
Dehradun

Vs

Brahma Raina : **Respondent**
S/O Late Pran Kishore Raina, 25-Teg
Bahadur Road, Dehradun, Uttarakhand

APPEARANCE:
Shri S. K. Meena, Authorized Representative for the Appellant
Shri Ajay Aggarwal, Advocate and Ms. Aanchal Kapoor, Chartered Accountant for the Respondent

CORAM :

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

FINAL ORDER No. 51596/2025

Date of Hearing:10.10.2025

Date of Decision:10.10.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by the department against the Order-in-Appeal No. DDN/EXCUS/000/APP/101/2020-21 dated 31.08.2020 wherein the Commissioner (Appeals) rejected the appeal of the department.

2. The brief facts of the case are that information gathered by the officers of CIU that M/s. Pushpanjali Realms and Infrastructure Pvt. Ltd. engaged in the business of rendering Residential Complex Service

including Commercial and Industrial Building were involved in the evasion of Service tax. Therefore, a search was conducted at the premises of M/s. Pushpanjali on 17.07.2015. On the basis of documents resumed from M/s. Puspanjali, revealed that a Collaboration agreement dated 26.12.2013 was executed between the respondent Brahma Raina[1] & builder i.e. M/s. Puspanjali for allowing the developer to construct residential fiats on certain terms and conditions. As per the said agreement, the respondent received consideration of Rs.3,50,00,000/- and three flats in the new building to be constructed by the Builder. The Department alleged that the respondent ought to have discharged Service Tax liability on the consideration received for transferring land development rights to M/s. Pushpanjali, since the activity of transferring land development rights falls in the ambit of 'Service' as defined under Section 658(44) of the Act. The Department further alleged that the said service was neither covered under the negative list nor exempt under the Notification no.25/2012-ST dated 20.06.2012. A show cause notice dated 22.04.2019 was issued to the respondent for demand of Service tax of Rs. 1,08,90,662/- along with applicable interest and proposing penalty under sections 77 & 78 of the Finance Act, 1994. The said show cause notice was adjudicated by the Joint Commissioner of CGST, Dehradun vide Order-In-Original No. 22/Joint Commissioner/DDN/2019 dated 24.10.2019, wherein adjudicating authority dropped the proceedings. Aggrieved by the said order, the Department filed an appeal before the Commissioner (Appeals) wherein the Commissioner (Appeals)

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1 the respondent

upheld the Order-in-Original and rejected the appeal filed by the Department. Aggrieved by the said order-in-appeal, the Department has filed the present appeal before the Tribunal.

3. Learned Authorized Representative for the Department submitted that there was no conveyance deed transferring any benefit in land and hence, this is not a case of transfer of property or benefit thereon. Section 65B (44) of the Finance Act, 1994, exempts from service tax an activity of transfer of title in goods or immoveable property. In the instant case, there was no transfer of title in immovable property and hence there is no exemption from service tax. Further, there was no registered conveyance deed in this case, therefore, there is no transfer of title in property. Learned Authorized Representative further stated that Commissioner (Appeals) had erred in relying upon the decision of Supreme Court in the case of **Syndicate Bank vs. Estate Officer**[2]**,** in which it was held that a title which is subordinate to an owner and which need not be created by reason of a registered deed of conveyance may at time create title. The order of Supreme Court relates to those cases such as lease of land which does not require registration; if it is for a period of less than one year by partition of a joint family property by way of family settlement. However, the ratio of the decision does not apply in this case. He further submitted that there was only a collaboration agreement and there is no transfer of development rights under this agreement. This cannot be equated with transfer of title.

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2 (AIR 2007 SC 3169)

3.1 Learned Authorized Representative contended that in the case of **Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana**[3], the Supreme Court distinguished an agreement of a contract of sale of an immoveable property from transfer of Immoveable property and held that a transfer was only completed when the deed of conveyance was registered. In this case, there was no registered conveyance deed and hence, there is no transfer of property. Further, the Supreme Court also held in the case of **Naran Das Karsoin Das vs. S.A. Kamtam**[4], while examining a sale of property that "in India", observed that the word "transfer" is defined with reference to the word "convey". Hence, transfer of property requires conveyance through a transfer of deed. The Supreme Court relied on the case of **Rani Chhatra Kumari Devi vs. Mohan Bikram Shah**[5], whereby the Bombay High Court held that in respect of property there can be only one owner i.e. legal owner. In view of the above Supreme Court decisions, it was clear that there was no transfer of title in the instant case and the party/respondent continued to be owner of the land. In fact, there was no transfer of any benefits arising out of land as there was no conveyance deed transferring any such benefit, and under the Registration Act, 1908, Transfer of Property Act, 1882 and the law laid down by the Supreme Court, there can be no transfer of benefit relating to property without registration of the conveyance deed thereof. Learned Authorized Representative contended that it was evident that the party had full rights of title with them and they were liable to discharge service tax

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3 SLP(C No. 13917 of 2009)
4 [1977 AIR 774]
5 (1931)33 BOMLR 1390)

liability on the consideration received in return of allowing the builder to build and sell flats as this activity fell within the ambit of 'service'. Learned AR prayed that the present appeal may be allowed.

4. Learned counsel for the Respondent submitted that in "transfer of development rights", there was no element of service involved and therefore, there was no liability to pay Service Tax under the provisions of Finance Act. 1994. As per Section 65B (44) of the Finance Act, 1994, 'service' was an activity carried out by a person for another for consideration, and included "declared service" but did not include, inter alia, transfer of title in goods or immovable property, by way of sale, gift or in any other manner. Learned counsel contended that what constitutes an "immovable property" was not defined the Finance Act, 1994. Therefore, the definition of "immovable property" as defined in General Clauses Act, 1897 would get attracted.

4.1 Therefore, Learned counsel submitted that "transfer of development rights" not being an activity, was not covered by the definition of 'service' under Section 65B (44) of the Finance Act, 1994. He stated that in any case, "transfer of development rights" was transfer of "immovable property", within the meaning of aforesaid definition under Section 3(26) of the General Clauses Act, 1897 and was outside the purview of the Service Tax regime under the provisions of the Finance Act, 1994. He also submitted that the issue was squarely covered by the decision of the Tribunal in the case of **DLF Commercial Projects vs. Commissioner of Service Tax,**

Gurugram[6] as relied upon by the adjudicating authority. Learned counsel stated that the Department has filed an appeal before the Supreme Court, but there was no stay granted by the Supreme Court.

5. We have heard the learned AR for the Department and the learned counsel for the respondent. We note that the present issue is squarely covered by the decision of the Tribunal in the case of **M/s Genius Propbuild Private Limited vs. Commissioner of Central Excise and CGST, Jaipur**[7]. The relevant paras are reproduced hereinafter:-

> "4. The issue for consideration is whether the „transfer of development rights" amounts to rendering of service under the head „sale of development rights", on which service tax is payable by the appellant.
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> Xxxxx xxxxx xxxxxxx xxxxxxx
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> 7. Considering the decisions referred, we find that the Bombay High Court in **Chheda Housing Development Corporation versus Bibijan Shaikh Farid,** referred to the definition of „immovable property" under Section 3(26) of the General Clauses Act, 1897 and also the decisions on it, held that the benefit arising from the land is immovable property and TDR being a benefit arising from the land, the same would be held to be immovable property.
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> 8. In **DLF Commercial Projects Corporations versus Commissioner of ST, Gurugram**[8], the Chandigarh Bench of the Tribunal also similarly held that the „transfer of development right" is immovable property in terms of section 3(26) of General Clauses Act, 1897, and hence no service tax is payable as per the exclusion clause in terms of Section 65(B)(44) of the Act. The relevant para is as under:-
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>> **"10.** We further find that in this case, when the land-owning company transfers land development rights to the developers, the developers gets the right to not only to develop project on such land but also the right to sell such developed property along with undivided interest in the land underneath and to receive payments for such transfers from the buyers.

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6 Final Order No. 60554 of 2019 dated 22.05.2019
8. 2025 (9) TMI 1607-CESTAT NEW DELHI

Once the land-owning companies transfers the land development rights to developer for a consideration, it is obligated to transfer the undivided interest in the land in favour of developer"s buyers for which no separate consideration is paid for it. In other words, such transfer of undivided interest in the land by the land-owning company is in return of the initial consideration paid by the developer to it for transfer of land development rights only. Thus, it is the ownership of the land, which stands transferred effectively by the land-owning company in return of consideration payable by the developers. The moment it is either land or "benefits arise out of land", it goes outside the purview of "Service" as defined in Section 65B(44) of Finance Act, 1994. Under the Development Agreement dated 5-12-2006, it is stated that *there would be transfer of Development Rights in future* and the Developer were permitted to carry out the developmental activities as per clause 2.2 of the Development Agreement, wherein the developer is permitted to enter the scheduled property for carrying out developmental activities. *After the developmental activities have been carried out, sale deed is executed among the three parties namely Landowner, Developer and the Purchaser under which the title to the undivided portion of the land is transferred to the various vendees/purchasers from time to time as and when the Conveyance Deed/Sale Deed is executed in future*. We further observe that it is not only the possession, which stood transferred with the right to use, enjoy and construct building/super structure, but, at the same time, undivided right, title and interest in the land also stand transferred under the Deed of Conveyance on which stamp duty has been paid and the Deed of Conveyance has been registered before the Sub-Registrar."

9. Thereafter, referring to the decisions of the Allahabad High Court in **Bahadur & Ors. versus Sikandar & Ors.**, Bombay High Court in **Sadoday Builders Pvt. Ltd. Vs. Joint Charity Commissioner, Nagpur and Others-2016 (6) TMI 936-Bombay High Court and Chheda Housing Development Corporation (supra),** where transferable development right has been held to be immovable property, the Chandigarh Bench observed that the transfer of development rights in the case in hand is termed as „immovable property" and no service tax is payable as per the exclusion clause in terms of Section 65(B)(44)(a)(i) of the Act.

10. Following the ratio laid down in the aforementioned decisions, we find from the terms and conditions of the collaboration agreement that the ultimate aim for the transfer of development right was the transfer of land which in clear terms is out of the purview of the service tax. In the

circumstances, it is not necessary to consider the other contentions raised by the appellant.”

6. Respectfully following the aforesaid decision, we uphold the impugned order. The cross objection is accordingly disposed of. The appeal is dismissed.

(Order dictated and pronounced in the open Court on)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.