

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 50280 Of 2021

[Arising out of Order-in-Appeal No. 24(SM)/ST/JPR/2020 dated 03.02.2020 passed by the Commissioner (Appeals) of Central Excise and CGST, Jaipur]

Ambition Builders Private Limited

: Appellant

Avalon Homes, Village Masit, Khasra No.
663/355, 358 & 359, Bhiwadi Alwar, Rajasthan

Vs

Commissioner, Central Excise &

: Respondent

CGST-Alwar
Block-A, Surya Nagar, Alwar, Rajasthan-301001

APPEARANCE:

Shri Atul Gupta, Chartered Accountant for the Appellant

Shri Shashank Yadav, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

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

FINAL ORDER No. 51927/2025

Date of Hearing:01.12.2025

Date of Decision:01.12.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by Ambition Builders Private Limited¹ to assail the Order-in-Appeal No. 24(SM)/ST/JPR/2020 dated 03.02.2020 wherein the Commissioner (Appeals) confirmed the demand of service tax amounting to Rs. 46,96,800/- along with interest and equal penalty.

2. The brief facts of the case are that the appellant was engaged in providing services of 'Construction of Residential Complex Service' and 'Construction Service other than Residential Complex' and was

1 the appellant

registered under the Service Tax Department. In the due course of business of construction and development, appellant transferred the Land Development rights along with the exclusive rights, interest and entitlement to M/s GRJ Distributors and Developer Private Limited vide Collaboration Agreement dated 10 June 2013. Thereafter, an audit was conducted by the Department in November 2015 for the period April 2012 to March 2015, wherein the present objection was raised. Based on the said objection, a show cause notice was issued on 09.12.2016, proposing a service tax demand of Rs. 46,96,800/- along with interest and equal penalty, alleging that the transfer of development rights by the appellant during the material period was a taxable service. The demand was confirmed by the adjudicating authority vide Order in Original dated 21.05.2018, against which the appellant filed an appeal before the Commissioner (Appeals). Vide Order-in-Appeal dated 03.02.2020, the Commissioner (Appeals) upheld the order-in-original and rejected the Appeal. Aggrieved by the said order, the appellant has preferred this appeal before the Tribunal.

3. Learned counsel for the appellant submits that the issue is no longer res integra and has been decided in favour of the appellant in the following decisions:-

- (a) DLF Commercial Projects Corporations vs. Commissioner of Service Tax, Gurugram²
- (b) M/s Genius Probuild Private Limited vs. Commissioner of Central Excise and CGST, Jaipur³

2 2019 (27) GSTL 712 (Tri.-Chan.)
3 2025 (9) TMI 1607-CESTAT NEW DELHI

(C) Sadoday Builders Private Limited vs. Jt. Charity Commissioner,
Nagpur and others⁴

4. Learned Authorized Representative for the Revenue has very fairly conceded that the issue has been decided in favour of the appellant in the earlier decisions.

5. We have heard the learned counsel for the appellant and the learned Authorized Representative 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**. 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.

Xxxxx xxxxx xxxxxxxx xxxxxxxx

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.

8. In **DLF Commercial Projects Corporations versus Commissioner of ST, Gurugram**⁵, 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:-

"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. 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 decisions, we set-aside the impugned order. Consequently, the appeal stands allowed.

(Order dictated and pronounced in the open Court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.