

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**New Delhi**

PRINCIPAL BENCH – COURT NO. 3

**Service Tax Appeal No. 50348 Of 2019**

[Arising out of Order-in-Original No. 30/PK/GST/DE/2018-19 dated 06.11.2018 passed by the Commissioner of CGST-New Delhi]

**Omaxe Limited**

7, Local Shopping Center,  
Kalkaji, New Delhi

**: Appellant**

Vs

**Commissioner of Central Goods  
And Service Tax and Central  
Excise, Delhi East**

Central Revenue Building  
I.P. Estate, new Delhi-110014

**: Respondent**

**APPEARANCE:**

Shri Shaubhik Gupta, Advocate for the appellant

Shri Aejaz Ahmad, Authorised Representative for the respondent

**CORAM :**

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

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

**FINAL ORDER No. 50171/2026**

Date of Hearing:12.01.2026

Date of Decision:29.01.2026

**HEMAMBIKA R. PRIYA**

The present appeal has been filed by M/s Omaxe Ltd<sup>1</sup> to assail the impugned Order-in-Original No. 30/PK/GST/DE/2018-19 dated 06.11.2018 wherein the demand of ₹4,48,59,134/- was confirmed along with interest and penalty.

2. The brief facts of the case are that the appellant is a real estate developer engaged in the development of integrated townships. For

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**1** the appellant

this purpose, the appellant enters into MoU with land owning companies for acquiring land developing rights. The appellant entered into such understanding with M/s Lavanya builders Pvt Ltd., and M/s Source Developers Pvt Ltd., whereby they transferred the land development rights to the appellant. The DGGI gathered information that the appellant had entered into such arrangements with the companies and had not paid any service tax on such activities. Show cause notice dated 10.4.2017 was issued alleging that transfer of development rights for consideration is covered under the definition of 'service' as it did not involve transfer of title of immovable property. Hence, it was a taxable service under section 66B of the Finance Act, 1994. The notice also invoked the extended period under section 73(1) of the act. Vide the impugned order, the demand was confirmed and penalty was also imposed. Hence, the present appeal has been filed by the appellant before this Tribunal.

3. Ld counsel for the appellant submitted that the present dispute had been authoritatively concluded in favour of the appellant by the Tribunal in the case of **DLF Commercial Projects Corporation vs. Commissioner of Service Tax, Gurugram**<sup>2</sup> wherein it was held that the transfer of such land development rights is transfer of immovable property in terms of Section 3(26) of the General Clauses Act, 1897 and no service tax is payable as per the exclusion in terms of Section 65B(44) of the Finance Act. He relied on other similar decisions of this Tribunal on this issue. Hence, he prayed that the impugned order is set aside and appeal be allowed.

4. Ld Authorized Representative for the Department reiterated the findings of the impugned order. However, he conceded that this matter was squarely covered by several decisions of the tribunal.

5. We have heard the Learned Counsel for the appellant and the Learned Authorized Representative for the department and perused the records.

6. The issue before us for consideration is whether the transfer of development rights amounts to rendering of service on which service tax is liable to be paid.

7. We find that is issue stands squarely covered by several decisions of this Tribunal. In **DLF Commercial Projects** (supra), the Chandigarh Bench of this Tribunal following the decisions of Allahabad High Court in **Bahadur & Ors** versus **Sikander & Ors.**<sup>3</sup> and the Bombay High Court in **Sadoday Builders** versus **Joint Charity Commissioner, Nagpur**<sup>4</sup>, it was held that transfer of such development rights was transfer of the immovable property, held as follows:

"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

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3 MANU/UP/0016/1905

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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 658 (44) of Finance Act, 1994, Under the Development Agreement dated 05.12.2006, 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."

8. Respectfully following the aforesaid decisions, we set aside the impugned order and allow the appeal.

*(Order pronounced in the open Court on 29.01.2026)*

**(BINU TAMTA)**  
MEMBER (JUDICIAL)

**(HEMAMBIKA R. PRIYA)**  
MEMBER (TECHNICAL)

G.Y.