CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50977 OF 2020

[Arising out of Order-in-Appeal No.225-226-SM-ST-JPR-2020 dated 28/05/2020 passed by the Commissioner (Appeals), Central Excise and CGST, Jaipur]

M/s. DKG Township and Developers **...APPELLANT**
B-135, Vijay Path, Tilak Nagar,
Jaipur

Vs.

Principal Commissioner of CGST **...RESPONDENT**
And Central Excise Commissionerate- Jaipur
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur

AND

SERVICE TAX APPEAL NO. 50978 OF 2020

[Arising out of Order-in-Appeal No.225-226-SM-ST-JPR-2020 dated 28/05/2020 passed by the Commissioner (Appeals) Central Excise and CGST, Jaipur]

Shree Seco Pvt Ltd **....APPELLANT**
B-135, Vijay Path, Tilak Nagar,
Jaipur

Vs.

Commissioner of CGST **...RESPONDENT**
And Central Excise Commissionerate- Jaipur
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur

Appearance:
Present for the Appellant : Shri Rahul Lakhwani, Advocate and Ms. Diksha Khandel, Chartered Accountant
Present for the Respondent: Shri Aejaz Ahmad, Authorised Representative

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

Date of Hearing:27.02.2026
Date of Decision:16.03.2026

Final Order No.50360-50361/2026

HEMAMBIKA R. PRIYA

Challenge is to the impugned order no. 225 & 226(SM)/ST/JPR/2020 dated 26.5.2020 by M/s. DKG Townships & Developers[1] and Shree Seco Pvt Ltd[2] wherein the demand of Rs.86,95,869/- & Rs.1,06,28,285/- respectfully was confirmed along with interest and penalty.

2. The brief facts are that the appellant no.1 & no.2 are co-owners of a land ad measuring 25320 sq.mts. An intelligence was received that the land owners were not paying service tax on the consideration received for transferring land developmental rights. Investigations were launched by DGCEI[3] wherein it was seen that the appellant no.1 & no.2 had entered into a development agreement with the developer M/s Adarsh Buildstate Ltd for construction of residential complex by the name Hyde Park. Show Cause Notice dated 30.08.2016 was issued alleging that transfer of development rights for consideration was 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 demands were confirmed and penalties were also imposed on the appellant no.1 & no.2.

3. Learned counsel submitted that the development agreement entered into by the developer and the appellants was in the nature of

---

1. Appellant no.1
2. Appellant no.2
3. Directorate General of Central Excise Intelligence

collaboration and there was no transfer of development rights between the appellants and the developer. He contended that the developer was not providing any services to the developer nor was the developer providing any service to the appellant no.1 & no.2. He further contended that both the appellants and the developer jointly sold units to the buyers under a tripartite agreement and revenue was shared between them. Thus he stated that the transaction did not qualify as service.

He further contended that even if there was transfer of such rights, then that issue had been authoritatively concluded in favour of the appellant by the tribunal in its decision in the case of **DLF Commercial Projects Corporation** vs. **Commissioner of Service Tax, Gurugram**[4] 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. Learned authorized representative 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 of the Department and perused the records.

---

4. 2019-(27)GSTL 712-Tri-Chan

6. The issue before us for consideration is whether there was any transfer of development rights which amounted to rendering of service on which service tax is liable to be paid. We note that the learned Counsel has categorically stated that there was no transfer of land development rights to the developer and the agreement was a joint collaboration between the appellants and the developer. If that be the case, there is no question of any provision of service by the appellants, and there is no liability to service tax.

6.1 Even if we accept the Department's contention that there was transfer of land development rights, then we note that this issue is 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** vs **Sikander & Ors**[5], and the Bombay High Court in **Sadoday Builders** vs **Joint Charity Commissioner**, **Nagpur**[6] wherein 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 landowning 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

5. Manu/UP/0016/1905
6. Manu/MH/0791/2011

> 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 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 sunder 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."

7. Respectfully following the aforesaid decisions, we set aside the impugned order and allow the appeals.

(Order pronounced on **16.03.2026**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana