CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50151 of 2018

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/040-41/2017dated25.09.2017 passed by the Commissioner of CGST, Central Excise & Customs, Raipur]

M/s. Raipur Development Authority **...Appellant**
Bhakt Karma Business Complex,
New Rajendra Nagar, Raipur

VERSUS

Commissioner of Central Excise and Service Tax, Raipur **...Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chhattisgarh – 492001

APPEARANCE:
Shri A.K. Batra and Ms. Shakshi Khanna, Chartered Accountant for the Appellant
Shri Rajpal Sharma, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 20.04.2026
DATE OF DECISION: **19.08.2026**

FINAL ORDER NO. 51403/2026

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Original No. 040-41/2017 dated 17.10.2017 vide which the following order has been passed:

> *i. I confirm the demand of service tax collectively amounting to Rs. 19,27,38,667/- (Rupees Ninteen Crores Twenty Seven Lakhs Thirty eight Thousand Six Hundred Sixty seven only (Service tax Rs. 18,71,24,920/-, Education Cess Rs.37,42,500/- and SHE Cess Rs. 18,71,247/-) not paid by the Noticee during the period 2013-14 and 2014-15, as detailed herein above, and order for its recovery from the Noticee under proviso to Section 73(1) of Chapter V of the Finance Act, 1994 read with Sections 66, 67 and 68 of the said Act;*

ii. Interest at appropriate rate is also ordered to be recovered from the Noticee under Section 75 of the Finance Act, 1994, on the demand of service tax confirmed above at sl. no. (i) above.
iii. I impose a penalty of Rs. 19,27,38,667/- upon the Noticee under Section 78 of the said Act for suppressing the relevant details and the taxable value of the said services with intent to evade payment of service tax;
iv. I do not impose penalty under Section 76 of the Finance Act, 1994;
v. I impose penalty of Rs. 10,000/- on Noticee under Section 77 of the Finance Act, 1994
vi. I hold the Noticee liable to pay the amount under Rule 7C of Service Tax Rules, 1994 which should be recovered from them for their failure to file the prescribed returns on or before the prescribed date on actual computation.

Thereby confirming the proposal of Show Cause Notice No. 15-40/2015 dated 24.04.2015. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri A.K. Batra and Ms. Shakshi Khanna, learned Chartered Accountants for the appellant and Shri Rajpal Sharma, learned Special Counsel for the department.

3. Learned counsel for the appellant has submitted that appellant is a statutory body constituted by the State Government of Chattisgarh under Section 38(1) of the Chhatisgarh Nagar Tatha Gram NiveshAdhiniyam, 1973, and is known as the 'Town and Country Development Authority' thereby falls under the definition of Governmental authority as per explanation(s) to Notification No. 25/2012-ST dated 20.06.2012. The issues involved in the present proceedings stand squarely covered by the decision of CESTAT, Delhi rendered on 24.07.2025 in the appellant's own case for the

earlier period from April 2009 to March 2013. The Tribunal has decided the matter in favor of the appellant, and the said decision is directly applicable to the present case, as the facts and legal issues remain identical.

3.1 It is pertinent to mention that the issue relating to denial of CENVAT Credit does not arise in the present appeal, and the issue concerning the 'Kamal Vihar Yojana' was not a subject matter in the earlier appeal. However, the core issue involved in both proceedings-pertaining to the leasis of land for a period of 30 years, renewable for two further terms of 30years each, and the sale of superstructure either prior to or after completion of construction- remains identical and has already been adjudicated in favor of the appellant.

3.2 With respect to demand on one time lease premium/lumpsum about received for leasing of land used for commercial purposes (on which super structure was constructed by appellant and sold to buyers on auction basis after construction)-(Rs.58,47,445/-), it is submitted that the department has raised the demand on the consolidated amount of lease premium and amount charge for sale of super structure, at full rate without even extending the benefit of Rule 2A of the Valuation Rules. The entire consideration towards the superstructure is received post-construction, substantiating that the transaction pertains to sale of immovable property. Hence, the demand confirmed on leasing of land with sale of superstructure is legally untenable.

3.3 With respect of demand in respect of contract entered with M/s. Gupta Infrastructure, it is submitted that leasing of land for period of 30 years, renewable for two further terms of 30 years each, amounts to the transfer of development rights. Such transfer of development rights constitutes a benefit arising out of land, falling within the definition of immovable property as per Clause 3(26) of the General Clauses Act, 1897. Accordingly, the tansaction lies outside the ambit of 'service' as defined under Section 65B(44) of the Finance Act, 1994. Reliance in this regard is placed on the previous decision and on the following judgments:

(i) Hon'ble Bombay High Court in the case of Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid reported as 2007 (3) MhLJ 402, wherein it was held that development right are immovable property and constitute benefits arising from land.

(ii) Hon'ble CESTAT, Chandigarh in DLF Commercial Projects Corporation Vs. Commissioner of Service Tax, Gurugram reported as 2019 (27) GSTl 712 (Tri.-Chan.), wherein the Tribunal held that transfer of development rights is not a taxable service under the Finance Act, 1994.

3.4 With respect to demand in respect of Kamal Vihar Yojana, it is submitted that the allotment of land on a freehold basis is construed as a sale of immovable property, which falls outside the scope of 'services' as defined under the Act. Accordingly, service tax is not leviable on such transactions. The demand on advance amount returned to the buyers as no service was rendered and on surcharge/penalty is also objected as the transactions does not attract service tax liability. Hence, service tax is not leviable in such cases. With these submissions, appeal is prayed to allowed.

4. While rebutting these submissions, learned Departmental Representative, at the outset, has reiterated the findings arrived at by the adjudicating authority below. It is submitted that all the pleas taken by the appellant as well as those mentioned in the grounds of appeal are repetition of defense submissions as were put forth before the original adjudicating authority. All these grounds have been discussed in of the Order-in-Original dated 30.04.2015. It has specifically been held that transfer of development right cannot be equated with sale of land since the ownership of the land transfer remain of RDA only. The transfer of lease hold rights and development rights cannot be called as sale of land. Non-payment of service tax on the value of constructed area in CCM has been justified on the ground that the possession of area was not handed over, however the handed over property is not the point of taxation for the purpose of payment of service. There is not infirmity in the order when the demand on this count has been confirmed.

4.1 With respect to the lease premium, it is submitted that due to the contradiction in two decisions of the Tribunal reference was made to the Larger Bench decision in Appeal No. ST/50553/2017 filed by RIICO Ltd., Interim Order No. 1/2025 dated 27.01.2025 has answered the reference by concluding that value of premium/salami is exigible to service tax under "Renting of Immovable Property" for the period 01.07.2012 under Section 65(105)(zzzzz) of the Finance Act and under Section 66B of the Act w.e.f. 01.07.2012.

4.2 With respect to the amount received from leasing out of vacant land, findings in of the impugned order are being reiterated.

It is submitted that the service tax on renting of vacant land from 01.04.2009 is recoverable.

4.3 With respect to the demand of service on the amount of transfer fee, it is submitted that taxable services of Renting of Immovable Property was very comprehensive so as to cover not only renting and leasing of immovable property but also to included "any other service in relation to such renting". The transfer of land was granted by the appellant only after receiving of the transfer fee. Hence, the amount was received for an activity which was directly in relation to renting. Hence, the same has rightly been held taxable, it being not covered even in the negative list. The plea of inclusion of land value in the lease premium has rightly been denied for want of any evidence to support the said claim.

4.4 With respect to the cost of providing Commercial and Residential Complex Services, the plea of appellant that their liability is on 40% of the service value in terms of Rule 2A of the Service Tax Valuation Rules is denied to have any legitimate basis as apparent of the findings in the order under challenge in Para 36.44 thereof. The interest received by the appellants from the buyers of the residential unit is also to be treated as consideration for Commercial and Residential Complex Services as the appellant itself has booked the said amount as 'other interest' in their books of accounts. With these submissions, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, we observe and hold as follows:

5.1 The appellant has mentioned that for the previous period than the period of the impugned 2 show cause notices, stands already decided in favour of the appellant. The identical issues were raised in the earlier show cause notice dated 22.10.2014 and the issue stands decided in favour of the appellant vide the Final Order No.51068/2025 dated 24.07.2025.Learned Departmental Representative has objected the said submission pointing out certain discrepancies in the said order. However, it is acknowledged that no appeal against the said order has been filed. We have perused the order. In the said order with respect to respective issues, it has been held as follows:

> *5. Having heard both the sides, the rival contentions and perusing the entire records, we observe that the appellant, Raipur Development Authority, is denied to be government authority and the demand has been raised on following issues:*
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> *(i) Demand confirmed under renting of immovable property services for the period upto 30.06.2012 and under Section 66E read with 65B (44) for the period post 01.07.2012 on lump sum premium and transfer fee received in respect of commercial/vacant land – Rs.13,46,81,965/-*
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> *(ii) Demand confirmed under construction of residential complex service (CRCS) on lump sum premium and transfer fee received in respect of residential land and sale of superstructure constructed thereon (Demand – Rs.1,34,94,231/-*
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> *(iii) Demand on interest received under CRCS (01.04.2010 to 31.03.2013) – Rs. 81,93,549/-.*
>
> *(iv) Demand on supply of water under management, maintenance or repair services (MMR) – Rs.11,32,741/-*
>
> *(v) Denial of CENVAT credit availed Rs.1,79,45,250/- and utilized Rs.13,69,267/- included in availed amount.*
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> *6. Foremost we peruse the documents produced by the appellant to establish that the appellant is a government*

authority. It is observed that the appellant has been constituted under Chhattisgarh Nagar Tatha Gram NiveshAdhinayam, 1973 to perform the functions as mentioned in another statute namely Madhya Pradesh Nagar Tatha Gram NiveshVikasitBhoomiyco, Griho, BhavanoTatha Anya Sanrachnaon Ka VyayanNiyam, 1975. The notification issued under Section 38(1) of Chhattisgarh Nagar Tatha Gram NiveshAdhinayam, 1973 constituted M/s. Raipur Development Authority as a "Town and Country Development Authority" with a power to acquire, hold and dispose of the property and to enter into contracts w.e.f. the date of said notification i.e 03.09.2004.

7. We now peruse the definition of the government authority. Notification No. 25/12 dated 20.06.2012 defined government authority as follows:

> *EXEMPTION NOTIFICATION 2(s) "governmental authority'' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution; CLARIFICATION NOTIFICATION 2(s) "governmental authority" means an authority or a board or any other body; (i) Set up by an Act of Parliament or a State Legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;*
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> *Hon'ble Supreme Court in CIVIL APPEAL NO. 3991/2023 COMMISSIONER, CUSTOMS CENTRAL EXCISE AND SERVICE TAX, PATNA VS. M/S SHAPOORJI PALLONJI AND COMPANY PVT. LTD. & ORS…APPELLANT …RESPONDENTS WITH CIVIL APPEAL NO. 3992/2023*
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> *15. Having read the two definitions, first and foremost, it is necessary to ascertain the objective behind the Clarification Notification which amended the Exemption Notification and re-defined "governmental authority". A bare perusal of the Exemption Notification reveals that the exemption therein was only extended to those entities, viz. board or authority or body, which fulfilled the three requisite conditions, i.e. : a)*

> *having been established with 90% or more participation by way of equity or control by Government, b) set up by an Act of the Parliament or a State Legislature, and c) carrying out any function entrusted to a municipality under Article 243W of the Constitution. It is evident that the scope of the exemption was severely restricted to only a few entities. Although the reason for re-defining "governmental authority" has not been made available by the appellants, we presume that unworkability of the scheme for grant of exemption because of the restricted definition of "governmental authority" was the trigger therefor and hence, the scope of the exemption was expanded to cover a larger section of entities answering the definition of "governmental authority". An amendment by way of the Clarification Notification was, therefore, introduced which expanded the definition of "governmental 14 authority" and widened the exemption base for service tax to be provided even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without the condition of having been established with 90% or more participation by way of equity or control by Government to carry out any function entrusted to a municipality under Article 243W of the Constitution.*

From the perusal of the description above and the mode of constitution of the appellant under a statute, also keeping in view of the scope of work awarded to the appellant, we hold that the appellant falls under the category of government authority. The adjudicating authority below has relied upon the unamended definition of government authorities.

8. The appellant while emphasizing itself to be a government authority has relied upon Circular No. 89/7/2006-ST dated 18.12.2006. The part of the circular as has been impressed upon by the appellant is:

> *"2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such*

activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities."

9. The perusal reveals that if the government authority is receiving any statutory fee the same cannot be called as consideration for rendering taxable service. Further perusal reveals that the circular also clarifies as follows:

"3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

10. It becomes clear that any activity performed by a government authority which is not in the nature of statutory activity, if the activity is taxable, then even a government authority shall be liable to pay tax. Hon'ble Supreme Court in a recent decision in the case of ***Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise and Service Tax, Alwar reported as (2022) 5 SCC 62*** *has held as follows:*

"1. As per the exemption circular, only such activities performed by the sovereign / public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases,

service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.

2. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

3. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.

4. The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."

11. From the above discussion, it becomes clear that it shall be the nature of service which shall be relevant for deciding the tax liability of a government authority. We accordingly proceed as per the demand on five counts as already enumerated above.

12. Issue No. 1

12.1 The demand of this issued is based upon a agreement dated 11.11.2005 as was entered between the appellant and M/s. GIPL for development of City Centre Mall on the land which was otherwise owned by the appellant. However, on the basis of own ownership and transfer (BOOT Policy). The said project was sanctioned by Chhattisgarh Government vide letter dated No. 1950/1452/32/2005 dated 13.07.2005. Undisputedly the appellant was appointed as the body responsible for urban planning including town planning, one of the sovereign function but department has alleged that the act of the appellant vide the *said agreement is meant to have a personal commercial motive of RDA and that the activity is taxable.* ***Krishi Upaj Mandi Samiti (supra)*** *has already held that personal commercial motive even of government authority vis-à-vis service is also taxable. Hence, we need to look into whether the act of transferring the land on lease to the appellant for a period of 30 years extendable to 90 years against the one time premium giving all rights of use, possession and even sale to the developer amounts to fall under the definition of service for the period w.e.f. 01.07.2012 or under the definition of renting of immovable property till the period 30.06.2012. Finance Act, 2012 w.e.f. 01.07.2012 has defined the term 'service' under Section 65B (44) of Finance Act, 1994. The relevant extract of the same is reproduced as under:*

> *"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service but shall not include:-*
>
> *(a) An activity which constitutes merely-*
>
> *(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
>
> *(ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
>
> *(iii) A transaction in money or actionable claim;*
>
> *(b) A provision of service by an employee to the employer in the course of or in relation to his employment;*
>
> *(c) Fees taken in any Court or Tribunal established under any law for the time being in force."*

12.2 As per the aforesaid definition following essential pre-requisites are required to be satisfied:

(i) It should an activity other than personal transfer of title in goods or in immovable property by way sale, gift or any other manner;

(ii) For consideration;

(iii) Carried out by a person for another and includes the declared service.

12.3 The transaction agreed vide agreement dated 11.11.2005 is with respect to the immovable property which is defined under clause 3 (26) of General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to earth or permanently fasten to anything attached to the earth. The said provision has been dealt with by Hon'ble Bombay High Court in the ***Chheda Housing Development Corporation Vs. Bibijaan Shaikh Farid reported as 2007 (3) MHLJ402 (Bom.)****, wherein it has been held that the benefit arising from the land is also an immovable property. Once the possession of property is transferred to the developer against the payment of share of sale consideration for the development/construction on the said immovable property, the transaction is also that of the transfer to immovable property. The Hon'ble Court has clarified that it is as good as transferring of developmental rights being a benefit arising from the land which amounts to sale of immovable property. Similar view has been taken in the decision of this Tribunal in the case of* ***DLF Commercial Projects Corporations Vs. Commissioner of Service Tax, Gurugram reported as 2019 (27) G.S.T.L. 712 (Tri.-Chan.)*** *It has been appreciated as follows:*

> ***"(xv)*** *Section 65B (44) (a) (i) says that transfer of title in goods or immovable property, by way of sale, gift or in any other manner. In other words, the transaction of transfer of title either in goods or in "immovable property" are excluded from the purview of "Service". A question then arises, what is the meaning of the word "immovable property". Immovable property has not been defined in Finance Act, 1994 but has been defined in Section 3(26) of General Clauses Act, 1987 in following words:-*
>
> ***(26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;***
>
> ***(xvi)*** *The aforesaid definition clearly says that the immovable property includes not only "land" but also the benefits "arising out of land". Next, the question then arises whether transfer of development rights is a benefit arising*

out of land so as to fall under "immoveable property". The word „benefit arising out of land, has been interpreted in the following judgments:-

a) Bahadur & other Vs.Sikandar MANU/UP/0016/1905

b) Ananda Behera Vs. State of Orissa AIR 1956 SC 17

c) SmtDropadi Devi Vs. Ram Das AIR 1974 All 473

d) Sadoday Builders (P) Ltd Vs. Jt Charity MANU/MH/07912011

e) Chheda Housing Development Corpn Vs. Bibijan Shaikh 2007 (2) Bom CR 587

***(xvii)** The authorization given to a "Developer" to develop the land and sell super-structure in perpetuity shall undisputedly fall within the words "benefit arising out of the land" and shall, therefore, be held to be "immovable property". Once there is a transaction in relation to immovable property, that shall, undisputedly, fall outside the purview of "Service" within the meaning of Section 65B(44) and consequently, no "Service Tax" shall be payable under Section 66.*

12.4 The transaction in the agreement is therefore held to be a transfer of development right i.e. transfer of benefit arising out of immovable property which is out of the scope of above quoted definition of service. Hence it is held that the activity under this issue is per se not taxable. Question of confirmation of service tax demand for the period beyond 01.07.2012 is not maintainable.

12.5 For the period prior the activity of renting of immovable property is defined under 65(105) (zzzz) which reads as follows:

"to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce."

12.6 The land in question as given by RDA to the developer was initially a vacant land which was sanctioned to be developed by the developer under a government notification. As already held above, the transaction agreed under agreement dated 11.11.2005 *was not purely an act as covered under the aforesaid definition. It was an act of leasing out the land permanently for a longer period as that of 90 years against the one time payment. Irrespective that an annual ground rent was received but the lessee was allowed to retain the possession with all control on the immovable property. The transaction is one similar to sale as defined under Arcticle 366 (29A)(d) of the Constitution of India incorporated vide 46th amendment. The activity therefore cannot fall under the definition of renting of immovable property even for the prior period. Hence, the demand of Issue No. 1 is liable to be set aside.*

13. Issue No. 2

*13.1 The appellant had constructed the residential complex. This issue stands settled vide the decision of this Tribunal in the case titled as **M/s.Rajasthan State industrial Development and Investment Corporation Ltd. Vs. Commissioner of Central Excise, Jaipur I reported as 2017 TIOL 1725 CESTAT Delhi,** wherein it has been held that the consideration received for allowing the allotteehave direct nexus to the service of renting of immovable property. Appellant however had contended that the abatement of Notification No. 29/2010 dated 22.06.2012 has not been extended to the appellant. We observe that there is a Chartered Accountant Certificate produced by the appellant certifying that the appellant while discharging the service tax liability under Construction of Residential Complex Service has included the value towards the sale of super structure and the lease premium which is the cost of land/amount of consideration for sale of land. We have perused the said notification under which the abatement of 75% is applicable. A bare perusal of Notification No. 29/2010 dated 22.06.2010 is provided below:*

(a) Gross amount charged by the builder shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.

(b) Gross amount charged by the builder shall include cost of land.

(c) Builder shall not avail benefit of Cenvat Credit under Cenvat Credit Rules, 2004.

(d) Builder shall not avail benefit of exemption under Notification No. 12/2003 dated 20.06.2003.

13.2 No evidence is produced by the department that any of the said four conditions have been violated by the appellant. It is also apparent on record that the appellant earlier availed the Cenvat credit, however the same already stands reversed. It is settled that Cenvat credit, till it is not utilized it is as good as it it is not availed. Resultantly, we hold that though the appellant is liable to pay service tax with respect of the CRCS activity, however as per the abatement under Notification No. 29/2010 dated 22.06.2010.

14. Issue No. 3

14.1 The appellant had received the interest from the buyers of residential units in cases where there was deferment of payment of sale considerations. This apparent fact is sufficient for us to hold that the amount of interest is actually in the nature of penal consequences of delayed payment. It is as good as liquidated damages which have already been held to not to be includable into the gross taxable value. The Circular No. 96/7/2007 dated 23.08.2007 states that the amount collected for delayed payment of bill is not to be treated as consideration charged for the provision of taxable service and resultantly will not form part of the value of taxable service under Section 67 read with Service Tax (Determination of Value) Rules, 2006. We draw our support from the decision of this Tribunal in the case of ***AP Trade Promotion Corporation Vs. Commissioner of Central Excise, Hyderabad reported as 2010 (17) STR 107.***

15. Issue No. 4

15.1 The service tax has been demanded on the amount received by the appellant against once year water supply. It is submitted that the said amount was booked under the account head "water tax". It is submitted that the appellant was providing water supply to the occupants of the residential complexes at such rates as equivalent to the rate on which water has been supplied by Chhattisgarh Jal Board. From the meaning of government authority as discussed above, supply of water by a government authority is a sovereign function. Also from the definition of service as discussed above, it is clear that discharging a sovereign function cannot be called as the provision of services. Otherwise also, as pointed out on behalf of the appellant that Chhattisgarh

State Act, 2003 in its Schedule I while talking about tax free goods has specifically covered water in its ambit. Once water is as good as a good supply thereof is an act of transfer of goods which is subject to VAT and not to service tax.

16. Issue No. 5

16.1 There is no denial nor any evidence to the contrary to the fact that the Cenvat credit as was availed by the appellant stands already reversed. On this basis appellant is already held entitled for the benefit of abatement under Notification No. 29/2010 dated 22.06.2010. Hence there remains no need to give any findings for the eligibility of input services based where upon the Cenvat credit was availed.

17. In the light of discussion with respect to five issues, as above, we hereby set aside the entire demand confirmed vide impugned OI-O except that appellant is held liable to pay service tax w.r.t activity of Construction of Residential Complex. However, appellant is held eligible for abatement benefit of Notification No. 29/2010. With these findings, the Order-in-Original under challenge is hereby set aside except for the amount to requantified in terms of abatement, as mentioned above. Consequently the appeal stands partly allowed.

12. All the above discussed issues of the said earlier appeal have been raised vide the impugned both show cause notices and the demand has been confirmed vide the impugned order. However,we do not find any reason in the present appeal to differ from the above quoted findings, where the demand with respect to construction of residential complex service has been confirmed, however in accordance of abatement Notification No. 29/2010 dated 22.06.2010. Rest of the demand of service tax is hereby set aside.

13. Now coming to the plea of invocation of extended period, we observe that since the liability of the appellant was earlier also pointed out priorto the issuance of the impugned both the show

cause notices and the department had confirmed the demand on such issue, as mentioned above. The appellant still has not opted to not to discharge the liability of service tax in the subsequent years. The only consequence of such failure is the intentional evasion of duty. Hence, it is held that extended period has rightly been invoked.

14. Consequent to the entire above discussion, the demand of the order is partially set aside in the manner, as quoted above. As a result, appeal stands partially allowed except for Consequently, the present appeal also stands partly allowed except the appellant is held liable to pay service tax w.r.t activity of Construction of Residential Complex.

[Pronounced in the open court on **19.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

HK