

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING : 27/09/2017.
DATE OF DECISION : 27/09/2017.

Service Tax Appeal No. 1107 of 2011

[Arising out of the Order-in-Original No. 13 to 15/RDN/2011 dated 28/04/2011 passed by The Commissioner, Service Tax, New Delhi.]

M/s Ansal Housing & Construction Ltd.

Appellant

Versus

CST, New Delhi

Respondent

Appearance

Shri P.K. Sahu, Advocate - for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

**CORAM : Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. ____/2017 Dated : 27/09/2017

Per. B. Ravichandran :-

The appellant is against order dated 28/04/2011 of Commissioner of Service Tax, New Delhi. The appellants are engaged in real estate development activities. The dispute in the present appeal relates to the tax liability of the appellant for the consideration received under the heading "Administrative Charges" for allowing transfer of flat buyers right to another

person. The Revenue held a view that the said amount is liable to be taxed under "real estate agent service" in terms of Section 65 (88), (89) read with Section 65 (109) (v) of the Finance Act, 1994. Accordingly, the Original Authority adjudicated the case and confirmed service tax liability for the period 01/10/2007 to 31/03/2010, raised in three different show cause notices.

2. The learned Counsel appearing for the appellant contested the findings of the impugned order stating that they are basically involving in the activity of real estate development and promotion. They are not dealing in any property as real estate agent. Their transactions are on principal to principal basis and they do not fall under the scope of "real estate agent" in relation to service of sale, purchase, leasing or renting of real estate. The learned Counsel relied on the decision of the Tribunal vide final order dated 56131 of 2017 dated 23/08/2017 in the case of **CST, New Delhi vs. Ansal Properties and Infrastructures Ltd.,** involving almost identical set of facts.

3. The learned AR opposed the grounds of appeal. She submitted that real estate developer can also act as real estate agent. It is the nature of activity which is to be examined not the status of the person. When the appellant is transferring the rights of property in their accounts from one person to another person this is typically covered under the category of real estate agents.

4. We have heard both the sides and pursued the appeal records. We note that the "administration charges" collected by

the appellants are for transferring the right of a purchased flat from the seller to another person. The appellants do maintain records of the buyers. In case the initial buyer of a flat intend to dispose of the same to another buyer, the details are to be entered in the records of the appellant as per the pre-arrangement. For such change in the books of account and transfer to another buyer, the appellant are charging "administrative charges". We note similar set of facts came up for consideration in the case mentioned above, by the learned Counsel. The Tribunal in the said case observed as below :-

"9. The respondents were sought to be taxed under the category of "real estate agent's service" in terms of Section 65 (88) (89) of the Finance Act, 1994. The statutory provision of the tax entry are as below :-

"Section 65 (88) and (89) of the Act, 1994, defines the "real estate agent" and "real estate consultant" as under:

(88) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant;

(89) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

Section 65 (105) (v) defines taxable service in relation to 'Real Estate Agent' as under :

"taxable service" service means any service provided or to be provided to any person, by a real estate agent in relation to real estate and the term 'service provider' shall be construed accordingly".

10. The Revenue contended that the respondent received certain considerations for change of name of the owners of the flats, by way of substitution of the name by new buyer in place of earlier owner of the flat, was in relation to sale or purchase of such property and accordingly liable to service tax. To levy service tax first of all the provider of service should be a real estate agent and second while acting as such agent the person concerned should have provided service in relation to sale, purchase, leasing or renting of real estate. There is nothing in the show cause notice or the relied upon documents to show that the respondent acted in a capacity of "real estate agent" between the earlier owner and the new buyer of the flat. The changes made in the records of the respondent are not causative factors for such sale or purchase. We are in agreement with this observation of the Original Authority. In **RIICO – 2017 – TIOL – 1725 – CESTAT – DEL.**, the Tribunal held that the transfer charges received by the appellant for permitting the transfer of allotted land from one person to another cannot be taxed as real estate agent service because they were custodians of land and were dealing with the allottee on principal to principal basis, not as an agent of either party. We note that the reliance placed by Revenue on **Ajay Enterprises Pvt. Ltd. vs. CST, Delhi – 2016 (42) S.T.R. 471 (Tri. – Del.)** is not appropriate. In the said case it was admitted that the

appellant was a real estate agent registered with the Department. Here in the present case the respondent is a real estate developer selling their constructed flats. They are dealing with the buyers, old or new, on principal to principal basis. Accordingly, we are in agreement with the impugned order that no service tax liability can be confirmed against the respondent under this category”.

5. By following the above ratio, we find no merit in the impugned order. Accordingly, the same is set aside. In the result appeal is allowed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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