

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Cross Objection No. 86322 of 2019**

(on behalf of respondent)

**&**

**Service Tax Miscellaneous Application No. 85196 of 2022**

(on behalf of appellant)

**In**

**Service Tax Appeal No. 87297 of 2019**

(Arising out of Order-in-Original No. 11/SKV-11/THCGST/2018-19 dated 17.09.2018 passed by the Commissioner of Central GST & Central Excise, Thane, Mumbai.)

**Commissioner of CGST & Central Excise, Thane**

**.... Appellant**

4th Floor, Navprabhat Chambers,  
Ranade Road, Dadar (West),  
Mumbai – 400 028.

Versus

**CCI Projects Private Limited**

**.... Respondent**

Rivali Park, CCI Compound  
Western Express Highway  
Borivali (East), Mumbai – 400 066.

**AND**

**Service Tax Appeal No. 87297 of 2019**

(Arising out of Order-in-Original No. 11/SKV-11/THCGST/2018-19 dated 17.09.2018 passed by the Commissioner of Central GST & Central Excise, Thane, Mumbai.)

**Commissioner of CGST & Central Excise**

**.... Appellant**

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Versus

**CCI Projects Private Limited**

**.... Respondent**

Rivali Park, CCI Compound  
Western Express Highway  
Borivali (East), Mumbai – 400 066.

**APPEARANCE:**

Shri Shambhoo Nath, Special Counsel for the Revenue

Shri V. Sridharan, Sr. Advocate along with Shri Jay Chedha & Shri Aniket Barve,  
Advocates for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86823/2025**

Date of Hearing: 12.06.2025

Date of Decision: 19.11.2025

**Per: M.M. PARTHIBAN**

This appeal has been filed by Revenue (herein after, referred to as "the appellant", for short) pursuant to the Review Order No.54/Review/CCO/2018-19 dated 12.02.2019 passed by the Committee of Chief Commissioners assailing the Order-in-Original No. 11/SKV-11/THCGST/2018-19 dated 17.09.2018 (herein after, referred to as "the impugned order") passed by the Commissioner of Central GST & Central Excise, Thane, Mumbai, in adjudication of the show cause proceedings initiated against M/s CCI Projects Private Limited, Mumbai (herein after, referred to as "the respondent" for short).

2.1 The brief facts of the case are that the respondent M/s CCI Project Private Limited, Mumbai herein are *inter alia*, engaged in the business of providing services of construction of residential complex. For the purpose of payment of service tax on taxable output services and for compliance with the Service Tax statute, they are registered with the jurisdictional Commissionerate under service tax registration No. AABCT4694BST001.

2.2 During the disputed period from 2012-13 to 2016-17, the respondent had entered into an agreement dated 26.03.2009 with M/s Cable Corporation of India Limited (CCIL) wherein they were appointed as the Chief Project Manager and co-ordinator for the development, supervision and construction of multi-storeyed residential complex and other structures of mixed use on the land belonging to CCIL. In terms of the said agreement, the respondent had provided the services of construction of residential dwellings to the flat buyers. The conveyance deed of the constructed flat has been done vide a triparte agreement wherein CCIL has conveyed the land to the buyer and the respondent has conveyed the constructed building to the buyer. The respondent had received various amounts during the disputed period from the flat buyers, which was kept in a designated bank account and as per agreed terms, after retaining 50%/66.67% of such amount towards construction services, the balance amount was remitted to CCIL. In respect of the entire amount attributable to the construction services, the respondent had discharged the applicable service tax after availing the benefit of Notification No. 26/2012-S.T. dated 20.06.2012.

However, the department had viewed that the total gross amount received by the respondent from the flat buyers i.e., including the amount paid by respondent to CCIL, is the consideration for providing project management and co-ordination services and therefore initiated show cause proceedings demanding service tax of Rs.71,88,65,982/- by treating that these are liable to service tax as 'service' under Section 65B(44) of the Finance Act, 1994 and under Section 66B w.e.f. from 01.07.2012. On the above basis, the department had initiated show cause proceedings demanding service tax for the period 2012-13 to 2016-17 involving contravention of Section 66, 68 of the Finance Act, 1994 and Rule 6 of Service Tax Rules, 1994, read with Sections 91, 95 of the Finance Act, 2004; Sections 136, 140 of Finance Act, 2007, Section 119(2) of Finance Act, 2015 read with Section 174 CGST Act, 2017 along with demand of interest and for imposition of penalty on the respondent under Sections 77 of the Finance Act, 1994. The matter arising out of the show cause notice dated 28.03.2018 was adjudicated vide the impugned order dated 17.09.2018 in setting aside the proposed demands made in the SCN. Feeling aggrieved with the impugned order, appellant department/Revenue have preferred this appeal before the Tribunal.

3.1 Learned Special Counsel appearing for Revenue, had submitted that the respondent had entered into "project Management Agreement' dated 26.03.2009 with CCIL, for providing project management and co-ordination service in construction of flats on the land that belonged to CCIL. Further, CCIL had also entered separate agreements with M/s Kanakia Construction Private Limited, for transfer of land for development purpose. He submitted that on combined reading of the above agreements, it would appear that CCIL outsourced the entire work of construction and sale of flats; and the service provided by the respondent in this context, would be considered as 'provision of service on behalf of the client (CCIL) and the entire consideration received by the respondent from the flat buyers would be liable to service tax as per Section 65 (19) of the Finance Act, 1994.

3.2 He further claimed that payment of service tax by the respondent for an amount of Rs.29,11,01,366/- towards 'construction services' without availing CENVAT facility enabled them to avail the abatement provided under Notification No. 26/2012-S.T. dated 20.06.2012; whereas they are required to discharge the entire service tax liability Rs.71,88,65,982/- without any abatement. Hence, he prayed that the impugned order be set aside and the appeal filed by the department be allowed.

4.1 Learned Senior Advocate appearing for the respondent submitted that the respondent has provided the services of construction of residential complex to the flat buyers. In the impugned transaction, M/s CCIL is engaged in sale of land to the flat purchasers, whereas the respondent is engaged in construction and sale of residential flats to the flat buyers. Hence, there is no element of service inter-se between the respondent and CCIL. Further, learned Advocate also stated they had entered into an agreement dated 26.03.2009 with M/s CCIL merely to regulate the joint obligations of the respondent and CCIL, in relation to the flat purchasers, and this cannot be construed by the department to be a separate contract for rendering services to CCIL.

4.2 He further submitted that it is a settled position of law in India, that the ownership of the land and the ownership of the buildings erected on such land may vest with different persons. Further, he stated that specific clauses viz., clauses 2(d), 4(d), 7(b), 7(c) and 15(a) of the agreement dated 26.03.2009 clearly establish that the superstructures constructed on the land are owned by the respondent and these alone are transferred to the flat buyers and there is no clause which indicates that there is a transfer of superstructures to CCIL, whether by accretion or any other manner. The respondent had already paid the service tax on the value/consideration of the flats received from the flat buyers. Further, there is no evidence to substantiate the claim of the department that the respondent had suppressed the facts in relation to the alleged service between them and CCIL, as every transaction and all receipts have been duly accounted in the books of accounts maintained by them. Since, quantification of service tax demand in the SCN has been worked out on the basis of accounts maintained by them, he stated that the demand of service tax invoking extended period of limitation is factually incorrect. Hence, he claimed that there could be no additional levy of service tax on the respondent. Thus, he stated that the proceedings initiated by the department for demand of service tax is not legally sustainable, and accordingly the learned Commissioner had rightly dropped the proceedings by setting aside the SCN.

4.3 Furthermore, learned Advocate submitted that the issue under dispute has been settled in a number of judicial pronouncements passed by this Tribunal and such orders affirmed by the Hon'ble Supreme Court. In this regard, he relied upon the following case laws:

(i) *Commissioner of Central Excise & Customs, Kerala Vs. Larsen & Toubro Limited* –2015 (39) S.T.R. 913 (SC)

(ii) *Vasantha Green Projects Vs. Commissioner of Central Tax, GST, Ranga Reddy* – 2019 (20) G.S.T.L. 568 (Tri.-Hyd.)

(iii) *DLF Commercial Projects Corporations Vs. Commissioner of Service Tax, Gurugram* – 2019 (27) G.S.T.L. 712 (Tri.-Chan.)

5. Heard both sides and perused the case records along with paper books and case law citations submitted in this case.

6. In the impugned order dated 22.10.2018, learned Commissioner had examined the issues under dispute and had recorded his findings as follows:

"5.18 The amount being Rs.7,26,11,77,466/- which was billed for the sales of the flats was thus assessed to service tax (Table at the end of Para 5.8 above refers). Out of the said total amount, an amount of Rs.6,78,01,79,079/- was received by the noticee during entire period of demand notice. Out of this received amount, an amount of Rs.5,33,44,55,359/- was retained by the noticee. The demand notice has been raised for this amount of Rs. 5,33,44,55,359/-. Since the entire amount billed for selling of flats Rs.7,26,11,77,466/- has already been subjected to service tax and an amount of Rs.29,11,01,366/- was paid by the noticee towards service tax, therefore, demand ff service tax on the retained amount is not maintainable.

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5.20 In the present case, the noticee had constructed the flats and paid service tax on the same and passed on pre-decided amount to CCIL as their share as being owner of the land. Sale of land is not a taxable event and hence no service tax can be demanded in the demand notice. No money has come from CCIL to the noticee. Hence the ratio of judgement in the case of *Katrina R Turcotte (supra)* cannot be made applicable to the present case as both the cases are different from each other.

5.21 Since the demand is not maintainable, as well as revenue neutral, therefore there is no question of levy or imposition of interest or penalty. Hon'ble Supreme Court in the case of *Jet Airways (India) Limited Vs. Commissioner* [as reported in 2017 (7) GSTL J 35 (SC)] has while relying on the judgement of Hon'ble Tribunal in the case of *British Airways Vs. CCE, Delhi* [as reported in 2014 (36) STR 598 Tri (Del.)] has held that in cases of revenue neutrality demand for interest and penalty is not sustainable.

5.22 In view of the above findings, I pass the following order.

#### ORDER

6.1 In view of the above findings, I set aside the show cause cum demand notice bearing F. No. V/CGST/CCI/46/2017-18 dated 28.03.2018 issued to M/s CCI Projects Pvt. Ltd."

7. We have examined the Agreement for Project Management and Co-ordination dated 26.03.2009 entered into between the respondent (CCI Projects Pvt. Ltd., earlier known as Entertainment India Pvt. Ltd.) and the CCIL who is the owner of the land, which is placed on record. Clauses in the agreement clearly provide that the CCIL had already entered into various development agreements with persons, other than the respondent, for providing exclusive development rights to such parties while retaining the ownership with them (CCIL). It has been specifically mentioned that such agreements were entered prior to engagement of the respondent as a Chief Project Manager and/or Co-ordinator for co-ordinating and managing the project of development of flats in the specified area. The obligations clauses provide that the respondent shall prepare building plans, carry out all the infrastructural work, construction of buildings and other structures etc. till completion of the flats and obtain Occupation Certificates from the government authorities for sale of the flats to the buyers, including assisting the buyers in formation of society and transfer of title after completion of the project. In providing such service, the agreed upon consideration have also been mentioned as 50%/66.66% of gross sale proceeds. Therefore, we find that the respondent had acted as per the said agreement while retaining the amount in respect of the services provided by them and paid applicable service tax. We also find that accounting of the entire gross receipts in respect of the sale of the flats also fulfils one of the condition set forth in the exemption entry No.12 of Notification No.26/2012-S.T. dated 26.06.2012, along with non-availment of CENVAT credit facility. Since, the respondent had fulfilled both the requisite conditions and have paid service tax on the amount retained by them, we do not find any infirmity in the findings arrived at by the learned Commissioner in the impugned order concluding that the respondent had duly discharged the entire service tax liability and further holding that demand of service tax on the respondent is not sustainable, for dropping the proposals made in the SCN.

8.1 We find that the Hon'ble Supreme Court in the case of *Larsen & Toubro Limited* (supra) have held that under works contracts containing elements both of transfer of property in goods as well as labour and services, service tax could not be levied on the value of transfer of property since in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive and the Finance Act, 1994 does not provide

for the same. The relevant paragraphs in the said judgement is extracted and given below:

**"15.** *A reading of this judgment, on which counsel for the assessee heavily relied, would go to show that the separation of the value of goods contained in the execution of a works contract will have to be determined by working from the value of the entire works contract and deducting therefrom charges towards labour and services. Such deductions are stated by the Constitution Bench to be eight in number. What is important in particular is the deductions which are to be made under sub-paras (f), (g) and (h). Under each of these paras, a bifurcation has to be made by the charging Section itself so that the cost of establishment of the contractor is bifurcated into what is relatable to supply of labour and services. Similarly, all other expenses have also to be bifurcated insofar as they are relatable to supply of labour and services, and the same goes for the profit that is earned by the contractor. These deductions are ordinarily to be made from the contractor's accounts. However, if it is found that contractors have not maintained proper accounts, or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. This judgment, therefore, clearly and unmistakably holds that unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire cost of establishment, other expenses, and profit earned by the contractor and would transgress into forbidden territory namely into such portion of such cost, expenses and profit as would be attributable in the works contract to the transfer of property in goods in such contract. This being the case, we feel that the learned counsel for the assessee are on firm ground when they state that the service tax charging section itself must lay down with specificity that the levy of service tax can only be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract. This not having been done by the Finance Act, 1994, it is clear that any charge to tax under the five heads in Section 65(105) noticed above would only be of service contracts simpliciter and not composite indivisible works contracts.*

**16.** *At this stage, it is important to note the scheme of taxation under our Constitution. In the lists contained in the 7th Schedule to the Constitution, taxation entries are to be found only in lists I and II. This is for the reason that in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive. There is no concurrent power of taxation. This being the case, the moment the levy contained in a taxing statute transgresses into a prohibited exclusive field, it is liable to be struck down. In the present case, the dichotomy is between sales tax leviable by the States and service tax leviable by the Centre. When it comes to composite indivisible works contracts, such contracts can be taxed by Parliament as well as State legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts. Thus, it becomes very important to segregate the two*

elements completely for if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally infirm. This position is well reflected in *Bharat Sanchar Nigam Limited v. Union of India*, (2006) 3 SCC 1 = [2006 \(2\) S.T.R. 161 \(S.C.\)](#), as follows :-.....

**17.** We find that the assesseees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In *Gannon Dunkerley*, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows :-.....

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**24.** A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

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**41.** We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second *Gannon Dunkerley* decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.

**42.** It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by *Mcdowell's* case.

**43.** We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on

*indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services."*

8.2 We further find that in the case of *Vasantha Green Projects* (supra), the Co-ordinate Bench of the Tribunal has held that demanding service tax on the gross value obtained by the appellant developer/ contractor including the value of the land would amount to double taxation and the same is not legally sustainable. In the said order, the Tribunal also referred to the clarification issued by CBEC clarifying the above position. The extract of the said order is given below:

**"11.** *We find that C.B.E. & C. vide circular dated 16-2-2006 in respect of collection of service tax under construction of complex services had issued instructions under Section 57B of Central Excise Act, 1944 which are made applicable to service tax under Section 83 of Finance Act, 1994, in Para No. 8 of the said instructions stated as under :*

*"8. It is noticed that in the construction business different practices and financial arrangements concerning (a) promoters, developers & builders, (b) land owners (c) contractors and (d) buyers exist. These practices influence the 'taxable value' under the construction of complex services. In all such situations, the taxable value under section 67 shall be the gross amount charged by the service provider (builder in this case) for such services provided or to be provided by him. This read with notification No. 18/2005-S.T., dated 7-6-2005 entitles a builder/ contractor an abetment of 67% on the gross amount charged, which shall include the value of goods and material supplied. Further, there is no deductions/exemptions provided for computation of such taxable value in the composite contract."*

*(emphasis supplied)*

**12.** *It can be seen from the abovesaid instructions, the gross amount charged by the builder is liable to tax. The said instructions are in force till today and has not been withdrawn by the Board. As already detailed herein above, the appellant has discharged the service tax liability on the gross amount charged i.e. consideration received from land owners in the form of kind other than cash (value of the land/development rights) + consideration received from prospective buyers in cash by way of financial arrangements on the construction services undertaken by the appellant on joint development basis. We also note that appellant had declared the same in the books of account like IT returns and ST-3 returns which has been certified by Chartered Accountant wherein it is stated that service tax compliance is towards the payment of gross amount of the construction undertaken on joint development basis and received from the customers has been made. This leads to conclusion that it is evident that appellant has complied with the service tax liability on the construction undertaken on joint development basis on the value of construction which is mandated in Section 67 of Finance Act, 1994, read with rules made thereunder. In our view, if once the service tax liability has been discharged on the gross amount, demand of service tax on the same amount again would amount to double taxation."*

8.3 Furthermore, we also find that in the case of *DLF Commercial Projects Corporations* (supra), the Co-ordinate Bench of the Tribunal has held that

no service tax is payable on the portion of transferrable development right, since it is a transaction involving immovable property, in terms of Section 3(26) of General Clauses Act, 1897 and therefore there is no application of Section 65B(44) of the Finance Act, 1994 for charging service tax.

**"16.** *On going through the said definition, the immovable property includes land benefit arising out of land. In the case of transfer of development rights of the land, therefore, it is to be seen in the legal aspect whether the benefit arising out of land can be equated to transfer of development rights of land or not?*

*The said issue has been examined by the Hon'ble Allahabad High Court in the case of Bahadur and Others v. Sikandar and Others wherein the Hon'ble Apex Court observed as under :-*

*"Therefore, the principal question we have to consider is whether the right to collect dues upon a given piece of land, the property of the alleged lessor, is a benefit to arise out of land within the purview of Section 3 of the Registration Act. In our opinion, the right to collect dues upon a given spot is such a benefit, and therefore, we are constrained to find that the document in question purported to convey that which falls within the definition of immovable property. The so-called lease being an unregistered instrument, it could not effect the transfer and could not be admissible in evidence. We are therefore of opinion that the Court of first instance was right. We set aside the order of the lower appellate Court and restore the decree of the Court of first instance with costs in all courts."*

*Further, in the case of Chheda Housing Development Corporation v. Bibijan Shaikh Farid, the Hon'ble High [Court] of Bombay observed as under -*

*"15. The question is whether on account of the term in the clause which permits acquisition of slum TDR the appellants in so far as the additional FSI is concerned, are not entitled for an injunction to that extent. An immovable property under the General Clauses Act, 1897 under Section 3(26) has been defined as under :-*

*(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." If, therefore, any benefit arises out of the land, then it is immovable perproperty. Considering Section 10 of the Specific Relief Act, such a benefit can be specifically enforced unless the respondents establish the compensation in money would be an adequate relief.*

*Can FSI/TDR be said to be a benefit arising from the land. Before answering that issue we may refer to some judgments for that purpose. In Sikandar and Ors. v. Bahadur and Ors. 27 ILR 462 a Division Bench of the Allahabad High Court held that right to collect market dues upon a given piece of land is a benefit arising out of land within the meaning of Section 3 of the India Registration Act, 1877. A lease, therefore, of such right for a period of more than one year must be made by resitred instrument. A Division Bench of the Oudh High Court in Ram Jiawan and Anr. v. Flanuman Prasad and Ors. AIR 1940 Oud 409 also held, that bazaar dues, constitute a benefit arising out of the land and therefore a lease of bazaar dues is a lease of immovable Allahabad High Court in Smt. Dropadi Devi v. Ram Das and Ors. MANU/UP/0120/1974 : AIR1974AII473 on a consideration of Section 3(26) of General Clauses Act. From these judgments what appears is that a benefit arising from the land is immovable property. FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an Agreement for use of TDR consequently can be specifically enforced, unless it is established that compensation in money would be an adequate relief."*

*Further, the issue was examined by the Hon'ble High Court of Bombay again in the case of Shadoday Builders Private Ltd. and Ors. v. Jt.*

Charity Commissioner and Ors. (*supra*) wherein the issue was in respect of sale of transferrable development right is immovable property or not?

The Hon'ble High Court observed as under :-

"5. The principal issue which arose before the learned Joint Charity Commissioner as to whether the TDR could be termed as a movable property, is concluded and is no more *res integra* in view of the judgment of the Division Bench of this court reported in 2007(3) Mh.L.J. 402 in the matter of Chheda Housing Development Corporation v. Bibijan Shaikh Farid and ors. Para no. 15 of the said judgment is material and is reproduced hereunder.

15. The question is whether on account of the term in the clause which permits acquisition of slum TDR the appellants insofar as the additional F.S.I. is concerned, are not entitled for an injunction to that extent. An immovable property under the General Clauses Act, 1897 under Section 3(26) has been defined as under :-

(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."

If, therefore, any benefit arises out of the land, then it is immovable property. Considering section 10 of the Specific Relief Act, such a benefit can be specifically enforced unless the respondents establish that compensation in money would be an adequate relief.

Can FSI/TDR be said to be a benefit arising from the land. Before answering that issue we may refer to some judgments for that purpose. In *Sikandar and ors. v. Bahadur and ors.*, XXVII Indian Law Reporter, 462, a Division Bench of the Allahabad High Court held that right to collect market dues upon a given piece of land is a benefit arising out of land within the meaning of section 3 of the Indian Registration Act, 1877. A lease, therefore, of such right for a period of more than one year must be made by registered instrument. A Division Bench of the Oudh High Court in *Ram Jiawan and anr. v. Hanuman Prasad and ors.*, AIR 1940 Oudh 409 also held, that bazaar dues, constitute a benefit arising out of the land and therefore a lease of bazaar dues is a lease of immovable property. A similar view has been taken by another Division Bench of the Allahabad High Court in *Smt. Dropadi Devi v. Ram Das and ors.*, AIR 1974 Allahabad 473 on a consideration of section 3(26) of General Clauses Act. From these judgments what appears is that a benefit arising from the land is immovable property. FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an Agreement for use of TDR consequently can be specifically enforced, unless it is established that compensation in money would be an adequate relief."

6. The Division Bench has held that since TDR is a benefit arising from the land, the same would be immoveable property and therefore, an agreement for use of TDR can be specifically enforced. The said dictum of the Division Bench is later on followed by a learned single Judge of this court in 2009(4) Mh.L.J. 533 in the matter of *Jitendra Bhimshi Shah v. Mulji Narpar Dedhia HUF and Pranay Investment and ors.* The learned judge relying upon the judgment of the Division Bench in *Chheda Housing Development Corporation (supra)* has held that the TDR being an immovable property, all the incidents of immovable property would be attached to such an agreement to use TDR. In view of the judgments of this court (*supra*), in my view, the order of the Charity Commissioner that no permission under Section 36 is required as TDR is a movable property cannot be sustained and therefore, the application filed by the respondent no. 2 - Trust under Section 36 of the said Act would have to be considered on the touch stone of the said Section 36 and also on the touch stone of the principles applicable to such a sale by a Trust."

As the Hon'ble High Court observed in the case of *Sadoday Builders Private Ltd. and Ors. (supra)* that transferrable development right is immovable property, therefore, the transfer of development rights in the case in hand is termed as immovable property in terms of Section 3(26) of General Clauses Act, 1897 and no service tax is payable as per the exclusion in terms of Section 65B(44) of the Finance Act, 1994."

9. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Bench of the Tribunal and the judgement delivered by the Hon'ble Supreme Court, we do not find any infirmity in the impugned order dated 17.09.2018 passed by the learned Commissioner.

10. In the result, the appeal filed by the Revenue is dismissed and impugned order dated 17.09.2018 is upheld.

11. Miscellaneous application filed by Revenue and Cross Objection filed by the respondent are also disposed of.

(Order pronounced in the open court on 19.11.2025)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**