CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86972 of 2017

(Arising out of Order-in-Original No. 09-10/ST-VII/CD/2017 dated 28.04.2017 passed by Commissioner of Service Tax, Mumbai-VII)

Godrej Properties Ltd. **.... Appellant**
5th Floor Godrej One, Pirojshanagar,
Eastern Express Highway, Vikhroli East,
Mumbai – 400 079.

Versus

Commissioner of Service Tax-VII, Mumbai **.... Respondent**
16th Floor, Satra Plaza, Palm Beach Road,
Sector 19-D, Vashi, Navi Mumbai – 400 705.

APPEARANCE:

Shri Gajendra Jain, Advocate a/w Shri Aditya Jain, Chartered Accountant for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85780/2026

Date of Hearing: 15.04.2026

Date of Decision: 15.04.2026

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants during the disputed period had entered into the Memorandum of Understanding (MOU) dated 24.08.2012 with M/s. Sterling Urban Development P. Ltd. and Mr. Sanjay Kakade, for development of land. In terms of the said MOU, the land owners granted the rights to the appellants for the development of the said land. Towards such development of land, the appellant got a compensation amounting to Rs.22 Crores from both the parties to the MOU. The appellants did not pay any service tax on such amount on the ground that no taxable service was provided by them. However, the department had proposed

to recover the service tax under clause (e) of Section 66E of the Finance Act, 1994 holding that the compensation received by the appellant should be considered as a declared service and the appellant should be exposed to the consequences of payment of service tax thereon. The department had also proceeded against the appellant for recovery of service tax on Rs.4,63,67,857/- on the ground that the appellant did not pay any service tax in respect of such amount received from the parties to the MOU. The show cause notice issued in this regard was adjudicated by the learned Commissioner, Service Tax-VII, Mumbai vide the impugned order dated 28.04.2017, wherein the service tax demand of Rs.2,71,92,000/- and Rs.57,31,067/- was confirmed along with interest and also penalties were imposed under Section 76, 77 and 78 of the Finance Act, 1994. Feeling aggrieved with the impugned order dated 28.04.2017, the appellants has preferred this appeal before the Tribunal.

3.1 The appellant has contended that the final price under the MOU was negotiated with the parties and the amount agreed upon was Rs. 9,63,67,857/-. Out of such amount, the appellant had accounted for Rs. 5 Crores in the financial year 2010-2011 under the head "compensation" received and on the balance amount of Rs.4,63,67,857/- as well as for the amount received during the financial year 2010-11 of Rs.2,50,00,000/-, the appellant did not pay any service tax, owing to the reason that such amount received from the parties to the MOU was towards sale of land and there is no element of service, which would attract payment of service tax.

3.2 With regard to the termination clause contained in both the agreements dated 24.08.2012, the appellant has contended that the scope and purview of the contract is for development of the land and not towards agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Thus, appellant has contended that since the MOU was entered into between the parties with the sole objective of development of land, service tax demand cannot be fastened considering the compensation received as a declared service. To support such stand that no service tax demand can be confirmed, the appellant has relied upon the Circular No. 214/1/2023-Service Tax dated 28.02.2023 issued by the Central

Board of Indirect Tax & Customs (CX & ST Wing) in the Department of Revenue, Ministry of Finance.

4. During the course of hearing, the learned Advocate has submitted the written note, explaining that the service tax amount received by the appellant during the financial year 2014-15 was for Rs.7,13,67,857/- and such amount received by them cannot be termed as 'consideration', for the purpose of payment of service tax. In this context, it was pleaded by the appellant that there is no element of service and the amount received by the appellants was entirely towards sale of land. However, on reading of the impugned order, we find that instead of the claim of the appellants that they got an amount of Rs.7,13,67,857/-, the impugned order has recorded that the appellants got Rs.4,63,67,857/-. Further, the learned adjudicating authority has also held that proper accounting records were not submitted by the appellant for his verification. Since the impugned order has not categorically discussed about the submission of the appellant that the amount received by them was towards sale of land and not for provision of any taxable service, we are of the view that such aspect is required to be examined by the adjudicating authority. Therefore, the impugned order insofar as it has confirmed the service tax demand of Rs.57,31,067/- is set aside and the appeal is allowed by way of remand to the original authority for *denovo* adjudication. During the course of *denovo* adjudication, the appellants should submit the evidence that the amount of Rs. 7,13,67,857/- received by them was towards sale of land and the adjudicating authority should also explain as to how the figure of Rs.4,63,67,857/- was arrived at by him in the impugned order.

5.1 The service tax demand of Rs.2,71,92,000/- was confirmed in the impugned order on the ground that the compensation amounting to Rs.22 Crores received by the appellant was towards provision of declared service under Section 66E(e) of the Finance Act, 1994 by tolerating an act. However, on perusal of the case records, we find that the scope of the MOU was for development of land and not for the purpose of tolerating an act and no such compensation towards such tolerance was received by the appellant, in order to be categorized as a declared service for payment of service tax thereon. In context with the declared service, the Circular No. 214/1/2023-Service Tax dated 28.02.2023 issued by CBIC is relevant, which is quoted herein below:

> ***"6.*** *……, it is clarified that the activities contemplated under section 66E(e), i.e. when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. Field formations are advised that while taxability in each case shall depend on facts of the case, the guidelines discussed above and jurisprudence that has evolved over time, may be followed in determining whether service tax on an activity or transaction needs to be levied treating it as service by way of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."*

5.2 Therefore, the impugned order, to the extent it has confirmed the service demand of Rs.2,71,92,000/- along with interest and penalty are liable to be set aside. Accordingly, the impugned order to such extent is set aside and the appeal is allowed in favour of the appellant.

6. The appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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