

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52875 of 2019

(Arising out of Order-in-Original No. 39/2017-CE dated 31.10.2017 passed by the Additional Director General (Adj.), Directorate General of GST Intelligence (Adjudication Cell), New Delhi)

**M/s J.N. Investments & Trading Company Appellant
Private Limited**

Wind World Towers, Plot No. A-9,
Veera Industrial Estate,
Veera Desai Road, Andheri West,
Mumbai, Maharashtra-400053.

Versus

**Additional Director General (Adjudication), Respondent
New Delhi**

Directorate General of GST Intelligence
(Adjudication Cell), West Block VIII,
Wing No. 6, 2nd Floor, R.K. Puram,
New Delhi - 1100066

And

Service Tax Appeal No. 50197 of 2020

(Arising out of Order-in-Original No. 39/2017-CE dated 31.10.2017 passed by the Additional Director General (Adj.), Directorate General of GST Intelligence (Adjudication Cell), New Delhi)

M/s Vish Wind Infrastructure LLP (VWILLP) Appellant

Wind World Towers, Plot No. A-9,
Veera Industrial Estate,
Veera Desai Road, Andheri West,
Mumbai, Maharashtra-400053.

Versus

**Additional Director General (Adjudication), Respondent
New Delhi**

Directorate General of GST Intelligence
(Adjudication Cell), West Block VIII,
Wing No. 6, 2nd Floor, R.K. Puram,
New Delhi - 1100066

Appearance:

Present for the Appellant: Ms. Aarya More, Advocate

Present for the Respondent: Shri Mihir Ranjan, Special Counsel

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing : 13/03/2025
Date of Decision : 11/07/2025

Final Order Nos. 51002-51003/2025

Dr. Rachna Gupta:

The present order disposes of two appeals arising out of same Order-in-Original and appellant being the two companies of same Group of Companies. The details of both the appeals are as follows:

Appeal No.	Name of appellant	SCN No.	O-I-O No.	Amount of demand confirmed
ST/52875/2019	M/s J.N. Investments & Trading Company Private Limited	574/16912 dated 20.10.2015	39/2017-CE dated 31.10.2017	1,92,81,451/- With penalty of equal amount under section 78(1)
ST/50197/2020	M/s Vish Wind Infrastructure LLP (VWILLP)	574/16912 dated 20.10.2015	39/2017-CE dated 31.10.2017	1,92,81,451/- With penalty of equal amount under section 78(1)

Also the Penalty of Rs. 7,000/- under Section 77(1). No penalty of Section 78A has been ordered to be imposed on Shri Yogesh Mehra.

2. The facts relevant for the disposal of these appeals are:

2.1 M/s Vish Wind Infrastructure LLP (herein referred as VWILLP) is a Limited Liability Partnership¹ and M/s J.N. Investments & Trading Company Private Limited² is a company incorporated under the Companies Act, 1956. Both these appellants are having their

1 LLP
2 (hereinafter referred as JNITCL)

registered office at Wind World Towers, Veera Industrial State, Andheri, Mumbai. Both of the appellants have been floated by M/s Wind World (India) Ltd. (hereinafter known as WWIL) which was earlier known as M/s Enercon (India) Ltd. (hereinafter referred as EIL), **to be engaged in carrying out various activities for facilitating the setting up of wind energy projects.** VWILLP is floated for acquiring, purchasing, selling or otherwise dealing with approvals, allotments etc. for wind power projects including identification of potential wind sites after undertaking power evacuation and related feasibility studies; carrying out land and contour services; micro siting, wind motoring, collection and analysis of data to undertake project planning, costing and feasibility studies. Thus VWILLP undertakes various activities of extensive research for wind Power Projects.

2.2 The another appellant JNIPPL was incorporated to establish wind farms for electricity generation and to carry on the business as lessors, **sub-contractors and consultant of wind energy projects** on the basis of wind assessment studies, Geo-technical service, various studies in India which have the requisite ventures in terms of terrain, wind patterns, requisite plant load factor and power evacuation etc. **Thus possibilities for commercially viable sites for setting up wind energy projects across subject to the results of the aforesaid preparatory work used to be explored by both the appellants.** The company which floated both the appellants i.e. EIL/VWIL is simultaneously is engaged in the business of development, for third parties, of infrastructure facilities, utilities and wind resources that are

required for setting up and running of wind power projects and they also act as consultant to render technical and infrastructural services in connection therewith.

2.3 Directorate General of Central Excise Intelligence, New Delhi received an intelligence that VWILLP and JNIPPL, floated by the promoters of EIL/WWIL were indulging in evasion of service tax. While investigating, department observed that both the appellants were providing project related services to EIL/VWIL in the guise of sale of Developmental Rights (hereinafter referred as DRs). It was alleged that there was no sale involved in the impugned transactions and services only were provided by both the appellants to EIL/VWIL. During further investigation, and based on the outcome of search dated 17-18/09/2013, the department got to know that EIL/VWIL used to provide complete end to end solutions and services to their customers/third parties for setting up of wind mills/wind farm projects on 'Turnkey Basis' including supply, development and setting up of wind mills/wind farm projects as a complete package. Various such contracts were perused by the department. **From the perusal of those contracts, department formed the opinion that the activities required for getting allotments and approvals and ensuring viability of sites for development and setting up of wind mill/wind farm projects were also included in the composite work contracts entered into by EIL/WWIL with their customers. Even the price of Developmental Rights was found included in the negotiated price between the customers and EIL/WWIL.**

2.4 While conducting search in the premises of both the appellants and perusing the documents as got recovered, department observed that appellants had transferred the project 'Approvals', as were obtained after conducting various activities and 'Allotments' of land, referring them to be Developmental Rights to EIL/WWIL vide an agreement dated 22.09.2010 to enable EIL/WWIL to set up wind farms in the State of Rajasthan, Karnataka and Gujarat to M/s EIL/WWIL against consideration vide Debit Note No. 1 dated 22.9.2010 for the amount of Rs. 194,14,00,000/-. The department observed from **the debit note that though the appellants were obtaining DRs for setting up of wind farm but were getting the funding for the same from EIL/WWIL.** Department formed the opinion that the appellants were acting on behalf of the EIL/WWIL for setting up of the mega wind farm projects. As also got supported from the **Valuation Analysis Report dated 19.9.2010 about the valuation of the so called Development Rights.** From the perusal thereof, department re-confirmed the observation that most of the activities which are required for setting up and successful development of Wind Power Sites by EIL/WWIL are being done by the appellants, for EIL/WWIL.

2.5 Department further observed that the agreement dated 22.9.2010 for transfer of project 'Approvals and Allotments' as was executed between EIL/VWILLP and VWILLP. Similar agreement dated 11.3.2011 was executed between EIL/WWIL and JNITCL. In these agreements it is mentioned that EIL/WWIL had agreed to pay the 'Purchase Consideration' to the appellants *qua*

unconditional and irrevocable transfer of "Approvals and Allotments' procured by the appellants. However, department observed from the said Valuation Analysis report dated 19.9.2010, alleged that what was transferred to EIL/WWIL under the name of Developmental Rights are various activities/services performed by the appellants for EIL/WWIL i.e. the activities which were required by EIL/WWIL for setting up developed wind farms. **Thus department alleged the transaction between EIL/WWIL and both the appellants vide respective agreements is that of providing 'Business Support Services' under the guise of, sale of DRs. It is also alleged that all the activities mentioned in Valuation Report were intentionally concealed in the agreements dated 22.9.2010 and 11.3.2011 with an intent to hide true nature of the transactions so as to evade the payment of service tax; 'Business Support Service' being a taxable service.**

2.6 With these allegations, the show cause notice, as mentioned in the table above was served upon both the appellants proposing the recovery of such amount of service tax along with interest and such penalties as are already mentioned in the said table. The said proposal has been confirmed vide impugned Order in Original dated 31.10.2017, as already mentioned in the table above. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Ms. Aarya More, learned Advocate and Shri Mihir Ranjan, learned Special Counsel for the Revenue.

4. Learned counsel for the appellant submitted that the appellants are the commercial entities engaged in acquisition of 'Development Rights' and undertake the requisite procedural and regulatory compliances necessary for the establishment of wind farms including obtaining governmental approvals from designated nodal agencies. It is submitted that the allegations leveled against the appellants that they were providing 'Business Support Service' to EIL/WWIL are absolutely wrong. It is submitted that the appellants were not rendering any taxable service to EIL/VWIL but were merely undertaking self-supply for acquiring DRs which falls outside the ambit of taxable transactions. Having obtained requisite 'Governmental Approvals' and acquired Exclusive Right for the development of wind farms and power evacuation infrastructure, these approvals and allotments constitute the Development Rights which were actually transferred to EIL/WWIL on principal to principal basis without any agency relationship between the appellants and EIL/WWIL. It is apparent from the facts on record that those 'Allotment and Approvals' were obtained in the name of the appellants and were sold and transferred to M/s EIL/WWIL that too after several years of acquisition vide respective agreements i.e. of dated 22.09.2010 and of 11.03.2011 against the purchase value as consideration of sale. **These Development Rights were procured after following due processes by the appellants, in their independent capacity, commercial discretion while engaging with nodal agencies exclusive for regulatory approvals.**

4.1 Learned counsel further submitted that under wind power policy of the government the applications for setting up wind power project are to be invited from the developers. Post scrutiny of those applications, government issues 'Government Orders' earmarking area in favour of the specific project developer **providing the exclusive right to the developer for the area ear-marked for setting up of wind power project.** Under the said policy, the appellants, being such a developer, got exclusive rights to conduct wind studies, acquire land, develop wind power infrastructure and set up wind power projects. Since all such activities require few years of time, the appellants being entitles specializing in such activities obtain development rights by conducting wind studies and such other activities for the wind potential area and retained those DRs with themselves in their own name. Thus, the appellants were the true legal and beneficial owner of all approvals and allotments. However, the appellants unconditionally and irrevocably transferred those 'Approvals and allotments' along with the right to set up the wind farms based on those DRs to EIL/WWIL by way of sale agreement dated 22.9.2010; and 11.03.2011 with the intent that EIL/WWIL shall be the full an absolute legal owner of those Development Rights with all rights title and interest to develop and exploit all those 'Approvals and Allotments', the development rights, in its name as a purchaser. The agreements clearly do not create principle-agent or service provider-service recipient relationship. The said agreements dated 22.9.2010 and 11.03.2011 have absolutely been ignored by the original adjudicating authorities.

4.2 Learned counsel further submitted that DRs are nothing but 'Goods' and the sale/transfer of title in goods or immovable property is outside the purview of service tax. The 'Approvals and Allotments' in the transactions are the benefits arising out of land having the Wind Potential meant for setting up of wind mill/farm hence are the saleable title of said land/immovable property. Thus the service tax demand has wrongly been imposed on the amount of 'Purchase Consideration' received by the appellants while transferring the DRs related to immovable property to EIL/WWIL.

4.3 Learned counsel further impressed upon the definition of 'Business Support Services' given under Section 65(104C) of Finance Act, 1994 and impressed upon that the definition seeks to cover services which are auxiliary, ancillary, and in support of the business of the client. **The list of services given in the provisions clearly indicates that the activities which are of the nature of outsourced services are sought to be covered under the aforesaid taxable head.** It is mentioned that the appellants are not undertaking any of those specified activities. Above all, the transaction has been undertaken on Principal to Principal Basis. Further, reliance on the definition of service given under Section 65B(44) of the Finance Act has also been laid to impress upon that any activity which constitute a transaction in money or actionable thing or an activity of transfer of title in goods or immovable property by way of sale, or in any other manner shall not be included in the said definition of service. Since the benefits arising out of land are also immovable property by virtue of Section 3 sub-section 26 General Clause Act, the impugned transaction of

transfer of DR's is out of the scope of the definition of service given under Section 65B(44) of the Act. Learned counsel has relied upon the decision of this Tribunal in the case of **DLF Commercial Projects Corporation Vs. Commissioner of ST, Gurugram**³.

4.4 The following decisions have also been relied upon:

(i) **Sadodaya Builders Private Ltd. Vs. Jt. Charity Commissioner**⁴;

(ii) **Amit Metaliks Limited Vs. Commissioner of CGST, Bolpur**⁵;

(iii) **Rajasthan State Mines & Minerals Ltd. Vs. Commissioner of Central Excise & ST, Jaipur**⁶;

(iv) **Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid**⁷.

In these decisions the 'Approvals/Allotments from the state Governments/nodal agencies are collectively held to be called as Developmental Rights and the transfer thereof is held to be amounting as sale of the immovable property. The decision in the case of **Fakir Chand Gulati Vs. Uppal Agencies Pvt. Ltd.**⁸ has also been relied upon, to impress that in case of joint venture there is neither any intention to render a service to other nor is there any consideration fixed as a quid pro quo for a particular service to a partner. Hence the contractor and contractee or the principal and agent relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-ventures or between co-ventures and the joint ventures. With these submissions, it is submitted that service tax liability has

3 2019 (27) GSTL 712
 4 (MANU/MH/079/2011
 5 2020 (41) GSTL 325 (Tri.-Kol.)
 6 2020 (35) GSTL 561 (Tri.-Del.)
 7 2007 (2) Bom CR 587
 8 2008 (12) STR 401

wrongly been confirmed against the appellants. The order under challenge is accordingly, prayed to be set aside and both the appeals are prayed to be allowed

5. Learned Departmental Representative, while vehemently objecting all the submissions put forth by the learned counsel for the appellant, has submitted that the appellants have wrongly claimed that the activities such as feasibility study and obtaining of approvals were merely for appellant themselves/self supply. It is submitted that due to existing regulations, the areas where Wind Turbine Generators (WTG) can be set up, must be approved by the Government/Regulatory Body as setting up of WTG depends upon various factors including respective authorities development plan for energy in that area, prevailing infrastructure for evacuation of the energy feasibility and viability on a particular site etc. Therefore, the approvals and allotments for setting up wind farm on a particular site is not just the right to develop the specific site as wind farms but it is an outcome of several activities being rendered by the appellants.

5.1 Learned Departmental Representative led emphasis on the fact that once an entity acquires approvals and allotments for a particular site from the respective governmental authorities, only that entity, its assignee or transferee of these rights is allowed to set up WTG in that area without transferring the same to any one else. The said fact was duly acknowledged by Shri S.B. Patil, Deputy Director of M/s Gujarat Energy Development Agency in his statement dated 10.2.2015 as was recorded under Section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act

1994. Similar statement of engineer (R&C) of M/s Gujarat Energy Transmission Corporation Limited is on record. Based on those statements department had alleged that the term Development Rights as mentioned by both the appellants in the agreements with EIL/WWIL is nothing but a strategy to camouflage the transactions of providing services for the development of wind farm projects that too with an intent to evade service tax.

5.2 Learned Departmental Representative further led emphasis upon the Valuation Report from valuation consultant M/s Morison Ltd. as was got prepared to arrive at a fair price for the transfer of such Development Rights to EIL/WWIL, who has utilized these rights for setting up of wind farm for their ultimate customer/third parties. It is alleged that the agreement dated 22.9.2010 and 11.03.2011 do not indicate the correct nature of the transaction. The correct intent of both the appellants is of providing support services to M/s EIL/WWIL. Reliance is placed on the decision of Hon'ble Apex Court in the case of **Sundaram Finance Ltd. Vs. State of Kerala**⁹. Learned Departmental Representative further submitted that DGCEI's investigation revealed WWIL/EIL project scope for their customers/third parties included the following:

- (a) To procure Wind Turbine Generators ¹⁰, the necessary transformer, and all ancillary and incidental equipment for said WTGS.
- (b) To perform civil and industrial works, including construction of the sending station, interconnection facilities, foundations, and

9 MANU-0299-1965

10 WTGs

internal roads for the WTGS, as well as supply and erection of internal lines for the project.

(c) To provide installation and commissioning of the WTGS, including assembly and erection of WTGS, Grid interfacing, testing and commissioning of WTGS at the site.

(d) To acquire project land for installation, erection, and commissioning of WTGS at the site per the terms and conditions of this Agreement, subject to applicable law.

(e) For completing all legal requirements for the installation, erection, Commissioning, and commencement of the operations of a lot or the project, as the case may be, including obtaining all land leases, permits, authorization approvals, and contracts

From the above scope of work, it is evident that EIL/WWIL has undertaken "composite works Contract" for the supply of the equipment of WTGs and the various services required for the development and setting up of the wind mill project/wind farm, including erection, installation and commissioning of such mills on a turnkey basis. The necessary activities required for the development and setting of these wind mills include activities for acquiring of requisite approvals and allotments were done by the appellants VWILLP/JNIPL. **Documentary evidence unearthed during the investigation revealed that EIL had the facility to manufacture wind turbines, and VWILLP/JNIPL had the required experience and infrastructure to set up the wind farms. Thus it was concluded that the appellants acted on**

behalf of EIL/WWIL to facilitate them by creating the infrastructure and providing the necessary support and assistance by completing the essential formalities and obtaining the required approvals and permissions from the various governments/state nodal authorities that are essential for setting up wind farms, EIL/WWIL helped them financially. Thus, both the appellants were actually providing Support Services to EIL/WWIL. Being the service providers and BSS being taxable, the appellants were liable to pay service tax on the amount received from EIL/WWIL. Hence the demand is rightly confirmed.

5.3 With these submissions, the learned Departmental Representative impressed upon no infirmity in the impugned order under challenge and the appeal is prayed to be dismissed.

6. Having heard rival contentions of the parties, perusing the entire record and the decisions relied upon by both the parties, we observe that to adjudicate the present appeals the issue to be adjudicated is:

(i) whether the appellants while transferring allotment/approvals, acquired by them for a long as a result of several activities undertaken to check the viability of setting up wind farm on the said land, vide agreements dated 22.09.2010 and 11.03.2011, respectively to EIL/WWIL. The manufacture of WTF's for setting up of a wind farm project were providing 'Business Support Services' to the said EIL/WWIL as is alleged by the

department or the said transfer amounts to the sale of Developmental Rights which are benefits arising out of immovable property which is excluded from the definition of service, as is claimed by the appellant.

6.1 To adjudicate the said issue foremost we have to peruse the respective concepts i.e. the definition of 'Business Support Service', the definition of 'Service'; along with the meaning of consideration and the meaning of 'Development Rights'.

Section 65B(49) of Finance Act, 1994 defines 'Business Support Service' as follows:

"Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing

Explanation -For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;"

Section 65(104c) of the Finance Act, 1994) "Taxable Service" to:

means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;

6.2 The definition was expanded in the Finance Act, 2012, to encompass a broader range of services. Support services provided by government or local authorities to business entities are excluded from the negative list under section 66D. The new definition may

be divided into two parts i.e., one is the main part and the other is the inclusive part. The first part of the definition is –

“infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that **entities** carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever”

and the second part is-

“shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis”.

6.3 The list of services mentioned in this provision clearly indicates that the activities in support of business of client are actually outsourced services. The CBEC vide Circular No. 109/3/2009-ST dated 23.02.2009 further clarified that ‘Business Support Service’ is a generic service of providing support to the business or commerce of the service receiver. In other words, the principal activity is to be undertaken by the recipient while the service received is to support the business or commerce of the said recipient.

6.4 Term ‘Service’ is defined under Section 64B(44) of the Act as follows.:

“Section 65B(44) ‘service’ means any activity carried out by a person for another for consideration and includes a declared service but shall not include

(a) ‘any 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.

6.5 Though the aforesaid definition clarifies that the immovable property includes not only "land" but also the benefits" arising out of land. We also observe that the benefits arising out of the land are also immovable property by virtue of Section 3 (sub-section (26)) of the General Clauses Act as submitted by the appellant. But we have also perused that in Order-in-Original para A-3.14, thereof has discussed about "benefits arising out of land" and it has been that title of land also include transfer of benefits to arise out of land. However, these benefits include the crops to be cultivated on the land, the trees that might be growing on the land, the fish that may be thriving on a pond that might exist on the land. The right to land includes all the above benefits arising out of land. The Order-in-Original in para a. 3-18, it has been further observed that:

"The term benefit to arise out of land is therefore to be restricted to those which directly arise out of land and are endemic to land."

To adjudicate the correctness of these findings the question arises whether transfer of development rights is a benefit arising out of land so as to fall under the meaning of "immovable property". As mentioned by learned counsel for the appellant that the said issue has been examined by the Hon'ble Bombay High Court in the case of **Chheda**

Housing Development Corporation v. Bibijan Shaikh Farid

(supra). However, we observe that the decision is with respect to Transferable Developmental Rights. The Hon'ble Court held as under:

"15 The question is whether on account of the term in the clause which permits acquisition of slum Transferred Developmental Rights the appellants 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 property. 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 registered instrument. A Division Bench of the **Oudh High Court in Ram Jawan 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 Dropad1 Devi v Ram Das and Ors MANU/UP/O120/1974, AIR1974All473** 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

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7. The Delhi Bench in **DLF Commercial Projects Corporations**

(supra) held that 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. It is also observed that when a company who owns the land or to whom the land is allotted, transfers the same for being developed to a developer, the transfer amounts to the transfer of land development rights to the developer for consideration.

The word 'benefit; arising out of land, has also been interpreted in the following judgments:

- (i) **Shantabai Vs. State of Bombay¹¹** - It was held that right to entry upon the lands in order to cut down certain kinds of wood and to carry away the wood is the benefit arising out of immovable property;
- (ii) **Ananda Behera vs. State of Orissa¹²** - Where lake has been held to be the immovable property and right to catch carry away fish therefrom is held to be benefit arising out of immovable property being 'profit a prendre';
- (iii) **State of Orissa Vs. Titagarh Paper Mills Company Limited¹³** - Hon'ble Supreme Court held that an agreement allowing, falling, willing, obtaining and removing bamboos from forest area for manufacture of paper is a benefit to arise out of land being an interest in immovable property.

11 AIR 1958 SC 542

12 AIR 1956 SC 17

13 1996 (9) SCC 516

However the agreement cannot be called as contract for sale.

8. From the above decisions, it stands clear that Development rights refer to the ownership and possession rights of the landowners developed with respect to a particular immovable property including the 'profit a prendre' which includes the right to get their property, including the ability to construct buildings, alter existing structures, or change the use of the land. These rights are often regulated by local zoning laws and building codes, which dictate what can be built and how. Thus the development rights can be understood to mean in context of following:

1. Ownership and Regulation:

- Development rights are inherent to land ownership, meaning the owner has the primary authority to decide how the property is developed.
- However, these rights are not absolute and are subject to regulations set by local governments.
- Zoning laws, building codes, and environmental regulations all play a role in shaping how land can be developed.

2. Transferable Development Rights (TDR):

- TDR allows landowners to separate their development rights from their land and sell them to other land owners.
- This can be a way to protect environmentally sensitive areas or historic landmarks while still allowing for growth in other areas.

- For example, a landowner in a historic district might sell their development rights to a developer in a different area, allowing the developer to build at a higher density than zoning would normally permit.

3. Examples of Development Rights can be as follows:

- FAR (Floor Area Ratio): Determines the maximum building size relative to the land area.
- Setbacks: Define the distance buildings must be from property lines.
- Height restrictions: Limit the maximum height of buildings.
- Density: Regulates the number of units or people that can occupy a particular area.
- Land Use: Specifies the type of activities permitted on the land (residential, commercial, industrial, etc.).

4. Purpose of Development Rights:

- Development rights are crucial for urban planning and managing growth.
- They allow for flexibility in development while protecting valuable resources and community character.
- Understanding development rights is essential for both landowners and developers to make informed decisions about land use.

8.1 From the entire above discussion it stands clear that Development rights has to be the permission simpliciter to get entire on land either to get 'profit a prendre' or to get a right to develop the land including the allotment and approval simpliciter with reference to land in case it was not owned or possessed by the person desirous of getting it developed. The Development Rights

cannot be sold except rights are those which are known as Transferable Development Rights (TDR).

9. We now revert to the facts of the present case. Following are observed as the admitted facts:

- (i) Both the appellants VWILLP and JNITPL are the companies floated by the parent company EIL/WWIL. Thus the appellants admittedly are the part of same group companies of EIL/WWIL.
- (ii) The appellants are engaged in the business of development of infrastructure facilities for setting up of Wind Energy Projects by acquiring, purchasing, selling or otherwise dealing in approvals/allotments for Wind Power Projects, after undertaking several activities like identification of potential wind side, acquiring for Wind Power Projects etc.
- (iii) VWILLP was granted exclusive Rights under the State Government's Wind Power Policy through Government orders with respect to ear-marked areas for (a) development and (b) setting up of wind power projects;
- (iv) EIL/WWIL is engaged in manufacture of Wind Turbine Generations and in Installation and Commissioning thereof by providing complete end to end solution and services to their customers. The unrelated third parties for setting up of the Wind Mill/wind farm projects for them on turnkey basis i.e. they were entering into composite contracts for setting up of the wind farm project as a complete package with other parties.

- (v) The transaction under dispute is between the VWILLP and JNITPL with EIL/WWIL pursuant to the agreements dated 22.9.2010 and 11.03.2011 respectively which are Agreements for Transfer of Project Approvals and Allotments.
- (vi) The amount of consideration for the said agreements is mentioned as 'Purchase Consideration' in those agreements and is recorded as 'Sale of Allotment/Approvals' in the financial statements of the appellants;
- (vii) The agreement coins the approvals as "developer permission".

From the above admissions on record it becomes clear that the appellants are incorporated by EIL/WWIL to do some of such activities as were undertaken by EIL/WWIL to be done for their customers. Precisely the preparatory work for enabling EIL/WWIL to erect and commission the Wind Farms has been done by appellants. This observations gets support from the fact that EIL/WWIL while entering into the agreements with third parties for developing and setting up wind farms for them has agreed to obtain requisite approvals and allotments. One of such agreement of EIL/WWIL with M/s Tadas Wind Energy Pvt. Ltd is seen. **It is observed that EIL/WWIL had agreed for land to be arranged with land boundary markings by them. Also the 100% of the price for transfer of development rights was received by EIL/WWIL in advance from the said third party.** Following

permissions/ clearances were agreed to be obtained by EIL and to be submitted to relevant authorities & customers:

- (1) Allotment of capacity from State Govt. / Nodal Agency;
- (2) NOC / clearance from Nodal Agency / SEB;
- (3) Evaluation Approval from SEB
- (4) Government Land Document as Applicable
 - a) Lease Deed / Sub Lease Deed
- (5) Approval of Construction Drawings from CEIG;
- (6) Safety Certificate from CEIG;
- (7) Signing of PPA or Wheeling & Banking Agreement or Third Party Sale Agreement with SEB
- (8) Commissioning Certificate from SEB Nodal Agency"

10. We further observe that procedure for obtaining these approvals has been elaborated in the Valuation Analysis Report dated 19.09.2010 in respect of 1333.06 MW of Development Rights given by Morison Bairagra Consulting Limited. It was undertaken by the appellants as per the valuation report, the details of DRs are as below:

"Before we proceed with the valuation analysis it is important to highlight the nature of these rights, process of obtaining these rights and its use in the business of energy generation.

Wind Turbine Generators (WTG) are currently setup onshore in India. The owner of the WTG would need some degree of assurance that the WTG will generate a desired output which will make economic sense for setting up the WTG. Based on this need, experts on the field of Wind Energy locate such areas, study the wind pattern over a period of time (generally 1-3 years), evaluate the pros and cons of the site in terms of topography, geography, soil condition, evacuation lines for transmission generated and others.

Due to the existing regulations, the areas which these WTG's can be setup need to be approved by the

Government / Regulatory Authorities. This is due to the fact that the area in which these WIG's can be setup is dependent on the respective authorities development plan for that area, the need for energy in that area, prevailing infrastructure for evacuation of the energy and many other factors.

Therefore, a development right for a wind farm site is the right to develop a wind farm at a particular site. Once an entity acquires a development right for a particular site, only that entity or its assignee or the transferee of these rights has the right to setup a WTG in that area. A development right for wind farm for a particular site is achieved on successfully discovering a potential wind power project at a particular site, by assessing wind speeds and estimated energy generation, known as Wind Monitoring, followed by obtaining the required approvals from the Government / Regulatory Authority.”

Further the process cycle for obtaining such development rights for wind farm sites has been elaborated by those consultants in the said Valuation report as below:

Concept Stage	Identification	Identification of site based on wind pattern studies sourced from various agencies
	Approval	If studies are favorable, obtain approvals for further wind energy potential studies
Wind Monitoring	Wind Mast Installation	Once approval is received, Wind Masts are installed to study the wind patterns over a period of time
	Wind Profile Measurement	Based on the above, reports are drawn out
	Micro-siting and Energy Prognosis	Includes site plan, direction analysis, placements of WTG etc.
Project Development	Contour and Plain Table Survey	Includes Topography, Geography, Soil studies
	Project Feasibility	Based on legal, commercial, financial grounds

Approval	Project Allotment	MoU with respective State Government/Allotment from State Nodal Agencies
	Land Acquisition	Either Outright Purchase or Lease of Private/Revenue/Forest land
	Evacuation Allotment	Provided to the company by the State Electricity Board for grid connectivity of the power generated.

11. Perusal of this report and the agreement of EIL/WWIL with third parties for setting up wind farms for them clearly establishes that procuring of allotment and approvals. The so called Development Rights was agreed to be the responsibility of EIL/WWIL. However, admittedly those got procured by the appellants which were not in the nature of approvals and allotments simpliciter but were the outcome of several activities to procure the allotment and approvals (as recorded above), which were undertaken by the appellants to be utilized by EIL/WWIL. Hence the act of the appellant cannot be called as Development Right in the same sense as has been dealt with in **DLF** (supra) decision, relied upon by the appellants or it can be called as 'benefit arising out of land' as dealt with by Hon'ble Supreme Court in decision above. EIL/WWIL had otherwise agreed with its customers that it shall procure the allotment and approvals i.e. it shall undertake all those activities without which approvals could be granted.

11.1 The arrangement under question is for outsourcing these activities to the appellants. It is wrongly nomenclated as agreement to transfer Approvals and Allotments also. EIL/WWIL

had received the same amount of money from its customers/third parties as is mentioned as 'Purchase Money' in the agreements entered between appellants and EIL/WWIL dated 22.09.2010 & 11.03.2011. It is also an admitted fact that said purchase month was the debit note given to the appellants of the said amount. Thus demand of service tax has rightly been confirmed.

12. The Valuation Report has been considered by the original adjudicating authority as the basis of confirmation of impugned demand. Following conclusions of the said report are also observed:

"From the above, it can be seen that EIL were having the facilities for manufacture of wind turbines and VWIL were having the required experience and infrastructure for setting up the wind farms. It appears that VWIL were acting on behalf of EIL to facilitate them by creating the infrastructure and providing the necessary support and assistance by completing the necessary formalities and obtaining the required approvals and permission from the various Government/State Nodal authorities for setting up of wind farm."

13. It becomes evidence that though the application for setting up of wind farm of capacity 159.2 MW was made by VWIL to RREC but the funding for the same was provided by EIL/WWIL. This goes to show that VWIL were acting on behalf of EIL/WWIL while making the application for setting up of the 159.2. MW wind farm project.

14. From the project summary information and other documents in respect of the wind farm project in Gujarat it can be seen that EIL was the Developer of the project and some of the approvals for the project including approval for forest land were obtained by EIL. However, the approval for diversion of reserve forest land was obtained from the Ministry of Environment and Forest, New Delhi by VWIL on behalf of EIL. It is also apparent on record that while

entering into MoU with NEDCAP, VWILLP were not acting on their own but were acting on behalf of their various Group Companies, including EIL/WWIL, who had authorized VWILLP for preparation and submitting of the investment proposal and to sign and implement the MoU with NEDCAP on their behalf. This shows that VWILLP were acting as a facilitating agency for its Group Companies (EIL/WWIL and other Group Companies of Enercon Group) and were providing the above mentioned services to them for establishing wind energy measurement stations for obtaining wind data.

15. Above all the Developer Permissions granted to the appellants by the governmental nodal agencies were not transferable to any other entity or other developer, as has stated by Sh. S. B. Patil, Deputy Director of M/s Gujrat Energy Development Agency, Gandhinagar, Gujrat and also by Engineer (R&C) of M/s Gujrat Energy Transmission Corporation. It was also stated that it could only the capacity granted under the Developer Permission which was transferable that too to a client of the developer only on submission of an application in prescribed format. Appellant could not deny the said statements nor could produce any evidence to prove that permission was obtained for transferring the developer permission (Approvals and Allotments). Resultantly the agreements executed by the appellants for transfer of Developer Permission / approvals and allotments is the one prohibited under relevant law hence is void. Otherwise also the nomenclature of the document does not define the document, it is rather the content therein. We draw our support from the decision of Hon'ble Rajasthan High Court

in the case of **Shanti Devi Vs. Nand Lal**¹⁴ wherein it has been held that the nomenclature of the document would not be the decisive factor. Document should be read as a whole and it is the substance of the document that matter and not the Form. Hence much important cannot be adjudged in the nomenclature. **The appellants agreements when read along with the said Valuation report it stands clear beyond all reasonable doubts that what has been transferred by the appellants under the said agreements to EIL/WWIL is not merely the approvals and allotments required to set up the wind farms but the whole set of underlying activities undertaken by the appellants to obtain those approvals and allotments. The approvals and allotments so obtained are not 'profit a prendre' hence cannot be called as benefit arising out of immovable property. Appellants are rightly held to have rendered the Business Support Services to EIL/WWIL.**

16. The act of appellants is held to be an intentional act of hiding true colour of the transaction between the service provider (VWILLP) and the recipient of such services (EIL). This appears to have been done with intent to misguide the government authorities for the purpose of avoiding scrutiny of the transactions and to evade Service Tax payable thereon, support services of business & commerce being taxable services, the agreement are held to be the act done by VWILLP/JNITC in connivance with EIL/WWIL to suppress the true nature of services provided. Hence it is held that

14 AIR 2005 Raj. 1249

extended period of limitation has rightly been invoked while issuing the impugned show cause notice.

17. The appellants have taken the additional plea of them being the joint venture and their activity being self supply. But it is held that in cases of JVs the liability to tax depends on whether the JV is treated as a separate entity or are created to undertake transactions that occur between members. In the present case the transaction agreed by EIL/WWIL for its customers include the transaction undertaken by the appellants. This fact corroborates that the appellants had undertaken transactions on behalf of EIL/WWIL.

18. In the light of entire above discussion, we find no infirmity in the order under challenge when the invocation of extended period has been justified and the demand of service has been confirmed holding that appellants have rendered Business Support Services to EIL/WWIL. We therefore uphold the order. Consequent thereto both the appeals are hereby dismissed.

(Pronounced in open Court on 11/07/2025)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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