CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 53203 of 2015

[Arising out of Order-in-Original No. RPR/EXCUS/000/COMMR/017/2015 dated 30.04.2015 dated 18.05.2015 passed by the Commissioner of Central Excise and Customs, Raipur]

M/s. Raipur Development Authority **...Appellant**
Bhakt Mata Karma Business Complex,
Near Rajendra Nagar, Raipur (Chhattisgarh)

VERSUS

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

APPEARANCE:
Mr. A.K. Batra, Chartered Accountant for the Appellant
Shri R.P. Sharma, Special counsel for the Respondent

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

DATE OF HEARING: 25.03.2025
DATE OF DECISION: **24.07.2025**

FINAL ORDER NO. 51068/2025

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Original No. 017/2015 dated 30.04.2015. The facts in brief which have culminated into the said order are as follows:

1.1 The appellant is engaged in the activity of development of Raipur City by construction, development and maintenance of buildings, road etc. It is a body constituted by the State Government of Chhattisgarh in terms of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973. The appellant was also engaged in commercial activities like Construction of Commercial and Residential Complexes and renting out the space in those

commercial complexes. They also got service tax registration with the department under the categories "Construction services other than residential complex, including commercial/industrial buildings or civil structures", "Construction of residential complex service", "Renting of Immovable Property Services", "Legal Consultancy Service" and several other taxable services but the tax was not paid by the appellants. The department investigated the matter and observed that the appellants are engaged in collecting huge amounts on account of leasing of land to be used by their lessees for construction of commercial complexes and for furtherance of business. Rs. 2.5 crores per annum were found to be received from M/s. Gupta Infrastructure (India) Pvt. Ltd. (hereinafter referred as M/s. GIPL) on account of lease of land for construction of City Centre Mall (hereinafter referred as CCM), a commercial complex at Pandri, Raipur. Despite renting/leasing being a taxable service, the appellant was not paying service tax.

1.2 It was further observed from the various documents received from the appellant that vide a Project Agreement dated 11.11.2005 executed between the appellant and M/s. GIPL, ground rent of Rs.2,66,53,315/- was received by the appellant during 2010-11, 2011-12 and 2012-13. The land premium amounting to Rs.41,00,51,000/- was also received from M/s. GIPL for the year 2009-10. During the reconciliation of the financial statements of the appellant for the period 2009-10 to 2012-13, it was observed that appellant has received several other amounts in the name transfer fee (residential/commercial/land), ground rent (residential/commercial), water tax, interest (bank), interest

(others), surcharge, development fee, miscellaneous receipts, registration charges and maintenance charges.

1.3 The appellants were also alleged to have wrongly availed Cenvat credit as the input services for which the credit was claimed were not the eligible input services in terms of Rule 2(l) of Cenvat Credit Rules, 2004. With these observations, the Show Cause Notice No. 34/12-13 dated 22.10.2014 was served upon the appellant proposing that the amount received from leasing of vacant land as well as commercial complexes should be consideration towards rendering a taxable service. It was Renting of Immovable Property Services as defined under erstwhile Section 65(90a) of the Finance Act, 1994 prior to 01.07.2012 and "service" as envisaged under Section 65B(44) of the Act read with declared service of Renting of Immovable Property Service under Section 66E of the said Act w.e.f. 01.07.2012. The total amount of service tax of Rs. 21,28,21,211/- received by the appellant was proposed to be recovered. The wrongly availed Cenvat credit of Rs.1,79,45,250/- was also proposed to be reversed. Interest at appropriate rate was also proposed to be charged and recovered in terms of Section 75 of the Finance Act, 1994 on the amount of demand of service tax/Cenvat credit. Penalties under Section 76 and 78 of the Finance Act, 1994 and those under Rule 15(3) of the Cenvat Credit Rules, 2004 and also under Rule 7C of Service Tax Rules, 1994 were proposed to be imposed. The said proposal has been confirmed vide the aforesaid Order-in-Original. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri A.K. Batra, learned Chartered Accountant for the appellant and Shri R.P. Sharma, learned Special Counsel for the department

3. Learned Chartered Accountant for the appellant has submitted that the proposal of considering the activity of leasing as Renting of Immovable Property Service and confirmation thereof is absolutely wrong and beyond the statutory provisions. The said proposal has been made in respect of transfer of development rights for construction of City City Centre Mall to the developer, M/s. GIPL. It is submitted that the appellant has entered into an agreement with M/s. GIPL dated 11.11.2005 agreeing to lease out the land owned by the appellant to M/s. GIPL giving M/s. GIPL the right to develop the project/mall on the lease land along with the transfer of right to use the constructed mall to the extent of selling the individual units constructed. The lease was for the period of 30 years agreed to be extendable till the period of 90 years. Such a transaction amounts to the transfer of immovable property, the deemed sale as different from Renting of Immovable Property Services. Resultantly, the lease premium received by the appellant against a transaction of deem sale as different from the consideration received for rendering taxable services.

3. Learned Chartered Accountant has laid reliance upon Section 3(26) of General Clause Act, 1897 to impress upon that the rights in the immovable property are the development rights which are benefits arising out of land and thus are covered under the definition of immovable property only. The transfer thereof is a transaction of sale as different from a transaction of rendering

taxable service. The amount in question received towards lease is therefore an amount of sale proceeds as different from consideration for rendering taxable services. After executing the agreement dated 11.11.2005, the appellant also executed the lease deed. The premium received in lieu of lease deed also cannot be called as amount of consideration received for rendering taxable services. It is submitted that lease premium was for transferring the right to use the land. Otherwise also, it has already been held by Hon'ble Supreme Court that the premium/salami is not subject to service tax. The decision in the case of **Commissioner of Income Tax, Assam and Manipur Vs. Panbari Tea Co. Ltd. reported in (1965) 3 SCR 811 = 2002-TIOL-1509-SC-IT-LB** is relied upon.

3.1 In addition, it is submitted that in case the amount is held to be an amount towards rendering taxable services then the value of material use of construction of commercial units still cannot be taxed being a transaction of sale of goods. Similarly, the amount received in respect of sale of commercial units which were sold after completion of construction is not liable to service tax. As per the agreement dated 11.11.2005 between appellant and M/s. GIPL, lessee was held entitled to get the leasehold land converted into free hold land upon payment of certain amount. The lessee was also allowed to further transfer its rights to third person. It was also entitled to raise loan on the said amount by giving land as security to banks/NBFCs. The activity in question is wrongly held to be taxable service.

3.2 Learned Chartered Accountant further submitted that the vacant land was not covered under the definition of Renting of Immovable Property till 30.06.2010. Therefore, the question of taxing any income received vis-à-vis vacant land for the period 01.04.2009 to 30.06.2010 cannot at all be taxed. With respect to the service tax demand on the amount of transfer fee, it has fairly been conceded that transfer fee is held subject to service tax in the decision of **RIICO Ltd. Vs. Commissioner of Central Excise – Jaipur I reported as 2017 (5) TMI 673 – CESTAT New Delhi.** However, this Tribunal in the case of **Greater Noida Indl. Development Authority Vs. CCE & ST, Noida reported as 2015 (38) STR 1062 (Tri.-Del.)** has denied transfer fee to be subject matter of service tax. While submitting about the alleged tax liability with respect to activity of construction of residential complex service (till 30.06.2012) which w.e.f. 01.07.2012 was declared service under Section 66E(b) of Finance Act, 1994, learned Chartered Accountant has submitted that the services were actually in the nature of Works Contract Service. No service tax can be imposed on such services prior for the period w.e.f. 01.07.2012. Even the abatement of 75% has wrongly denied despite that the cost of land was included in the amount received by the appellant. Denial of abatement for the period 2012-13 is also wrongly denied as the appellant has already reverse the Cenvat credit as is apparent for ST-3 returns for the said period.

3.3 While submitting upon the alleged service tax liability alleging the activity of the appellant as Management, Maintenance or Repair Service till 30.06.2012 and service w.e.f. 01.07.2012, learned

Chartered Accountant for the appellant has mentioned that the activity of supply of water, from any stretch of imagination, cannot be defined under Management, Maintenance or Repair Service. Otherwise also, entry no. 39 of Notification No. 25/2012-ST dated 20.06.2012 provides exemption to supply of water being function entrusted to municipality and RDA is considered as Government Authority.

3.4. With respect to the allegations of wrong availment of Cenvat credit, it is submitted that Cevat credit of Rs.1,66,28,032/- has already been reversed by the appellant. The balance Cenvat credit of Rs.13,17,218 was utilized in respect of legal services availed which is specifically covered under the definition of input services.

3.5 Finally it is submitted that the show cause notice has invoked the extended period of limitation despite that there was no suppression on part of the appellant. All appellant's transactions were duly recorded in the their Books of Account. The ST-3 returns for the disputed period were duly filed indicating value of annual rent on which tax was duly paid and value of lease premium (residential) on which the appellant started paying tax after insertion of explanation to the definition of Construction of Complex Services. Otherwise also, appellant is a government authority, there cannot be any mala fide intent to evade the payment of service. Above all, the issue of long term leasing of land and transfer fee remained under litigation for a long period of time. The show cause notice is therefore alleged to be barred by limitation. For these reasons, the demand is mentioned to have wrongly been confirmed. There remains no reason for demanding interest and

imposing penalty rather cum tax benefit may be given to the appellant. With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be dismissed.

4. While rebutting these submissions, learned Departmental Representative, at the outset, has reiterated the findings arrived at by the adjudicating authority below. It is submitted that all the pleas taken by the appellant as well as those mentioned in the grounds of appeal are repetition of defense submissions as were put forth before the original adjudicating authority. All these grounds have been discussed in Para 26.1 to 26.64 of the Order-in-Original dated 30.04.2015. It has specifically been held that transfer of development right cannot be equated with sale of land since the ownership of the land transfer remain of RDA only. The transfer of lease hold rights and development rights cannot be called as sale of land. Non-payment of service tax on the value of constructed area in CCM has been justified on the ground that the possession of area was not handed over, however the handed over property is not the point of taxation for the purpose of payment of service. There is not infirmity in the order when the demand on this count has been confirmed.

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

65(105)(zzzzz) of the Finance Act and under Section 66B of the Act w.e.f. 01.07.2012.

4.2 With respect to the amount received from leasing out of vacant land, findings in Para 26.31 of the impugned order are being reiterated. It is submitted that the service tax on renting of vacant land from 01.04.2009 is recoverable.

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

4.3 With respect to the cost of providing Commercial and Residential Complex Services, the plea of appellant that their liability is on 40% of the service value in terms of Rule 2A of the Service Tax Valuation Rules is denied to have any legitimate basis as apparent of the findings in the order under challenge in Para 36.44 thereof. The interest received by the appellants from the buyers of the residential unit is also to be treated as consideration for Commercial and Residential Complex Services as the appellant itself has booked the said amount as 'other interest' in their books of accounts. The Circular No. 96/7/2007 dated 23.08.2007 relied

upon by the appellant is not having any relevance in the present context as the said circular is issued to clarify that the amount collected for delayed payment of bill is not to form part of the value of the service. Whereas, in the present case the issue is regarding enhanced value of the service under a scheme offered by the appellant itself and it cannot be equated with late fee, penalty or surcharge being collected for late payment of the bills. The benefit of Notification No. 12/2003 dated 20.06.2003 with respect to supply of water is not applicable to the appellant as there is no evidence of inclusion of value of water in the value of overall services. The said activity of appellant has rightly been categorized under Management, Maintenance or Repair Services till the period of 30.06.2004 and later as taxable service. The appellant is denied to have any benefit of being a government authority. The decision of Hon'ble Gujarat High Court in the case of **NEPRA Resources Management Pvt. Ltd. Vs. State of Gujarat reported as 2024 (85) GSTL 129 (Guj.)** wherein it is held that Notified Area Authority, Vapi constituted under GIDC Act is neither a local authority nor a government authority carrying out any activity in relation to any function entrusted to a panchayat or a municipality under Article 243 G or Article 243W of the Constitution respectively. In the said decision Supreme Court's decion in the cases of **New Okhla Industrial Development Authority Vs. Chief Commissioner of Income-Tax (2018) 95 Taxman. Com 58** and **Saij Gram Panchayat Vs. State of Gujarat – (1992) 2 SCC 366** are relied upon wherein Noida Industrial Development Authority and GIDC are not considered as municipality or Panchayat as envisaged under above two Articles. With these submissions and impressing

upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

5. Having heard both the sides, the rival contentions and perusing the entire records, we observe that the appellant, Raipur Development Authority, is denied to be government authority and the demand has been raised on following issues:

(i) Demand confirmed under renting of immovable property services for the period upto 30.06.2012 and under Section 66E read with 65B (44) for the period post 01.07.2012 on lump sum premium and transfer fee received in respect of commercial/vacant land – Rs.13,46,81,965/-

(ii) Demand confirmed under construction of residential complex service (CRCS) on lump sum premium and transfer fee received in respect of residential land and sale of superstructure constructed thereon (Demand – Rs.1,34,94,231/-

(iii) Demand on interest received under CRCS (01.04.2010 to 31.03.2013) – Rs. 81,93,549/-.

(iv) Demand on supply of water under management, maintenance or repair services (MMR) – Rs.11,32,741/-

(v) Denial of CENVAT credit availed Rs.1,79,45,250/- and utilized Rs.13,69,267/- included in availed amount.

6. Foremost we peruse the documents produced by the appellant to establish that the appellant is a government authority. It is observed that the appellant has been constituted under Chhattisgarh Nagar Tatha Gram Nivesh Adhinayam, 1973 to

perform the functions as mentioned in another statute namely Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyco, Griho, Bhavano Tatha Anya Sanrachnaon Ka Vyayan Niyam, 1975. The notification issued under Section 38(1) of Chhattisgarh Nagar Tatha Gram Nivesh Adhinayam, 1973 constituted M/s. Raipur Development Authority as a "Town and Country Development Authority" with a power to acquire, hold and dispose of the property and to enter into contracts w.e.f. the date of said notification i.e 03.09.2004.

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

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

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

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

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

> *"2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities."*

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

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

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

> *"1. As per the exemption circular, only such activities performed by the sovereign / public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as*

per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.

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

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

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

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

12. Issue No. 1

12.1 The demand of this issued is based upon a agreement dated 11.11.2005 as was entered between the appellant and M/s. GIPL

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

> *"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service but shall not include:-*
>
> *(a) An activity which constitutes merely-*
>
> *(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*

(ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) A transaction in money or actionable claim;

(b) A provision of service by an employee to the employer in the course of or in relation to his employment;

(c) Fees taken in any Court or Tribunal established under any law for the time being in force."

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

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

(ii) For consideration;

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

12.3 The transaction agreed vide agreement dated 11.11.2005 is with respect to the immovable property which is defined under clause 3 (26) of General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to earth or permanently fasten to anything attached to the earth. The said provision has been dealt with by Hon'ble Bombay High Court in the **Chheda Housing Development Corporation Vs. Bibijaan Shaikh Farid reported as 2007 (3) MHLJ402 (Bom.)**, wherein it has been held that the benefit arising from the land is also an immovable property. Once the possession of property is transferred to the developer against the payment of share of sale consideration for

the development/construction on the said immovable property, the transaction is also that of the transfer to immovable property. The Hon'ble Court has clarified that it is as good as transferring of developmental rights being a benefit arising from the land which amounts to sale of immovable property. Similar view has been taken in the decision of this Tribunal in the case of **DLF Commercial Projects Corporations Vs. Commissioner of Service Tax, Gurugram reported as 2019 (27) G.S.T.L. 712 (Tri.-Chan.)** It has been appreciated as follows:

> ***"(xv)*** *Section 65B (44) (a) (i) says that transfer of title in goods or immovable property, by way of sale, gift or in any other manner. In other words, the transaction of transfer of title either in goods or in "immovable property" are excluded from the purview of "Service". A question then arises, what is the meaning of the word "immovable property". Immovable property has not been defined in Finance Act, 1994 but has been defined in Section 3(26) of General Clauses Act, 1987 in following words:-*
>
> ***(26) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;***
>
> ***(xvi)*** *The aforesaid definition clearly says that the immovable property includes not only "land" but also the benefits "arising out of land". Next, the question then arises whether transfer of development rights is a benefit arising out of land so as to fall under "immoveable property". The word „benefit arising out of land, has been interpreted in the following judgments:-*
> *a) Bahadur & other Vs.Sikandar MANU/UP/0016/1905*
>
> *b) Ananda Behera Vs. State of Orissa AIR 1956 SC 17*
>
> *c) SmtDropadi Devi Vs. Ram Das AIR 1974 All 473*
>
> *d) Sadoday Builders (P) Ltd Vs. Jt Charity MANU/MH/07912011*
>
> *e) Chheda Housing Development Corpn Vs. Bibijan Shaikh 2007 (2) Bom CR 587*
>
> ***(xvii)*** *The authorization given to a "Developer" to develop the land and sell super-structure in perpetuity shall undisputedly fall within the words "benefit arising out of the land" and shall, therefore, be held to be "immovable property". Once there is a transaction in relation to immovable property, that shall,*

> *undisputedly, fall outside the purview of "Service" within the meaning of Section 65B(44) and consequently, no "Service Tax" shall be payable under Section 66.*

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

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

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

12.6 The land in question as given by RDA to the developer was initially a vacant land which was sanctioned to be developed by the developer under a government notification. As already held above, the transaction agreed under agreement dated 11.11.2005 was not purely an act as covered under the aforesaid definition. It was an act of leasing out the land permanently for a longer period as that of 90 years against the one time payment. Irrespective that an annual ground rent was received but the lessee was allowed to retain the possession with all control on the immovable property. The transaction is one similar to sale as defined under Arcticle 366 (29A)(d) of the Constitution of India incorporated vide 46th amendment. The activity therefore cannot fall under the definition

of renting of immovable property even for the prior period. Hence, the demand of Issue No. 1 is liable to be set aside.

13. Issue No. 2

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

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

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

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

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

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

14. Issue No. 3

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

Corporation Vs. Commissioner of Central Excise, Hyderabad reported as 2010 (17) STR 107.

15. Issue No. 4

15.1 The service tax has been demanded on the amount received by the appellant against once year water supply. It is submitted that the said amount was booked under the account head "water tax". It is submitted that the appellant was providing water supply to the occupants of the residential complexes at such rates as equivalent to the rate on which water has been supplied by Chhattisgarh Jal Board. From the meaning of government authority as discussed above, supply of water by a government authority is a sovereign function. Also from the definition of service as discussed above, it is clear that discharging a sovereign function cannot be called as the provision of services. Otherwise also, as pointed out on behalf of the appellant that Chhattisgarh State Act, 2003 in its Schedule I while talking about tax free goods has specifically covered water in its ambit. Once water is as good as a good supply thereof is an act of transfer of goods which is subject to VAT and not to service tax.

16. Issue No. 5

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

the eligibility of input services based where upon the Cenvat credit was availed.

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

[Order pronounced in the open court on **24.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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