

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3

SERVICE TAX APPEAL NO. 51127 OF 2020

[Arising out of Order in Appeal No. 38/ST/DLH/2020 dated 14.07.2020
passed by the Commissioner (Appeals-I)CGST, Delhi]

MR. AJAY KUMAR SOOD**APPELLANT**
19, Golf Links, New Delhi-110003

Vs.

COMMISSIONER(APPEALS-I),CGST-DELHI**RESPONDENT**
Room No. 134, Central Revenue Building
Indraprastha Estate, New Delhi-110002

WITH

SERVICE TAX APPEAL NO. 51128 OF 2020

[Arising out of Order in Appeal No. 37/ST/DLH/2020 dated 14.07.2020
passed by the Commissioner (Appeals-I)CGST, Delhi]

MR. SATISHKUMAR SOOD**APPELLANT**
19, Golf Links, New Delhi-110003

Vs.

COMMISSIONER(APPEALS-I),CGST-DELHI**RESPONDENT**
Room No. 134, Central Revenue Building
Indraprastha Estate, New Delhi-110002

AND

SERVICE TAX APPEAL NO. 51129 OF 2020

[Arising out of Order in Appeal No. 36/ST/DLH/2020 dated 14.07.2020
passed by the Commissioner (Appeals-I)CGST, Delhi]

MR. RAMAN KUMAR SOOD**APPELLANT**
19, Golf Links, New Delhi-110003

Vs.

COMMISSIONER(APPEALS-I),CGST-
DELHI

.....RESPONDENT

Room No. 134, Central Revenue Building
Indraprastha Estate, New Delhi-110002

Appearance:

Shri A.K. Batra and Ms. Sakshi Khanna, Chartered Accountants for the Appellant

Shri Rajeev Kapoor and Shri Suresh Nandanwar, Authorised Representatives for the Respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 51257-51259 /2025

DATE OF HEARING : 05/08/2025
DATE OF DECISION : 01/09/2025

P.V. SUBBA RAO

These three appeals are filed by three brothers assailing three different Orders in Appeal passed by the Commissioner (Appeals) upholding three different Orders in Original passed by the Additional Commissioner deciding the proposals in three Show Cause notices issued to the appellants. The details are as below:

Appellant	Ajay Kumar Sood	Satish Kumar Sood	Raman Kumar Sood
Appeal No.	ST/51127/2020	ST/51128/2020	ST/51129/2020
Show Cause Notice date	4.12.2017	10.10.2017	1.11.2017
Order in Original	No. 08/NY/JC/GST/DE/2019 -20 dated 6.8.2019	No. 12/NY/JC/GST/DE/2019-20 dated14.8.2019	No. 11/NY/JC/GST/DE/2019-20 dated 14.8.2019
Order in Appeal (Impugned order)	38/ST/DLH/2020 dated 14.7.2020	37/ST/DLH/2020 dated 14.7.2020	36/ST/DLH/2020 dated 14.7.2020
Disputed period	1.4.2013 to 31.3.2014	1.4.2013 to 31.3.2014	1.4.2013 to 31.3.2014
Service tax demanded	Rs. 55,62,000/- with Interest under section 75 Penalty under section 77 Rs. 10,000/- Penalty under section	Rs. 55,62,000/- with Interest under section 75 Penalty under section 77 Rs. 10,000/- Penalty under section	Rs. 55,62,000/- with Interest under section 75 Penalty under section 77 Rs. 10,000/- Penalty under section

	78- Rs. 55,62,000/-	78- Rs. 55,62,000/-	78- Rs. 55,62,000/-
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2. We have heard Shri A.K. Batra, learned chartered accountant for the appellants and Shri Rajeev Kapoor and Shri Suresh Nandanwar, learned authorised representative for the Revenue and perused the records. The facts which led to the issue of the impugned order are as follows:

3. The appellants were registered with the service tax department for providing service of renting of immovable property service and have been paying service tax on the rental income and there is no dispute about it.

4. On 17.7.1987, Shri Charan Balji Kaur and other land owners signed an agreement with the appellants to sell 17 acres of agricultural land in Village Samalkha, New Delhi. As per the agreement, the appellants had also paid earnest money to the sellers. Thereafter, instead of selling the land to the appellants, the land owners sold it to some other persons.

5. Aggrieved, the appellants filed civil suits in 1988 in the Delhi High Court seeking injunction against the land owners and the buyers. After prolonged litigation, the appellants settled the matter with the land owners by signing a Memorandum of Settlement on 6.9.2013 as per which each of the appellants was paid a sum of Rs. 4.5 crores. The land owners paid the amount and the dispute was settled.

6. The case of the department is that the appellants had received this amount of Rs. 4.5. crores each to tolerate the situation in which the land, after having agreeing to sell to the appellants, was sold to someone else. The amount so received, according to the department, was liable to service tax under section 66E (e) of the Finance Act, 1994¹. Since the appellants had not paid the service tax, SCNs were issued demanding service with interest and further proposing to impose penalties as above. The proposals in the SCNs were confirmed by the Joint Commissioner in his Orders in Original which decisions were upheld in the orders impugned in these three appeals.

Submissions on behalf of the appellants

5. Shri A.K. Batra, learned chartered accountant for the appellant made the following submissions:

(i) The amounts received by the appellants is in the nature of damages for reneging on the Agreement to sell by the land owners and not in the nature of consideration for a service. Therefore, it is not covered by section 66 E (e) of the Act and no service tax is payable.

(ii) Section 66E (e) covers only such cases where the agreement itself is to tolerate an act or to refrain from an act or to do an act which is not the present case.

(iii) The amounts were received by the appellants in settlement of disputes and not as a consideration in the

¹ Act

agreements. The settlement cannot be construed as an activity and therefore, it does not fall within the scope of “service’ as per section 66B (44) of the Act.

(iv) Another way of looking at the receipts is as actionable claims which are explicitly excluded from the scope of section 66B (44) of the Act.

(v) Extended period of limitation cannot be invoked in this case.

(vi) If at all service tax is confirmed against the appellants, cum tax benefit may be given, i.e., the sums received should be considered as inclusive of the tax and the amount of service tax calculated accordingly.

(viii) Penalties cannot be imposed on the appellants.

Submissions of the Revenue

6. Learned authorised representative for the Revenue vehemently supported in the impugned order and made the following submissions:

(i) The amounts received by the appellants were as per the agreement called the Memorandum of Settlement signed by the appellants with the land owners and not as per the original agreement to sell signed between the appellants and the land owners.

(ii) In the original agreement to sell, the appellants paid an amount as earnest money and thereby earned the right

to buy the land from the land owners. Having signed the agreement to sell and having taken the earnest money, the land owners reneged on their agreement. This was the subject matter of dispute in the civil suits filed for injunction before the Delhi High Court. The appellants could have pursued the suits to their logical conclusion.

(iii) Instead, the appellants signed an agreement called the Memorandum of Settlement, in which they agreed to tolerate the land owners reneging on the agreement to sell and instead selling the land to some other party. The substance of this Memorandum of Settlement is that the appellants relinquished their right to purchase the land and the land owners paid them an amount of Rs. 4.5 crore each. This is an agreement in itself in which the appellants received a consideration for tolerating the act of the land owners selling the land to a third party and relinquishing their right to buy the land.

(iv) This is squarely covered by the definition of section 66E(e) of the Act as a declared service on which service tax was payable.

(v) Since the appellants had not paid service tax, SCNs were issued which culminated in the impugned orders.

(vi) The amounts received by the appellants cannot be called actionable claims. In fact, the appellants themselves have recorded the amounts received in their books of accounts as " On account of surrender of booking

rights in land at Smalkha'. The appellants themselves did not understand these amounts as actionable claims and it is not open for the learned counsel to now claim that they are actionable claims and hence do not fall under the definition of service.

(vii) As far as the extended period of limitation under the proviso to section 78 is concerned, it must be remembered that the appellants were registered with the service tax department but never disclosed the amounts which they had received for tolerating an act. Therefore, extended period of limitation was correctly invoked.

(ix) The impugned orders may be upheld and all three appeals may be dismissed.

Findings

7. We have considered the submissions advanced by both sides. The primary question to be answered is if the amounts received by the appellants were exigible to service tax under section 66E (e) of the Act.

8. When service tax was introduced by the Finance Act, 1994, it was imposed on a few services. As per section 66 of the Act, service tax was payable on taxable services rendered. These were listed in various clauses of section 65 (105). Over years, more and more services were included in the list of taxable services under various clauses of section 65(105) of the Act. Tax

had to be paid if a taxable service was rendered for a consideration and not otherwise.

9. Significant changes were made to the Act in 2012 and all services except those in the negative list and especially those which were 'Declared Services' became exigible to service tax. These provisions are relevant to these three appeals. Unless the rendered service was under the negative list or was exempted, service tax had to be paid after 2012. Service tax had to be certainly paid on the declared services under section 66E of the Act. The relevant provisions are as follows:

"Section 66B

There shall be levied **a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list**, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Section 65 B: In this Chapter, unless the context otherwise requires,-

.....

(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) 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.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.— For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 3.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

66E. Declared Services.—The following shall constitute declared services, namely:—

.....

(e) **agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;”**

10. What is evident from the above is that after 2012, on every service which is not in the negative list which is provided or agreed to be provided, a service tax had to be paid at fourteen percent of the value of the service. The definition of ‘Service’ as per section 65B (44) has three parts- the main part, an inclusion part and an exclusion part. As is well known, the inclusion part expands the scope of the term beyond the main part of the definition and the exclusion part reduces the scope of the term.

11. The main part of the definition says service means any activity carried out by a person for another for consideration. Thus, it must be an activity and it must have been carried out by a person for another and for a consideration. This definition is enlarged by the inclusion part of the definition ‘and includes

declared services'. Therefore, if something is a declared service, even if does not fall within the scope of the main part of the definition, it would still be 'service'. The exclusion part of the definition then narrows the scope of the term by excluding certain services.

12. We now proceed to look at the scope of 'Declared services' under section 66E. It lists certain things to be declared services. Clause (e) reads as 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.' The case of the department is that the appellants had tolerated the act of the landowners selling the land to someone else reneging on the agreement to sell signed with the appellants. For this purpose, they received an amount which falls within the scope of declared services and therefore, this tolerance of the act for a consideration will amount to a service and accordingly service tax has to be paid.

13. According to the appellants, they have not entered into any new agreement but have only settled the dispute in an old agreement viz., the agreement to sell the land. As a part of the settlement they received some damages which does not amount to a declared service under section 66E (e).

14. We find that it is true that a memorandum of settlement was signed by the appellants with the landowners and they received an amount of Rs. 4.5 crores each as per the settlement. This settlement, however, is not an agreement by itself but is only settlement of the dispute which had arisen out of an earlier

agreement. When two persons enter into a contract, what they agree to do for each other is the consideration. In this case, under the Agreement to sell, the landowners agreed to sell the land to the appellants and the appellants had paid an earnest money for the purpose. While the appellants paid the earnest money thereby fulfilling their part of the Agreement to sell, the landowners did not fulfil their part of the deal by not selling the land to the appellants. If one reneges on the contract, the dispute is settled either through liquidated damages (where the amount of damages to be paid is recorded in the agreement itself) or through unliquidated damages (where the court decides the damages) or through suits for specific performance, etc. The appellants had filed suits before Delhi High Court but finally both parties agreed to settle the dispute and as a part of the settlement, the land owners paid a sum of Rs. 4.5 crore to each of the appellants. This is clearly only a settlement of the dispute and the amount received is only damages for reneging on the agreement to sell. This is clearly not an agreement to tolerate any act or situation. It is beyond the scope of section 66E (e) of the Act and therefore it is not a declared service.

15. The amount of Rs. 4.5 crores each received by the appellants from the land owners is a compensation for the reneging on the agreement to sell. It does not fall under section 66E (e) and is not a declared service.

16. The demands of service tax on the appellants cannot be sustained and need to be set aside. Consequently, the demand of interest and imposition of penalties also cannot be sustained.

17. All three appeals are allowed and the impugned orders are set aside with consequential relief to the appellants.

[Order pronounced on **01/09/2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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