CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 52874 of 2019

(Arising out of Order-in-Appeal No. 608(CRM)ST/JDR/2019 dated 20.06.2019 passed by the Commissioner (Appeals), CGST, Jodhpur)

Suwalka & Suwalka Properties and Builders Pvt. Ltd. — **Appellant**
Near Raj Petrol Pump, Bundi Road,
Kunhadi, Kota, Rajasthan-324008.

Versus

Commissioner of Central Goods & Service Tax, Jodhpur — **Respondent**
G-105, Road No. 5, New Industrial Area,
In front of the Diesel Shed, Behind AIIMS
Jodhpur-342003

Appearance:

Present for the Appellant: Shri Rahul Lakhwani and Ms. Diksha Khandal, Chartered Accountants

Present for the Respondent: Shri S.K. Meena, Authorized Representative

CORAM:
Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Mr. A.K. Jyotishi, Member (Technical)

Date of Hearing: 14/07/2025
Date of Decision: 13.10.2025

Final Order No. 51559/2025

Dr. Rachna Gupta:

M/s Suwalka & Suwalka Properties & Builders Pvt. Ltd. are engaged in providing 'Construction of Residential Complex Services'., 'Construction services other than residential complex services', 'Works Contract Services, 'Manpower recruitment/supply agency services' and 'Transport of Goods by Road (GTA) Services. During the scrutiny of the documents of the appellant, it was observed that they are engaged in Construction of Residential Complex as well as Residential Townships by way of purchase the land to develop the same. They take advances for booking of

Residential Accommodation and get approved the lay out plane from UIT (Local Body) for developing and building of the Complete Residential Townships. The appellant undertook the project "Riddhi Siddhi Nagari", constructed independent Villas/Bungalows and also developed the roads, utilities and other facilities of Township. Further, it has been observed that they have also received the advance payments up to March 2014; however, they have neither declared such advance receipt amount in the ST-3 Returns filed for the said period nor paid service tax on the advance payments received by them as advance for booking of flats but they have not paid service tax which is due on the said amount, thereby contravening the provisions of Section 66, 66B, 67 and 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. Hence the service tax of Rs. 1,63,30,533/- after allowing 75% abatement under Construction of residential complex service, was alleged to be not paid by the appellants. Accordingly, Show Cause Notice No.24/2017/367 dated 26.01.2018 was served upon the appellant proposing the demand of service tax of Rs. 1,63,30,533/- along with proportionate interest and the appropriate penalties. The proposal was initially confirmed vide Order-in-Original No. 90/2018-19 dated 04.09.2018. Appeal against the said order has been dismissed vide Order-in-Appeal No. 608/2019 dated 24.06.2019.'

2. We have heard learned counsels for the appellant and learned Authorized Representative for Revenue.

3. Learned counsel for the appellant has submitted that the subject advance is not received towards booking of residential units

(to be constructed by the appellant). But it was received towards sale of land hence same is not the subject matter of service tax liability.

4. Learned counsel elaborated by submitting that the appellant is engaged in the business of real estate and therefore, they purchase land, construct complex/residential accommodation and sell the same. In some cases, they sell the land itself, thus such purchasers of land are also their customers. Appellant entered into agreement with four companies namely:

(i) M/s Caplin Dealcomm Private Limited;

(ii) M/s Competent Securities Private Limited;

(iii) M/s Denim Developers Limited:

(iv) M/s Fairland Plazza Private Limited.

According to these agreements the appellant agreed to transfer the land to those companies subject to it being approved to be meant for converted Commercial Land Use [1] , from Urban Improvement Trust[2], Rajasthan/State Government (Kota). It was also agreed that in case appellant fails to get the said land converted into commercial use, then the agreement shall be rescinded and the parties shall be at the liberty to get back the amount of consideration/earnest money along with interest at bank rate calculated till the date of refund of consideration. The total amount of advances received by the appellant from these companies is Rs. 52,84,96,200/- which was reflected in the balance

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1 (CLU)
2 (UIT)

sheet as on 31.03.2014. However, during the audit for the period October 2012 to September 2012, the Audit Authority alleged non-payment of service tax on the said amount considering the same as advance amount received against booking of flats in the residential complex, to be constructed by the appellant on the same land for which appellant could not got the CLU for commercial use and could not sell the same to four different companies. Hence the allegations are wrong. The impugned order upholding said allegations is, therefore, liable to be set aside.

5. The order under challenge has also been objected on the following ground, that the appellate authority has grossly erred:

(1) by confirming service tax on an amount relating to sale of land;

(2) in not considering the submissions of the appellant without providing reasonable basis for the same;

(3) in adjudicating a show cause notice which is void-ab-inito;

(4) in invoking the extended period of limitation;

(5) in confirming the order-in-original which was passed in violation of principles of natural justice.

(6) in denying cum-tax benefit is available to the appellant;

(7) in imposing interest upon the appellant;

(8) in levying penalty under Section 78 of Finance Act, 1994 which is illegal and unwarranted.

With these submissions, the order under challenge is accordingly, prayed to be set aside and the appeal is prayed to be allowed.

6. While rebutting these submissions, learned Departmental Representative appearing for the Department , at the outset, has reiterated the findings arrived at in the order under challenge and also of the order in original. It is submitted that the appellant's claim about amount in question to have been received against the sale of land, is not tenable as the subject land is not vacant land. Appellant failed to submit any documentary evidence of sale of land to four different companies i.e. Registry/Patta & evidence of payment of stamp duty/taxes etc. against subjected transaction nor any agreements undertaken with these customers were provided at the time of audit. During the course of personal hearing on 23.05.2018 the appellant claimed that they had agreed to sell vacant land to the subjected buyers. Whereas, on verification of the subjected land by the JRO on 28.06.2018 (only after one month of personal hearing) it has been found that the appellant is developing a multi-story residential housing project on the subjected land and same is near to completion. This fact shows the mala fide intention of the appellant and also proves that the appellant is trying to mis-lead the issue with intent to evade the payment of service tax. Look alike letters of all four companies addressed to the appellant were signed on same date 27.06.2018, i.e. after initiation of verification by the JRO. Thus all these letters are held to be fabricated.

7. It is further submitted that the appellant has never disclosed the facts to the Department these facts came to the notice of the Department only after initiating of investigation. The appellant is working under self-assessment system. They are bound by service

tax law to correctly assess their service tax liability and thereafter file their ST-3 returns properly. The appellant did not assess the correct amount of service tax and had also not shown the actual amount in the relevant ST-3 returns. They have willfully suppressed the facts from the department with intention to evade the payment of service tax. Therefore, extended period and penalty under Section 78 is invocable. With these submissions, the appeal is prayed to be dismissed.

8. Having heard the rival contentions, it is observed that the service tax in the present case was proposed and confirmed on an amount of Rs. 52,84,96,200/-as was received by the appellant as an advance amount from the customers during the period from 2012-13 to 2013-14. It is also an admitted fact that the said amount was received from four different companies as follows:

(i) M/s Caplin Dealcomm Private Limited – Rs. 22,40,00,000/-

(ii) M/s Competent Securities Private Limited – Rs. 4,50,00,000/-

(iii) M/s Denim Developers Limited- Rs.10,50,00,000/-

(iv) M/s Fairland Plazza Private Limited – Rs. 22,40,00,000/-

9. The department has alleged the said amount to be the advance related to booking of flats being constructed by the appellant. It is observed to be the appellant's response since beginning that the said amount of advance was received from the said four companies to whom the appellant had agreed to sell some portion of land after getting the said land converted to commercial

purposes. However, the appellant could not get the change of land use from the Government. Accordingly, the appellant who is in the business of real estate, purchase of land, construct complex/residential complex etc. started construction of residential complex on the said land. Subsequent thereto the appellant got cancelled the agreements with four of those companies and returned them the amount of advance as was received. There is no denial to the fact that the said amount stands returned by the appellant to four of those companies.

10. It is observed that the Commissioner (Appeals) in the impugned order has acknowledged about the letters dated 27.06.2018 received by the appellant from four of those companies to the effect that four of them are willing to get the refund advance paid by them and do not want it to be adjusted against any prospective acquirement of flat or constructed balance. However, the said letters have been ignored for the reason that all these letters are of same date and four of these look alike. Accordingly, are alleged to be fabricated. We find no evidence on record which may disprove those letters. The letters rather corroborate four of the agreements to sell entered between appellant with four of the abovementioned companies. Those agreements have been produced by the appellant and were before the adjudicating authorities below. But the authorities have ignored those agreements.

11. It is also observed that the department has presumed the said amount of advances to have been received for the purpose of booking flats solely on the appearance of these advances in the

balance sheet under "advance from the customer". There is no evidence on record that the customers, were the flat buyers. On the contrary, as already observed above, the customers were four companies with whom the appellant had entered into a memorandum of agreement the copies of four of those agreements is also produced by the appellant. Perusal reveals that four of these of same dated 27.7.2012 and were almost look alike. The perusal reveals that the said agreement was not with respect to any housing project but with respect to some portion of land in the housing project measuring 11,000 sq. mtr. for which the appellant had undertaken to convert the same into commercial land and the agreement was subject to the said obligation of the appellant.

12. This perusal is sufficient for us to hold the amount of advance received by the appellant was with respect to the sale of land which is absolutely out of the scope of applicability of the provisions of Finance Act. The findings of the adjudicating authority to hold that the amount paid by those companies was with respect to the booking of flats in the residential complex to be constructed by the appellant is without any evidence. The findings are, therefore, held to be result of presumption and assumption hence are liable to be set aside.

13. Finally it is observed that show cause notice dated 25.1.2018 has proposed the demand for the period 2012-16. As discussed above, there is no iota of evidence produced by the department proving any positive act of the appellant to evade tax. On the contrary appellant has successfully established that activity undertaken with reference to amount in question pertain to sale of

immovable property and as such he was not liable to pay any service tax on the amount received as advance towards that sale. We hold that the department has wrongly invoked the extended period of limitation while issuing the impugned show cause notice. The show cause notice is held to be barred by time. We draw our support from the decision of Hon'ble Apex Court in the case of **Anand Nishikawa Co. Ltd. Vs. CCE, Meerut**[3] wherein it has been held that suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties. The omission by one to do what he might have done not that he must have done would not render it suppression. There must be some positive act from the side of the assessee to find willful suppression.

14. In the totality of entire above discussion, the order under challenge is hereby set aside. Consequent thereto, the appeal is allowed.

(Pronounced in open Court on 13.10.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(A.K. Jyotishi)
Member (Technical)

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3 2005 (188) ELT 149 (SC)