CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 50233 OF 2024

(Arising out of Order-in-Original No. 20/RPS/COMMR./CGST/DSC/2023-24 dated 30.11.2023 passed by the Commissioner of Central Goods and Service Tax, Delhi South Commissionerate)

M/s. Baakir Real Estate Private Limited **.....Appellant**
232-B, 4th Floor, Okhla Industrial Estate
Phase-III, New Delhi
110020

versus

Commissioner of CGST, Delhi South Commissionerate, **.....Respondent**
Plot-2B, 3rd Floor, EIL Annexe,
Bhikaji Cama Place, New Delhi
110066

APPEARANCE:

Shri Shaubhik Gupta, Advocate for the Appellant

Shri Anand Narayan, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 31.01.2025
DATE OF DECISION: 19.05.2025

FINAL ORDER NO. 50704/2025

JUSTICE DILIP GUPTA:

M/s. Baakir Real Estate Private Limited[1] has assailed the order dated 30.11.2023 passed by the Commissioner confirming the demand of service tax with penalty and interest after invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994[2].

2. A show cause notice dated 11.03.2020 was issued to the appellant for the years 2016-17 and 2017-18 containing the following allegations:

> "**5.3 Whereas for the year 2016-17, as per From 26AS, the Party has received income to the tune of Rs. 91,177/- from M/s. Advance**

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1. **the appellant**
2. **the Finance Act**

India Private Limited under Section 194J of Income Tax Act, 1961 and **for which no explanation was provided indicating it to be non-taxable income. Hence, the said amount of Rs. 91,177/- appears to be income arising out of services, which are taxable nature under the provisions of the Act** ibid aforesaid. It is also noted that **the Party received an amount of Rs. 34,45,00,000/- towards Sale of Development Rights as per Balance Sheet of 2016-17. Since development right is a right to develop the land for agricultural, residential or commercial use, it does not result into transfer of ownership of the land in totality but only the aspectual right to develop the land is transferred; hence, it appears that transfer/sale of such development right does not get covered under the exclusion clause of Section 65B(44) or get covered under Section 66D of the Act ibid,** implying thereby that the same is covered under the definition of "service", as provided under Section 65B(44) of the Finance Act, 1994 and is thus, susceptible to levy of Service Tax. **Thus, the value of taxable services works out to Rs. 34,45,91,177/- (Rs. 34,45,00,000/- + Rs. 91,177/-) for the year 2016-17.**

5.4 Whereas, for the year 2017-18 as per Form 26AS, the Party has received taxable income of Rs. 2,19,099/- upto 30.06.2017 from M/s Advance India Private Limited under Section 194J of Income Tax Act, 1961, which is liable to levy of Service Tax as a party received such income for which no explanation was provided indicating it to be non-taxable income. The said amount of Rs. 2,19,099/- appears to be income arising out of services, which are taxable nature under the provisions of the Act ibid aforesaid.

6. Whereas, based upon the aforesaid, the service tax liability of the Party is calculated as follows:

Year	**Taxable Amount (Rs.)**	**Tax Rate (%)**	**Service Tax (Rs.)**
2016-17	34,45,91,177/-	14.5	4,99,65,721/-

2017-18 (upto 30.06.2017)	2,19,099/-	15	32,865/-
Total	34,48,10,276/-		4,99,98,586/-

(emphasis supplied)

3. The extended period of limitation under the proviso to section 73(1) of the Finance Act was also invoked and the relevant paragraph of the show cause notice relating to this aspect is reproduced below:

> "**8. Whereas, from the facts discussed above, it further appears that the Party, by doing so, had intentionally and wilfully suppressed the details of providing the impugned taxable services and did not file prescribed ST-3 returns containing the details correctly therein with intention of non-payment of the applicable Service Tax on such taxable services**. These acts of omission and commission on the part of the party resulted in short payment/ non-payment of Service Tax as discussed under aforesaid paras. **They are working under self-assessment and the onus to pay proper Service Tax was on them**. Intentional non-disclosure the entire facts resulted in contravention of various provisions of the Act ibid, as amended and the Rules made thereunder. **Suppression of facts on part of the Party resulted in escape of assessment of Service Tax liabilities of the Party on the value suppressed by them. Thus, it appears that but for the investigations conducted in respect of the Party, these facts would not have come to the notice of the department**. **Therefore, it appears that the Proviso to Section 73(1) of the Act ibid read with is invokable in the instant case and Service Tax evaded by the Party on accounts of non-levy and non-payment by the reason of suppression of facts for five years from the relevant date appears to be recoverable from them**."
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> **(emphasis supplied)**

4. It would be seen that the demand raised in the show cause notice relates to a consideration of Rs. 34,45,00,000/- said to have been

received by the appellant under the two agreements and an amount of Rs. 2,19,099/- + 91,177/- i.e. Rs. 3,10,276/- said to have been received by the appellant as income shown under section 194(J) of the Income Tax Act, 1961[3].

5. The appellant filed a reply to the show cause notice and denied the allegations made therein. Apart from contesting the demand proposed in the show cause notice on merits for the reason that there is no liability to pay service tax on transfer of development rights as it was actually a case of transfer of immovable property and that the appellant was also not liable to pay service tax on income received on which TDS was deducted under section 194(J) of the Income Tax Act as the amount was within the threshold limit of Rs. 10 lakhs, the appellant also contended that the demand was barred by time under the provisions of section 73(1) of the Finance Act and in any case the extended period of limitation under the provisio to section 73(1) of the Finance Act could not have been invoked in the facts and circumstances of the case.

6. The Commissioner, however, did not accept the contentions raised on behalf of the appellant, both on merits and on the demand being barred by time and confirmed the demand.

7. The relevant portions of the order dealing with the consideration received by the appellant under the two agreements are reproduced below:

> "**24.** ***** In this regard, I observe that as per provision of Section 66B of the Finance Act, 1994, Service Tax is levied on 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. **Further, as per definition of taxable service as defined under Section 65B (51) of the Act and as per definition of 'service' as defined under Section 65B (44) of the Act**

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3. the Income Tax Act

read with terms and conditions mentioned in the said both Development Agreements, the activity of the Land Owners is very much covered under the definition of 'taxable service' and 'service' as defined supra, as all rights of ownership were in possession of the land Owners who have transferred the development rights in the developers. Moreover, the activity of transfer of land development rights is neither covered under Negative List (Section 66D of the Act) nor exempted under Notification No. 25/2012-ST dated 20.06.2012.

25. It is further observed that the exclusion clause of Section 65B (44) of the Finance Act, 1994 clearly provides that **any activity which involves transfer of title in goods or immovable property by way of sale is outside the purview of 'service'**. Whereas in the instant case, as per the relevant clause of Development Agreement, it is clear that the land owner, in lieu of the consideration has assigned the rights, interest and entitlements exclusively for undertaking development of the project on the land**. I find that such transfer of development rights in favour of the developer is not sale of immovable property in view of the fact that it does not involve 'transfer of title' in goods or immovable**. The developer does not hold exclusive title of the land or the immovable property in the present case, but only the development rights have been transferred. In this case the rights of development have given against a consideration. **Transfer of any rights in an 'immovable property' and transfer of 'immovable property are two distinct activities and transfer of one can not lead to transfer to another activity.** In terms of Section 3 (26) of the General Clauses Act, 1897 'immovable property' includes land, benefits to arise out of land, and things attached to earth or permanently fastened to anything attached to the earth. Since the transfer of land development rights for consideration, does not involve transfer of title in immovable property, by way of sale, gift or in any other manner, such activity appears rightly covered under the definition of 'service' for leviability of

> service tax on the consideration involved. I find that as per the both the Development Agreements entered into between the land owner and the developer in the instant case, the land owner did not transfer or sold the title of the land to the developer and the developer did not purchase the land or immovable property from the land owner.
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> In view of the above, with effect from 01.07.2012, I find that sale of development rights for consideration, is covered under the definition of taxable services as it does not involve transfer of title in immovable property, by way of sale, gift, or in any other manner. Hence, the land owners are required to pay Service Tax on the consideration.
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> **(emphasis supplied)**

8. In respect of the income received by the appellant to the extent of Rs. 91,177/- for 2016-2017 and Rs. 2,19,099/- for 2017-18, the Commissioner held that the appellant had not given any evidence nor any explanation as to why it was non-taxable.

9. Regarding the invocation of the extended period of limitation, the Commissioner observed as follows:

> "**34.5 In the instant case, the information regarding the element of non-payment of Service Tax has genesis only after the investigations of the records of the noticee by the Department and without which the short payment of Service Tax could not have been detected.** It is evident that the noticee did not cooperate in the investigations and did not furnish all the requisite information in spite of providing and receiving taxable services during the referred period. **I find that such acts of the noticee can be considered as acts performed with malafide intention to evade payment of Service Tax appropriately and timely.** Hence, such acts are squarely covered under the elements of deliberate suppression of facts with intent to evade payment of Service Tax as stated under proviso to Section 73 (1) supra."
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> **(emphasis supplied)**

10. It is this order dated 30.11.2023 passed by the Commissioner that has been assailed in this appeal.

11. Shri Shaubhik Gupta, learned counsel appearing for the appellant made the following submissions:

(i) The demand of service tax is on the consideration received under the two agreements. The first agreement dated 18.05.2011 was entered into between the appellant and M/s. Splendor Landbase Limited[4]. The second agreement dated 16.12.2011 was entered between the appellant and Advance India Projects Limited[5]. The payments were received by the appellant between 18.05.2011 to 15.02.2013 and was duly recorded by the appellant in the balance sheets for the Financial Years 2011-12 and 2012-13. Thus, the entire demand is barred by limitation, as it is even beyond the period of 5 years contemplated in section 73 (1) of the Finance Act;

(ii) Even otherwise, the extended period of limitation could not have been invoked in the facts and circumstances of the case, more particularly when the issue as to whether transfer of development rights would be a transaction in immovable property or a service was debatable;

(iii) Transfer of development rights is transfer of immovable property and, therefore, no service tax is payable in view of the exclusion clause contained in section 65B(44) of the Finance Act. In support of this contention, learned counsel place reliance upon the decisions of the Tribunal in **DLF Commercial Projects Corporations** vs. **Commr. Of**

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4. Splendor
5. Advance India

S.T., Gurugram[6] and **Amit Metaliks Limited** vs. **Commissioner of CGST, Bolpur**[7]; and

(iv) The department had to substantiate that the income shown under section 194(J) of the Income Tax Act was leviable to service tax and in any case the amount was within the threshold limit of Rs. 10 lakhs as provided for in the Notification dated 20.06.2012.

12. Shri Anand Narayan, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned authorized representative submitted that transfer of development rights is a taxable service and is not exempted under section 65B (44) of the Finance Act. Learned authorized representative also submitted that the extended period of limitation was correctly invoked.

13. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

14. The issues that arise for determination relate are whether the demand was barred by time under section 73(1) of the Finance Act; whether the consideration received by the appellant under the agreement dated 18.05.2011 entered into between the appellant and Splendor and the agreement dated 16.12.2011 entered into between the appellant and Advance India can be subjected to levy of service tax; and whether the amount of Rs. 3,10,276/- shown as income under section 194(J) of the Income Tax Act can be leviable to service tax.

15. To appreciate the contention raised by the learned counsel for the appellant that the demand was barred by time under section 73(1) of the

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6. 2019(27) G.S.T.L. 712 (Tri.-Chand.)
7. 2020 (41) G.S.T.L. 325 (Tri.-Kolkata)

Finance Act and that the consideration received by the appellant under the two agreements was not leviable to service tax, it would be appropriate to examine the relevant portions of the two agreements.

16. The agreement dated 18.05.2011 is between the appellant (Owner Company) and Splendor (Developer) and the relevant clauses are reproduced below:

> "**C. Owner Company further represents that in pursuance of the above said License, total FSI amounting to 9,09,995 sq. ft. approximately (on the area measuring 8.35625 acres of the Total Land) has been permitted as per the existing norms of the planning department for development of Cyber/IT Park on the Total Land**.
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> **D.** The Owner Company further represents that subsequent to the grant of the said License the land owned by M/s. Arnon Builders & Developers Pvt. Ltd. and M/s. Beyla Builders & Developers Pvt. Ltd. as detailed in Clause B and C of Schedule 1 were transferred in favour of the Owner Company vide Sale Deed dated 16th February 2011 and Sale Deed dated 15th February 2011 respectively after obtaining permission from DTCP vide Memo No. DS(R)-LC-1629/2011/1615 and DS(R)-LC-1629/2011/1616 both dated 7th February, 2011. The Owner Company represents that necessary actions for transfer of license in respect of entire land in the name of the Owner Company has been taken in pursuance of above said Memo issued by the DTCP.
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> **E. In pursuance of the aforesaid License granted by the DTCP and after obtaining approval of zoning plans, building plans and other requisite approvals, sanctions, permissions and licenses and in accordance with applicable laws, byelaws, rules and regulations etc. the Owner Company is desirous of developing the Total Land as Cyber/IT Park consisting of various towers(s) / block(s) of different**

sizes and dimensions to be developed for construction of individual Building(s)/Tower(s) thereon alongwith support infrastructure, utilities and services (hereinafter referred to as the 'Total Project').

F. **The Developer is well established in the business of real estate development and has significant expertise in developing, promoting, marketing and sell of Commercial Complexes, Malls, Integrated Townships,** Commercial and Residential Buildings, IT/Cyber Park projects in various parts of Northern India **and is desirous of acquiring the development rights in respect of 50% FSI equivalent to 4,54,997.5 Sq. Ft. out of Total FSI of 9,09,995 square feet of the Said Land or as approved by Regulatory Authorities according to the zoning plans** (hereinafter referred to as the **'Said FS1'**), for setting up an IT building comprising of various IT units and commercial spaces along with utilities and common areas therein **(Project)** on the plot of land, out of the Total Land, which is shown in orange colour in Layout Plan attached herewith as **Schedule-II** (hereinafter referred to as the **'Said Land'**) in accordance with the Building Plans to be sanctioned by the Regulatory Authorities and in that respect has approached the Second Party for acquiring rights to undertake development including all rights to promote, market and sell of saleable area/units therein.

G. The Developer has confirmed to the Owner Company that it has full knowledge of all the applicable laws, rules, regulations, notifications etc. in general and applicable to the Total Land and the Project in particular, and the terms and conditions contained in this Agreement and that the Developer has clearly understood its rights, duties, responsibilities, obligations under each and all of the clauses in this Agreement.

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2.1 **The Owner Company hereby grants to the Developer, from the Effective Date, an exclusive license to enter upon the Said Land and develop the same in terms of the applicable laws, approvals and sanctioned plans. The Owner Company further agrees to irrevocably and exclusively permit and authorize the Developer, its agents, servants, associates and any person claiming through or under them to enter upon the Said Land for construction and development of Project in accordance with this Agreement without any let or hindrance by the Owner Company. The Developer shall also be entitled to all its rights contained in this Agreement including without limitation rights contained in Article 7 & 10**.

2.2 The Parties agree, that nothing contained herein shall be construed as delivery of possession in part performance of any agreement of sale under Section 53-A of the Transfer of Property Act, and or such other applicable law of the time being in force. **It is clarified that the Owner Company shall be the owner of the Said Land and the Developer shall have the permission to enter upon the same only for carrying out the development activities and for fulfillment of its obligations as per the terms of this Agreement**.

2.3 On the Effective Date, the Owner Company shall execute and deliver the POA in favour of the Developer.

2.4 The Developer shall co-operate and take all necessary steps with the Owner Company for obtaining all the Approvals from Director Town and Country Planning, Chandigarh, Haryana and Regulatory Authority(ies) for the development of Project on the Said Land and upon receipt of the Sanctioned Plans and all Approvals, the Developer shall commence the

development and construction on the Said Land and complete the Development and construction of the Complex.

2.5 It is specifically agreed between the Parties that the Developer shall make best efforts and shall be responsible for obtaining approvals in respect of the Project on the Said Land within 1.5 (One and half) years from the Effective Date or within such extended time as the Parties may mutually decide. The Developer shall be responsible for informing the Owner Company on the expiry of the said period of 1.5 (One and half) years from the Effective Date about the receipt or non-receipt of the approvals, as the case may be.

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4.1 **In consideration of the Owner Company transferring and assigning their exclusive development rights over the Said Land and other rights and entitlements in respect of the Project in favour of the Developer and other covenants contained in this Agreement; the Developer shall pay Rs.378.573 per square feet of the Said FSI aggregating to total consideration of Rs. 17,22,50,000/- (Rupees Seventeen Crore Twenty Two Lacs Fifty Thousand only) to the Owner Company. The Developer has given a loan of Rs.31,75,00,000/- to the Owner Company under the Share Purchase Agreement dated 23.03.2011 executed interalia between the Owner Company and the Developer. The Owner Company has adjusted Rs.16,00,00,000/- (Rupees Sixteen Crores only) of the total consideration against the said loan. The balance consideration of Rs.1,22,50,000/- (Rupees One Crore Twenty Two Lacs Fifty Thousand only) shall be paid by the Developer to the Owner Company.on completion of the Project**."

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6.1 **The Owner Company hereby agree that the Developer shall have unfettered right to enter into agreements, memorandum of understanding and/or other arrangements, deeds and documents on behalf of itself as well as the constituted attorney for Owner Company for lease, license, sell, allotment or transfer of the Saleable Area/Unit in whole or part of the Project. The Developer shall also have right to deal with the Said Land in any manner whatsoever for the purpose of development thereof and to enter into suitable agreements or arrangement with Third Parties/Co Developers for assigning and transferring development rights in respect of part of the Said FSI.** The specific terms and conditions in the respective lease deeds/license agreements/memorandum of understanding/sale deeds and other agreements and documents including without limitation the consideration payable shall be mutually decided by the Developer and the Owner Company.

Without prejudice to the POA, the Owner Company shall provide such appropriate representations and warranties and other assistance and assurances as may be required by the Developer in connection with the proper execution of such lease deed/sale deed or such other agreements, documents and/or instruments as contemplated above.

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8.1 The Developer shall be entitled to undertake the development and construction work on the Said Land in such manner it deems fit and always in accordance with the applicable laws, approvals and sanctioned plans. The Developer may undertake the same either by itself or through competent contractors and sub-divide the work or appoint sub-contractors or enter into suitable agreements with the Co-Developers, as it may deem fit and proper. The

Developer shall be entitled to exploit the maximum permissible F.S.I. over the Said Land.

8.2 **The Parties have agreed that a fixed consideration is payable by the Developer to the Owner Company for the grant of development rights and other rights and entitlements granted by the Owner Company to the Developer in respect of the Said Land and the Owner Company shall have no interest in the Project and/or area developed on the Said Land.**"

(emphasis supplied)

17. The agreement dated 16.12.2011 is between the appellant (First Party) and Advance India (Second Party). The relevant clauses are as follows:

"**C.** The First Party further represents that in pursuance of the above said License no. 86 of 2010 dated 23 October 2010, total FSI admeasuring to 8,95,416,235 sq. ft. approximately on the Total Land has been permitted for setting up a Cyber/IT Park (hereinafter referred to as the **"Total FSI"**) as follows:

Category	**FSI in Sq. ft.**
IT AREA	8,73,576.822
COMMERCIAL AREA	21,839.413
TOTAL	**8,95,416.235**

D. The First Party further represents that subsequent to the grant of the abovesaid License no. 86 of 2010 dated 23 October 2010, the land owned by M/s. Arnon Builders & Developers Private Limited and M/s. Beyla Builders & Developers Private Limited were transferred in favour of the First Party vide Sale Deed dated 16 February 2011 and Sale Deed dated 15 February 2011 respectively after obtaining permission from DTCP vide Memo No. DS(R)-LC-1629/2011/1615 and DS(R)-LC-1629/2011/1616 both dated 7 February 2011. The First Party represents that necessary action for transfer of License in

respect of the Total Land in the name of the First Party has been taken in pursuance of Memo No. DS(R)-LC-1629/2011/1615 and DS(R)-ILC-1629/2011/1616 both dated 7 February 2011 issued by DTCP.

E. **In pursuance of above said License no. 86 of 2010 dated 23 October 2010 granted by DTCP, and after obtaining Applicable Permits and in accordance with Applicable Laws, the First Party is desirous of setting up a Cyber/IT Park on the Total Land consisting of various block(s) to be developed for construction of individual building(s)/tower(s), of different sizes and dimensions, along with support infrastructure, utilities and services** (hereinafter referred to as the **'Total Project'**).

F. **The Second Party is well established in the business of real estate development and has significant expertise in developing, promoting, marketing, leasing, licensing, and selling of Commercial Buildings, Malls,** Integrated Townships, Residential Buildings, IT/Cyber Park, etc.

G. **The Second Party is desirous of acquiring the development rights in respect of Fixed Sanctioned FSI of 4,47,708.118 sq. ft. as follows:**

Category	**FSI in Sq. ft.**
IT AREA	4,36,788.411
COMMERCIAL AREA	10,919.707
TOTAL	**4,47,708.118**

J. **The Second Party has agreed on principal to principal basis to acquire development rights and to develop AIPL FSI as its own costs and expenses for its own benefits, and the First Party has agreed to assign the rights of development of AIPL FSI in the form of AIPL Project on AIPL Plot alongwith other rights and entitlements as mentioned herein to the Second Party** against the Total Consideration as defined in Clause 4 of this Agreement.

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3.2 **The Second Party, relying on confirmations, representations and assurances of the First Party, has agreed and accepted the right for development of AIPL Project including the right to**:

(a) lease and/or license the Leasable Area/Units;

(b) book, allot, sell, transfer the Saleable Area/Units;

(c) sell, transfer AIPL FSI

(d) to receive proceeds in its own name on account of the booking amount, installment or other consideration / charges payable by the Prospective Buyer(s)/Prospective Lessce(s).

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4. TOTAL CONSIDERATION

4.1 **Subject to the terms and conditions of this Agreement, the First Party agrees to grant exclusive rights to the Second party to:**

(a) undertake development of AIPL Projects;
(b) lease and/or license the Leasable Area/Units;
(c) book, allot, sell, transfer the Sealable Area/Units;
(d) sell, transfer AIPL FSI;
(e) to receive proceeds in its own name on account of the booking amount, installment or other considerations/charges payable by the Prospective Buyer(s)/ Prospective Lessee(s) and other rights and entitlements in respect of AIPL Project including rights of AIPL Plot, for an agreed Total Consideration of Rs 17,22,50,000/- (Rupees Seventeen Crore Twenty Two Lacs Fifty Thousand only) (hereinafter referred to as "Total Consideration")

4.2. **Out of the above Total Consideration, the Second Party has paid to the First Party an advance of Rs 11,93,25,000/- (Rupees Eleven Crore Ninety Three Lac and Twenty Five Thousand only)** prior to the execution of this Agreement as per the details mentioned in

Schedule-V, the payment and receipt of which the First Party doth hereby admit and acknowledge.

4.3 **An amount of Rs.4,06,75,000/-(Rupees Four Crore Six Lac and Seventy Five Thousand only) shall be paid as advance by the Second Party to the First Party**.

4.4 **The balance amount of Rs.1,22,50,000/- (Rupees One Crote Twenty Two Lacs Fifty Thousand only) being the balance consideration after adjustments of amounts paid as above (hereinafter referred to as "Balance Consideration"), shall become due and shall be paid by the Second Party to the First Party upon Completion of AIPL Project**.

4.5. **It is agreed between the Parties that till the completion of all obligations of the Second Party as defined in this Agreement, the amounts paid by the Second Party to the First Party under Clause 4 of this Agreement, will be treated as advance which will be settled against the Total Consideration upon completion of all obligations of the Second Party as defined in this Agreement.**"

(emphasis supplied)

Barred by time

18. The contention advanced by the learned counsel for the appellant is that the demand is not only beyond the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, but is also even beyond the maximum period of 5 years contemplated under section 73(1) of the Finance Act. Elaborating this submission, learned counsel pointed out that even from a perusal of the impugned order the payments were received by the appellant between 16.12.2011 and 15.02.2013 while the show cause notice was issued on 11.03.2020.

19. The details of the payments made under the two agreements are as follows:

Details of the agreement	Payment receipt date	Amount
Agreement between the appellant and Advance India	16.11.2011	11,93,25,000/-
	29.11.2012	1,50,00,000/-
	15.02.2013	2,56,75,000/-
Agreement between the appellant and Splendor	18.05.2011	16,00,00,000/-

20. The aforesaid payments are in conformity with the agreement dated 16.12.2011 entered into between the appellant and Advance India and the agreement dated 18.05.2011 entered into between the appellant and Splendor. The said payments are also recorded as advance received in the balance sheets of the appellant for the Financial Years 2011-12 and 2012-13. The balance sheet for the Financial Year 2011-12 is at page number 125 of the Appeal Memo and shows an advance of Rs. 16,00,00,000/- from Splendor and an advance of Rs. 11,93,25,00/- from Advance India. The relevant portions of the Notes to the Financial Statements for year ended 31.03.2012 containing the disclosure of related party transactions during the year 2011-12 are reproduced below:

BAAKIR REAL ESTATES LIMITED

NOTES TO FINANICAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 2012

Disclosure of Related Party Transactions during the Year 2011-12

The followings transactions were carried out with the related parties in ordinary course of business:

Nature of Transactions	Associates	
	31-Mar-12	31-Mar-11
Transactions during the year		
Loan taken	2,45,28,260	-
Repayment against loan given	27,93,25,000	-
Advance	27,93,25,000	-

against Development Rights		
Balance at the end of the year		
Advance against Development Rights		
Splendor Landbase Limited	16,00,00,000	-
Advance India Project Limited	11,93,25,000	-
Unsecured Loan		
Splendor Landbase Limited	6,27,03,260	31,75,00,000

21. The balance sheet for the Financial Year 2012-13 which is at page 133 of the Appeal Memo shows an advance of Rs. 16,00,00,000/- from Splendor and an advance of Rs. Rs. 16,00,00,000/- from Advance India. The relevant portions of the Notes to the Financial Statements for year ended 31.03.2013 containing the disclosure of related party transactions during the year 2012-13 are reproduced below:

BAAKIR REAL ESTATES LIMITED

NOTES TO FINANICAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 2013

Disclosure of Related Party Transactions during the Year 2012-13

The followings transactions were carried out with the related parties in ordinary course of business:

Nature of Transactions	**Associates**	
	31-Mar-13	**31-Mar-12**
Transactions during the year		
Loan taken	-	2,45,28,260
Repayment against loan given	5,16,75,000	27,93,25,000
Advance against Development Rights	4,06,75,000	27,93,25,000
Balance at the end of the year		
Advance against		

Development Rights		
Splendor Landbase Limited	16,00,00,000	16,00,00,000
Advance India Project Limited	16,00,00,000	11,93,25,000
Unsecured Loan		
Splendor Landbase Limited	1,10,28,260	6,27,03,260

22. It is, therefore, clear that not the two agreements were executed in the year 2011 pertaining to the Financial Year 2011-12, but payments were also received by the appellant in the Financial Year 2011-12 and Financial Year 2012-13.

23. Under the Point of Taxation Rules, 2011[8], the point of taxation, where a person providing service receives a payment before issuance of an invoice, is at the time when he receives such payment. In the present case, the receipt of payments by the appellant from the two buyers is duly recorded in the balance sheets for the Financial Years 2011-12 and 2012-13. It is not the case of the department that the payment was made after the issuance of the invoice. Thus, it is these dates that have to be considered for the purpose of calculation the limitation and not from the year 2016-17.

24. In **M/s. SPML Infra Limited** vs. **Commissioner of CGST & Excise, Kolkata South**[9], the Tribunal held that the demand has to based on the basis of the amount realized. The relevant portion of the order is reproduced below:

> "4.4 **In our view the entire demand has been made against the four issues referred in the show cause notice as Issue No 1 to 4 is based on the entries recorded in the book of accounts toward the expected revenue and expense recognition and not on the basis of the actual**

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8. the 2011 Rules
9. Service Tax Appeal No. 75620 of 2017 decided on 28.07.2022

amounts realized against the contracts undertaken by the appellant.

4.5 **The Service tax is paid on the basis of the revenue realized towards the provision of the taxable services** and not on the basis of the revenue recognition. Impugned order do not point out a single case whereby the amounts realized by the appellant against any of the project undertaken by the appellant were not reflected in their ST-3 return. ST-3 return is based on the revenues realized by the appellant during the period of the return and not on the basis of revenue recognition. Accordingly, we do not find any merits in the impugned order. *****"

25. Section 73(1) of the Finance Act as it stood upto 27.05.2012 is reproduced below:

"**73(1)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within eighteen months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-
(a) fraud; or
(b) collusion; or
(c) wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."

26. With effect from 28.05.2012, the period of "one year" was replaced by "eighteen months".

27. In the present case, the show cause notice was issued even beyond the period of 5 years from the date the advances were recorded in the balance sheets for the Financial Years 2011-12 and 2012-13. The demand is, therefore, barred by time.

28. Even otherwise, the show cause notice seeks to invoke the extended period of limitation contemplated in the proviso to section 73(1) of the Finance Act for the reason that the appellant had intentionally and wilfully suppressed the details of providing the taxable services and did not correctly disclose the details with an intention of not making payment of the applicable service tax. The show cause notice further mentions that the appellant was working under self-assessment and the onus to pay proper service tax was on the appellant but it was only when an investigation conducted that these facts came to the notice of the department. The show cause notice, therefore, invokes the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act while proposing the demand.

29. The Commissioner, while dealing with this aspect of the invocation of the extended period of limitation, observed that it is only after the investigation of the records that the element of non-payment of service tax was detected and such an act of suppression can be considered as an act performed with mala fide intention to evade payment of service tax.

30. The contention of learned counsel for the appellant is that there cannot be any intent to evade payment of service tax as the transactions were duly recorded in the Financial Books of Account of the appellant for the Financial Years 2011-12 and 2013. In this connection, learned counsel placed reliance upon a decision of the Tribunal in **M/s. Wellworth**

Project Developers Private Limited vs. **Commissioner of CGST, New Delhi**[10]. Learned counsel for the appellant further submitted that in any view of the matter what is involved in the present case is levy of service tax on transfer of development rights which was a debatable issue and, therefore, the extended period of limitation could not be invoked. In this connection, learned counsel for the appellant placed reliance upon decisions to which reference shall be made at the appropriate stage.

31. The learned authorized representative appearing for the department, however, supported the impugned order and contended that the Commissioner was justified in holding that the extended period of limitation was correctly invoked.

32. The proviso to section 73(1) of the Finance Act stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if for the words one year upto 27.05.2012 or eighteen months w.e.f. 28.05.2012, the word "five years" has been substituted.

33. It has, therefore, to be seen whether suppression of facts under section 73(1) of the Finance Act has to be willful and with an intent to evade payment of service tax. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of service tax.

34. In **Pushpam Pharmaceutical Co.** vs. **Commissioner of Central Excise, Bombay**[11] the Supreme Court examined whether the department was justified in initiating proceedings for short levy after the expiry of the

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10. Service Tax Appeal No. 50259 of 2014 decided on 10.01.2025
11. 1995 (78) E.L.T. 401 (SC)

normal period of six months by invoking the proviso to section 11A of the Central Excise Act. The proviso to section 11A of the Excise Act carved out an exception to the provisions that permitted the department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;

> "4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
>
> **(emphasis supplied)**

35. This decision was relied upon by the Supreme Court in **Anand Nishikawa Company Ltd.** vs. **Commissioner of Central Excise**[12] and the observations are as follows:

> "26……..This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. **It does not mean any omission and the act must be deliberate and willful to evade payment of duty.** The Court, further, held:-
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> > "In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
>
> 27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find 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. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."
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> **(emphasis supplied)**

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12. 2005 (188) E.L.T. 149 (SC)

36. The aforesaid decisions of the Supreme Court were relied upon by the Supreme Court in **Uniworth Textiles Ltd.** vs. **Commissioner of Central Excise, Raipur**[13] and the relevant portion of the judgment is reproduced below:

> "12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable.** If that were to be true, we fail to understand which form of nonpayment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. **In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.**"
>
> **(emphasis supplied)**

37. It would also be appropriate to refer the decision of the Delhi High Court in **Mahanagar Telephone Nigam Ltd.** vs. **Union of India and others**[14]. The Delhi High Court observed that merely because MTNL had not declared the receipt of compensation as payment for taxable service, does not establish that it had wilfully suppressed any material fact. The Delhi High Court further observed that the contention of MTNL that receipt was not taxable under the Act is a substantial one and no intent to evade

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13. 2013 (288) E.L.T. 161 (S.C.)
14. W.P. (C) 7542 of 2018 decided on 06.04.2023

tax can be inferred by non-disclosure of the receipt in the service tax return. The relevant portion of the observations are:

> "28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. **However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax.** Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable.
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> *****
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> 41. **In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service.** On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. **Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable.** The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. **As**

> **stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact.** MTNL"s contention that the receipt is not taxable under the Act is a substantial one. **No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return.**"
>
> **(emphasis supplied)**

38. In **The Commissioner of Central Tax, Bangalore North Commissionerate** vs. **M/s. ABB Limited, Maneja Works**[15], the Karnataka High Court held that when the amount was recorded in the balance sheet it is not possible to accept the contention of the department that the trading activity was not known to the department and that it was learnt on the basis of intelligence report.

39. It is, therefore, clear from the aforesaid discussion that the extended period of limitation could have been invoked only if there was suppression of facts with intent to evade payment of service tax.

40. In the present case, as noticed above, the appellant had disclosed the receipt of consideration in the balance sheet for the Financial Years 2011-12 and 2012-13. There is only a mere allegation in the show cause notice that suppression was with an intent to evade payment of service tax without elaborating the allegation. A mere allegation is not sufficient for invoking the extended period of limitation. It cannot, therefore, be urged that the appellant had any intention of avoiding payment of service tax. The extended period of limitation, therefore, could not have been invoked in the facts and circumstances of the present case.

41. Learned counsel of the appellant also submitted that the issue as to whether the transfer of development rights is service or not was debatable in view of various conflicting decisions. Learned counsel for the appellant,

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15. Central Excise Appeal No. 16 of 2021 decided on 01.06.2022

therefore, contended that the appellant bona fide believed that it was not liable to pay service tax on the consideration received under the two agreements and ultimately this belief of the appellant was confirmed by a Division Bench of the Tribunal in **DLF Commercial**.

42. In this connection, it may be pertinent to refer to the decision of the Supreme Court in **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd.**[16]. The Supreme Court held that if an assessee bona fide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render such a belief of the assessee to be mala fide. If a dispute relates to interpretation of legal provisions, the department would be totally unjustified in invoking the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it is the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bona fide manner. The relevant portion of the judgment is reproduced below:

> "23. **We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In**

16. 2023 (385) E.L.T. 481 (S.C.)

> **any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.**
>
> 24. **The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law.** *****. On the question of disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports. **There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances.**"
>
> **(emphasis supplied)**

43. The show cause notice also alleged that in an era of self-assessment an assessee in required to correctly discharge the duty liability, but the appellant still did not include the compensation amount.

44. It is the duty of the officers scrutinizing the returns to examine the information disclosed by an assessee and the department cannot be permitted to take a plea that it is the duty of the assessee to disclose correct information and it is not the duty of the officers to scrutinize the returns.

45. In this connection, reference can be made to the decision of the Tribunal in **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur**[17]. The Tribunal, in connection with the extended period of limitation, observed that even in a case of self-assessment, the

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17. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasise that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision of the Tribunal in **Raydean Industries** is reproduced below:

> "24. **It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the exemption under the notification dated 17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**
>
> 25. **Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.** The instructions issued by the Central Board of Excise & Customs on December

> 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:
>
> *****
>
> 26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.
>
> *****
>
> 27. **It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.**"
>
> **(emphasis supplied)**

46. The Tribunal in **Sunshine Steel Industries** vs. **Commissioner of CGST, Customs & Central Excise, Jodhpur**[18] observed that the department cannot be permitted to invoke the extended period of limitation by merely stating that it is a case of self-assessment. The relevant observations are:

> "20. **The Department cannot be permitted to invoke the period of limitation by merely stating that it is a case of self-assessment as even in a case of self-assessment, the Department can always call upon an assessee and seek information.** It is under sub-rule (1) of rule 6 of the Central Excise Rules, 2002 that the assessee is expected to self-assess the duty and sub-rule (3) of rule 12 of the Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by

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18. (2023) 8 Centax 209 (Tri.-Del.)

> the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**"
>
> **(emphasis supplied)**

47. **Civil Appeal No. 4246 of 2023** (Commissioner of CGST, Customs and Central Excise vs. Sunshine Steel Industries) filed by the department before the Supreme Court to assail the aforesaid decision of the Tribunal in **Sunshine Steel Industries** was dismissed by the Supreme Court on 06.07.2023 and the judgment is reproduced below:

> "Delay condoned.
>
> 2. Heard learned counsel for the appellant.
>
> 3. This Court is not inclined to interfere with the impugned order of the High Court (Sic).
>
> 4. The appeal is dismissed.
>
> 5. Pending applications, if any, are disposed of."

48. The aforesaid discussion leads to the inevitable conclusion that even the extended period of limitation could not have been invoked in the facts and circumstances of the case.

Whether the consideration received under the two agreements is leviable to service tax

49. The show cause notice and the impugned order mention that the appellant received an amount of Rs. 34,45,00,000/- towards sale of development rights as per the balance sheet of 2016-17 and since

development rights do not result into transfer of ownership, it would not be covered by the exclusion clause of section 65B(44) of the Finance Act and, therefore, would be a service provided by the developers as defined under section 65B(44) of the Finance Act.

50. The issue, therefore, that arises for consideration is whether the consideration received under the two agreements for transfer of development rights would be exigible of service tax.

51. To examine this issue, it would be pertinent to examine the two agreements dated 18.05.2011 and 16.12.2011 entered into between the appellant and the two developers, Splendor and Advance India. The relevant portions of the agreements have been reproduced above.

52. A perusal of the relevant clauses of the two agreements makes it clear that the developers have been conferred the right to not only develop the projects on their respective land parcels but have also been conferred the right to sell such developed property along with un-divided interest on the land underneath and to receive payments for such transfers from the subsequent buyers. Thus, the appellant, as owner of the land, transferred the land development rights to the developers for a consideration and it was also under an obligation to transfer the un-divided interest on the land in favour of the buyers to whom the developers may ultimately sell, for which no separate consideration was required to be paid to the appellant. This would mean that such transfer of un-divided interest in the land by the appellant is in return for the initial consideration paid by the developers and, therefore, in effect it is the ownership of land which is transferred in return for the consideration payable by the developer. This is what was held by the Division Bench of the Tribunal in **DLF Commercial** after referring to various judgments of the High Court. This view was reiterated by the Tribunal in **Amit**

Metaliks. The consideration received by the appellant under the two agreements, would, therefore, not be leviable to service tax.

Income shown under section 194(J) of the Income Tax Act

53. The contention of the learned counsel for the appellant is that the Miscellaneous Receipts of Rs. 91,177/- in the Financial Year 2016-17 and Rs. 2,19,099/- in the Financial Year 2017-18 are not leviable to service tax as the amounts are within the threshold yearly exemption limit of Rs. 10 lakhs contained in the Notification dated 20.06.2012.

54. The relevant portion of the said Notification dated 20.06.2012 is reproduced below:

> "**Notification No. 33/2012 - Service Tax**
>
> **New Delhi, the 20th June, 2012**
>
> G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, **the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act**"
>
> **(emphasis supplied)**

55. The only reason assigned by the Commissioner for confirming the demand of service tax on these two amounts is that the appellant could not explain under which head the amount was received. This amount was

picked up for levy of service tax because it was shown as income under section 194(J) of the Income Tax Act. All incomes may not be leviable to service tax, unless they are subject to levy of service tax under the Finance Act. This apart, even if it is assumed that the said amount was leviable to service tax, then too the amount was within the yearly threshold limit of Rs. 10 lakhs provided for in the Notification dated 20.06.2012. The two amounts would, therefore, not be leviable to service tax.

Conclusion

56. What follows from the aforesaid discussion is that the impugned order dated 30.11.2023 passed by the Commissioner cannot be sustained. It is, accordingly, set aside and the appeal is allowed.

(Order Pronounced on **19.05.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Kritika, Shreya