2025 INSC 1299

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 11744 – 11745 OF 2025**

**COMMISSIONER OF SERVICE TAX ....APPELLANT(S)**

**VERSUS**

**M/S ELEGANT DEVELOPERS ....RESPONDENT(S)**

**J U D G M E N T**

**Mehta, J.**

For ease of reference, this judgment is divided into the following sections:

**INDEX**

**1.** Heard.

**2.** The Commissioner of Service Tax, New Delhi[1] has filed these statutory appeals under Section 35L(b) of the Central Excise Act, 1944, assailing the common judgment and final order Nos.53602-53605 of 2018 dated 21st June, 2019, passed by the

[1] Hereinafter, being referred to as "appellant or Commissioner".

Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi[2] in Service Tax Appeal Nos. 50119-50120 of 2014.

**3.** The M/s Elegant Developers, 1-C, Beli Road, Allahabad, Uttar Pradesh[3] was issued a Show Cause Notice dated 22nd April, 2010 by the Commissioner and pursuant to the adjudication thereof, the Commissioner *vide* order dated 30th September, 2013, imposed a penalty and demand of tax against the respondent in the following terms:

> "49. In view of the aforesaid discussion and findings, I pass the order as under:-
>
> ORDER
>
> 1. I confirm the demand of Rs.10,45,61,837/- (Rupees Ten Crores Fourth Five Lakhs Sixty One Thousand Eight Hundred Thirty Seven Only) against M/s Elegant Developers 1-C, Beli Road, Allahabad, (UP) under Section 73(1) of the Finance Act, 1994.
>
> 2. I order to recover interest on Rs.10,45,61,837/- from M/s Elegant Developers 1-C, Beli Road,

[2] Hereinafter, being referred to as "Appellate Tribunal".
[3] Hereinafter, being referred to as "respondent".

Allahabad, (UP) at appropriate rates under Section 75 of the Finance Act, 1994.

3. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on M/s Elegant Developers 1-C, Beli Road, Allahabad, (UP) under Section 77 of the Finance Act, 1994 for not applied and taken registration under Section 69 of the Finance Act, 1994 and for not filing prescribed ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 4 and 7j of the Service Tax Rules, 1994 in respect of 'Real Estate Agent Services'.

4. I impose a penalty of Rs.10,45,61,837/- (Rupees Ten Crores Fourth Five Lakhs Sixty One Thousand Eight Hundred Thirty Seven Only) against M/s Elegant Developers 1-C, Beli Road, Allahabad, (UP) under Section 78 of the Finance Act, 1994.

5. I impose a personal penalty of Rs.10,000/- (Rupees Ten Thousand Only) on Shri Rajat Yadav, Partner of M/s Elegant Developers 1-C, Beli Road, Allahabad, (UP) for failure to furnish required information/documents and non appearance against summons on time under Section 77(c) of the Finance Act, 1994 as amended.

6. I do not impose any penalty under Section 76 of the Finance Act, 1994 upon M/s Elegant Developers, 1-C, Beli Road, Allahabad (UP)."

**4.** Being aggrieved, the respondent preferred an appeal under Section 86 of the Finance Act, 1994 to the Appellate Tribunal which stands allowed *vide* final judgment and order dated 21st June, 2019, and

is the subject matter of challenge in these statutory appeals under Section 35L(b) of the Central Excise Act, 1944, as made applicable to Service Tax matters by Section 83 of the Finance Act, 1994.

## A. BRIEF FACTS

**5.** Succinctly stated, the facts relevant and essential for disposal of these appeals are noted hereinbelow.

**6.** The respondent, a partnership firm which was engaged in business of purchasing, selling, developing, and dealing in lands, buildings, and other allied activities, entered into three separate but substantially identical Memorandums of Understanding[4] dated 25th December, 2002, 30th December, 2004, and 17th August, 2005, respectively with M/s Sahara India Commercial Corporation Ltd.[5]

[4] For short "MOUs".
[5] Hereinafter, being referred to as "SICCL".

for the acquisition, development and management of land parcels for its real estate project at Sahara City Homes, Sri Ganganagar (Rajasthan), Vadodara (Gujarat), and Kurukshetra (Haryana) respectively.

**7.** The salient features of the MOUs germane for the adjudication of the present appeals, are as under:

i. SICCL agreed to pay the respondent a 'fixed average rate' per acre of land, which was to be identified, divided, and demarcated by the respondent, along with complete documentation and other related formalities and the fixed average rate was to be determined as follows: -

| **Place/Sites** | **Date of MOU** | **Area of the land (in acre)** | **Fixed Average rate per acre (in Rs.)** |
|---|---|---|---|
| Vadodra | 25th December, 2002 | 146.84 | 12,40,000/- |

| | | | |
|---|---|---|---|
| Sriganganagar | 30th December, 2004 | 112.46 | 15,65,000/- |
| Kurukshetra | 17th August 2005 | 150 | 38,45,000/- |

ii. SICCL had agreed to purchase land at afore-mentioned locations, at the fixed average rate per acre, which included the entire cost of the land as well as the development expenses.

iii. As per the MOU, the respondent was responsible to carry out the following specific tasks: -

a. Purchase the land in contiguous blocks,

b. Divide and demarcate the entire land into blocks of 20 to 30 acres,

c. Furnish title papers and other necessary documents for the land,

d. Obtain permissions and approvals from the concerned authorities for land transfer, with all related expenses to be borne by the respondent, and

e. Bring forward the landowners for negotiations, registration, and other formalities, while SICCL was to bear all related expenses, including stamp duty, registration charges, and mutation fees.

iv. Upon being satisfied as to the propriety and fitness of the proposed land transactions, the respondent was obligated to effectuate the registration of the said land in the name of SICCL, after disbursing the requisite payments to the respective landowners from the advance

funds provided by SICCL for the purpose of acquisition.

v. Any shortfall or surplus between the amount paid to the landowners and the fixed average rate would accrue to the respondent as its profit-loss margin.

vi. SICCL reserved the right to withhold 50% of the respondent's margin to ensure due performance of the MOUs obligations, with such withheld amount liable to forfeiture in case of any serious default by the respondent.

vii. In the event the respondent defaulted in performing its obligations under the MOUs, SICCL was entitled to terminate the agreement, and the withheld amount would be liable to forfeiture.

**8.** The Directorate General of Central Excise Intelligence, Delhi Zonal Unit[6], on the basis of specific intelligence that the respondent had been engaged in providing services to SICCL in relation to the acquisition and development of its real estate projects and had received substantial consideration without discharging the liability of service tax, initiated investigation against the respondent. In the course thereof, the Directorate General called upon the authorized representative of SICCL to furnish information of the Real Estate Agent/s engaged, including the copies of bills raised by such agents and the amount paid in consideration of such services. The respondent was also directed to furnish copies of its Service Tax registration, returns filed thereunder, income tax returns along with audited balance sheets for the financial years 2003-04 to

[6] Hereinafter, being referred to as "Directorate General".

2007-08, as well as copies of agreements entered into with various companies for providing services in relation to real estate.

**9.** Upon perusal of the statements of the authorized representative of SICCL as well as the respondent, the Directorate General, *prima facie*, concluded that the respondent squarely fell within the purview of a 'Real Estate Agent' as defined under Sections 65(88) and 65(89) of the Finance Act, 1994, and had wilfully suppressed the fact of rendering taxable services to its client from 1st October, 2004, onwards from the jurisdictional Service Tax authorities.

**10.** Accordingly, the Directorate General issued a Show Cause Notice dated 22nd April, 2010, to the respondent requiring it to show cause why Service Tax totalling Rs. 10,28,81,379/- (Rupees Ten Crore Twenty-Eight Lakh Eighty-One Thousand Three

Hundred Seventy-Nine Only) for the period from 1st October, 2004, to 31st March, 2007, may not be charged and recovered from the respondent under the *proviso* to Section 73(1) of the Finance Act, 1994. The notice further called upon the respondent to explain why penalty should not be imposed upon it under the relevant provisions of the Finance Act, 1994. The notice also proposed to invoke the extended period of limitation under Section 73 of the Finance Act, 1994, on the ground that the non-payment of service tax in the present case was occasioned by wilful suppression of material facts with intent to evade payment of tax.

**11.** The respondent submitted a reply to the said notice *vide* letter dated 1st March, 2011, contending that the activities undertaken by it did not fall within the ambit of taxable services as it was not covered under the category of 'Real Estate Agent', asserting

that the nature of its dealings was confined to purchase and sale of land, and did not tantamount to any service in relation to real estate. The respondent further contended that it had undertaken development activities in respect of the land prior to the execution of the sale deeds, and thus, its actions did not fall within the scope of taxable services under Chapter V of the Finance Act, 1994. The respondent also submitted that it had received advance money from SICCL against sale of lands from time to time.

**12.** The respondent also objected to the invocation of the extended period of limitation by the Directorate General, asserting that it was under a *bona fide* impression that no service tax was payable on the transactions in question, and therefore, there was no wilful suppression or mis-statement of any material facts on its part so as to warrant such invocation.

**13.** The said Show Cause Notice came to be adjudicated by the Commissioner, after consideration of the reply of the respondent, vide Order No. 132/GB of 2013 dated 30th September, 2013, raising the demand of service tax and awarded penalties as mentioned above[7].

**14.** The Commissioner held that the expression 'Real Estate Agent' as defined under the Finance Act, 1994, was of wide amplitude, covering any person engaged in providing services in relation to the sale, purchase, leasing, or renting of real estate, and included a 'Real Estate Consultant'. It was further held that the scope of the definition extends to any person rendering advice, consultancy, or technical assistance in relation to real estate activities, and even a person who merely facilitated or introduced

[7] *Supra* para 3.

parties for such transactions would fall within its scope and ambit.

**15.** The Commissioner, after a perusal of the MOUs, held that the activities undertaken by the respondent were in the nature of those performed by a 'Real Estate Agent/Real Estate Consultant' and therefore, the respondent would squarely fall within the scope of Sections 65(88) and 65(89) of the Finance Act, 1994. The Commissioner further held that the fixed average rate, as stipulated in the MOUs, included the profit margin of the respondent, and such profit constituted consideration received for rendering services in relation to purchase, registration, and allied activities of land for SICCL, thereby attracting levy of service tax. Accordingly, the consideration received by the respondent was held liable to service tax in terms of Section 65(105)(v) of the Finance Act, 1994.

**16.** The Commissioner also concluded that the respondent suppressed the fact of rendering taxable services to its client from 1st October, 2004, onwards; failed to obtain service tax registration as 'Real Estate Agent'; and failed to file the prescribed ST-3 returns under the Service Tax Rules, 1994 thereby entitling the Directorate General to invoke the extended period of limitation by virtue of *proviso* to Section 73(1) of the Finance Act, 1994. It was further observed that, had the Directorate General not initiated the inquiry against the respondent, the said non-payment of service tax would not have been unearthed.

**B. IMPUGNED JUDGMENT**

**17.** The respondent, being aggrieved by the adjudication order passed by the Commissioner raising the demand of service tax, afflicting interest, and penalties, preferred an appeal to the Appellate

Tribunal. Upon consideration of the submissions advanced by the parties and upon appraisal of the material placed on record, the Appellate Tribunal reversed the findings of the Commissioner and consequently allowed the appeal filed by the respondent thereby, setting aside the demand of service tax and levy of penalty.

**18.** The Appellate Tribunal, upon perusal of the MOUs, observed that the agreement between the respondent and SICCL extended beyond mere acquisition of land and encompassed ancillary activities including verification of the title deeds of the landowners, obtaining necessary documents from the competent authorities, and facilitating other procedural formalities. It further noted that the remuneration or consideration payable to the respondent for undertaking these activities was not specifically quantified in the MOUs. The

remuneration was rather structured in the nature of a profit-loss margin, contingent upon the difference between negotiated land price and fixed average rate.

**19.** The Appellate Tribunal held that as the MOUs did not specify any fixed remuneration in form of commission etc. for the acquisition of the land, both parties to the MOUs acted as principals in the transaction, rather than as principal and agent.

**20.** The Appellate Tribunal further held that there was no mala fide intention or deliberate act of suppression on the part of the respondent, as the transactions were conducted through proper banking channels and duly recorded in the respondent's books of account and thus, invocation of extended period of limitation was not justified.

**21.** The said judgment and order dated 21st June, 2019, passed by the Appellate Tribunal is the subject matter of challenge in these appeals.

## C. SUBMISSIONS ON BEHALF OF THE APPELLANT

**22.** Shri V. Chandrashekara Bharathi, learned counsel appearing for the appellant, vehemently and fervently contended that the impugned judgment is contrary to the settled principles of law and inconsistent with the facts available on record.

**23.** To buttress the above contention, learned counsel for the appellant, drew the Court's attention to the fact that the title to the concerned lands rested solely with the individual owners, and at no point of time the respondent ever gained ownership of the said lands, a position further fortified by the fact that the respondent merely obtained Powers of Attorney from the individual landowners and subsequently transferred the said lands to SICCL.

**24.** It was thus projected on behalf of the appellant that the respondent acted as a mere facilitator for

sale of lands to the benefit of SICCL, earning a commission on amounts exceeding the fixed average rate under the MOUs, thereby qualifying as a 'Real Estate Agent' under Section 65(88) of the Finance Act, 1994, and thus the services rendered by the respondent against the MOUs were unquestionably taxable under Section 65(105)(v) of the Finance Act, 1994.

**25.** Shri Bharathi relied upon a judgment of the High Court of Chhattisgarh at Bilaspur in ***Chhattisgarh Steel Castings (P) Ltd. v. Union of India***[8], and contended that in a similarly situated case, the High Court held that a transaction cannot be regarded as a mere sale and purchase of immovable property, where a person, from the outset, enters into an agreement to acquire property with the intention of subsequently selling it to another. Such

[8] 2020 (34) G.S.T.L. 70.

an activity falls within the ambit of a 'Real Estate Agent' as defined under the Finance Act, 1994, rather than constituting a simple transaction of sale and purchase of immovable property.

**26.** The learned counsel for the appellant further justified the stance of the revenue in invoking the extended period of limitation under the *proviso* to Section 73(1) of the Finance Act, 1994, contending that the respondent despite being fully aware that its activities merely constituted facilitation of sale in favour of SICCL, and were covered under a 'Real Estate Agency' contract, wilfully suppressed facts to evade payment of service tax.

## D. SUBMISSIONS ON BEHALF OF THE RESPONDENT

**27.** *E-converso*, Shri Balbir Singh, learned senior counsel appearing for the respondent, opposed the submissions advanced by the learned counsel for the

appellant, contending that by no stretch of imagination, the transactions in question can constitute a 'service' and that the respondent does not fall within the definition of 'Real Estate Agent' under Section 65(88) of the Finance Act, 1994, and therefore it cannot be subjected to service tax.

**28.** Learned senior counsel, while placing reliance upon a recent judgment of this Court in ***Union of India v. Future Gaming Solutions Pvt. Ltd.***[9], contended that the respondent assumed the risk and reward of loss and profit in land transactions. The mere fact that ultimate conveyance may have been executed directly in favour of SICCL does not alter the economic reality that the respondent acted as an intervening trader, bearing the procurement risk and earning or losing on the spread.

[9] (2025) 5 SCC 601.

**29.** Lastly, the learned senior counsel, contended that the entire demand is barred by limitation, as it was issued beyond the limitation period provided under Section 73 of the Finance Act, 1994, and the extended period of limitation could not have been invoked, as the appellant failed to demonstrate any positive act of suppression on part of the respondent. To fortify his submissions, learned senior counsel, relied upon a recent judgment of this Court ***Stemcyte India Therapeutics Pvt. Ltd. v. CCE & ST***[10] and contended that the appellant is required to prove that the respondent deliberately suppressed facts with intent to evade tax, in order to invoke the extended period of limitation of five years. Mere non-payment of tax does not constitute suppression, nor does the law impose any obligation upon the respondent to

[10] 2025 SCC OnLine SC 1412.

seek clarification regarding applicability of service tax.

**E. ANALYSIS**

**30.** Having given our thoughtful consideration to the submissions advanced at bar and upon perusal of the impugned judgment and order and the materials placed on record, following issues fall for our consideration:

i. Whether the respondent rendered services falling within the category of 'Real Estate Agent', taxable under Section 65(105)(v) read with Section 65(88) of the Finance Act, 1994, during the period from 1st October, 2004 to 31st March, 2007?

ii. Whether the appellant has established that the respondent deliberately suppressed facts, thereby justifying the

invocation of the extended period of limitation under the *proviso* to Section 73(1) of the Finance Act, 1994?

**I. Whether the respondent rendered services falling within the category of 'Real Estate Agent', taxable under Section 65(105)(v) read with Section 65(88) of the Finance Act, 1994, during the period from 1st October, 2004 to 31st March, 2007?**

**31.** For adjudicating the issue at hand, it is pertinent to examine the relevant statutory provisions, namely Sections 65(88) and 65(89) of the Finance Act, 1994, which define the terms 'Real Estate Agent' and 'Real Estate Consultant,' respectively, and are reproduced as follows:

> "**Section 65(88): 'real estate agent'** means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting of real estate and includes a real estate consultant;
>
> **Section 65(89): 'real estate consultant'** means a person who renders in any manner, either directly or indirectly, advice, consultancy or

> technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate."

**32.** A careful reading of both these definitions, *i.e.*, 'Real Estate Agent' and 'Real Estate Consultant' as provided under Sections 65(88) and 65(89) of the Finance Act, 1994, respectively, reveals that both the definitions are centred on the rendering of services, whether in form of sale, purchase, leasing or renting of real estate and/or in form of advice, consultancy or technical assistance, in relation to procurement, acquisition, development, construction, maintenance, marketing, or management of real estate or activities related to construction.

**33.** The specific argument advanced on behalf of the respondent was that the transactions undertaken by it, pursuant to which the lands in question were provided to SICCL constituted outright sale

transactions and did not involve component of providing any service, assistance, advice, consultancy, etc. in relation to any of the activities referred to in Sections 65(88) and 65(89) of the Finance Act, 1994. To test the veracity of this argument, the relevant clauses from the MOUs entered into between the parties would have to be perused and the same, as extracted in paragraphs 10.1-10.8 of the impugned judgment, are reproduced hereinbelow for a proper appreciation of the nature and scope of the transactions in question:

> *"10.1 The process of land purchase shall be in a compact contiguous, adjacent and plot wise or block wise manner starting from the roadside.*
> *10.2 The appellant shall furnish the title papers and all other necessary documents with reference to the land proposed, within 15 days from the date of signing of the MOU.*
> *10.3 Thereafter the appellant shall obtain and furnish, each and every other necessary permission/ approval from the Government body/competent authority, or other regulatory authority, required for transfer of the land proposed, and further arrange for the purchase of land proposed under the MOU, at the average*

*agreed rate per acre, within two months or within such further time at the discretion of Sahara India.*
*10.4 All expenses for obtaining proof of title and approval (except for ULC clearance) required for the transfer of title in the land shall be borne by second party, that is the appellant, and all the supporting documents furnished in respect thereof shall reflect the latest position of the ownership of land.*
*10.5 Thereafter scrutinising the papers relating to title, the first party- Sahara India shall enter into an agreement of sale with the owners of the land, after payment of advance/signing amount, in favour of the cultivators/owner of the land.*
*10.6 Thereafter having completed and covered the entire land(area) under the MOU through agreement(s) to sell, the appellant shall thereafter get the sale deed(s) executed by the cultivators/owners of land in favour of Sahara India or its nominees, after payment of remaining amount towards purchase. Where there are several co-owners in a 'Khata' (entry in the land record) the second party/appellant shall ensure that all the co-owners execute the document (sale deed) at one time. In no case shall any document be executed by part co-owners. That in the case the land is owned by minor, lunatic or an insane person, appellant will get appropriate guardianship certificate from the competent court/authority and agreement to sell shall be executed only with such guardian. In case any dispute is pending before any civil court or revenue Court, regarding title, share or for partition of the property, the appellant will try its best to get the settlement arrived among the Co sharers/co owners and agreement to sell shall be executed accordingly.*

*10.7 That it is the responsibility of the appellant for bringing the cultivators/land owners to the Registrar office along with the necessary documents and photograph and to witness execution/registration of the documents.*

*10.8 That all payments to the Kashtkar/land owners, shall be made through pay orders/demand drafts/account payee cheques. That the-difference, if any, or the amount being actually paid to the cultivators /owner of land and the average rate, shall he payable to the appellant. Such payment of difference to the appellant shall be regulated in such a manner so as to ensure the performance of the terms and conditions of the MOU. The first party Sahara India may under discretion withhold maximum up to 10 per cent of the amount payable to the second party/appellant to ensure peaceful/proper demarcation and possession, mutation and construction of the boundary wall of the entire land.*

*In case, the appellant fails to fulfil its obligations as stipulated in the terms of the contract/MOU, the same can be terminated by Sahara India and the withheld amount is liable to be forfeited. All expenses for registration of documents relating to the transfer or agreement of sale, etc., shall be borne by Sahara India. Further all expenses of mutation of land in the office of the concerned Revenue authority shall be borne by Sahara India and the appellant shall be required to coordinate and to do the work of Pairvi in respect thereof in the concerned offices and shall provide to Sahara India all necessary help so as to get the work of mutation completed."*

**34.** For a person to qualify as a real estate agent, there has to be a contract of agency, to be specific, an estate agency agreement. Expanding the definition of 'Real Estate Agent' under Section 65(88) of the Finance Act, 1994, it becomes clear that, in order to fall within its ambit, an individual or the entity must be engaged in rendering a service and such service must be in relation to sale, purchase, leasing or renting of a real estate and includes a real estate consultant.

**35.** The phrase 'Real Estate' is not expressly defined under the Finance Act, 1994, but according to the Oxford English Dictionary, the expression denotes property in the form of land or buildings, and may additionally refer to the business of selling houses or land for building.

**36.** Moreover, Section 2(zn) of the Real Estate (Regulation And Development) Act, 2016 defines 'real estate project' to mean:

> "the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, **or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be,** and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto."

**37.** The understanding of the term 'Real Estate', as drawn from the above discussion, provides the necessary context for interpreting the scope of a 'Real Estate Agent' under the Finance Act, 1994. While 'Real Estate' encompasses land, buildings, and associated development works, as well as commercial activities connected with such property, it is essential to note that the definition of a 'Real Estate Agent'

under Section 65(88) of the Finance Act, 1994 is service-centric.

**38.** Thus, for a person to be covered under the definition of 'Real Estate Agent', there must be attributable to such person, an act of rendering service. The section does not cover a direct transaction of sale and/or purchase *inter se* between two individuals or entities, as the case may be. Likewise, 'Real Estate Consultant' is a person who renders services in form of advice, consultancy or technical assistance for the purposes as set out in Section 65(89) of the Finance Act, 1994. The common thread passing through both the provisions is that the person concerned must be engaged in rendering of services, advice, consultancy or technical assistance for sale and purchase of land or for development, construction, evaluation, conception, etc. of real estate.

**39.** It is only the contract of agency *inter se* between the service provider or the consultant, as covered under Sections 65(88) and 65(89) of the Finance Act, 1994, and the principal engaging such service provider or the consultant, for the purpose specified in these two sections, which establishes the agency relationship. The consideration paid for the services or the consultancy provided under such contract in form of commission or otherwise, would be the taxable event as defined under Section 65(105)(v) of the Finance Act, 1994.

**40.** In the present case, admittedly, the respondent was not engaged by the SICCL for any such service. The terms of MoUs (*supra*) which we have carefully examined, do not indicate that there existed any relationship of principal and agent between SICCL and the respondent. The MoUs simply referred to a fixed rate per plot which SICCL would pay to the

respondent for every chunk of the land provided by the respondent to SICCL. There was no element of any service charges or consultancy charges being levied by the respondent on such sale transactions. The gains accruing to the respondent would arise from the difference of sale consideration over and above the fixed sale price settled in the MoUs. For this purpose, the respondent would be required to negotiate with the original landowners and facilitate the transfer of the lands to SICCL. It is noteworthy that there existed a probability of the respondent even suffering losses in the transaction if the value of the land exceeded the fixed price agreed upon in the MoUs. This would not be possible if the contract was for providing services based on commission or in any other form.

**41.** Thus, we are of the firm opinion that the Appellate Tribunal did not commit any error in

holding that the respondent did not act as a real estate agent or a consultant while acting in furtherance of the MoUs entered with SICCL. The profitability of the respondent was contingent upon the rate at which land was procured by it from the sellers.

**42.** As a matter of fact, the transactions *inter se* between the respondent and SICCL under the said MoUs are covered within the exceptions as enumerated in the definition of 'Service' under Section 65B(44)(a)(i) of the Finance Act, 1994 which reads as follows:

> **"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;
>
> …" (Emphasis supplied)

**43.** The respondent admittedly transferred title of land to SICCL after negotiating the price thereof with the owners and procuring a Power of Attorney to execute the sale deeds. Hence, these activities were purely of sale/conveyance of immovable property which clearly falls within the exception as provided under Section 65B(44)(a)(i) of the Finance Act, 1994, reproduced supra.

**44.** Thus, we are of the firm opinion that the transactions/activities undertaken by the respondent with SICCL did not bring it within the purview of 'Real Estate Agent' or 'Real Estate Consultant' as defined under Sections 65(88) and 65(89) of the Finance Act, 1994, respectively. These transactions were not undertaken for service charges, commission, agency or consultancy but were plain and simple transactions of sale of land,

which are expressly protected under the exception clause to the definition of the 'Service' referred to supra.

**45.** Hence, the Commissioner erred in raising the demand of tax and imposing penalty upon the respondent by the Order dated 30th September, 2013 and therefore, the view taken by the Appellate Tribunal in setting aside the said Order does not suffer from any infirmity warranting interference of this Court.

**II. Whether the appellant has established that the respondent deliberately suppressed facts, thereby justifying the invocation of the extended period of limitation under the *proviso* to Section 73(1) of the Finance Act, 1994?**

**46.** Although, the core issue has been decided against the appellant, it remains necessary to examine the present issue, which concerns allegation of deliberate concealment and suppression of facts by

the respondent, thereby justifying the invocation of extended period of limitation by the Directorate General under the *proviso* to Section 73(1) of the Finance Act, 1994.

**47.** The *proviso* to Section 73(1) of the Finance Act, 1994 provides for the recovery of service tax not levied or paid or short-levied or short-paid under circumstances where the normal limitation period has expired. While the general period of limitation is eighteen months from the relevant date, the *proviso* to Section 73(1) permits recovery beyond this period when there is deliberate suppression of facts or mis-statement by the service recipient or provider. The provision is therefore intended to deal with cases of intentional concealment, ensuring that taxpayers do not escape liability by withholding material information or misrepresenting facts that would affect the determination of tax.

**48.** It is trite that for invocation of extended period of limitation under the *proviso* to Section 73(1) of the Finance Act, 1994, the appellant was required to prove deliberate suppression and concealment of the material facts on the part of the respondent to evade the tax liability.

**49.** Recently, this Court in ***Stemcyte India Therapeutics (P) Ltd. (Supra)***, while considering the scope of the extended period of limitation under Section 73 of the Finance Act, 1994, held as follows:

> "9.3 It is a settled principle of law that, for the Department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period…
> …
> 9.4 Therefore, in the absence of fraud, collusion, wilful mis-statement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly, the show-cause notice issued by the Department is clearly

> time-barred. On this ground alone, the impugned order deserves to be set aside."

**50.** The extended period of limitation of five years under the *proviso* to Section 73(1) of the Finance Act, 1994, was invoked by the Directorate General on the ground that the respondent allegedly failed to file periodical Service Tax returns in ST-3, as required under Section 70 of the Finance Act, 1994, for the period commencing from 1st October 2004. The Show Cause Notice issued in this regard stated that, by such omission, the respondent did not wholly and truly disclose material facts, with a purported deliberate intention to evade service tax, thereby contravening the provisions of Section 68 of the Finance Act, 1994.

**51.** In its reply to the said Show Cause Notice, the respondent explained that, being under a *bona fide* belief that no service tax was payable on the

payments received under the MoUs, it had neither wilfully suppressed nor mis-stated any material facts, and therefore, there was no *mala fide* intention or deliberate act of suppression to evade the payment of service tax.

**52.** Admittedly, all the transactions *inter se* between the respondent and SICCL were through valid banking channels and thus, there was no element of concealment or suppression by the respondent warranting invocation of the extended period of limitation by the Directorate General under the *proviso* to Section 73(1) of the Finance Act, 1994.

**53.** The appellant has failed to adduce any evidence or establish that the respondent engaged in wilful or deliberate suppression of material facts, and there is nothing on record to suggest that the respondent acted with any intention to mislead the authorities or evade payment of service tax. To be specific, the

appellant failed to satisfy the Court that the respondent was under any obligation to seek clarification as to whether its activities with SICCL would bring it within the scope and ambit of a real estate agent.

## F. CONCLUSION

**54.** In light of the aforesaid discussion, we have no hesitation in holding that the impugned judgment does not suffer from any infirmity warranting interference by this Court. Accordingly, we hold that the transactions in question neither fall within the definition of a 'Real Estate Agent' nor that of a 'Real Estate Consultant' under the Finance Act, 1994.

**55.** As a consequence of the above discussion, we do not find any merit in these appeals which are dismissed as such.

**56.** Pending application(s), if any, shall stand disposed of.

**.....J.**
**(J.B. PARDIWALA)**

**.....J.**
**(SANDEEP MEHTA)**

**NEW DELHI;**
**NOVEMBER 10, 2025.**