

The Commissioner Of Central Tax, Cgst ... vs M/S Government Official Welfare ... on 28 March, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28t

+ CEAC 5/2025 & CM APPL. 18349/2025

THE COMMISSIONER OF CENTRAL TAX, CGST DELHI SOUTH

.....Peti

Through: Mr. Shubham Tyagi, Adv.

versus

M/S GOVERNMENT OFFICIAL WELFARE ORGANISATION

.....Respond

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (ORAL)

1. This hearing has been done through hybrid mode. CM APPL. 18349/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

3. The present appeal has been filed by the Appellant- Commissioner of Central Tax, CGST Delhi South, under Section 35G of the Central Excise Act read with Section 174 of the Central Goods and Service Tax Act, 2017 challenging the impugned order bearing no. 58604/2024 of the Central Excise Service Tax Appellate Tribunal (hereinafter, 'CESTAT') dated 23rd September, 2024.

4. The brief background of the present case is that the Respondent - M/s Government Official Welfare Organisation is an organisation set up by serving and retired Central and State Government Officials. A development project was undertaken by the Respondent under a Memorandum of Understanding (hereinafter, 'MoU') dated 30th July, 2009 with one M/s India Affordable Housing Solutions (hereinafter, 'IAHS'). The services that the IAHS provided was to identify certain reputed builders or developers so that bulk booking of residential flats could be done for the staff and their families.

5. In the course of this agreement, the Respondent had obtained applications from various staff members with a membership fee of Rs.50,000/- and some deposit for the application forms. The same were all retained in the account of the Respondent. The Builder-Buyer Agreements were thereafter executed through the Respondent.

6. Thereafter, allegations were raised by the Anti-Evasion Branch that the Respondent was working as a real estate agent and certain service tax demands were proposed to be raised by the Show Cause Notice (hereinafter 'SCN') dated 17th October, 2014.

7. The stand of the Appellant is that in respect of some of the charges including cancellation charges, margin money, etc., service tax was liable to be paid and certain demands were raised. The Respondent also paid a sum of Rs.21,7,9876/- and sought registration with the Service Tax Department for the 'Real Estate Agents' on 24th February 2011 vide registration no. AABTG3424BSD001.

8. The SCN was adjudicated and in the Order-in-Original (hereinafter, 'OIO') dated 13th July, 2018, the SCN were dropped. The findings of the Adjudicating Authority on various issues are as under:

(A) Whether the income earned by the Noticee from the aforesaid transaction of selling allotment rights in respect of flats to buyers is eligible for Service Tax?

9. On this issue, in respect of the period i.e., 1st April, 2009 to 30th June, 2012, the Adjudicating Authority held that no advice, consultancy or technical assistance has been provided and the Respondent, hence, cannot be described as a 'Real Estate Consultant' in terms of Section 654(89) of the Finance Act, 1994.

10. In respect of the second period i.e., 1st July, 2012 to 31st March, 2014, the Adjudicating Authority held that the benefits arising out of a sale of immovable property would not be covered under the ambit of service. (B) Whether amount charged in the name of Demand Survey is taxable under Service Tax?

11. On this issue, the Adjudicating Authority held that there was no consideration involved in the activity of transferring the property and the amount received by the Respondent was merely in the form of deposit and therefore, service tax would not be liable to be paid. (C) Whether Service Tax shall be applicable on cancellation charges and miscellaneous income received by the Noticee?

12. On this issue, the Adjudicating Authority held that no interest would be liable to be paid. Hence, finally, the demand for service tax was dropped.

13. The above order dated 13th July, 2018 passed by the Adjudicating Authority was challenged before CESTAT which came to the following conclusion:

"19. In arriving at the conclusion that the appellant has not rendered any service in the nature of real estate agent, we would like to refer to the decisions relied on by the learned Counsel for the appellant. In the case of Saumya Construction P. Ltd, (supra), the Tribunal while dealing with the issue whether the appellant was liable to discharge service tax under the category of "Real Estate Agent Service" for the amount received by it as development charges, had taken the view that in order to be covered under the definition of "Real Estate Agent" and "Real Estate Consultant", it is

necessary to find out whether any services have been rendered directly or indirectly involving the business of sale or purchase of the property, leasing or renting of the property and thereby gets an amount as a commission. Considering the facts in that case, the Tribunal found that the appellant envisaged, conceptualized, developed, implemented and marketed the scheme or project for himself and the development charges were only in the form of profit. Therefore, they were held to be not covered under the category of "real estate agent services".

20. Following the decision in Saumya Construction (supra), the Principal Bench in Ess Gee Real Estate Developers Pvt. Ltd. (supra), where the owners granted/assigned exclusive rights to the appellant to develop the property and to sell individual developed plots in a phased manner and as consideration for the same the owners were entitled to receive from the appellant the amounts specified in the agreement. Taking note of the Circular No. B-11/3/98-TRU dated 7.10.1998 clarifying that activity of actual construction of any building, carried out by builders or developers does not attract service tax levy as it is not a service within the meaning of the term "Real Estate agent" or "Real Estate Consultant", it was concluded that as per the agreement, extensive construction and development had to be carried out by the appellant and it is thereafter the land or plots were to be sold for which the finances were also arranged by the appellant and, therefore, does not fall in the category of "Real Estate Agent".

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24. On the second issue of amount charged by the respondent in the name of 'Demand Survey', we find that the Adjudicating Authority referring to the actual transaction on the basis of which the amount of Rs.5000/- was deposited by the customers along with the application form had dropped the demand. We agree with the findings arrived at as the said amount is adjusted against the price of the property in the customers account on finalising the deal or is refunded to the customer in the event the property is not found to be suitable. It has been rightly noted that the department has accepted the said situation in the show cause notice as under:-

"7.1 Some of the application forms for "Demand Survey" as submitted by the notice are attached as RUD-54. The perusal of the forms clearly indicates that the notice takes the service activities relates to real estate and undertakes the process of "demand Survey"

for the new locations. They charge the money for the same from the customers.' The money may be refundable as per the form indicates but the fact remains that the notice provides the services to the customers after charging the money from them. The element itself qualifies the notice in the category of service provider."

25. On the issue of levability of service tax on the 'Cancellation Charges' we have no hesitation in agreeing with the findings arrived at by the adjudicating authority that the cancellation charges are in the nature of penalty levied on the buyers for not fulfilling the commitment in which no real estate agent service is being provided by the appellant and hence, no service tax is leviable thereon.

Similarly, the Miscellaneous Income has been verified as per the ledger account where the miscellaneous income has been reflected as discount extended to them on the advertising service on which no element of service is involved."

14. Mr. Tyagi, Id. Counsel appearing for the Appellant has vehemently urged that the Respondent rendered services which would be covered under the definition of 'Real Estate Agent'.

15. In the opinion of this Court, the CESTAT has followed the decision dated 25th September 2023 in Saumya Construction Pvt. Ltd. V. CST, Ahmedabad, 2016 (46) S.T.R. 723 and decisions of Coordinate Benches of CESTAT which have held consistently that when the transaction is one of trading in land and no specific remuneration is fixed in the deal for acquisition of land, the same would not be liable to service tax.

16. Insofar as the small demand of Rs.5,000/- is concerned, which each of the customers had deposited, the said amount is primarily for the purpose of certain adjustments, if required, at the final stage and the same was on a refundable basis.

17. This Court is of the view that the findings of CESTAT do not raise any questions of law which need to be adjudicated.

18. Moreover, the Court is also concerned about the fact that there must be a large number of serving/retired officials who may have availed of the services of the Respondent which is a Trust constituted by the said officials. The agreement itself is of 2009 and several years have passed.

19. Even the prospect of raising any service tax demand after so many years, against the Respondent could in effect mean passing on the burden to various staff members and officials who were in Government, which would create further difficulties. Further, at this stage various third-party interests may have been created in respect of the flats, etc. which may have been allotted.

20. Under these circumstances, the Court is not inclined to admit the present appeal.

21. The appeal is accordingly dismissed as no substantial question of law arises in the present appeal.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE MARCH 28, 2025 Rahul/ck