

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.60751 Of 2017**

[Arising out of OIO No.DLI-SVTAX-004-COM-006-17-18 dated 09.06.2017 passed by the Commissioner of Service Tax, Delhi-IV, Gurugram]

**M/s DLF Home Developers Limited : Appellant (s)**

R Block, DLF Gateway Towers,  
NH-9, DLF City, DLF Qutub Enclave,  
Gurugram, Haryana-122002

Vs

**The Commissioner of Central  
Excise & Service Tax, Delhi-IV : Respondent (s)**

Plot No.36-37, Sector-32, Opposite  
Medanta Hospital, NH-IV,  
Gurgaon, Haryana-121001

**APPEARANCE:**

Shri Anubhav Goel, Advocate for the Appellant  
Shri Nikhil Kumar Singh and Shri Yashpal Singh, Authorised Representative  
for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60526/2023**

Date of Hearing:17.10.2023

Date of Decision:20.10.2023

***Per: P. ANJANI KUMAR***

The appellants, M/s DLF Home Developers, are providing Business Auxiliary Service, Business Support Service, Construction of Complex Service and Renting of Immovable Property Service and have registered themselves for the same. During the conduct of an audit by the officers, it was found that the appellants have received consideration on account of golf course activities which was shown as

income but no service tax was paid on the same; it was also observed that the appellants have not appropriated service tax on Construction of Complex Service, Renting of Immovable Property Service, Preferential Location Service and Banking and Other Financial Services. Two show-cause notices dated 20.10.2015 and 18.04.2016 were issued to the appellants demanding service tax under different Heads; the show-cause notices were adjudicated vide OIO dated 09.06.2017 wherein certain demands were confirmed and certain demands were dropped. Hence, this appeal.

2. Shri Anubhav Goel, learned Counsel for the appellants submits elaborate written submissions and copies of relied upon cases. He submits that learned Commissioner has dropped the demand on Renting of Immovable Property Service, Construction of Residential Complex Service; however, learned Commissioner has confirmed tax and penalty on Banking and Other Financial Services and has confirmed penalty on Preferential Location Services on which the applicable tax was paid before issuance of show-cause notice. Regarding imposition of penalty on the service tax payable on Preferential Location Services, learned Counsel submits that the appellants have paid the tax of Rs.2,67,45,149/- before the issuance of show-cause notice and therefore, in terms of Section 73, show-cause notice ought not to have been issued.

3. Regarding Banking and other Financial Services, he submits that the appellants have given bank guarantees on behalf of their group companies and the Department intends to tax the same under

Banking and Other Financial Services. He submits that, however, there is no consideration flowing to the appellant; Department presumed without any evidence that the appellants have availed loans at a lower interest and collected more interest on the money invested in bank guarantees; this is factually incorrect; the appellants have not charged any fee or interest on the bank guarantees provided by them to their group companies. This Bench of the Tribunal in their own case has decided the issue in their favour.

4. Shri Nikhil Kumar Singh, assisted by Shri Yashpal Singh, learned Authorized Representative for the Revenue, reiterates the findings of the OIO; he submits that penalty in respect of Preferential Location Services has been correctly imposed as the appellants have not disclosed material facts to the Department and have not paid the applicable service tax.

5. Heard both sides and perused the records of the case. There are two issues in the impugned case: (i) whether the Revenue was correct in issuing show-cause notice and imposing penalty in respect of Preferential Location Services wherein the appellants have paid the applicable service tax before the issuance of show-cause notice and (ii) whether the appellants are required to pay service tax under the Head "Banking and Other Financial Services" on their act of providing bank guarantees to their group companies. As far as the issue no. (i) is concerned, we find that Section 73 (3) provides that the Central Excise Officer shall not serve any notice under sub-Section 1 of Section 73 where the assessee pays the service tax. The only

exception to such non-issuance of show-cause notice is provided under sub-Section 4. Sub-Section 4 is attracted when the elements like fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the Rules made there under with intent to evade payment of service tax. We find that Revenue has not established any such ingredients in the impugned case except for stating that the appellants have suppressed the material facts. We find that Courts and Tribunals have been consistently holding that mere non-obtaining registration, non-payment of service tax and non-filing of ST-3 Returns cannot be a reason to allege suppression etc. and that a positive act on the part of the assessee with intent to evade payment of tax has to be established. Looking into the facts and circumstances of the case, we find that extended period is not invocable and hence, penalty cannot be imposed on the service tax which stands paid before the issuance of show-cause notice.

6. Coming to the second issue, we find that the Department has not adduced any evidence to the effect that the appellants have received any consideration in providing bank guarantees. This Bench in the case of appellant's group company have decided the issue vide Final Order No.60890/2019 dated 21.10.2019 in their favour. The Bench observed that:

4. It is an admitted fact that the appellant has not received any consideration from either from the financial institutions or from their associates for providing corporate guarantee, in that circumstances, no service tax is payable by the appellant. Moreover,

the demand raised in the show cause notices are on the basis of assumption and presumption presuming that their associates have received the loan facilities from the financial institution at lower rate, therefore, the differential amount of interest is consideration, but there is no such evidence produced by the revenue on that behalf. In that circumstances, we hold that the appellant is not liable to pay any service tax on corporate guarantee provided by the appellant to various banks/financial institutions on behalf of their holding company/associate enterprises for their loan or over draft facility under Banking and Financial Institutions after or before 01.07.2012.

5. In view of this, we set-aside the impugned order qua demand of service tax on corporate guarantee provided by the appellant. We further take note of the fact that for the charges leviable on account of prime location charges etc., the appellant has already paid service tax along with interest before issuance of the show cause notice. Therefore, we hold that in terms of Section 73(3) of the act, the proceedings were not required to be initiated against the appellant, therefore, penalty imposed on the appellant is set 4 ST/61204/2018 aside. Accordingly, the impugned order is set aside, the appeal is allowed with consequential relief.

7. The Co-ordinate Bench, Mumbai in the case of Commissioner of CGST Vs Edelweiss Financial Services Ltd. (Final Order No. A/85986/2022 dated 16.02.2022) held that:

8. The criticality of 'consideration' for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputed period after introduction of 'negative list' regime of taxation has been rightly construed by the adjudicating authority. Any activity must, for the purpose of taxability under Finance Act, 1994, not only, in relation 7 ST/87134/2018 to another, reveal a 'provider', but also the flow of 'consideration' for rendering of the service. In the absence of any of these two elements, taxability under section 66B of Finance Act, 1994 will not arise. It is clear that there is no consideration insofar as 'corporate guarantee'

issued by respondent on behalf of their subsidiary companies is concerned.

8. In view of the above, we find that the appeal survives on both issues. As a result, the appeal is allowed.

*(Pronounced on 20/10/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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