

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 55198 of 2014

[Arising out of Order-in-Original No.80/ST/COMMR/DM/RTK/2013-14 dated 24.01.2014 passed by the Commissioner, Central Excise, Rohtak]

M/s. Delhi Metro Rail Corporation Ltd.,
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road,
New Delhi-110001

...Appellant

Versus

**Commissioner of Central Excise,
& Service Tax,**
Rohtak, SCO 6 to 8 & 10, Sector-1,
Huda Market, Rohtak
Haryana-124001

...Respondent

Appearance:

Shri Vishwajeet Tyagi, Advocate and Shri Sanjay Kumar, Authorised Representative for the appellant.

Shri Aejaz Ahmad, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 24.06.2025

Date of Decision 02.07.2025

FINAL ORDER NO.50952/2025

BINU TAMTA:

1. M/s. Delhi Metro Rail Corporation Limited¹ has challenged the Order-in-Original No.80/ST/COMMR/DM/RTK/2013-14 dated 24.01.2014, whereby the Commissioner upheld the demand of service tax under the category of "Renting of Immovable Property Service" on a portion of the

¹ The Appellant

amount received as "upfront fee" under the provisions of Finance Act,1994².

2. The Appellant is a company registered under the Companies Act, 1956 and is promoted by Government of India and Government of NCT of Delhi for implementation and operation of Delhi Mass Rapid Transit System Project in the National Capital Region.

3. The appellant has been authorised by the Union of India and Government of NCT of Delhi to generate revenue by way of property development on the lands allotted to it by various agencies, which would be a part of the MRTS Project. That as per the mandate, the appellant entered into various Concession Agreements with the various developers and granted rights to construct, develop, procure, finance, manage and maintain the specified land at various locations for periods ranging from 30 years to 50 years.

4. At the time of executing the Concession Agreements, the appellant had collected "upfront fee" as a price for obtaining the respective Concession Agreements. As per Article 3 of the Concession Agreement dated 05.08.2009 executed between the appellant and M/s Unity Buildwell Limited consideration to DMRC has two aspects:-

- (i) Fixed Upfront Fee(Non-negotiable).
- (ii) Recurring Payment on quarterly basis for the specified area.

5. Show cause noted dated 25.04.2013 was issued to the appellant raising the demand of service tax on the portion of "upfront fee" received

² Act, 1994

at the time of entering into the various concession agreements prior to 01.07.2010 for leasing of vacant land. The Commissioner by the impugned order confirmed the demand of service tax amounting to Rs.45,11,42,179/- along with interest and equivalent amount of duty under Section 78 of the Act. Hence, the present appeal is before this Tribunal.

6. Heard Shri Vishwajeet Tyagi, Advocate and Shri Sanjay Kumar, Authorised Representative for the appellant and Shri Aejaz Ahmad, Authorised Representative for the Department.

7. The issue for consideration in the present appeal is whether the "upfront fee" received by the appellant from various customers under the Concession Agreements entered prior to 1.7.2010 is exigible to service tax on or after 1.7.2010 under "Renting of Immovable Property Services".

8. Though basically both the sides agree that the issue stands settled by the Larger Bench of the Tribunal in the case of **Rajasthan Sate Industrial Development and Investment Corporation Ltd.**³ however, learned counsel for the appellant has raised the plea that whether "One Time Premium" received for acquiring the lease hold right, i.e. the consideration received for agreement to lease would also be exigible to service tax is a question which has been left un-answered by the Larger Bench. Learned counsel referred to the definition of "Renting of Immovable Property" as defined under Section 65(90a) and the taxable service under Section 65(105) (zzzz) prior to 30.06.2010 and the

³ Interim order no's. 1/2025 & 1/2025 dated 27.01.2025(ST Appeal No. 50553 of 2017 & 89766/2013)

subsequent change introduced in the definition of 'taxable service' w.e.f. 01.07.2010 adding specific words by "Renting of Immovable Property or any other service in relation to such renting", urged that the liability to pay service tax on the "Upfront fee" on "One Time Premium" amount would only be made applicable w.e.f. 1.7.2010 and cannot be levied retrospectively on such amounts.

9. The submissions made by the learned counsel needs to be considered in the light of the decision rendered by the Larger Bench in **Rajasthan State Industrial Development & Investment Corpn. Ltd. (supra)**. The issue before the Larger Bench was whether "premium" or "salami" can be subjected to levy of service tax under "Renting of Immovable Property" defined under Section 65(90a) of the Act. The Bench noted that the term 'lease' has not been defined in the Finance Act and hence, reliance was placed on the provisions of Section 105 of the Transfer of Property Act, 1882⁴, which defined 'lease'. It was observed that the definition of "Renting of Immovable Property" includes 'leasing' which under Section 105 of "TPA" includes both 'premium' and 'periodical rent' and, therefore, one time premium amount received by the lessor from the lessee for transfer of interest in the property would be leviable to service tax under Section 65(105)(zzzz) of the Act. In that view, the Bench observed as under:-

"40. It is not possible to accept the contention advanced by the learned counsel for the appellant. As noted above, premium is a consideration paid for being let into possession prior to the creation of the tenancy so as to enable the person to enjoy the benefits so granted. It has been repeatedly held that when the interest of the lessor is parted for a price, the price paid is called premium, while rent is the periodical

⁴ TPA

payment for the continuous enjoyment of the benefits under the lease. **Under section 105 of the Transfer of Property Act, lease has been defined to include both the one time premium amount and the periodical rent amount. No doubt premium amount is paid prior to the execution of the lease deed, but in view of the definition of 'lease' under section 105 of the Transfer of Property Act, this amount would also be included since the definition of "renting of immovable property" under section 65(90a) of the Finance Act includes leasing or a similar arrangement of immovable property for use in the course or furtherance, of business or commerce. Thus, the premium paid by the lessee to the lessor would also be exigible to service tax."**

10. The observations made above specifically answer the plea raised by the appellant before the Larger Bench as well as the submissions made by the appellant herein. We do not agree with the contentions raised by the appellant that the Larger Bench had not answered the query in as much as para-40 clarifies that the amount towards 'premium' though paid prior to the execution of the lease deed but in view of the definition of 'lease' under Section 105 of "TPA" coupled with the fact that the definition of "Renting of Immovable Property" under Section 65(90a) includes 'leasing' or similar arrangement of immovable property for use in the course or furtherance or business or commerce, is exigible to service tax. Similarly, for the subsequent period, w.e.f. 1.7.2012, the Bench considered the provisions of Section 65B(44) read with Section 66D dealing with Negative List of Service and Section 66E dealing with declared services, including, Clause (a) "Renting of Immovable Property". In view thereof, the contention of the learned counsel that "Renting of Immovable Property" is excluded from leviability of service tax by virtue of sub-clause (a)(i) of Section 65B(44) cannot be accepted. The term 'premium' was analysed as a payment for being allowed to take

possession of the immovable property and has to be treated as the amount received for "renting" of immovable property. The reference was accordingly answered as under:-

"The value of "premium" or "salami" is exigible to service tax under "renting of immovable property" for the period prior to 1.07.2012 under Section 65(105)(zzzz) of the Finance Act and from 01.07.2012 under Section 66B of the Finance Act."

11. We have no doubt that the contention raised by the appellant that the definition of "Renting of Immovable Property" under Section 65(90a) of the Act only includes 'leasing' and not an 'agreement to lease' and since a "premium" is received by the appellant for entering into agreement to lease, this amount would not be exigible to service tax stands answered by the Larger Bench and the same needs to be followed.

12. The next contention raised by the learned counsel is that the imposition of equivalent amount of penalty under Section 78 of the Act on the ground that the impugned order does not even allege that the appellant has not paid service tax by reason of fraud, or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the Rules made thereunder with intent to evade payment of service tax. Learned counsel has also submitted that the appellant being a Public Sector Undertaking was under a bonafide belief that service tax is not exigible to the "upfront fee" or "one time payment" received by it under the agreements for grant of such concessions to various developers. The learned counsel relied on the following decisions as under:-

1. **Greater Noida Industrial Development Authority Versus Commissioner of Central Excise and Service Tax** ⁵
2. **Kagal Nagar Parishad versus Commissioner of Central Excise, Pune**⁶
3. **Gujarat Power Corporation Ltd. versus C.C.E & S.T.- Ahmedabad-III,** ⁷
4. **M/s. Luxmi Township Ltd. Vs. Commissioner of CGST & CX, Siliguri Commissionerate** ⁸

13. We agree with the learned counsel for the appellant that the appellant being a Public Sector Undertaking could be under a bonafide belief that no service tax is leviable on the "upfront fee". The issue related to the interpretation of the provisions and diversion views were taken by different Benches of the Tribunal as noted by the Larger Bench in **Rajasthan State Industrial Development & Investment Corporation Ltd. (supra)**. The controversy has been settled at rest by the decision of the Larger Bench delivered on 27.01. 2025. It has been an accepted principle that there is no personal gain /benefit when the assessee is a Government Authority/Public Undertaking etc. The Tribunal in the case of **Greater Noida Industrial Development Authority Vs. Commissioner of Central Excise and Service Tax (Supra)** dealt with the similar issue and decided that service tax would be leviable only on the element of "rent" and not on the value of "premium" or "salami". At the same time, it was held that it is a fit case where by invoking Section 80 of the Act, penalties under Section 76,77 and 78 have to be waived if the assessee proves that there was reasonable cause for the said failure and the appellant being an organization functioning under the Government of Uttar Pradesh and the obvious reason for non-payment of service tax, is their bonafide belief that the activity rendered by them

⁵(2016) 87 VST 461

⁶ 2018 SCC online CESTAT 5475.

⁷ ST Appeal No. 10193 of 2017.

⁸ ST Appeal No.76847 of 2016

would not attract service tax, therefore, set aside the penalties imposed under Section 78 by the impugned order. Following the said decision, we are of the view that the equivalent penalty imposed under Section 78 of the Act is unsustainable and is hereby set aside.

14. On merits, the impugned order is affirmed, the same being in consonance with the decision of the Larger Bench, however, on the issue of penalty, the same is set aside to the extent referred above. The impugned order, is accordingly modified. The appeal stands allowed partly.

[order pronounced on 2nd July,2025]

**(BINU TAMTA)
MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**