

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 40814 of 2014**

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-011-14 dated 31.01.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

**M/s. Brookefields Estates Private Limited** : Appellant  
67-71, Krishnaswamy Road,  
Coimbatore – 641 001

**VERSUS**

**Commissioner of Central Excise and Service Tax** : Respondent  
6/7, A.T.D. Street, Race Course Road,  
Coimbatore – 641 018

**APPEARANCE:**

Shri Dwarakesh Prabhakaran, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40663 / 2023**

DATE OF HEARING: 19.07.2023

DATE OF DECISION: 10.08.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

This appeal is filed by the assessee-appellant against the Order-in-Appeal No. CMB-CEX-000-APP-011-14 dated 31.01.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore.

2.1 Brief facts leading to the present dispute are that the appellant is registered as a provider of taxable services under the category of renting of immovable property service [hereinafter referred to as 'RIPS'] and sale of space

for advertisement within the meaning of Section 65(105)(zzzz) and Section 65(105)(zzzm) of the Finance Act, 1994 respectively.

2.2 It appears that the appellant filed an application for refund on 15.11.2012 seeking refund of the Service Tax paid by them on the parking services provided by them during the period from 01.11.2011 to 30.06.2012. It appears that the appellant realized that they were not liable to pay any Service Tax on the parking charges as the same is not covered in the definition of RIPS, which prompted the appellant to seek refund of Rs.12,57,268/-

2.3 The Revenue entertained a doubt that the parking space provided by the appellant in the open land in and around the shopping mall and some portion of built-up area could not be regarded as "land", but as an integral part of the building and as such, the area was not excluded from the definition of immovable property for the purposes of service under RIPS as claimed by the appellant.

3. Therefore, a Show Cause Notice dated 11.02.2013 was issued proposing, *inter alia*, to reject the refund claimed by the appellant.

4. It appears that the appellant filed a detailed reply dated 25.03.2013 *inter alia* claiming that the parking space provided by them was "land" and not "building", "land" could not be interpreted to mean "vacant land". They also appear to have referred to the definition of RIPS under Section 65(105)(zzzz) *ibid.* to contend that land which is *inter alia* used for parking purposes, stood excluded from the above definition. It also appears that the appellant took a stand that they did not pass on the incidence of taxation to their customers and hence, there was no element of unjust enrichment.

5. The adjudicating authority having considered the reply during adjudication, however, proceeded to reject the refund claim made by the appellant vide Order-in-Original

Sl. No. R (14)/2013-(AC) dated 29.10.2013. In the said order, the adjudicating authority has held that the definition of immovable property did include the parking area as well.

6. Aggrieved by the above rejection, it appears that the appellant filed an appeal before the first appellate authority, but however, even the first appellate authority vide Order-in-Appeal No. CMB-CEX-000-APP-011-14 dated 31.01.2014 having rejected their appeal, the present appeal has been filed before this forum.

7. Heard Shri Dwarakesh Prabhakaran, Ld. Advocate and Smt. Anandalakshmi Ganeshram, Ld. Superintendent.

8.1 The submissions of the Ld. Advocate could be summarized as under: -

- (i) The appellant is the owner of 'Brookefields Mall' in Coimbatore and the main taxable service is letting out shops in the mall.
- (ii) The claim for refund made by the appellant was on the ground that they had inadvertently remitted Service Tax on the parking charges collected by them from the public / visitors to the mall for parking of vehicles in the open land, stilt floor or basement floor.
- (iii) The above parking charges were exempted from Service Tax by virtue of "land" used for parking purposes being excluded from the definition of immovable property under Explanation 1 (c) to Section 65(105)(zzzz) *ibid*.
- (iv) The word "land" has been consciously adopted by the legislature in Explanation 1 (c) as opposed to "vacant land" under Explanations 1 (a) and 1 (b), clearly implying thereby that even if land is not vacant, the same would be eligible for exemption under Explanation 1(c).

- (v) It is practically impossible to provide education, sports, circus, entertainment or parking services on vacant land as some kind of infrastructure is required for providing the said services and therefore, there is conscious omission of use of "vacant" in Explanation 1(c).
- (vi) Without prejudice to the above, he would submit that the use must naturally be in reference to the person who is using the property i.e., the service recipient, but however, here, the parking charges were collected only from the public / visitors to the shopping mall which could not be treated as using the parking space in the course of furtherance of business or commerce.
- (vii) The price charged for parking did not include any element of tax, which was collected vide machine generated charge slips depending on the duration of parking.
- (viii) Though the parking charges were exempted, the appellant did remit the Service Tax inadvertently, but however, the incidence of tax was not passed on.
- (ix) The dispute relates to the period from 01.11.2011 to 30.06.2012; thus, the said charges were also exempted when the Negative List was introduced / took effect from 01.07.2012, but however, with effect from 01.04.2013, the exemption granted under the Negative List was also withdrawn.
- (x) The appellant having some of its services as exempted, the CENVAT Credit initially utilized for payment of duty was proportionately reversed under Rule 6 (3A) of the CENVAT Credit Rules, 2004.

8.2 He would place reliance on the decision of the Hon'ble Supreme Court in the case of *P. Rami Reddy & ors. v. State of Andhra Pradesh & ors.* [(1988) 3 SCC 433] wherein the meaning of "land" in a legal sense has been held to include structures, if any, raised thereon.

9. *Per contra*, Ld. Superintendent supported the findings of the lower authorities. She would also rely on an order of the Principal Bench of the CESTAT in the case of *M/s. Select Infrastructure Pvt. Ltd. v. Commissioner of Central Excise, Delhi-I* [2018-TIOL-688-CESTAT-DEL].

10. We have heard the rival contentions, we have perused the documents placed on record and we have also gone through the decision / order relied upon during the course of arguments.

11. After hearing both sides, we find that the issues to be decided by us are: -

(1) Whether the parking facility provided by the appellant in the "land" is covered under the definition of RIPS within the meaning of Section 65(105)(zzzz) *ibid.*?

(2) Whether the rejection of refund is in order?

12.1 We find it relevant to reproduce the provisions of Section 65(105)(zzzz) of the Finance Act, 1994 for convenience since the issue to be decided by us is in the context of the above definition: -

"Section 65. Definitions. — In this Chapter, unless the context otherwise requires, -

... ..

(105) "taxable service" means any [service provided or to be provided], -

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*(zzzz) [to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.]*

*Explanation 1. — For the purposes of this sub-clause, "immovable property" includes —*

*(i) building and part of a building, and the land appurtenant thereto;*

*(ii) land incidental to the use of such building or part of a building;*

*(iii) the common or shared areas and facilities relating thereto; and*

*(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include —*

*(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;*

*(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;*

*(c) land used for educational, sports, circus, entertainment and parking purposes; and*

*(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.*

*[(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;]*

*Explanation 2. — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;"*

12.2 The inclusive part of the definition of 'immovable property' covers *inter alia* building and part of a building and the land appurtenant thereto and also land incidental to the use of such building or part of a building. Clause (iv) of Explanation 1 excludes, *inter alia*, "land" used for educational, sports, circus, entertainment and parking purposes.

12.3 We find that the legislature has used the words "land" and "vacant land" in accordance with the context, wherever applicable. When "land" in a legal sense includes structures, if any, raised thereon, the same covers the land appurtenant to a building or a part of the building as well.

13. Ld. Advocate stressed heavily on the use of "vacant" in exclusion clauses (a) and (b) and "land" used in exclusion clause (c) of the definition of RIPS under Section 65(105)(zzzz). It is his contention that the omission to use "vacant" at (c) above is a conscious omission since here, in the case on hand, such land is used for parking purposes only and hence, they are covered by the non-inclusion clause (c) i.e., land used for 'parking purposes'.

14.1 The impugned order holds the view that since the car parking is provided from an immovable property (building) which is not vacant land, it is liable to tax during the period under dispute. From a reading of the provisions, it is seen that, for the purposes of sub-clause (zzzz) of Section 65 (105), "immovable property" does not include land used for parking purposes. Clause (c) which deals with the exclusion states:

*"(c) land used for educational, sports, circus, entertainment and parking purposes;"*

14.2 While clauses (a) and (b) under Explanation 1 make a reference to 'vacant land', clause (c) refers only to 'land'. The purpose for the use of land is also mentioned as educational, sports, circus, entertainment and parking. Therefore, the word "parking" takes colour from the

preceding words educational, sports, circus, entertainment. These activities in the normal course are of a nature that would normally be carried out in buildings to be put up either as a temporary or a permanent structure on land. It is perhaps for this reason that exclusion clause (c) uses the term 'land' instead of the term 'vacant land' as used in exclusion clauses (a) and (b).

14.3 In view of our discussion, a building or its part put up on land and which is used for car parking will get the benefit of the exclusion from levy of Service Tax under Section 65(105)(zzzz) *ibid.*, as it stood then.

15. Consequently, the rejection of the refund claim is held to be not in order.

16. Hence, the impugned order is set aside and the appeal is allowed, subject to the duty having not been passed on, with consequential benefits, if any, as per law.

(Order pronounced in the open court on **10.08.2023**)

Sd/-  
**(M. AJIT KUMAR)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd