

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 445 of 2012-DB**

[Arising out of Order-in-Original/Appeal No STC-29-COMMR-AHD-2012 dated 07.06.2012 passed by Commissioner of Service Tax - AHMEDABAD]

**Safal Construction Pvt Limited**

B-Safal House, Behind Mirch Masala Restaurant,  
Sindhuhavan Road, Off S G Road, AHMEDABAD  
GUJARAT-380054

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Ahmedabad**

7 Th Floor, Central Excise Bhawan,  
Nr. Polytechnic Central Excise Bhavan,  
Ambawadi, Ahmedabad, Gujarat-380015

**.... Respondent**

**APPEARANCE :**

Shri Hardik Modh, Advocate for the Appellant  
Shri Rajesh K Agarwal, Superintendent (AR) for the Revenue.

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 15.11.2022

DATE OF DECISION: 28.11.2022

**FINAL ORDER NO. A/11755 / 2022**

**RAMESH NAIR :**

The brief facts of the case are that appellant Safal Construction Pvt Limited (SCPL for short) have made a development agreement with one land owner Sameet (Bodakdev) Owners Association, a non trading corporation (hereinafter referred to as Sameet) and Shri Samprat Co-operative Housing Society Limited (hereinafter referred to as Samprat) to develop and build residential scheme in the name and style of Samprat Residency-II. Accordingly, the appellant developed and built residential scheme on the land owned by Sameet and Samprat. Subsequently they made a co-development agreement dated 01.11.2006 between the appellant (SCPL), M/s. Safal Infrastructure Pvt. Limited (now known as M/s. Safal Realty Pvt. Limited) and M/s. Pegasus Commercial Co-op Society Limited for joint

development of Pegasus Commercial Complex. The appellant have not paid service tax in relation to the joint development under the agreement. The case of the department is that in terms of agreement, the appellant carried out a limited activity of marketing and liasoning for the project with the government departments and follow-up with sanctioning authorities and obtaining all licenses, approvals, permissions, consents, no objection certificates etc. for implementing the Pegasus Commercial Complex. On this basis, the contention of the Revenue is that the appellant has provided Business Support Service to the joint developer therefore, they are liable to pay service tax under the category of 'Support Service for Business and Commerce' as defined under the Finance Act, 1994. Therefore, show cause notice was issued demanding service tax, interest thereon and proposing penalties. The said show cause notice was adjudicated by the learned Commissioner of Service Tax Ahmedabad whereby the service tax demand, interest and penalties as proposed in the show cause notice were confirmed. Being aggrieved by the said order-in-original the appellant filed the present appeal.

2. Shri Hardik Modh, learned Counsel appearing on behalf of the appellant submits that the appellant is one of the parties to joint venture for development of Pegasus Commercial Complex. He referred to the co-development agreement and submits that as per agreement, the activities was assigned as part of overall work of development of property in the capacity of co-developer. Therefore, there is no service exist among equally placed co-developers in joint venture therefore, no service tax is payable. In this regard he referred to Board Circular No. 151/12/2012-ST dated 10.02.2012, 148/17/2011-ST dated 13.12.2011 and 334/4/2006-TRU dated 28.02.2006 and submits that as per Circulars also the activities of the

appellant does not fall under Business Support Service. He also referred to Black's Law Dictionary meaning of "Joint Venture" to submit that as per definition there is commercial objective between all the three developers and the consideration is in the form of distribution of profit. He further submits that entire demand is raised by invoking extended period. In the present case there is no suppression of facts and the case was made out on the basis of audit and the information regarding receipt of joint development agreement was reflected in the books of accounts. Therefore, there is no malafide on the part of the appellant and the demand is hit by limitation also. He relied upon the following decisions:-

- (a) Union of India vs. Mahindra & Mahindra Ltd. - 1995 (76) ELT 481 (SC)
- (b) Mirah Exports Pvt. Ltd. vs. Collector of Customs - 1998 (98) ELT 3 (SC)
- (c) C.C., C.E. & S.T., Bangalore (Adjudication) vs. Northern Operating Systems Pvt. Ltd. - 2022 (61) G.S.T.L. 129 (SC)
- (d) Gannon Dunkerley & Co. Ltd. vs. Commissioner - (Adj.) of S.T., New Delhi - 2021 (47) GSTL 35 (Tri. Del.)
- (e) Commissioner vs. Meghmani Dyes & Intermediate Limited - 2013 (288) ELT 514 (Guj.).

3. Shri Rajesh K. Agarwal, learned Superintendent (AR) appearing on behalf the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that in the present case the Revenue has demanded service tax on the consideration received by the appellant against the co-development agreement between the appellant, M/s. Safal Infrastructure Pvt. Limited (now known as M/s. Safal Realty Pvt. Limited)

and M/s. Pegasus Commercial Co-op Society Limited. The department contended that the appellant's activity is the Support of Business of the joint venture therefore, the appellant have provided Business Support Service. In this regard it is necessary to go through the relevant clauses of the co-development agreement dated 01.11.2006:-

(A) SIPL has entered into an Agreement obtaining exclusive rights of development, construction and sale of the units to be constructed on the land being survey No. 1296/1, 1296/2 and 1298/1 which is more particularly described and mentioned in the schedule hereunder written [hereinafter referred to as the 'said land'] owned by the Pegasus Commercial Co. Op. Society Ltd.

(B) SIPL has incurred some expenses on project. However, looking to the size of the project and involvement of work and time, it found that it was not possible for it to handle the scheme alone by itself. At the same time, SIPL has less experience of marketing, liasoning etc. with the Government departments and follow up with the sanctioning authorities, etc.

(C) SIPL established contact with SCPL which is in the line of development and construction since many years and requested to combine with it as co-developers to develop the said land and complete the scheme on the said land.

(D) SCPL gave its consent and decided to develop the said land jointly. The parties hereto finalized the terms & conditions to which they are desirous of recording into writing by executing this Co-development Agreement being these present:-

**NOW THIS SUPPLEMENTARY AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. The parties of the First Part and Second Part hereto as co-developers have agreed to carry out the joint development of the scheme on the said land by contributing their expertise, financial resources, manpower, etc.
2. The parties hereby specifically agree that this agreement for joint development shall not constitute partnership between the parties hereto and neither shall be agent of any body.
3. The party of the First Part and Third Part hereby assure the Party of the Second Part that the titles of the said land are clear, marketable and free from doubt and the said land is free from encumbrances or charge.
4. The Party of the First Part hereby assures the party of the Second Part that it will deploy the necessary funds from its own resources or by borrowings from the financial institutions to complete the construction work allocated to it under this Agreement, as early as possible. The party of the First Part shall be entitled to utilize the fund arranged by it against mortgage of the said land.
5. It has been specifically agreed between the parties hereto that all works other than allocated to the Party of the First Part will be done by the party of the Second part.

6. To facilitate early implementation of the scheme and for mutual convenience, functional division between the parties hereto are made and agreed as under-

**6.2 FUNCTIONS OF THE PARTY OF THE SECOND PART: (SCPL)**

A. It will obtain all licenses, approvals, permissions, consents, no objections certificates, etc, as may be necessary or required according to the laws legally applicable in connection with undertaking and implementing the proposed scheme.

B. It will look after and take care of all the legal procedural aspects including getting the plans modified, to meet the requirements laid down by the competent authorities, etc.

C. If required it will get amended plans for the said land for joint development of the scheme through Architects, Structural engineers or other consultants and will do necessary follow up work for getting the plans sanctioned.

D. It will look after the activities of advertisements and marketing of the scheme.

E. Reference is also drawn to para '5' herein above regarding the residuary work to be handled by the party of the Second Part.

It has been specifically agreed by and between the parties hereto that all expenses in carrying out the development and construction and completion of the scheme shall be borne and paid by the Party of the First part, save and except which the Party of the Second Part has expressly agreed to.

...

12. In consideration of contributing the expertise and experience agreed to be contributed by the parties of the First part and Second Part hereto entitlement from the project, after deduction of expenses relating to building construction from the gross income offered in Profit and Loss Account shall be as under:

Party of the First Part	- 75%
Party of the Second part	- <u>25%</u>
Total:	- <u>100%</u>

13. The parties of the First and Second Part hereto are hereby individually authorized to collect the sale proceeds from prospective purchasers and shall not be obliged to deposit the sale proceeds recovered from the prospective purchasers by them in common pool or joint bank account, if maintained, but retain with them against their own outgoings.

14. Although functional division has been made for the reasons already given and clarified above, the party of the Second Part shall as often a possible visit and observe the progress of the scheme on site, an actively contribute and cooperate in all respects with the party of the First Part in solving all difficulties and hurdles in the implementation the scheme.”

5. From the above extract of the agreement it is clear that the appellant is not an agent and providing service to anyone else whereas the appellant (SCPL) is an active party to the joint venture with M/s. Safal Infrastructure

Pvt. Limited and M/s. Pegasus Commercial Co-op Society Limited. The consideration is also on the basis of the profit of joint venture. In this fact, the appellant (SCPL) is not providing any service to any other person and the appellant was assigned the work in the capacity of co-developer and not an agent. Therefore, it cannot be said that appellant have provided Business Support Service to any other person. In this regard the Hon'ble Supreme Court in the case of UOI vs. Mahindra & Mahindra Limited (supra) held that ordinarily the Court should proceed on the basis that apparent tenor of agreement reflects the real state of affairs. Though it is open to Revenue to allege and prove that apparent is not real. In the present case also, if strictly go through the above agreement, it is nowhere mentioned that appellant is a service provider to some service recipient. As per the agreement, all the parties to co-development agreement have been assigned to their respective jobs and all have performed in favor of the joint venture in which again all the three parties are participants. Therefore, it is clear that the appellant have not provided any service to the joint venture.

6. Learned Counsel also strongly argued that the demand is time-barred. In this regard we find that appellant have not carried out activities clandestinely as the same were as per the co-development agreement and was on principal to principal basis. The case was made out on the observation of audit from various records of the appellant and all the transactions were admittedly recorded in the books of accounts. In this fact, the suppression of fact or any malafide to evade payment of service tax is not established. Therefore, in our considered view, demand of service tax is hit by limitation also.

7. As per our above discussion and findings, the impugned order is not sustainable hence, the same is set-aside to the extent it confirms demand of service tax, interest and penalties. The appeal is allowed with consequential relief.

*(Pronounced in the open court on 28.11.2022)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

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