



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.5 OF 2022

M/s Provident Housing Ltd.

Through its Authorised Representative,

Through Shri Vineet Pujari,

Having its registered office at 198/1,

Adora De Goa,

Near MES College,

Zuarinagar, Goa 403726

...Petitioner

Versus

1. Union of India,

Through its Secretary,

Ministry of Finance,

Department of Revenue, Aykar Bhavan,

Marine lines, Mumbai 400 020

2. Central Board of Indirect Taxes & Customs,

R.No.227-B, CBIC,

NTC House, 3rd Floor,

Department of Revenue, North Block,

New Delhi 110001

3. Directorate General of GST Intelligence,

Goa Regional Unit, #406/79, Shangri La,

PDA Colony,

Alto Porvorim,

Goa 403 521

4. Commissioner of Central Tax,

EDC Complex, Plot No.6

Patto, Panaji 411001

...Respondents

Mr V. Raghuraman, Senior Advocate with Mr Bhanu Murthy and Mr Gauravvardhan Nadkarni, Advocates for the petitioner.
Ms Asha Desai, Senior Standing Counsel for the respondents

**CORAM: BHARATI DANGRE &
 NIVEDITA P. MEHTA, JJ**

DATED : 21st AUGUST 2025

ORAL JUDGMENT (Per Bharati Dangre, J.)

1. The petitioner is a company predominantly engaged in the business of real estate development, and by the petition filed in the year 2022, it has raised a challenge to the Notification dated 01.07.2017 (corrected by Corrigendum dated 29.07.2019), seeking relief of quashing and setting aside of Notification dated 01.07.2017 as well as quashing of the summons dated 02.12.2021.

2. On the petition being heard on 23.08.2022, a Rule was issued and the parties were given liberty to complete the pleadings.

 The order also record the statement of Ms Desai that no coercive steps will be taken against the petitioner, with clarification that the show cause notice will be issued.

3. We have heard the learned Senior Counsel Mr Raghuraman for the petitioner and Ms Desai for the respondents.

Upon the pleadings being completed, a request was made to take up the petition for final hearing.

4. The brief facts reveal that the petitioner in the course of its business, entered into a joint development agreement (JDA) with M/s Trinitas Realtors India LLP (landowner) for the construction of a residential project on 13.10.2017. Upon this deal being struck, the Directorate General of GST Intelligence took up an investigation as regards the transaction involving the landowner and the petitioner as the developer and insisted for payment of GST on the premise that it is due and payable on the construction service provided by the petitioner to the landowner.

As a part of the inquiry, communications were addressed to the petitioner, directing it to furnish certain documents and details. Some statements of the authorised representatives of the petitioner were also recorded.

It is specifically pleaded by the petitioner that it was also orally informed that the bank accounts would be attached if the GST on the construction services, in the wake of the JDA is not paid. Succumbing to the pressure, ultimately on 21.12.2021, the petitioner remitted an amount of Rs.7 crores, of course under protest.

Subsequent to the deposit of the amount, the petition was filed on 23.12.2021.

5. The learned Senior Counsel would invite our attention to Sections 73 and 74 of the Central Goods and Services Tax Act, 2017.

As regards to Section 73, he would specifically rely upon the timeline which is prescribed for issuance of the notice and it contemplate passing of the order under sub-section (9) by the proper officer, determining the amount of tax, interest and penalty as specified therein, to be issued within three years from the due date for furnishing of annual return for the financial year in which he faces an allegation that the tax is not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.

As far as Section 74 is concerned, sub-section (10), has specified the timeline to be within a period of five years from the due date for furnishing of annual return in place of three years as specified in Section 73.

6. Our attention is also invited to Section 75, which is general provision for determination of tax and sub clause (10) thereof, categorically state that the adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period

specified in sub-section (9) of Section 73 or in sub-section (10) of Section 74 or in sub-section (7) of Section 74A.

Our attention is also invited to the Notification No.9/2023 issued under the Central Tax by extending the time limit in special circumstances and including sub-section (10) of Section 73 for issuance of order under sub-section (9) of Section 73 and from reading of the same, it is urged before us that for the financial year 2017-18, the timeline has been extended to 31.12.2023. Another Notification relating to extension of time limit for furnishing of annual return by registered persons, for the period between 01.07.2017 to 31.03.2018, has reflected the date of furnishing return to be 07.02.2020, and this date is specifically applicable to the State of Goa, amongst other States.

7. By taking us through the aforesaid statutory scheme, it is the specific contention of the learned Senior Counsel that, assuming that the notice is under Section 73, the time limit for issuance of notice was up to 30.09.2023, and the timeline for passing of the order could not have extended beyond 31.12.2023. If the notice is taken to be issued under Section 74, in that case, the maximum time period before which the notice is to be issued as on 07.08.2024, and in that case, the order is required to be passed should be not later than 07.02.2025.

It is therefore the contention of the petitioner that even till date no notice has been issued and therefore, it is specific case of the petitioner, that as per Section 75 sub-section (10), the adjudication proceedings shall be deemed to be concluded, as per the sub -section (10) of Section 73 or sub-section (10) of Section 74 is not yet resorted to.

Our attention is also invited to the specific stand adopted in the two affidavits filed by the Revenue, where the relief sought by the petitioner including the amended petition is opposed on the ground that in view of Section 13(2)(b) of the CGST Act, 2017, the time of supply of services is the date of JDA i.e. 13.10.2017 and no tax invoice has been issued by the petitioner on that date. It is a specific stand adopted in the affidavit that the petitioner has provided the construction services to the landowner which is taxable with GST rate at 12%, in the wake of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and accordingly the taxable supply of construction service was estimated to be Rs.96,54,36,400/- and applicable GST @ 12% on the construction service works out to Rs.11,58,52,368/-.

The affidavit categorically accuse the petitioner of not declaring the transactions in their periodical statutory GST returns. However, in the affidavit it is admitted that the petitioner has paid an amount of Rs.7 crores by utilizing input tax credit (ITC) and

filing DRC-03 form dated 21.12.2021 for the Financial Year 2021-2022. However, the issue of non-payment of GST, according to the Revenue, pertains to the Financial Year 2017-18, for which the petitioner did not have any Input Tax Credit (ITC) available in their credit ledger.

8. Another affidavit filed on behalf of the Revenue, to which we would refer to as the second affidavit, the same stand is reiterated by stating that the Notification No.04/2018 - Central Tax (Rate) dated 25.01.2018 has no retrospective effect as the Notification fixes the time of supply in the JDA agreement as the date on which the transfer of property takes place from the developer to the landowner through conveyance deed or allotment letter or similar instrument. It is therefore, stated that the Notification is effective from the date of its publication i.e. from 25.01.2018 and in the present case, since JDA agreement was signed on 13.10.2017, which is the date prior to 25.01.2018, as the time of supply as envisaged in the said Notification is not available to the petitioner and the GST liability on the petitioner fell on the date of agreement of JDA.

9. However, in the recent affidavit filed by the Deputy Director, Directorate General of GST Intelligence (DGGI), Goa Regional

Unit, Mr Shibi Singh Gaharwar, a diametrically opposite stand is adopted, as in Para 4, the affidavit state thus: -

“4. Further, I say that subsequent thereto, the Central Government issued Notification No.4/2018-Central Tax (Rate), dated 25 January 2018 (“Notification”). By virtue of the Notification, special provisions were made for the incidence of Central Tax in respect of (a) landowners supplying development-rights to developers, and (b) developers supplying construction services to landowners, under JDAs. The Notification stipulates that the liability to pay Central Tax in either case arises only upon transfer of possession – or any right therein – in the completed structure to the landowner by conveyance deed, allotment letter or similar instrument.”

10. From the last affidavit and the stand adopted as recently on 25.07.2025, it is evidently clear that the Revenue is of the view that the Notification dated 25.01.2018, when special provisions were made for the incidence of Central Tax in respect of landowners assigning development rights to developers, all developers supplying construction services to landowners under JDA, the liability to pay tax in either case arises only upon transfer of possession -or any right therein in the completed structure to the landowner by conveyance deed, allotment letter, or similar instrument.

In the wake of clear admission on the part of the respondents, the liability did not arise for the petitioner on the date on which the JDA was entered into i.e. 13.10.2017, since the Revenue is of the opinion that in the wake of the Notification of 2018, it shall now arise only at the time of the conveying the

property upon its construction in the wake of the JDA, the initial stand adopted by the Revenue, deserved to be overlooked.

11. Another important aspect which must take note of is that the landowner i.e. M/s Trinitas Realtors India LLP, has sold the entire land, which was made over for development to the petitioner and as per the arrangement between the parties, both the parties shall not claim any right or liability under the JDA and the deed of sale clearly record thus: -

“(g). The Parties (The Vendor and the Purchaser) hereby declare and confirm that the Parties do not have any claims/demands under the Joint Development Agreement dated 13.10.2017 and Allocation Agreement dated 23.10.2017 against each other. The said Joint Development Agreement and the Allocation Agreement henceforth shall not have any force and effect from the date of this Sale Deed.”

In addition, the agreement also record that the parties declare and confirm that they do not have any claims/demands under the JDA dated 13.10.2017 and Allocation Agreement dated 23.10.2017 against each other, and therefore, this liability is also now extinguished, as the land is now sold to the petitioner by the other party under the JDA.

12. In the wake of the aforesaid development, the petition is now restricted by the learned counsel for the petitioner to the prayer clause (ca), which is inserted by way of amendment, seeking

direction to the Revenue to refund the amount of Rs.7 crores, which was remitted by the petitioner under protest along with interest.

13. After hearing the learned Senior Counsel and Ms Desai and in the wake of the specific stand adopted by the Revenue before us in the third affidavit, we have no hesitancy in declaring that no liability actually fell upon the petitioner at the time when JDA was entered into and in the wake of the subsequent Notification issued in 2018, with the clarification that the liability would fall upon the property which is conveyed and in the light of the sale deed which is placed on record, that the petitioner developer becoming the owner of the property for which the JDA was entered into, we are of the view that the tax liability do not fall upon the petitioner.

As a result, amount of Rs.7 crores, which is deposited by the petitioner, is liable to be remitted with interest at the rate of 6% per annum from the date of its deposit.

We direct that the aforesaid refund shall be ensured within a period of six weeks from today.

The petition is made absolute in the aforesaid terms.

NIVEDITA P. MEHTA, J

BHARATI DANGRE, J