

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

SERVICE TAX Appeal No. 10722 of 2017

(Arising out of OIO-BVR-EXCUS-000-PR-COM-001-16-17 dated 03.01.2017
passed by Principal Commissioner of Central Excise-Bhavnagar)

GUJARAT MARITIME BOARD

P.O. ALANG, SHIP RECYCLING YARD,
ALANG, BHAVNAGAR-GUJARAT

...Appellant

VERSUS

C.C.E. & S.T.-BHAVNAGAR

PLOT NO.6776/B-1...SIDDHI SADAN, NARAYAN UPADHYAY MARG,
BESIDE GANDHI CLINIC, NEAR PARIMIAL CHOWK,
BHAVNAGAR, GUJARAT-364001

...Respondent

APPEARANCE:

Shri Jigar Shah, Advocate & VHP Singh, CA appeared for the Appellant
Shri Ashok Thanvi, Superintendent (Authorized Representative) for the
Respondent

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

Final Order No. 12092 /2023

DATE OF HEARING: 14.09.2023

DATE OF DECISION: 22.09.2023

RAJU

This appeal has been filed by Gujarat Maritime Board against demand of service tax in respect of the amounts recovered by them in the Alang Ship Breaking Yard from various ship breakers.

2. Learned counsel pointed out that the appellants are part of Government of Gujarat. During the period 2007-08, 2008-09 and 2009-10 the appellants recovered certain amounts from the various ship breakers to whom they had allotted plots at Alang for the purpose of ship breaking. The various charges connected by them were under the following heads:

- **Land lease Rental**
- **Plot Developmental Charges**
- **Plot Rent**
- **Plot Rent Shipping Breaking**

- **Shore Assistant Charges**
- **Water & Electricity Charges (Plot rent)**

Demands were raised against them to recover service tax on all this charges however, the demand was confirmed only in respect of recoveries made against plot development charges only.

2.1 Learned counsel pointed out that earlier a show cause notice was issued to them in respect of same set of plots allotted to ship breakers demanding service tax under renting of immovable property service. He pointed out that the earlier demand was also in respect of same period. He pointed out that said earlier demand was raised only in respect of the amounts collected under the head of rent collected from the ship breakers. He pointed out in total six show cause notices were issued and all of them were dropped by the Commissioner, Bhavnagar vide order dated 21.04.2011. Learned counsel pointed out that the entire issue was examined at that time by the Office of Directorate General of Central Excise Intelligence, Ahmadabad Unit. He pointed out that at the material time they had specifically informed department about collection of plot development fee from the ship breakers vide letter dated 29.12.2009. In the said letter they had informed revenue the following:

- "3. PLOT DEVELOPMENT FEES
PLOT DEVELOPMENT FEES – The same is collected from port developers and no services whatsoever in connection with vessel and / or cargo is provided by GMB. Hence, in view of the said factual situation no service tax is collect on same."

He pointed out that after the said correspondence, the show cause notices issued by office of DGCEI did not cover the charges collected under the head of 'plot development fee'. He pointed out that later on 10.04.2013, another show cause notice was issued demanding service tax under the head of 'Port Service' and 'Renting of Immovable Service'

for the entire amount collected by them under all heads mentioned in para 2 above.

2.2 The issue regarding disclosure of details regarding collection of plot development fee vide letter dated 29.12.2009 was informed to the Commissioner still the demand of service tax under the head of Port Service for the amount collected under user development fee has been confirmed by the Commissioner. He pointed out that they had informed about the said fee to the officers of DGCEI in 2009 but the officers in 2013 have chosen to issue show cause notice invoking extended period of limitation in 2013. He argued that entire demand is barred by limitation as full disclosure was made by them to the Revenue vide their letter dated 29.12.2009, before issue of first set of notices for the same period and for same set of transactions.

2.3 Learned counsel further pointed out that definition of 'Port Service' reads as follows:

***"Port Service"** means any service rendered by a port or other port or any person authorized by such port or other port, in any manner, in relation to a vessel or goods;*

Learned counsel argued that user development fee is in the nature of levy by the Government of Gujarat and is not collected for any services provided to the allottees of the plots for the purpose of ship breaking. He argued that no service in relation to vessel or goods is provided by the Gujarat Maritime Board, and therefore, no service in the nature of port service is provided by the appellant to ship breakers. He relied on the decision of Tribunal in the appellant's own case wherein following has been held:

"10. It is also to be mentioned that w.e.f. 1-4-2008, the Govt. of Gujarat has amended the Gujarat Maritime Board Act, 1981, wherein Section 22A has been inserted. The said Section 22A specifically states that any amount provided by Gujarat Maritime Board, the appellant herein, is a State levy and a statutory levy and proceeds of such levy are credited to the Consolidated Treasury Fund of State of Gujarat. If that be so, any amount collected after 1-

4-2008 by Gujarat Maritime Board, can be considered as statutory levy only and Service Tax liability thereon may not arise.”

He further pointed out that the said decision of Tribunal has been upheld by the Hon’ble Apex Court reported at 2015 (39) STR 529.

2.4 Learned counsel also relied on the decision of Tribunal in the case of Konkan Railway Corporation Limited 2023 (6) TMI 1001-CESTAT-MUMBAI.

2.5 Learned authorized representative relies on the impugned order. He pointed out that the show cause notice has been raised on the basis of CERA objection. Learned authorized representative pointed out that the appellant assist the ship breakers in bringing the vessels for breaking into the shipyard.

3. We have considered the rival submissions. We find that two proceedings have been initiated against the appellant covering the same period and in respect of same set of receipts. The appellants have received amounts under the following heads from the ship breakers.

- **Land lease Rental**
- **Plot Developmental Charges**
- **Plot Rent**
- **Plot Rent Shipping Breaking**
- **Shore Assistant Charges**
- **Water & Electricity Charges (Plot rent)**

One set of six show cause notices were issued demanding service tax under the head of ‘renting of immovable property service’. The show cause notices were initiated after the investigation done by the office of DGCEI. The said show cause notices issued under the head of ‘renting of immovable property service’ were set aside by the Commissioner vide order dated 10.04.2013. No appeal was filed against the said orders and the said orders and has been accepted by the department.

3.1 Subsequently vide show cause notice dated 10.04.2013 another demand was raised in respect of the same period demanding service tax under the head of 'renting of immovable property service'/ 'port service' covering all the heads under which collections were made by the appellant from the ship breakers. The said demand was confirmed only in respect of the charges collected under the head of 'user development fee' and under the head of 'port services'. The charge of demand under other heads of income and the demand under the head of 'renting of immovable property service' was set aside.

4. It is noticed from the letter dated 29.12.2009 that the appellants had informed the fact regarding collection of 'plot development fee' to the office of DGCEI. They had also expressed their views on the subject in the following words:

"3. PLOT DEVELOPMENT FEES
PLOT DEVELOPMENT FEES – The same is collected from port developers and no services whatsoever in connection with vessel and / or cargo is provided by GMB. Hence, in view of the said factual situation no service tax is collect on same."

From the above, it is apparent that the appellant had a view that the collection made under the head of 'user development fee' is not in respect of any service and the said amount collected by them is not liable to payment of service tax. Their views were clearly communicated to the office of DGCEI and no show cause notice under the said head was issued by the office of DGCEI to the appellant. In this background, issuance of show cause notice on 10.04.2013 demanding service tax on this very amount of 'user development fee' is clearly barred by limitation. There was no suppression or intention to evade payment of duty as the appellant had clearly disclosed the fact regarding collection of said user development fee as well as their views about non-taxability of the same to the department way back in 29.12.2009.

5. In these circumstances, issuance of show cause notice on the said amount on 10.04.2013 is clearly barred by limitation and cannot be sustained.

6. It is also seen that while Revenue is claiming that the appellant had provided same services against collection of plot development fee, no specific service has been pointed out. Appellant have clearly stated that no services is provided by them to the allottees for plots to ship breaking and therefore, the amount collected by them cannot be called 'port service'. It has been asserted by the learned counsel that the amount collected by them is in nature of levy by Government of Gujarat. We find similar view has been held by Tribunal in the appellant's own case reported in 2015 (38) STR 776 wherein in para 10 following have been observed:

“10. It is also to be mentioned that w.e.f. 1-4-2008, the Govt. of Gujarat has amended the Gujarat Maritime Board Act, 1981, wherein Section 22A has been inserted. The said Section 22A specifically states that any amount provided by Gujarat Maritime Board, the appellant herein, is a State levy and a statutory levy and proceeds of such levy are credited to the Consolidated Treasury Fund of State of Gujarat. If that be so, any amount collected after 1-4-2008 by Gujarat Maritime Board, can be considered as statutory levy only and Service Tax liability thereon may not arise.”

7. In the background, we do not find any merit in the impugned order. The same is set aside and appeal is allowed.

(Pronounced in the open court on 22.09.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha