

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 2

Service Tax Appeal No. 11127 of 2017 – DB

(Arising out of OIA-RAJ-EXCUS-000-APP-194-16-17 dated 17.03.2017 passed by Commissioner(Appeals), Central Excise, Customs and Service Tax-RAJKOT)

Sea Shipping Services

A-1,prabhukrupa Society, Opp.
St Gregorious School,
JAMNAGAR, GUJARAT

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Rajkot

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

.....Respondent

APPEARANCE:

Shri Sharan Rayaprol, Advocate appeared for the appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) appeared for the respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10177/2026

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 12.03.2026

SATENDRA VIKRAM SINGH

1. M/s. Sea Shipping Services (Appellant), Jamnagar are registered with the department under the category of port services, GTA service, clearing service, supply of tangible goods service and transportation of goods through water-ways services. During audit of their records, the officers observed that the appellant have issued debit notes, to their customers for reimbursement charges of supply of water and recovered payment of Rs.66,25,250/- on which they did not pay the requisite service tax. The above services are alleged to be covered under "Port service" as defined under Section 65(82) of the Finance Act, 1994 and therefore, SCN dated 24.09.2014 was issued to them proposing recovery of service tax of Rs.6,82,400/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 and penalty under Section 77 and 78 of the said Act.

1.1 The said show cause notice was adjudicated by the Additional Commissioner vide order dated 29.01.2016 wherein, he confirmed the charges made in the show cause notice and also imposed an equal penalty on the appellant under Section 78 of the Finance Act, 1994 along with penalty of Rs.10,000/- under Section 77 of the said Act. Aggrieved with the said order, the appellant filed appeal before the Commissioner (Appeal) who vide impugned order dated 28.03.2017 upheld the order of the lower authority and rejected the appeal filed by the appellant. Hence, the present appeal before the Tribunal.

2. In their appeal, the appellant took the following grounds: -

- The show cause notice issued on 24.09.2014, is an outcome of audit of their records on 22.02.2012. It demands service tax for the period 2009-10 and 2010-11 (upto June 2010) and thus, it is beyond the normal period of limitation. It has been issued on the basis of balance sheet figures of these two years and their ledger accounts. There is no suppression of facts as the documents on the basis of which demand has been raised were already in public domain and therefore, demand for extended period is not sustainable.
- They started the business in 2009 and obtained service tax registration on 21.01.2010 under Port services and other services. They are also engaged in providing ship chandelling services to various ships calling at ports of Bcdi, Sikka, Vadinar, Okha, Pipavav and Mundra Port. This income has been booked under the category of "Income from fresh water sales" and therefore, sale of water cannot be treated as provision of service for charging the service tax
- They raised debit notes to various parties/ owners who reimbursed the actual expenses incurred by them. The amount taken in the show cause notice is the value of water sold and not the service charge for supply

of water. The sale of water is unconditionally exempted from VAT as per Sr. No.53 of Schedule 1 of Gujarat VAT Act, 2005.

- In their Debit notes, they have given quantity and price per M.T. sold to their consignees. This value includes transportation charges of tankers/ barges, pumping charges and profit margin only. They are not charging any separate service charge for supply of water on board of any vessel. Vide Notification No.31/2010-ST dated 22.06.2010, supply of water was exempt from service tax w.e.f. 01.07.2010. It has wrongly been interpreted that service tax was leviable on such charges collected prior to 01.07.2010.
- Under Rule 5(2) of the Service Tax (Determination of Value) Rules 2006, expenditure or costs incurred by service provider as a pure agent of the recipient of service shall be excluded from the value of the taxable service if all the conditions are satisfied. They have satisfied all the conditions and therefore, no service tax on this value is liable to be paid by them.
- They are purchasing water and supplying the same on back to back basis to the ship owners and getting the cost of water reimbursed from the ship owners. As such, payment made by the appellant on behalf of the ship owners and getting it reimbursed cannot be added to the value of taxable services for calculation of service tax.
- Port Service is defined under Section 65(82) of the Finance Act, 1994 as under:-

"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";

Further, as per Section 65(105) (zn), the taxable services would be the services provided "to any person, by other port or any person authorized by-that port in relation to port services, in any manner". The appellant are neither a port nor other port nor authorised by port or other port

and therefore, demand of service tax under the said taxable category is without authority of law.

- They were under bonfide belief that they are not liable to pay any service tax as sale of water is exempt under Gujarat VAT Act, 2005 and there is no contravention of provisions of Finance Act, 1994 and accordingly, they are not liable to pay any penalty under Section 77 & 78 of the said Act. They rely on the decision in the case ICC Reality (India) Pvt. Ltd. Vs. CCE reported at 2013 (32) STR 427 (Tri-Mumbai) wherein, para 9, 10 & 11 of which are reproduced below:-

"9. We have gone through the Lease Agreements. As per the terms and conditions of the Lease Agreements, the tenants have to pay electricity charges directly to the MSEB and the appellants are also providing electricity through generator set in case there is a power failure and the appellants are charging for the same. We find that electricity is specifically covered under Tariff Heading 27 of the Central Excise Tariff Act. We find that as per the provisions of Maharashtra Value Added Tax Act, 2002. electricity is also covered under Schedule A Sr. No. 20 and charged to Nil rate of tax. In view of this, we find the electricity is goods chargeable to duty under Central Excise Tariff as well as under the Maharashtra Value Added Tax Act, 2002. Therefore, the supply of electricity to tenant amounts to sale of goods and not supply of service. Further the Notification No. 12/2003-ST, dated 20-6-2003 exempt from Service Tax, any value of goods supplied by service provider to service recipient

10. In view of the above discussion, we find merit in the contention of the appellants that the electricity charges collected from the tenants cannot be formed part of the assessable value for the purpose of Service Tax as provider of renting of immovable properties.

11. Impugned orders are set aside and the appeals are allowed."

- In view of the above, they requested to set aside the impugned order and allow their appeal.

3. During hearing, learned Advocate highlighted the provisions of Finance Act, 1994 and stated that the amount recovered by them is for supply of water which was exempted from Port services w.e.f 01.07.2010 vide Notification No.31/2010-ST dated 22.06.2010. He also claimed that the appellant being a pure agent, is not liable to service tax on the income from supply of fresh

water. He relied on the decision of CESTAT Hyderabad in the case of United Port Services Pvt. Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Hyderabad-II reported at 2020 (3) TMI 914 which held that, *"The appellant had purchased water and sold it to ships at a higher price. Thus, this is in our considered view, a case of purchase and sale of goods. Sale of goods is a taxable event for Sales Tax or VAT levied by the State Government. It appears from the records, that the appellant had reported the sales in their VAT returns to the State Government claiming an exemption from VAT available on sale of water. There is no dispute with the State Government that the transaction is one of sale of water. Sale is not a taxable event to levy service tax"*. Learned Advocate also relied on following case laws, to plead that the present case relates to sale of water and no service is involved and hence, demand of service tax by department is not sustainable.

- a) Electronics Technology Parks v CCE & ST, Trivandrum-2022 (56) G.S.T.L. 182 (Tri. -Bang.)
- b) Kiran Gems Pvt Ltd v CCE & ST, Surat-I-2019 (25) G.S.T.L. 62 (Tr.-Ahmd.)
- c) Radius Water Ltd v CCE & ST, Raipur-2015 (37) S.T.R. 409 (Tri. - Del.)
- d) Golflinks Embassy Business Park v Commissioner of ST, Bangalore-2012 (26) S.T.R. 124 (Tri. -Bang.)

4. Countering the arguments, learned Authorised Representative mentioned that supply of fresh water would include cost of procurement of water, transportation of the same to the vessel and other costs incurred in relation to provision of service in the port. It is not the cost of water alone, it includes cost of charges of other elements. CBEC in its Circular F No. B.11/1/2001-TRU dated 09.07.2001 has explained that water supply is taxable under the category of "Port Services". Learned AR also relied on the decision of this Tribunal in the case of Jaisu Dredging & Shipping Vs. Commissioner of Central Excise, Rajkot reported at 2013 (32) STR 107 (Tri-Ahmedabad). In

view of the above, he reiterates the findings of the lower authority and pleads that the transactions by the appellant in relation to vessels are taxable service under the category of "Port Service" as defined under Section 65(82) of the Act and cannot be considered as sale of water.

4.1 Regarding extended period of limitation, learned AR pleads that the fact of non-payment of service tax against supply of water service to the vessels came to the notice of the department only at the time of audit of their records and hence, extended period has rightly been invoked in this case to demand service tax for the longer period along with equal penalty.

5. We have heard the rival submissions. The short issue to be determined in this case is whether supply of water by the appellant to various vessels falls under sale of water or supply of water service. We find that CBEC vide their letter F No.B.11/1/2001-TRU dated 09.07.2001 have elaborated the scope of Port Services. The relevant Annexure (VIII) of this letter is reproduced below:-

"Port services: (Annexure VIII)

1. As per the section 65(51), the "port services" means any service rendered by a port or any person authorized by the port, in any manner, in relation to a vessel or goods. As per section 65 (72)(zn), taxable service is any service provided to any person by a port or any person authorized by the port, in relation to port services, in any manner.

2. Port services generally consist of port and dock services (these are for services rendered in relation to vessels), cargo handling and storage services, railway haulage services, and container handling services (these are for services rendered in relation to goods). The Dock Labour Board of the Port provides service of labour for handling of goods. The port or the person authorised by the port rendering these services is the service provider.

2.1 Some of the specific charges for the services rendered in respect of port services are as follows. (i) Port and dock charges consisting of berthing and mooring charges, port dues, pilotage and towage, water supply charges, salvage and diver charges, anchorage fee; (ii) Cargo handling and storage charges consisting of wharfage for general cargo, warehousing charges, cranage charges, ore handling charges, wharfage on petroleum products, weightment charges for lorries, traffic appliance charges, weightment charges for goods; (iii) Railway haulage charges for rail-borne goods, local haulage and

storage; (iv) Container handling charges consisting of import, export and transshipment wharfage on containers, equipment charges for handling of containers, container storage charges; (v) Labour charges.

2.2 All these charges form part of taxable value of port services. Demurrage charges are recovered by port authority as a rental for storage of goods. The fact that these charges apply only if the goods overstay a prescribed free period, does not detract from their being in the nature of a charge for providing a service in relation to goods. Accordingly they would form part of taxable value. The Dock Labour Board is liable to pay service tax on the labour charges recovered by them. However, estate rentals of the port which is charged for renting of accommodation provided to outsiders and port users, lease rental for land, etc. will not be liable to service tax as these are not services rendered in relation to goods or vessels. For any other charge not mentioned above, the Commissioner may decide the inclusion/exclusion in the value of taxable service on merits."

5.1 From above, it may be seen that water supply charges form part of taxable value of port services. We however find that Notification No.31/2010-ST dated 22.06.2010 (effective from 01.07.2010), exempts some of the services from payment of service tax when provided within a port or any airport. It reads as under:-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following services when provided within a port or an airport : -

- i.
- ii.
- iii. Supply of water"

This means that w.e.f. 01.07.2010, supply of water when provided within a port area is not leviable to service tax. We therefore, agree with the arguments of learned AR duly supported by the clarification issued by CBEC vide their letter dated 09.07.2001 read with Notification No.31/2010-ST dated

22.06.2010 that supply of water within the port area is covered under the category of port services and is leviable to service tax prior to 01.07.2010.

5.2 Prior to 01.07.2010, port service was defined as under:-

“Port service means any service rendered by a port or other port or *any person authorised by such port or other port*, in any manner, in relation to a vessel or goods.” The requirement of authorisation by the port was done away with vide Finance Act, 2010. Thus, prior to 1st July, 2010, service either provided by the port or other port or any person authorised by such port only falls within the definition of Service and leviable to service tax. As per the say of the learned Advocate, the appellant in this case was authorised by the port for rendering the service and therefore, service of supply of water by them forms part of port service leviable to service tax.

5.3 The appellant has relied on the decision of CESTAT Hyderabad in the case of United Port Services Pvt. Ltd. (cited supra) and have mentioned that in para 24 and 25 of the said decision, supply of water has been taken as sale of water attracting VAT and hence, not leviable to service tax. We find that in that case, the appellant had produced copy of invoices showing purchase and sale of water and had also reported sales in their VAT returns filed with the State Government claiming exemption from VAT available on sale of water. In view of these clinching evidences, the said decision was given by the Tribunal held that since the matter involves sale and purchase of water, hence, this is not leviable to service tax.

5.4 The other decisions cited by the appellant do not directly deal with the issue in hand. The decision in the case of Electronics Technology Parks deals with service charges of water provided to residential colonies/ Government buildings which is easily distinguishable from the present case. The decision in the case of Kiran Gems Pvt Ltd relates to reimbursement of actual electricity charges from the tenants and therefore, the said ruling is also not applicable to the facts of the present case. The decision cited in the case of Radius Water

Ltd. is also on different footing and therefore, the same is not applicable to the facts of the present case.

5.5 We find that this Tribunal vide Stay order in the case of Jaisu Dredging & Shipping Vs. Commissioner of Central Excise, Rajkot reported at 2013 (32) STR 107 (Tri-Ahmedabad) had held that the water supplied by barges to the vessels and only by nominated persons by port and invoice is containing the description "supply of water" would prima facie go against the assessee. The relevant para 6 of the said decision is as under:-

"6. We find that as regards port service, it means "any service provided by a port or any person authorized by the port in relation to port service in any manner. Port service means, "any service rendered in a port in relation to vessels or goods". In this case, there is no doubt that supply of bunkers is in relation to vessels. The question that arises is whether it can be considered as a sale only. In this case, it is not permissible for any one to supply water or bunker to vessels and to supply these items the port's authorization is a must. Further, from the sample invoices reproduced in the show-cause notice, it is seen that the invoice mentions "supply of fresh water by barge as per nomination". It has to be noted that in this case, supply of fresh water would include cost of procurement of water, transportation of the same to the vessel and other costs incurred in relation to provision of service in the port. From the invoice it is quite clear that it is not the cost of water alone that is charged, but it include cost of charges of other elements. Prima facie we consider that the submission of Id. AR that contemporanea expositio principle would apply in this case since while introducing port services as services liable to Service Tax, the Board has clarified that supply of water and bunker to vessels is part of port services. It has not been explained why the appellant suddenly came to the conclusion that supply of water is not covered by port services on 1-4-2007, except stating that the transaction is a sale and they got legal advice. Details of legal advice and whether legal advice had taken note of Board's Circular is not clear. The question arises whether in this kind of transaction; the dominant intention is sale or service? Obviously, the fact that the water is supplied by barges to the vessels and only by nominated persons by port and invoice is containing the description "supply of water" would, in our opinion, prima facie go against the appellant."

The appeal filed by the party in this case was finally dismissed on the ground of non-compliance of pre-deposit ordered by the Tribunal.

5.6 In the instant case, we find that the learned Advocate initially during hearing claimed that the transaction involves pure agent service and hence, it's value is not to be included in the taxable value of port services. This claim was subsequently not found correct as they could not produce any evidence to show that they were acting as a pure agent and providing service on behalf of another person. Therefore, claim of the appellant as pure agent is liable to be rejected. Learned Advocate of the appellant has also accepted that they were authorised by the port for the port services. We further find from the invoices produced before us that these nowhere indicate sale and purchase of water. These show that fresh water was supplied by barge which would include cost of procurement of water, transportation of the same to the vessel and other costs incurred in relation to provision of service in the port. From the invoice it is quite clear that it is not the cost of water alone that is charged, but it includes cost of charges of other elements. In view of the documentary evidences available in this case read with clarification issued by CBIC vide their letter dated 09.07.2001, we hold that the appellant are liable to service tax on supply of water which is a part of port service rendered by them. Therefore, the activity of supplying water forms part of port service. Hence, we uphold the service tax demand confirmed vide the impugned order by invoking extended period. However, we find that there was no mens rea on the part of the appellant to evade payment of service tax and therefore, we set aside the penalty of Rs.6,82,400/- imposed on the appellant under Section 78 of the Finance Act, 1994 by taking a lenient view in the matter. We however affirm the penalty imposed on them under Section 77.

6. The appeal is disposed of in above terms.

(Pronounced in the open court on 12.03.2026)

**(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)**