



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/TAX APPEAL NO. 505 of 2025  
With  
R/TAX APPEAL NO. 506 of 2025**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE A.S. SUPEHIA  
and  
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No

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**COMMISSIONER OF CENTRAL EXCISE AND CENTRAL GOODS AND  
SERVICES TAX , BHAVNAGAR**

Versus  
**OFFICER OF DEPUTY CONSERVATOR OF FORESTS**

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Appearance:

MR ANKIT SHAH(6371) for the Appellant(s) No. 1  
MR RAJ TANNA AGP for the Opponent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA  
and  
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

**Date : 23/04/2026**

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. The captioned appeals emanates from the Final Order No. A/12204/2024 dated 26.09.2024 passed by the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Ahmedabad (for short 'the tribunal') in Service Tax Appeal No. 12032 of 2019.

2. It is interesting to note that the appeals are preferred by the Commissioner of Central Excise and Central Goods & Services Tax, Bhavnagar against the office of the Deputy Conservator of Forests, Gir Forest, Sinh Sadan, Sasan, Junagadh. Thus, the Commissioner of Central Excise authority is aggrieved by the action of the respondent- Deputy Conservator of Forests, who is the person in charge of wild life division



in the district of Junagadh working under the Ministry of Forests and Environment, State of Gujarat.

3. We fail to understand that how an officer of the State Government – Deputy Conservator of Forests is roped in the proceedings who would not fall under the definition of “Tour Operator” or under Section 65(105) (zzzzw) and 65(105)(n) as per the Finance Act, 1994 (for short ‘the Act,1994’), substituted by the Finance Act, 2008 with effect from 16.05.2008. The appellant has encompassed the government officer i.e. Deputy Conservator of Forest within the definition of “Tour Operator” by contending that the he would be the person who satisfies the ingredients of the definition since he is engaged in the business of tour operating and is also planning, rescheduling or arranging the tours by any mode of transport.

4. It is not in dispute that the State Government is the authority which protects the conservation of the forests within its geographical territory and the fees collected by the respondent in its official capacity on behalf of Government of Gujarat and in discharge of his sovereign function is credited directly to the consolidated funds of State of Gujarat. It appears that a Show-Cause Notice for the Financial Year from 2009-10 to June-2017 demanding Service Tax was issued by the appellant on 10.10.2014, 14.03.2016 and 22.03.2018, which was adjudicated upon by the order-in-original dated 06.11.2015, 28.02.2017 and 03.05.2019, confirming the demand of Service Tax along with the interest under Section 75 of the Act,1994 and thereafter imposed a penalty under Section 77(1)(a) of the Act,1994.

5. By the Order-in-Original dated 03.05.2019, the Commissioner of Excise and Central Goods & Services Tax held that the respondent-



Deputy Conservator of Forest would fall within the category of “Tour Operator” in terms of Section 65(n)(105) of the Finance Act, 1994. It was further held that the respondent had charged from the visitors such as Entry Fees, Camera Fees and other charges for visiting the forest at Sasan Gir. Hence, it is held that respondent is engaged in the business of planning, scheduling or organizing and arrangement of tours by vehicles, and thus, would be fully covered under the definition of “Tour Operator”. By holding thus, it is further held that the respondent has not applied for registration under the appropriate category of the Service Tax at the relevant time and has not obtained Service Tax registration Certificate in the category of “Accommodation in Hotel” and “Tour Operator”. Thus, violated the provision of Section 69 of the Act, 1994 read with Rule 4 of the Service Tax Rules, 1994.

6. Ultimately, the adjudicating authority - Commissioner of Excise held the respondent – Deputy Conservator of Forests liable for the lecunas and ultimately calculated the service tax of Rs. 3,44,77,774/-, which is liable to be recovered under Section 73(2) of the Act, 1994 along with interest under Section 75 of the Act, 1994.

7. The following Order-in-Originals were challenged before the tribunal i.e Service Tax Appeal No. 11413 of 2016 (Order-in-Original dated 06.11.2015), Service Tax Appeal No. 11955 of 2018 (Order-in-Original dated 11.04.2018 ) and Service Tax Appeal No. 12032 of 2019 (Order-in-Original dated 03.05.2019), passed by the appellant. The tribunal vide common Judgment and Order dated 26.09.2024, allowed the Tax Appeals by placing reliance on the Judgment in the case of *Deputy Conservative of Forest Vs. CCE* reported in 2019(20) GSTL 355 (T).



8. It is not in dispute and it is established from the findings of the tribunal as well as the Order-in-Original that the Deputy Conservator of the Forest is the officer of the Government of Gujarat who is entrusted with the job of conservation of Gir Forest. The duties of collection of charges in the nature of permit fees from various tourists is undertaken by the Deputy Conservator of Forest in his official capacity, and at the behest of the state government. Thus, the respondent - Deputy Conservator of Forest was discharging his sovereign function which cannot be brought within the purview of Service Tax and was not discharging any private function by acting as a Deputy Conservator of Forests. It is also not in dispute that the amount collected in his official capacity is a fee in a nature of compulsory levy which is ultimately is credited to the consolidated funds to the Government of Gujarat since the State Government is the authority which protects and conserves the Forests within its geographical territory.

9. As per Article 246(3) of the Constitution of India, the State legislatures have exclusive power to make laws with respect to the matters listed in the State List (List II) of the Seventh Schedule and the Government of Gujarat has powers to levy such charges and the Central Government cannot make any law to levy tax from the statutory charges collected by the State Government, more particularly, when it protects and conserves the forests within its geographical territory. It is also not in dispute the levy of Service Tax is sought to be imposed on the income of the State Government, which is not permitted by Constitution of India or any Statutory provisions. The Deputy Conservative Officer of Forest only facilitates the tourists and provides the wherewithal through the Government facilitates such as buses etc. These activities of issuing permits for entry into the forests and issuing tickets for access to Devaliya



Park as well as Camera Fees etc, does not fall in any of the categories as taxable service which is undertaken by the respondent in its official duties. Ultimately, these fees which are collected and consolidated fund of the State Government. Hence, we fail to understand how the appellant has assumed its jurisdiction in passing the Order-in-Original in levying the service Tax as well as consequential penalty. Thus, right from the inception of proceedings the appellant has wrongly impleaded the respondent- Deputy Conservator of Forest and roped him in the proceedings. Even if it is assumed that the department had any legal or valid case, the same will only lie against the Government of Gujarat and not against the respondent who is the officer of the State of Gujarat and is appointed by the State Government on the post of Deputy Conservator of Forest in his official capacity.

10. Thus, the present appeal is devoid of any merits and misconceived. We do not find any convincing reason to disturb the decisions of the Tribunal. Finally, we may mention the proposed Substantial Question of law which is as under:

*“2.1 Whether CESTAT is correct in allowing appeal of the respondent by considering their activities as statutory functions?”*

11. Thus, on an overall analysis, we are of the opinion, that no substantial question of law, much less a substantial question of law arises in the present appeals, which calls for deliberation. Hence, the present appeals stands dismissed.

**(A. S. SUPEHIA, J)**

**(PRANAV TRIVEDI, J)**