

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 41395 of 2017

(Arising out of Order in Original No. CHN-SVTAX-001-COM-115-2016-17 dated 31.03.2017 passed by the Principal Commissioner of Service Tax – I, Chennai)

**State Industries Promotion Corporation
Of Tamil Nadu Ltd. (SIPCOT)**

19-A, Rukmai Lakshmi Pathy Road
Egmore, Chennai – 600 008.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam,
Chennai – 600 034.

Respondent

APPEARANCE:

Shri G. Baskar, and Shri R. Joseph Richard, Advocates for the Appellant
Smt. G. Krupa, Authorised Representative for the Respondent

CORAM

**Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)**

FINAL ORDER NO. 40707/2026

Date of Hearing: 29.04.2026

Date of Decision: 10.06.2026

Per M. Ajit Kumar,

This appeal is filed by SIPCOT the appellant against Order in Original No. CHN-SVTAX-001-COM-115-2016-17 dated 31.03.2017 passed by the Principal Commissioner of Service Tax – I, Chennai i (impugned order).

Factual Matrix

2. Brief facts of the case are that the appellant is engaged in establishing, developing, maintaining and managing industrial complexes at various places in the State of Tamil Nadu. The appellant leases land to industries for 99 years. At the time of execution of the lease, each allottee must also enter into a water supply agreement and

pay a one-time upfront charge equal to 50% of the capital cost of the water supply infrastructure. The appellant bears the remaining 50%. In addition, the allottee pays annual water charges based on actual consumption. The appellant treated the 'development charges' and upfront water-related infrastructure charges as "Construction Service". Service tax was paid on 33% of the value after claiming 67% abatement under Notification No. 01/2006-ST dated 01.03.2006. It was alleged by the department as per Statement of Demand No. 70 of 2016 dated 13.10.2016 that for the period from October 2014 to September 2015, the 'development charges' and '50% of capital cost for water supply' were taxable as "Support Services" under Section 65B(49) of the Finance Act, 1994, as stated in Show Cause Notice No. 36 of 2014 dated 12.11.2014. After due process, the Ld. Principal Commissioner while adjudicating the matter, dropped the demand pertaining to 'development charges' but confirmed the Service Tax demand on the '50% of capital cost for water supply' as "Support Services," under Section 65B(49) of the Finance Act, 1994, for the period October 2014 to September 2015. He also confirmed the demand for interest under Section 75 and imposed a penalty under Section 76(1). Hence this appeal.

3. The learned Advocates Shri G. Baskar and Shri R. Joseph Richard appeared for the appellant and Smt. G. Krupa, Ld. Authorized Representative appeared for the respondent.

Submissions made by the appellant

3.1 Shri G. Baskar the Ld. Counsel for the appellant submitted as under:

A. Revenue's contention that the capital cost is determined based on kilolitres (KL) of water supplied is erroneous. The appellant collects

50% of the water supply capital cost upfront from the allottees to recover the cost of establishing water infrastructure facilities. This is separate from the periodic water charges, which the allottees have to pay and are levied based on actual consumption in KL.

B. The agreement expressly distinguishes the upfront capital cost of water supply from water charges based on consumption. Accordingly, Revenue's conclusion that the 50% capital cost is determined by KL of water supplied is misconceived, and the resulting demand is legally unsustainable.

C. Revenue's reliance on **Jaisu Dredging & Shipping v. Commissioner of Central Excise, Rajkot** [2013 (32) S.T.R. 107 (Tri.-Ahmd.)] to characterize SIPCOT's activity as "infrastructural support" is misplaced. That decision concerned the levy of service tax on the supply of bunkers and barges, within a port, which is factually distinct from the present case. It therefore offers no valid basis for confirming service tax on the water supply capital cost.

D. Revenue's contention that the capital cost collected towards water supply is not akin to the "upfront amount" contemplated by the exemption is untenable. Section 104 of the Finance Act, 1994 exempts a one-time upfront amount and expressly includes amounts described as "premium, salami, cost, price, development charge or by whatever name called." The phrase "by whatever name called" must be given a broad construction so as to include all sums collected upfront.

E. On a plain reading of Section 104, the exemption extends to any amount paid once upfront, regardless of its label. By excluding the 50% water supply capital cost from this exemption, the impugned Order-in-Original artificially narrows the scope of the provision. The respondent's contention is therefore unsustainable.

F. For the periods July 2012 to September 2013 and October 2013 to September 2014, the demand of service tax on the 50% water supply capital cost was proposed but later dropped by the Principal Commissioner of CGST and Central Excise in Order-in-Original Nos. 50 to 56/2021 dated 24.12.2021, on the ground that the amount was exempt under Section 104 of the Finance Act. If the same 50% capital cost was treated as exempt for the earlier periods, the benefit of that exemption ought equally to have been extended to the period October 2014 to September 2015. The impugned order denying exemption under Section 104 is therefore without merit and liable to be set aside.

In view of the above submissions, he prayed that the impugned Order-in-Original dated 31.03.2017 be set aside and their appeal allowed.

Submissions made by the Respondent-Revenue

3.2 Smt. G. Krupa, Ld. Authorized Representative submitted on behalf of Revenue that:

A. Under the lease deed, the allottee industrial unit must enter into a separate agreement for water supply upon taking possession of the land, with the appellant. Before execution of that agreement, the allottee-lessee is required to pay the amount demanded by the Appellant toward the capital cost of the water supply system. This capital cost is determined on the basis of the agreed water supply per KL and is not connected with land development and is a service.

B. Water supply is a basic infrastructural requirement for the functioning of an industrial unit. The Appellant provides this essential facility and recovers charges based on the quantity of water supplied and the proportionate capital cost of the system. Applying the definition of "service" to this activity, it is clear that the Appellant

provides water supply to the allottee for consideration; the activity therefore constitutes a service and has been correctly assessed to Service Tax.

The Ld. AR hence prayed that the appeal may be rejected.

Discussion & Findings

4. We have carefully gone through the appeal and have heard the contesting parties. The only issue to be decided on merits is whether '50% of capital cost for water supply' is a service exigible to Service Tax.

4.1 We find that '50% of Capital Cost for water supply' is an upfront fee received by the Appellant from allottee-lessee for setting up water supply infrastructure for the land leased by them.

4.2 We find from para 3 of the impugned order and para 5 of the Appeal Memorandum that the earlier SCN no 36/2014 dated 12.11.2014 was confirmed by the Commissioner of Service Tax vide order dated 11.01.2016 and is stated to be pending before the CESTAT. This appeal appears to have been disposed off by this Tribunal vide Final Orders 40121-40126/2018 dated 16.01.2018 by remanding the matter to the Lower Authority.

4.3 We further find that the issue of exigibility of '50% of Capital Cost for water supply' has subsequently been examined by the Principal Commissioner of CGST and Central Excise vide Order 50 to 56/2021 CH.N.GST dated 24.12.2021, which has also taken into consideration earlier SCN no 36/2014 dated 12.11.2014, in terms of the remand made by this Tribunal.

4.4 The present appeal can be disposed of in terms of the said Order dated 24.12.2021, as it has dropped the Service Tax demand on '50%

of Capital Cost for water supply' and no appeal against the same has been brought to our notice by the parties to this dispute.

4.5 Para 10 and 11 of the said Order discuss the background and legal issues involved and are reproduced below:

"10. Now, coming to the remand order made by the Hon'ble CESTAT, vide the Final Orders 40121-40126/2018 dated 16.01.2018, it is seen that the above Final Order covered the following show cause notices/SODs viz. 181/2011 dated 11.04.2011, 404/2011 dated 05.10.2011, 46/2013 dated 29.03.2013 and 141/2014 dated 21.05.2014, 36/2014 dated 12.11.2014 and 98/2015 dated 18.08.2015 and in all these cases, the Tribunal has remanded the matter with a specific direction to examine the applicability of Section 104, which was introduced by the Finance Bill, 2017. Therefore, it is pertinent for me to first peruse the relevant Section 104.

11. For a better understanding, the relevant Section 104 of the Finance Act, introduced vide the Finance Bill, 2017 is reproduced below:

SECTION 104.(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax, leviable on one time upfront amount (premium, salami, cost, price, development charge or by whatever name called) in respect of taxable services provided or agreed to be provided by a State Government industrial development corporation or undertaking to industrial units by way of grant of long term lease of thirty years or more for industrial plots, shall be levied and collected during the period commencing from the 1st day of June, 2007 and ending with 21st day of September, 2016 (both days inclusive).

12. **From the above provisions it is clear that no service tax is leviable on one-time upfront amount, by whatever name called, in respect of taxable services provided or agreed to be provided by a State Government Industrial Development Corporation or undertaking to industrial units by way of grant of long-term lease of thirty years or more for industrial plots for the period from 01.06.2007 to 21.09.2016.** It is seen that the period involved in these cases span from October 2005 to June 2012. The Noticee in the instant case would become eligible for the exemption for such services provided by them for the period from June 2007 onwards, only if the amount received by them for such services is an one time upfront amount and if the agreement is for a long term lease of thirty years or more for the industrial plots."
(emphasis added)

4.6 With respect to SCN no 36/2014 dated 12.11.2014, para 20(V)(ii) of the Order records as under:

“(ii) Water Capital Cost:

It is seen from the notice and the Annexure to the notice that this cost is nothing but water capital cost, which is an amount collected towards capital cost of water supply system. Thus, it is seen that unlike water charges which are paid on an annual basis based on the consumption by the allottee, the capital cost is a one-time amount collected separately and forms part of the lease deed and is for a period of 99 years. This can be seen from the allotment letter which has been issued to the allottees. Therefore, the water capital cost involved in this notice would get exempted under Section 104 of the Act.

Hence the demand of Rs.18,99,828/- (Rupees Eighteen Lakhs Ninety Nine Thousand Eight Hundred and Twenty Eight only) is liable to be dropped, which I hereby do.”

5. Since the issue on merits, for the earlier period, has been decided by the Department itself in favour of the appellant, and the said decision is not stated to have been challenged in appeal, it binds the department and they are precluded from taking a different stand. The impugned order in the present proceedings cannot hence be sustained and is liable to be set aside on the same basis. Consequently, the questions of interest and penalty do not survive for consideration.

Conclusion

6. In view of the foregoing discussion and findings, the impugned order is set aside. The appellant shall be entitled to consequential relief, if any, in accordance with law. The appeal is disposed of on the said terms.

(Order pronounced in open court on 10.06.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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