

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 434 of 2012

(Arising out of Order-in-Original Sl. No.17/2011 dated 25.11.2011
passed by the Commissioner of Central Excise and Service Tax,
Mangalore.)

M/s. New Mangalore Port Trust,
Panambur,
Mangalore-575 010.

Appellant(s)

VERSUS

**Commissioner of Central Excise
and Service Tax,**

7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore - 575 003
Dakshina Kannada.

Respondent(s)

APPEARANCE:

Mr. J. S. Bhanu Murthy, Advocate for the Appellant.
Mr. M.A. Jithendra, Asst. Commissioner (AR) for the Respondent.

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

FINAL ORDER NO. 20746 / 2026

DATE OF HEARING: 26.05.2026

DATE OF DECISION: 23.06.2026

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. New Mangalore Port Trust (NMPT) against Order-in-Original No. 17/2011 dated 25.11.2011 passed by the Commissioner Central Excise, Mangalore.

2. The facts are that the Appellant M/s. New Mangalore Port Trust (NMPT) is one of the major ports in India. In the course of its port operations, appellant had offered vacant land on lease or license to the users to store their goods or to construct structure for storage or other specific purposes. The Revenue alleged that licensing of land / leasing of land would attract service tax and issued three show-cause notices demanding service tax for the period from 01.06.2007 to 31.03.2010. The Commissioner vide Order-in-Original No. 17/2011 dated 25.11.2011 observed that the exclusion of 'vacant land' from definition of immovable property would be applicable only where such vacant land is used for the purpose of agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes. Referring to the definition held that land incidental to use of building or part of the building and common shared areas would also be termed as immovable property to attract tax. Further, he held that land inside the security compound qualifies to be land appurtenant to building and the same is used for furtherance of commerce or business and hence, levy of service tax would come. Accordingly, since the non-payment of tax came to be known only after the investigations were conducted, larger period was invoked and penalties were imposed. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submits that Land which is leased / licensed is not a land incidental to building but is specifically identifiable piece of land and it is not incidental to the building or is the part of common area or common amenities. He further states that the fact that the Appellant is leasing or licensing vacant land on rent as per the provisions of Section 47 of Tariff Authority of Major Ports (TAMP) read with Section 42 of Major Port Trust Act is not denied and is very much on record. The fact that they have entered into short-term and long-term

agreements for the use of the land for storing of iron ores/granite blocks, wooden timbers and some of the items that cannot be stored in confined areas like constructed buildings is available on record; hence, there is no question of suppression.

3.1 It is further submitted that as per the definition of 'Renting of Immovable Property', vacant land is excluded from purview of immovable property. Only w.e.f. 1.7.2010, vacant land given on lease or license to put up structures for use in business or commerce is covered under definition of immovable property and the said amendment was prospective from 1.7.2010 and hence, the demand which is prior to that date cannot be sustained. The Circular No.334/1/201-TRU dated 26.02.2010 also denotes that the amendment expanded the scope of the Section, implying that the change is prospective and not retrospective. Relying on the decision of the Tribunal in the case of **Bhilai Steel Plant vs. Commissioner of Central Excise, Raipur: 2022 (61) GSTL 56 (Tri.-Del.)**, submits that the Tribunal held that vacant land even if it has some facilities incidental to the use of such land was clearly excluded by sub-clause (c) to clause (iv) to the Explanation and was not taxable prior to 01.07.2010. In the case of **Commissioner of Service Tax, Noida vs. Greater Noida Development Authority: 2015 (40) STR 46 (All.)**, the Hon'ble High Court of Allahabad upheld the decision of the Tribunal giving emphasis on the points that introduction of clause (v) to Explanation 1 was not a mere clarificatory endeavour but significantly expanded the scope of the Section with prospective effect. Renting of vacant land by way of lease or licence for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service only from 01.07.2010, and not so, earlier to this date.

3.2 He further submits that the Revenue has erroneously observed that exclusion for vacant land from definition of immovable property would be applicable only where such vacant land is used for agriculture, aquaculture etc. but the vacant land even if used for the purpose of business or commerce, would be excluded by the exclusion clause. He submits that the Explanation 1, clause (b) of Section 65(105)(zzzz) does not envisage that the vacant land should be put for non-commercial use and it is an undisputed fact that the leased land is vacant, the same is covered under the exclusion provided in the definition. In addition, he submits that the services of appellant are statutory functions, which are not liable to service tax. The function of allowing the use of vacant land belonging to the port trust is part of providing infrastructure at port, which is a statutory function under the provisions of section 49 of Major Port Trust Act, 1963 read with Section 34 of the 'Land Policy'. Relying on the decision in the case of **Karnataka Industrial Areas Development Board (KIADB) vs. Commissioner of Central Tax, Bangalore North: 2020 (40) GSTL 33 (Tri.-Bang.)**, he submits that the Tribunal held that the activities provided by sovereign/public authority, which are required to be provided under a statute does not constitute provision of taxable service to a person and therefore, not liable to pay service tax. He submits that in the case of **CCE, Tiruchirappalli vs. Indian Hume Pipe Co. Ltd.: 2015 (40) STR 214 (Mad.)**, the Hon'ble High Court of Madras held that the activity done in public interest and not for commercial or industrial purposes are excluded from the scope of taxable services qua the exclusionary clause definition of CICS, in Section 65(25b) of the Act.

3.3 With regard to limitation, it is submitted that the Appellant under *bona fide* belief that the services received are not liable to service tax did not discharge service tax, the appellant being a

Trust owned and Controlled by the Government of India, cannot be alleged that there was an element of intention to evade payment of taxes. There is no intention to evade payment of taxes as there was no clarity on the issue of imposition of service tax on renting of immovable property and the same was resolved by way of retrospective amendment brought out in year 2010, no fraud or suppression or mis-representation could be attributed to nonpayment of tax on renting activity. The tax, if paid, by the appellant would be eligible as credit to them; therefore, absolutely neutral impact on the revenue to the Government.

4. The learned Authorised Representative (AR) reiterating the findings of the Commissioner submitted that the appellant had rented-out vacant land for commercial use; hence, they are liable to pay service tax. Referring to the various Sections, it is submitted that the appellant is liable to pay service tax and also states that having collected the service tax from their clients, the appellant now cannot claim that he is not liable to service tax. It is the submission of the Revenue that whatever collected and paid cannot be disputed.

5. Heard both sides. It is a fact that the appellant had rented-out the vacant land to their clients M/s. Lakshmi Balaji Export, M/s. Kineta Minerals, M/s. Bharat Mines etc., to store their goods in order to proceed with their manufacturing activities. The question arose whether the renting of vacant land amounts to Renting of Immovable Property as is alleged by the Revenue during the disputed period from June 2007 to 2009-10. It is also a fact that appellant is one of the major ports constituted as per Chapter V-A of Major Port Trust Act, 1963 read with Section 47 of the Tariff Authority for Major Ports (TAMP).

6. During the disputed period the definition of 'Renting of Immovable Property' as per Section 65 (105) (zzzz) reads as follows:

"taxable service means any service provided or to be provided to any person, by any other person in relation to renting of immovable property for use in the course of furtherance of business or commerce.

Explanation 1: for the purpose of this sub-clause immovable property includes-

- i) Building and part of a building and the land appurtenant thereto;
- ii) Land incidental to the use of such building or part of a building;
- iii) The common or shared areas and facilities relating thereto; and
- iv) In case of a building located in a complex or industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include-
 - a) Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
 - b) Vacant land whether or not having facilities clearly incidental to the use of such vacant land
 - c) Land used for educational, sports, circus, entertainment and parking purposes; and
 - d) Building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2: For the purposes of this sub-clause, an immovable property partly for use of furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course of furtherance of business or commerce.

7. Section 65(90a) of the Finance Act, 1994 defines "renting of immovable property", which reads as follows:

"renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include-

- i) Renting of immovable property by a religious body or to a religious body; or
- ii) Renting of immovable property to an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation 1: For the purposes of this clause, "for use in the course of furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;

Explanation 2: for the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;

8. Referring to the above definitions, the Commissioner in the impugned order observes that '*I find that the vacant land inside the security wall qualifies to be the land appurtenant to building*'. Further, observing that certain common facilities are being used for stacking of coal, lime, coke, iron ore pallets in the case of M/s. ONGC and also the land has been taken on rent by M/s. MRPL, M/s. HPCL, M/s. HML Agency etc., holds that the vacant land since put to use, exclusion is not permissible in terms of *Explanation* provided in the amended definition of the taxable service in the category of 'Renting of Immovable Property Service'. The above observations of the Commissioner cannot be acceded to since the period of dispute in the three show-cause notices which are part of impugned order relates to 01.06.2007 to 2009-10, whereas the amended Notification came into existence only from 01.07.2010 and the period of dispute is prior to the amendment. We also find that the definition of Section 65(105)(zzzz) during the disputed period excluded the vacant land whether or not having facilities clearly incidental to

the use of such vacant land, hence, we find justification in the argument of the appellant that prior to 01.07.2010, the appellant was not liable to pay service tax on the vacant land.

9. We also find that in a similar set of facts, the Hon'ble High Court of Allahabad in the case of **Commissioner of S.T. Noida Vs. Greater Noida Development Authority** (supra) observed as follows:

17. It is his case that the amendment carried out under the Finance Act of 2010 was only clarificatory in nature and vacant land other than that used for the agriculture, aquaculture, farming, forestry, animal husbandry, mining purpose was clearly defined to be under the purview of the Service tax for the purposes of levy. The insertion of clause (v) under the Finance Act of 2010 w.e.f. 1st July, 2010 did not alter the taxable event of letting of the vacant land on lease or license for business/commerce purpose.

18. The Tribunal has recorded a specific finding that prior to the introduction of new clause on 1st July, 2010 the renting of vacant land within the enumerated taxable service was not embarrassed upon.

19. With reference to its earlier order in the case of assessee itself dated 11-12-2013 it has been recorded as follows :-

"12. Introduction of sub-clause (v) in Explanation I has significantly altered and extended the scope of the taxable service, with effect from 1-7-2010 and consequently vacant land given on lease or licence, for construction of a building or a temporary structure, to be used at a later stage for furtherance of business or commerce, would be 'immovable property' and renting of this immovable property would be the taxable service, since 1-7-2010.

13. In view of clear exclusion of vacant land from the ambit of immovable property prior to 1-7-2010 it cannot gainfully be contended by Revenue, that clause (v) to Explanation I (introduced in 2010), was a mere clarificatory endeavour, explicating the implicit and inherent meaning of Section 65 (105)(zzzz). Clause (v) is clearly an amendment which expands the scope of the taxable service; and prospectively.

14. Clause 75 of the Bill (which later came to be enacted as Finance Act, 2010) has proposed insertion of sub-clause (v) in Explanation I in Section 65(105)(zzzz) of the Act. The memorandum explaining the provisions in Finance Bill, 2010 also indicates that the amendments are being made in the definition of 'renting of immovable property' service *inter alia* levy of service tax on renting of vacant land where there is an agreement between lessor and lessee for undertaking construction of building or structure on such land for furtherance of business or commerce during the tenure of the lease. The C.B.E.&C. Board Circular No. 334/2010-TRU, dated 26-2-2010 (in paragraph 3) explains the purpose of the amendments to Section 65(105)(zzzz). Accordingly, the Circular explains that amendments are being made in the definition of this taxable service to provide that renting of vacant land where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax. The statement of objects and reasons accompanying the Finance Bill, 2010 also clarify that clause 75 of the Bill seeks to amend Chapter V of the Finance Act, 1994; to modify the scope of certain taxable services including the taxable service defined and enumerated in Section 65(105)(zzzz), of the Act. These several contemporaneous exposition and administrative constructions and the scope of sub-clause (v) of Explanation I in Section 65(105)(zzzz) fortify the conclusion the scope of sub-clause (v). To modify and expand the scope of the taxable service to cover and include vacant land on lease or licence for construction of a building or a temporary construction at a later stage to be used for furtherance of business or commerce, within the ambit of 'immovable property' is thus the taxable service. Since the introduction of this sub-clause in Explanation I expands the scope of the taxable service and renders the taxable (a) hitherto non-taxable transaction, and absent of explicit retrospective reach provided to the amendment and insertion of this sub-clause, these transactions covered by this sub-clause of the Explanation have only the prospective operation.

15. On the above analysis, renting of vacant land by way of lease or licence (irrespective of the duration or tenure), for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service only from 1-7-2010, and not so, earlier to this date."

20. In our opinion the findings recorded by the Tribunal on the aforesaid aspect of the matter are legally justified and we see no good reason to take any different view in the matter.”

10. In the case of **Tuticorin Port Trust Vs. Commissioner of CGST and Central Excise**, the facts were similar to the present case, wherein the appellant therein had leased-out lands to M/s. NLC Tamil Nadu Power Ltd. for setting-up of coal based Thermal Power Plant at Tuticorin and collected lease rent and had not paid service tax for leasing the said vacant land. Department was of the view that the vacant land being an immovable property would fall within the ambit of ‘Renting of Immovable Property Service’ and issued show-cause notice demanding service tax on the rent collected, which was confirmed by the Revenue authorities. On appeal, the Tribunal vide **Final Order No. 42476/2018 dated 26.09.2018** held as follows:

“Further, the Hon’ble High Court of Allahabad in the case of Greater Noida Development Authority (supra) had also held that there is no liability to pay service tax prior to 1.7.2010 for renting of vacant land. Following the decisions, we are of the considered opinion that the demand cannot sustain.”

11. In view of the above, we do not find any justification in sustaining the demand prior to 01.07.2010. However, the Commissioner at para 21 of the impugned order observes that the Tariff Authority for Major Ports (TAMP) had issued a Notification G.No. 184 dated 23.07.2010 revising the license fee on lease or license basis retrospectively w.e.f. 20.02.2007 based on which, the port trust had included the applicable service tax w.e.f. 01.06.2007. In the instant case also, we find that the appellant had collected and paid service tax amount of Rs.3,81,69,456/- as recorded by the Commissioner at para 54 of

the impugned order. The learned counsel also submitted that wherever the tax has been collected and paid, the same has not been disputed. We also find that the impugned order has appropriated the above amount paid by the appellant against the demand. Accordingly, we uphold the impugned order to the extent of appropriation of an amount of Rs. 3,81,69,456/- and set aside the balance demand for the period prior to 01.07.2010 along with penalties.

Appeal is partially allowed.

(Order pronounced in Open Court on 23.06.2026.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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