CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Service Tax Appeal No. 40819 of 2017

(Arising out of Order-in-Original No.CHN-SVTAX-001-COM-65,66 & 67-2016-2017 dated 09.01.2017 passed by Principal Commissioner of Service Tax, Service Tax-I Commissionerate, Newry Towers, No.2054-1, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Mahindra World City Developers Limited **....Appellant**
No.17/18, Patullous Road, Mahindra Tower,
Anna Road,
Chennai 600 002.

VERSUS

Commissioner of GST & Central Excise **...Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

WITH

(2) Service Tax Appeal No. 40820 of 2017

(Arising out of Order-in-Original No.CHN-SVTAX-001-COM-65,66 & 67-2016-2017 dated 09.01.2017 passed by Principal Commissioner of Service Tax, Service Tax-I Commissionerate, Newry Towers, No.2054-1, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Mahindra World City Developers Limited **.... Appellant**
No.17/18, Patullous Road, Mahindra Tower,
Anna Road,
Chennai 600 002.

VERSUS

Commissioner of GST &
Central Excise **...Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

WITH

(3) Service Tax Appeal No. 40821 of 2017

(Arising out of Order-in-Original No.CHN-SVTAX-001-COM-65,66 & 67-2016-2017 dated 09.01.2017 passed by Principal Commissioner of Service Tax, Service Tax-I Commissionerate, Newry Towers, No.2054-1, II Avenue, Anna Nagar, Chennai 600 040)

M/s. Mahindra World City
Developers Limited **....Appellant**
No.17/18, Patullous Road, Mahindra Tower,
Anna Road,
Chennai 600 002.

VERSUS

Commissioner of GST &
Central Excise **...Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

WITH

(4) Service Tax Appeal No. 40360 of 2019

(Arising out of Order-in-Appeal No.617/2018 (CTA-I) dated 20.11.2018 passed by GST & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-34)

M/s. Mahindra World City
Developers Limited **.... Appellant**
No.17/18, Patullous Road, Mahindra Tower,
Anna Road,
Chennai 600 002.

VERSUS

The Commissioner of GST &
Central Excise **... Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

AND

(5) Service Tax Appeal No. 40086 of 2021

(Arising out of Order-in-Appeal No.86/2020 (CTA-I) dated 23.11.2020 passed by GST & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-34)

M/s. Mahindra World City
Developers Limited **.... Appellant**
No.17/18, Patullous Road, Mahindra Tower,
Anna Road,
Chennai 600 002.

VERSUS

The Commissioner of GST &
Central Excise **... Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.41201-41205/2026

DATE OF HEARING: 02.06.2026
DATE OF DECISION: 25.11.2026

Per: Shri P. Dinesha

M/s. Mahindra World City, who is the Appellant in these Appeals, is claimed to be engaged in real estate development projects rendering services to both SEZ as well as DTA. During the course of its above business, the Appellant appears to have acquired about 1400 acres of land located at Chengalpattu Taluk, Kanchipuram District, Tamil Nadu from third parties/State Government; said land was acquired for the development of an industrial park for which, the Appellant is stated to have obtained all necessary approvals from the concerned authorities.

2. It appears that the Appellant entered into lease agreements with various third parties, in terms of which, each lessee was allotted a specific plot of vacant land on lease for a period of 99 years and the purpose of said lease was for the allottees to develop the said plots by constructing facilities like Office buildings, data centers, telecom hubs, etc. and in consideration, each

lessee would pay an upfront premium to the Appellant. There was a parallel agreement for services with each of such lessees in terms of which, the Appellant was required to exclusively provide services of 'Operation and Management Services' (O & M Services) and also services pertaining to supply of water to such lessees.

3. The charges for the above O & M services were fixed per month on the basis of per acre plot of land of lease, however, the water charges for supply was based on the actual metered consumption of water by the Lessees. It appears that there is no dispute as regards the discharge of service tax on the O&M charges recovered by the Appellant.

4. It appears that CAAP Audit was conducted during June 2013 following which, a letter dated 18.10.2013 was issued requiring the Appellant to submit clarifications regarding upfront lease premium and water charges collected. There is no dispute that the Appellant filed its detailed reply to the above letter.

5. Above was followed by a Show Cause Notice (SCN) dated 21.4.2014 and two Statement of Demands (SODs) on various grounds and proposing *inter alia* to demand service tax on the water supply charges, etc. as detailed below:

<table>
<tr><th>Appeal No.</th><th>ST/40819/2017
ST/40820/2017
ST/40821/2017</th><th>ST/40360/2019</th><th>ST/40086/2021</th></tr>
<tr><td>Period</td><td>October 2008 – Sept 2015</td><td>October 2015 – September 2016</td><td>October 2016 – June 2017</td></tr>
<tr><td rowspan="3">Show Cause Notice/ Statement of Demand</td><td>SCN No. 60/2014 dated 21.04.2014 (October 2008 to March 2013)</td><td rowspan="3">SOD No.5/2017-18 dated 12.05.2017</td><td rowspan="3">SOD No. 03/2019- Ch.N. (ADC) dated 05.04.2019</td></tr>
<tr><td>SOD No. 17/2015 dated 19.02.2015 (April 2013 to March 2014)</td></tr>
<tr><td>SOD No. 18/2016 dated 19.02.2016 (April 2014 to September 2015)</td></tr>
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6. In their reply to the above Notices, it appears that the Appellant filed its detailed reply denying any service tax liability either under 'Renting of Immovable Property Services' (RIPS); leasing of vacant land was

not covered under 'RIPS' during the period 01.07.2010 to 30.06.2012; there was also no liability under 'RIPS' for the same period; there was no liability to pay service tax on water charges collected by the Appellant for the period 01.10.2008 to 31.03.2013 as the water was considered as 'goods' by the TN State Government and the Appellant had paid VAT on the same, etc.

7.1 After affording an opportunity of personal hearing, the Adjudicating Authority *vide* impugned common Orders-in-Original Nos.65-67/2017 dated 09.01.2017, however, confirmed the demands proposed in the SCN/SODS along with applicable interests and penalties which are challenged in Appeal Nos.**ST/40819 to 40821/2017**. On a similar set of proceedings, adjudication Order-in-Original No.01/2018 dt. 09.05.2018 & Order-in-Original No.11/2020 dt. 24.03.2020 were passed against which Appellant filed first Appeals before Commissioner (Appeals), who, *vide* impugned Order-in-Appeal No.617/2018 dated 20.11.2018 and Order-in-Appeal No.86/2020 dt. 23.11.2020 upheld the respective Orders-in-Original

and hence, Appeal Nos.**ST/40360/2019 & ST/40086/2021** have been filed before this forum.

7.2 In Appeal No ST/40086/2021 the liability to service tax has been fastened on the sale of water to DTA as well as SEZ units; in Appeal Nos.40819/2017, 40820/2017 and 40821/2017 and 40360/2019 the similar liabilities have been fastened on the DTA units. It is the case of the Appellant that similar 'lease deeds'/'agreement of services' have been entered into with SEZ units as well and it is their case that the Appellant did not discharge service tax liability either on (O & M) charges or on the sale of water since, according to them, any services rendered to a SEZ unit is exempted from service tax liability.

7.3 The crux of the findings of the Original Authority are that it was for the Appellant to put up suitable water supply system as an infrastructural facility for which the capital cost was on the Lessees and such Lessees are to pay water charges as fixed by the Assessee, when common water supply system to all the allottees are put up, the cost of establishing /

refurbishment was raised from the allottees through which the Appellant supplied the required water to the industrial units on which water charges were collected based on the meter readings; water charges collected was not towards supply of water alone, but was inclusive of operation cost incurred by the Appellant for making available water, thus the activity provided by the Appellant was not just sale of water but service of supply of basic infrastructure facility of water. The Adjudicating Authority also placed reliance on an order of Ahmedabad Bench of the Tribunal in the Case of **Jaisu Dredging & Shipping Vs Commissioner of Central Excise, Rajoit** [2013 (32) STR 107 (Tri.-Ahmd.)].

8. When the Appeals were taken up for hearing, Shri Raghavan Ramabadran, Ld. Advocate appearing for the Appellant, submitted that in terms of the lease deed and agreement for services Appellant had agreed to exclusively provide services of O & M and supply of water to the allottees. For the first period of dispute 01.10.2008 to 30.06.2012, the demand under 'water charges' collected were brought under the taxable

category of ‘Business Support Service’ (BSS) on the ground that the Appellant had a water supply system used for supplying water to the allottees which amounted to infrastructural support services, hence covered by the inclusive clause of the definition of ‘BSS’. It was submitted that the Appellant had their own identified potential water sources and Government approved water sources from which water was drawn, treated and supplied to all lessees. The Appellant had also constructed two elevated storage reservoirs, apart from groundwater storage reservoirs; water was pumped from the water sources into the storage reservoir which was treated and then distributed throughout the industrial park to the allottees. Water meter was used to measure the quantity of water supplied to each allottee which was housed within a chamber and an invoice for water charges was raised every month on each of the allottees. It was clear from the above that the water supply charges was only towards supply of water from their water supply facilities to the allottees, which amounted to the supply of goods, which did not amount to ‘rendering any service’.

9. For the period 01.07.2012 to 30.06.2017, the same pertained to the period when negative regime was enacted. The Original Authority has held in the impugned order that the supply of water facility by the Appellant to the allottees was not covered under the negative list as defined under Section 66D of the Finance Act,1994, nor was any exemption specifically given under the Mega Exemption Notification No.25/2012. The demand proposed thus came to be confirmed for this period.

10.1 It was contended that there was an obligation on the part of the Appellant to supply water to the allottees and to ensure the same they had to establish water supply system, which was maintained as a necessary infrastructural facility at its cost. Water being 'goods', any expenses incurred for supply of the same to the allottees could only be treated as cost for supply of such goods, and in this regard, our attention was drawn to Tamil Nadu Value Added Tax (VAT), 2006, Section 2(41) was referred to specifically. It was contended that 'turnover' as per the definition under

Section 2(41) *supra,* included any sum charged for anything done by seller in respect of the goods at the time of or before delivery thereof.

10.2 It is clear that any activity prior to the delivery of goods by seller and the cost included for carrying out such activity is a part of the sale price on which VAT is payable. Reliance in this regard was placed on para 78 of the Apex Court judgement in **Bharat Sanchar Nigam Ltd., Imagic Creative Pvt. Ltd. Vs Commissioner of Commercial Taxes** [2008 (9) STR 337 (SC) and **Gujarat Ambuja Cement Limited Vs UOI** [2006 (3) STR 608].

11. It was thus submitted that the above ruling and the explanations/submissions are applicable even for the period after 01.07.2012. The supply of water was clearly 'supply of goods', the charges collected for the same was therefore, not liable to service tax. It was also submitted, without prejudice to the above that, the extended period of limitation was not invocable since right from the beginning, the Appellant had entertained a *bona fide* belief that they were only supplying goods

which was not liable to service tax and hence, allegation of suppression of fraud with intent to evade tax cannot be held against the Appellant. Reliance in this regard was placed on **International Merchandising Company LLC Vs CST New Delhi** [2022 (67) GSTL 129 (SC)].

12. *Per contra*, Smt. O.M. Reena, Ld. Departmental Representative relied on the findings in the impugned orders. She would also draw our attention specifically to paragraphs 9.2 and 9.3 wherein, the Commissioner has considered the clauses of the agreement and held that the Appellant was liable to service tax on the water supply charges as well.

13. We have carefully considered the rival contentions, and we have also perused the documents placed on record including the impugned order, we have also gone through the decisions relied upon during the course of arguments. At the outset, as canvassed by the Advocate that the decision relied upon by the Commissioner on **Jaisu Dredging & Shipping** (*supra*) that the same is only an interim order that was passed

while entertaining a stay petition, which lacks precedential value.

14.1 In so far as the supply of water and the payment of VAT is concerned, we find that the Appellant has discharged applicable VAT and hence, the findings on this issue in the impugned order appears to be incorrect. It is not the case of the Original Authority that the Appellant did not take the plea of remitting VAT to the State Government, in their written submission they had taken the above plea which has not been dealt with in the impugned order; and if there were any doubts, the same could have been communicated for due compliance with the Appellant, which was not done. Our attention was drawn to SI No.80 of Schedule IV to TNVAT Act, 2006 which specifically termed water as 'goods' on which VAT was made applicable which has also been duly remitted by the Appellant. Our attention was drawn in this regard to the following decisions:

(i) GMR Hyderabad International Airport Ltd. v. Commissioner of Central Excise and Service Tax Hyderabad-IV [2023-VIL-1018-CESTAT-Hyd-ST]

(ii) The Hon'ble Delhi Tribunal in Sasan Power Ltd. v. Commissioner of Central Excise & Central Goods and Services Tax, Jabalapur[(2024) 19 Centax 465(Tri.-Del)]

(iii) Raipur Development Authority v. Commissioner of Customs, Central Excise and Service Tax, Raipur [2025-VIL-1249-CESTAT-DEL-ST].

At para 15, Hyderabad Bench has observed as under:

> *'On going through the concessionaire agreement it appears that this is mainly in relation to renting of space/premises within the Airport to independent concessionaire with whom they have different revenue sharing agreement, etc., in lieu of rent. The actual consumption of electricity and water by these concessionaires is part of the same agreement but the same cannot be treated as part of MMRS, in view of the fact that it is an independent activity which they have to provide within the Airport premises, as they have no other option to get the water and electricity from somebody else. The Revenue has tried to classify this as MMRS, however, mere supply of water and electricity cannot become in itself MMRS in the facts of the case, when the entire agreement is seen in totality'*

14.2 We find sufficient merit in the contention of the Appellant that what was supplied was 'goods' on which the applicable State levy was paid and hence, there was no service element and the ratio laid down in **BSNL**, *(supra*) **Imagic Creative Pvt. Ltd.**, (*supra)* and **Gujarat Ambuja Cement Limited** (*supra*) clearly supports the case of the Appellant.

15. In view of discussion above, we are of the view that the supply of water is nothing but 'supply of goods' on which service tax cannot be levied or collected since water supply charges is towards supply of goods.

16. In so far as the subsequent period is concerned – post negative list, we find that Section 65B (54) of Finance Act, 1994 clearly excludes transfer of title in goods from the preview of service. The said Section reads as under:

> *"65B. In this Chapter, unless the context otherwise requires,-*
> *(44) "service" means <u>any activity carried out by a person for another for consideration, and includes a declared services,</u> but shall not include-*
> *(a) an activity which constitutes merely,—*
> *(i) a <u>transfer of title in goods or immovable property, by way of sale, gift or in any other manner</u>"*

Hence, even for the subsequent period, what was supplied was only 'goods' and hence, our above discussion equally holds good even for this period.

17. In so far as Appeal No.40086/2021 is concerned we find that the services were exclusively rendered to a

SEZ unit and remains a sale of 'goods' on which there can be no service tax liability and we find apt on the reliance placed on **GMR Aerospace v. Union of India** [2019 (8) TMI 748 Telangana and Andhra Pradesh High Court affirmed by Supreme Court in SLP (Civil) Diary No.22140/2019]

Hon'ble Andhra Pradesh High Court has after considering the statutory provisions, has held as under:

> *'....There is another aspect of Notification No. 12/2003 dated 20.06.2003, which provided for exemption to the extent of value of goods and materials sold by the service provider to the recipients of service subject to certain conditions. Therefore, under this notification also, even if the entire contract is to be treated as MMRS, the value of goods sold would have to be excluded, meaning, there won't be any service tax liability to that extent. As discussed supra, in view of the relied upon case laws, both, electricity and water, are to be treated as goods. Therefore, we find that supply of water and electricity is essentially a sale of goods and therefore not chargeable under provisions of service tax. By virtue of this interpretation also, there was no liability for payment of service tax on supply of water and electricity in view of the Notification No. 12/2003 dated 20.06.2003.*
> ___'

The above view has been followed by the Delhi Bench in the case of **M/s. Raipur Development Authority** (*supra*) and the relevant para reads as under:

'.... The service tax has been demanded on the amount received by the appellant against once year water supply. It is submitted that the said amount was booked under the account head "water tax". It is submitted that the appellant was providing water supply to the occupants of the residential complexes at such rates as equivalent to the rate on which water has been supplied by Chhattisgarh Jal Board. From the meaning of government authority as discussed above, supply of water by a government authority is a sovereign function. Also from the definition of service as discussed above, it is clear that discharging a sovereign function cannot be called as the provision of services. Otherwise also, as pointed out on behalf of the appellant that Chhattisgarh State Act, 2003 in its Schedule I while talking about tax free goods has specifically covered water in its ambit. Once water is as good as a good supply thereof is an act of transfer of goods which is subject to VAT and not to service tax. ___'

18. In view of the above discussion, we are of the clear view that the demand sought to be recovered from the Appellant per impugned order cannot be sustained and is required to be set aside, which we hereby do. In the result, the Appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 25.11.2026)

sd/- sd/-

(M. AJIT KUMAR) **(P. DINESHA)**
Member (Technical) Member (Judicial)

bv