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CESTAT Mumbai- JNPT was not liable to pay service tax on royalty charges collected under BOT agreements

This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant judgment, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Mumbai, has ruled in favor of Jawaharlal Nehru Port Trust (JNPT) in a long-standing dispute over the applicability of service tax on royalty charges collected under Build-Operate-Transfer (BOT) agreements. This decision, delivered on August 14, 2025, sets a precedent for similar cases in the port sector and reinforces the legal position that royalty charges under such agreements do not constitute taxable services.

Background of the Case

The appellants, Jawaharlal Nehru Port Trust (JNPT), had entered into BOT agreements with private entities such as Nhava Sheva International Container Terminal (NSICT) and Bharat Petroleum Corporation Ltd. (BPCL) for the development and operation of container and liquid cargo terminals. Under these agreements, the private operators paid royalty charges to JNPT based on metrics like TEU (Twenty-foot Equivalent Unit) or Metric Tonne of cargo handled. The jurisdictional service tax authorities contended that these royalty charges fell under the category of "Port Services" and were subject to service tax. Consequently, 16 show-cause notices were issued for the period between July 2001 and March 2010, demanding service tax and penalties.

Tribunal's Observations

1. **Nature of Royalty Charges**: The Tribunal held that royalty charges collected by JNPT were not in the nature of a service provider-service recipient relationship but were part of a joint venture arrangement.
2. **Settled Legal Position**: The Tribunal referred to landmark judgments, including those involving Cochin Port Trust, Visakhapatnam Port Trust, Mormugao Port Trust, and Gujarat Maritime Board, which had established that royalty charges do not amount to rendering "Port Services."
3. **Clarifications by CBIC**: Circulars issued by CBIC and the Ministry of Finance clarified that rental or lease charges for port premises are not subject to service tax under "Port Services."

Key Precedents Cited

The Tribunal relied on several judgments to support its decision, including:

- **Cochin Port Trust vs. Commissioner of Central Excise**: Royalty charges were deemed outside the scope of "Port Services."
- **Mormugao Port Trust vs. Commissioner of Customs**: BOT agreements were recognized as joint ventures, not service arrangements.
- **Gujarat Maritime Board vs. Commissioner of Central Excise**: Lease rent for waterfront facilities was held not to constitute "Port Services."

Final Verdict

The Tribunal set aside the impugned order passed by the Commissioner of Service Tax, Mumbai-VII, and ruled that JNPT was not liable to pay service tax on royalty charges collected under BOT agreements. This decision aligns with the settled legal position and provides clarity for similar disputes in the port sector.

Implications of the Ruling

This judgment has far-reaching implications for the port sector and other industries operating under public-private partnership (PPP) models. Key takeaways include:

- **Legal Clarity**: The ruling reinforces the distinction between joint ventures and service provider-service recipient relationships.
- **Financial Relief**: Ports operating under BOT agreements can avoid service tax liabilities on royalty charges, reducing financial burdens.
- **Precedent for Future Cases**: The decision serves as a benchmark for resolving similar disputes in the future.

Conclusion

The CESTAT's ruling in favor of JNPT marks a significant victory for the port sector and underscores the importance of judicial clarity in tax disputes. By recognizing the nature of BOT agreements as joint ventures rather than taxable services, the Tribunal has provided much-needed relief to ports and private operators alike. This judgment is a testament to the evolving legal landscape and the role of judicial bodies in ensuring fair and equitable treatment under tax laws.

Source: CESTAT Mumbai

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87693 of 2016

(Arising out of Order-in-Original No. 1 to 16/ST-VII/CD/2016 dated 14.09.2016 passed by the Commissioner of Service Tax, Mumbai-VII, Mumbai.)

Jawaharlal Nehru Port **.... Appellants**
(managed by Jawaharlal Nehru Port Trust)
Administration Building
Nhava Sheva, Uran
Navi Mumbai – 400 707.

Versus

Commissioner of Service Tax, Mumbai-VII **....Respondent**
16th Floor, Satra Plaza
Palm Beach Road, Sector-19D
Vashi, Navi Mumbai – 400 705.

APPEARANCE:

Shri Prakash Shah, Advocate for the Appellants
Shri S.K. Mathur, Special Counsel for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86268/2025

Date of Hearing: 04.06.2025
Date of Decision: 14.08.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Jawaharlal Nehru Port, which is managed by Jawaharlal Nehru Port Trust (JNPT), Nhava Sheva (herein after referred to, as "the appellants", for short) assailing the Order-in-Original No. 1 to 16/ST-VII/CD/2016 dated 14.09.2016 (herein after, referred to as "the impugned order") passed by the Commissioner of Service Tax, Mumbai-VII, Mumbai.

2.1 The brief facts of the case are that the appellants herein *inter alia,* are engaged in the business of providing services of port, renting of immovable property, cable operator, mandap keeper, consulting engineer, test inspection certification, maintenance or repair, goods transport operator etc., The appellants are registered with the jurisdictional service tax authorities under Centralized Service Tax Registration No. AAALJ0036

DST0001 for providing taxable services and for compliance with Chapter V of the Finance Act, 1994.

2.2 In pursuance to the Government's policy for private sector participation in the development of ports sector, the appellants had invited applications from interested parties for construction of container terminals at appellants' premises on Build Operate Transfer (BOT) basis through private sector participation. Accordingly, the appellants have entered into BOT agreement/contract with the entities viz., Nhava Sheva International Container Terminal (NSICT) for designing, engineering, financing, constructing, equipping, operating, maintaining etc., the container terminal for a period of 30 years. As per the terms of the agreement the principal obligation in relation to management and operations of the container terminal has been provided to NSICT, and they shall be entitled to recover from the consignees or vessel owner or agents, the rates and charges due and payable to them for use of the container terminal services including terminal charges, container handling and cargo related charges. NSICT shall be paying royalty to the appellants in the form of initial payment of Rs.72 million on the date of award of license and monthly royalty payment calculated on the basis of TEU transferred across the apron, as detailed in the contract/agreement. Similarly, the appellants have also entered into agreement with Bharat Petroleum Corporation Ltd. (BPCL) for privatisation of various services and facilities in JNPT port and to promote captive supporting infrastructure by the oil industry public sector. The appellants have granted an exclusive license to BPCL for the development, designing, financing, constructing, insuring, operating, maintaining etc., of the liquid cargo terminal. As per the contractual arrangement, BPCL shall be paying royalty to the appellants in the form of initial payment of Rs.50 million on the date of award of license and monthly royalty payment calculated on the basis of Metric Tonne of cargo handled, as detailed in the contract/ agreement.

2.3 The jurisdictional service tax authorities have noticed that the appellants were not paying service tax on various services provided by them at the JNPT port under their control. In the light of the circular No.80/2004-ST dated 17.09.2004 issued by CBIC with regard to airport services, wherein, it has been clarified that the charges such as royalty, license fees etc., collected by the Airports Authority of India from other service providers at the airports would be subject to the payment of service tax, similar views were held by the jurisdictional authorities in respect of

port sector too. On the above basis and based on the agreements entered into by the appellants with NSICT and BPCL, it was interpreted by the Department that appellants are rendering the services of licensing out its premises and thus such services rendered by them falls within the ambit of taxable services under the category 'Port Services'. Accordingly, show cause proceedings were initiated by the Department for demand of service tax under Section 73 of the Finance Act, 1994 read with Section 68 ibid and Rule 6 of the Service Tax Rules, 1994. During the disputed period from July, 2001 to March, 2010, a number of Show Cause Notices (16 SCNs in total) were issued to the appellants for demanding service tax on the aforesaid services and for imposition of penalty on the appellants. In adjudication of these SCNs, learned Commissioner of Service Tax vide common impugned order dated 14.09.2016 had confirmed all the proposals made in the SCNs. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the records of the case including the case laws relied upon by both sides.

4.1 We find that the issue of demand of service tax on royalty charges collected by the ports from the port terminal operators who have been awarded contracts on BOT basis etc., have already been addressed by various Co-ordinate Benches of the Tribunal and the Hon'ble High Court. In the aforesaid cases it has been held by the Tribunal that royalty received by the port, as a part of revenue earned from terminal operator as consideration for allowing such terminal operator to operate the port terminal is being in the nature of letting out port premises and shall not amount to rendering of 'port service'. Therefore, it was held that no service tax is payable on such royalty charges received by the port. We find that the present dispute is no more *res integra*, in view of the judgements relied upon by the appellants in the cases of *Commissioner of Central Excise, Cochin Vs. Cochin Port Trust* – 2019 (22) G.S.T.L. 345 (Ker.); *Visakhapatnam Port Trust Vs. Commissioner of Customs, Central Excise & ST, Visakhapatnam-I* – 2019 (27) G.S.T.L. 244 (Tri. – Hyd.); *Mormugao Port Trust Vs. Commissioner of Customs, Central Excise & Service Tax, Goa* – 2017 (48) S.T.R. 69 (Tri.- Mumbai) and upheld by Hon'ble Supreme Court in Civil Appeal Diary N0.33259; *ICC Reality (India) Private Limited Vs. Commissioner of Central Excise, Pune-III* – 2013 (32) S.T.R. 427 (Tri. - Mumbai); and *Commissioner of Central Excise, Bhavnagar Vs. Gujarat Maritime Board, Jafrabad* – 2015 (39) S.T.R. 529 (S.C.).

4.2 The issue decided in those cases was that there is no liability to pay service tax on the ground that royalty charges received by the appellants from their container terminal operator is not in the nature of service provider and service recipient relationship and it is in the nature of joint-venture. Accordingly, it was held that no service tax would be payable on the royalty charges in respect of ports. The relevant extract of the Final Order dated 14.03.2019 decided by the Tribunal in the case of *Visakhapatnam Port Trust* (supra) is as follows:

> ***"Royalty charges :***
>
> *12. As far as the royalty charges are concerned, service tax is proposed to be levied on the amount paid by the container terminal operator to the appellant as a part of the BOT agreement in which the appellant performs some services and the container terminal operator performs some other services. The question is whether such an arrangement would amount to container terminal operator using the franchise of the appellant and consequently, whether the royalty charges being chargeable to service tax under franchise services at the hands of the appellant or otherwise. There were other cases on similar issues but the levy was proposed under different headings. In the case of Tuticorin Port Trust (supra) it was held that the royalty charges paid by the terminal operator are leviable to service tax at the hands of the port trust under the head port services. On a similar arrangement the Tribunal Mumbai in the case of Mormugao Port Trust (supra) held that in a BOT arrangement there is no principal-client relationship between the terminal operator and the port trust but is a joint venture and therefore no service tax is payable on the royalty paid by the terminal operator to the port trust. This decision has reached finality with the Hon'ble Apex Court dismissing the department's appeal against this order of Tribunal in the case of Mormugao Port Trust on merits as well as on limitation. In view of the above, we find that the appellant is not liable to pay any service tax on royalty charges received by them from their container terminal operator because the service is in the nature of a joint venture and not in the nature of service provider and service recipient relationship."*

4.3 In the case of *Cochin Port Trust* (supra) it was held by the Tribunal that the royalty received by it from port terminal does not amount to rendering port services. The relevant paragraphs of the said order is quoted below:

> ***"5.1** As regards royalty, we find that CPT received part of revenue earned by IGTPL as consideration for allowing IGTPL to operate the port whereas IGTPL rendered services taxable under port services and paid the tax due on the total revenue. We do not find 1/3rd of that revenue received by CPT liable to tax under Port Services at the hands of the appellant. Letting out the port premises for operation by IGTPL does not amount to rendering of port service. In any case, if at all any service tax is paid on this amount, the same would be available to IGTPL as Cenvat credit, which can be used for paying service tax on port services rendered by it. We find this demand not sustainable.*

> ***5.2*** *As regards the rent collected from individuals/agencies for allowing them to construct and operate jetties, we find it to be rent and not value for port services rendered. The persons/individuals operating the berth would be required to pay tax on port services if they render such services. Demand raised on CPT under this head is not sustainable."*

4.4 The aforesaid decision of the Tribunal was also upheld by the Hon'ble High Court of Kerala in C.E. Appeal No.27 of 2011 in a judgement delivered on 29.01.2009, in the following manner:

> *"**6.** Obviously the agreements between the CPT and IGTPL does not at all bring forth any service as provided by the CPT to IGTPL. The "port services" as defined in the Finance Act, 1994, relevant to the subject years was as below :*
>
> > *"Port service means any service rendered by a port or other port, or by such port or other port, in any manner in relation to any vessel or goods"*
>
> *By the language expressed in the agreement a right is given to IGTPL to develop terminals and operate it which operation involves port services. The services provided to goods and vessels, as per the agreement is by the IGTPL. By the agreement the IGTPL agreed to take over the obligation to provide port services for which a fee is collected from the owners of the goods and vessels moving through the port. The CPT has given up their exclusive right to provide such services and by the agreement the CPT does not provide any services, in the nature of port services to IGTPL.*
>
> ***7.** The amounts paid by IGTPL to CPT is only in respect of the right conferred on the IGTPL to carry out the port services; for provision of which the users of the port would pay a fee. In such circumstances, definitely the revenue earned by IGTPL will be taxed under the Finance Act, 1994 specifically under sub-clause (lxxxii) of Section 65. It is a percentage of that, which the IGTPL pays to CPT, in lieu of surrendering their rights to carry out and provide port services in the subject terminals. There is no port service by the CPT to IGTPL. We hence find the order of the Tribunal to be perfectly in order."*

5.1 We further find that the Co-ordinate Bench of the Tribunal have also held in the case of *Mormugao Port Trust* (supra) that service tax is not payable on royalty charges received by the port from the terminal operator. The relevant paragraphs of the said order is extracted and given below:

> ***"12.** The arrangement between the Assessee and SWPL is the public-private partnership. In our view this arrangement in the nature of the joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. Such PPP arrangement are common nowadays not only in the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource over which it has the exclusive right, whether land, water front or the right to exploit the said land and water front, and the private entities brings in the required resources either capital, or technical expertise necessary for commercial exploitation of the resource belonging to the*

Government. These PPP arrangements are described sometimes as collaboration, joint venture, consortium, joint undertaking, but regardless of their name or the legal form in which these are conducted. These are arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of the joint business activity.

xxx xxx xxx xxx

16. *In the instant case the agreement entered into between the Assessee and SWPL envisages that the Assessee would make available the land and the water front, while the obligation of constructing, operating, maintaining, repairing the bulk cargo handling jetty on the same was that of SWPL. The agreement between the two also stipulates that SWPL will construct, modify, repair and maintain the facility only after the detailed plan, design and drawings have been approved by the Appellant. Further while SWPL was to operate and maintain the facility the Assessee was also responsible inter alia to undertake the several activities for the smooth operation of the said two bulk cargo handling jetties, as set out in Clauses 5.10, 5.11 and 6.2.1 which we have referred to earlier. It thus clearly comes out from the agreement between the Assessee and SWPL, that the two had come together with the common objective of earning revenue by jointly rendering port services at Jetty Nos. 5A and 6A. There is joint control over the operations as it is clear from the agreement that the strategic financial and operating decisions such as those relating to the basic design, capability functionality, etc., of the bulk cargo handling jetty and its subsequent upgradation, upkeep, modifications, repair, maintenance, dredging, installations, etc., are to be unanimously agreed upon by the two co-venturers. We are therefore of the view that the agreement between the Assessee and SWPL is joint venture between the two, where the two co-venture are jointly controlling a common activity and sharing the revenue therefrom.*

17. *The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.*

18. *In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless it can be established*

that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service……

19. *We are accordingly of the view that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed.*

xxx xxx xxx xxx

23. *We are accordingly of the view that there is no service that has been rendered by the Appellant, much less the taxable service of renting of immoveable property. The money flow to the Assessee from SWPL, under the nomenclature of Royalty, is not a consideration for rendition of any services but infact represents the Appellant's share of revenue arising out of the Joint Venture being carried on by the Assessee and SWPL."*

5.2 We further find that in an appeal filed by the department against the aforesaid order of the Tribunal in Civil Appeal Diary No.33259 of 2018, the Hon'ble Supreme Court have dismissed the departmental appeal by observing that there are no merits in the appeal filed by Revenue.

6. In one another case of *Gujarat Maritime Board* (supra), the Hon'ble Supreme Court have held that lease rent charged by the port for use of the waterfront facilities etc., does not include any service in relation to a vessel or goods and therefore such services cannot be described as "port service". The relevant paragraphs of the judgement dated 22.07.2015 delivered by the Hon'ble Supreme Court in Civil Appeal Nos. 3347-3348 of 2014 is extracted and given below:

"11. *The question which arises on a reading of the said agreement is, therefore, whether any service is rendered by GMB or by any person authorized by GMB in relation to a vessel or goods. The agreement makes it clear that it is the duty of the licensee, i.e., UCL to maintain the jetty in good order and condition during the tenure of the agreement. (See : clauses 15 and 16 set out above). Further, it is UCL that is to provide all services at or around the jetty including dredging, navigation, water supply, etc. (See : clause 28 of the agreement). This makes it clear that during the currency of the agreement it is not the Board but the licensee who keeps the said jetty in such condition that it is capable of enabling vessels to berth alongside it to load and unload goods. This being the position, we agree with Shri Tripathi, learned Senior Counsel on behalf of GMB that no service is rendered by GMB to UCL under the agreement. The agreement makes it clear that it is an agreement entered into under Section 35 of the GMB Act allowing the licensee - UCL to construct a jetty and thereafter maintain it at its own cost. We may add that the rebate in wharfage charges of 80% is a condition imposed statutorily under Section 35 of the said Act. To say that it is in the nature of lease rent or licence fee, would not be correct inasmuch as a separate licence fee is payable under the agreement. (See : clause 3 of the agreement). To that extent we agree with Shri Adhyaru, learned senior*

advocate appearing on behalf of revenue that the CESTAT does not seem to be correct in this behalf. But this would make no difference to the result of this case inasmuch as the very first condition that must be met under the definition of "port service" is not met on the facts of the present case.

12. *Shri Adhyaru argued relying upon the definition of "wharf" and "wharfage" in Black's Law Dictionary, Seventh Edition that all that is necessary is that a wharf be provided by the Board. The very provision of such wharf would entitle the Board to levy a fee which is nothing other than wharfage charges collected under the Schedule of rates mentioned hereinabove. To appreciate this argument we set out the definition of 'wharf and 'wharfage' from Black's Law Dictionary as under :*

> *Wharf. A structure on the shores of navigable waters, to which a vessel can be brought for loading or unloading.*
> *Private wharf. One that can be used only by its owner or lessee.*
> *Public wharf. One that can be used by the public.*
> *Wharfage 1. The fee paid for landing, loading, or unloading goods on a wharf. 2. The accommodation for loading or unloading goods on a wharf.*

We are afraid that we are unable to agree with Shri Adhyaru for the reason that though GMB is the owner of the jetty under the said agreement, yet for providing the service of allowing a vessel to berth at the said jetty, it is necessary for GMB itself to keep the said jetty in good order. Wharfage charges are collectible because they are in the nature of fees for services rendered. The expenses that are defrayed by the Board for the maintenance of the jetty is sought to be collected as wharfage charges. This amount would necessarily include all amounts that are spent for keeping the said jetty in good condition including dredging so that vessels can berth alongside the jetty. It is clear that so far as jetties operated by the Board are concerned, the Board itself defrays such expenses. It is only in cases like the present where the jetty is primarily meant for loading and unloading goods belonging to a particular private party that repair and maintenance expenses are to be borne by the private party and not by the Board. It is in this circumstance that we find that there is no service, therefore, rendered by GMB to UCL.

13. *The other limb of Shri Adhyaru's argument is that in any case UCL is a person authorized by GMB within the definition of "port service" and that, therefore, in any case the Section would be attracted as there is no doubt that wharfage charges are a payment for services rendered in relation to a vessel or goods.*

14. *As can be seen from Section 32 sub-sections (3) and (4), the Board may authorize any person to perform any of the services mentioned in sub-section (1) of the said section which includes landing of goods at wharves. We asked Shri Adhyaru to show us where such authority is given and his reply was only that it was given under the self-same agreement referred to hereinabove. We are afraid that we are unable to agree with Shri Adhyaru. The authority given to perform any of the services must first and foremost be under terms and conditions as may be agreed upon by the Board and the private person. Further, under sub-Section (4) of Section 32, it is the private person who is then authorized to charge or recover any sum in respect of such service rendered. This is conspicuously absent in the aforesaid agreement. There is no doubt on a reading of the agreement that it is the Board*

itself that charges or recovers wharfage charges from the licensee - UCL and does not authorize UCL to recover such charges from other persons. This being the position, it is clear that no service is rendered by a port or by any person authorized by such port and, therefore, the very first condition for levy of Service Tax is absent on the facts of the present case. So far as the direct berthing facilities provided for captive cargo is concerned, the lease rent charged for use of the waterfront also does not include any service in relation to a vessel or goods and cannot be described as "port service". This being so, it is unnecessary to go into any of the other contentions raised by both parties. To the extent that the impugned judgment is in conformity with our judgment, it is upheld. The appeals of the revenue are, therefore, dismissed accordingly."

7. On perusal of the Circular No.80/10/2004-S.T. dated 17.09.2004 issued by CBIC, explaining the scope of changes brought in the Budget/ Finance Bill. 2004, it has been clarified that in respect of the services relating to airport, rental/leasing charges would not be subject to service tax. The relevant portion of the said clarification is quoted below:

"3. Airport services*: Services provided in an airport or civil enclave, to any person by Airports Authority of India (AAI), a person authorized by it, or any other person having charge of management of an airport are taxable under this category. This includes variety of services provided to airlines, as well as for cargo and passenger handling such as security, transit facilities, landing charges, terminal navigation charges, parking and housing charges and route navigation facility charges. It would be on the gross amount chargeable by AAI or other such authorized person. Thus, charges such as royalty, license fees etc. collected by AAI from other service providers at the airport such as ground handling, security, common user terminal services etc. are chargeable to service tax.* ***However, in case a part of airport/ civil enclave premises is rented/leased out, the rental/lease charges would not be subjected to service tax, as the activity of letting out premises is not rendering a service****."*

8. Furthermore, we also find that in the Ministry of Finance, TRU's explanatory notes to the changes brought out in the Union Budget 2010-11 vide D.O.F. No.334/18/2010-TRU dated 26.02.2010, *inter alia*, it has been stated that the services provided in an port or airport, which were introduced in the past in 2001 and 2004 respectively, the taxable services referred to the phrase 'any person authorised by port/airport' and many persons were claiming exemption on the ground that they are not specifically authorized by the airport/port authority to provide a particular service. In order to clarify this anomaly, all services provided entirely within the port/airport premises was brought under the taxable net and we find that there was no reference to rental charges/lease rentals being subjected to service tax under the category of 'port services' in the clarifications issued by CBIC and the Ministry of Finance as discussed above.

9. In view of the settled position of law, as discussed in the above referred cases, and in view of the judgement delivered by the Hon'ble Supreme Court dated 22.07.2015 in the case of *Gujarat Maritime Board* (supra), the issue arising out of the present dispute is no more open for any debate and as such, the impugned order passed by the learned adjudicating authority contrary to the above ruling is not legally sustainable and thus it is liable to be set aside.

10. Therefore, the impugned order dated 14.09.2016 passed by the Commissioner of Service Tax, Mumbai-VII, Mumbai is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 14.08.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha