CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

ST/Cross/91/2011
Appeal No. ST/491/2009-DB
[Arising out of OIA-337/2009/AHD-III/CE/KCG/COMMR-A dated 16/09/2009 passed by C.C.E, Ahmedabad-III]

C.C.E.& S.T-Ahmedabad-iii **......Appellant**
7th Floor, Central Excise Bhavan, Nr. Polytechnic
Ambavadi, Ahmedabad- 380 015.

VERSUS

M/s Souvenir Developers P Ltd **...Respondent**
Mehsana Highway Toll Road, Village: Jamiyatpura,
Tal. Kalol, Dist. Gandhinagar

APPEARANCE:

Shri. L. Patra (A.R.) for the Appellant
Shri. Vipul Khandar (C.A) for Respondent

CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ 11385 /2019

DATE OF HEARING/DATE OF DECISION: 02.04.2019

PER: C.J. MATHEW

This appeal of Revenue challenges the setting aside of demand of service tax of Rs. 24,46,333/- under section 73 of Finance Act, 1994,along with interest thereon, and various penalties imposed in the original adjudication by Commissioner of Central Excise (Appeals), Ahmedabad – III in order-in-appeal no. 337/2009(Ahd-III)CE/KCG/Commr(A) dated 16th June 2009 on the challenge of M/s Souvenir Developers Pvt Ltd. Reinstatement of the confirmed demand and penalties is sought on the ground that the respondent herein, an agent of M/s Gujarat Road and Infrastructure Company Ltd, had rendered 'business auxiliary services' taxable under section 65 (105)(zzb) of Finance Act, 1994 in the discharge of their contractual undertaking to collect user-fees.

2. We have heard Learned Authorized Representative and Learned Chartered Accountant appearing for the respondent. Our attention is drawn to the decision of Tribunal, in *Ideal Road Builders Pvt Ltd v. Commissioner of Service Tax,Mumbai [2015 (40) STR 480 (Tri.-Mum)]*, wherein it has been clearly held that the activity of toll collection is not covered within the definition of 'business auxiliary service' in section 65(19) of Finance Act, 1994.

3. It is the contention of Revenue that the findings of the first appellate authority holding that the respondent is not an agent and, therefore, nota provider of service on behalf of the operator of the toll road is not valid. On examination of the legal provision pertaining to levy of tax for rendering of 'business auxiliary services', we find that thetaxable service is to be rendered with reference to an activity *i.e.*an offering made available by a client of the provider to a third person on behalf of such client. It appears from the facts and record that, while the respondent may have acted on behalf of M/s Gujarat Toll Road Infrastructure Company Ltd, the payer of the toll amount does not receive any

service provided by or through the appellant;the collection of road toll is not a rendering of any service to users of the road. Therefore, in line with the decision of the Tribunal in *re Ideal Road Pvt Ltd*, we find that the tax under section 65(105)(zzb) of Finance Act, 1994 does not sustain. Accordingly, we find no merit in the appeal of Revenue which is dismissed.

(Operative portion of the order pronounced in the open court)

(CJ Mathew)
Member (Technical)

(SK Mohanty)
Member (Judicial)

Seema