Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10878 of 2017 – DB

(Arising out of OIO-SUR-EXCUS-002-COM-066-16-17 dated 24.01.2017 passed by the Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Ongc Ltd ....**Appellant**
Hazira Plant, Po. Ongc Ltd
Nagar, SURAT, GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Surat-ii ......**Respondent**
NEW C.Ex BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

APPEARANCE:
Shri Shri S Suriyanarayanan, Advocate for the appellant
Shri NeilPrakash G Makwana, Superintendent (AR) for the department

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10467/2025

DATE OF HEARING: 04.06.2025
DATE OF DECISION: 04.06.2025

SOMESH ARORA

1. The limited issue in this case is whether the service tax was payable on terminalling charges collected by the appellant? The period involved is from 2011-2012 to September-2014. The "terminalling charges" were collected as the facilitating fees and as per the department, the same were taxable as "Business Auxiliary Services" and hence liable to service tax. Such charges were being collected by the appellant on the sale of LPG in domestic area only. The department raised the point that in the bills raised by the appellant, such terminalling charges were included in the basic price of LPG, whereas LPG sold in domestic area was exempted.

2. The learned Advocate has contested the demand on the ground that in CCE Vs. Grasim Industries Limited reported in 2018 (5) TMI 915, Hon'ble Supreme Court held that whatever is included in the transaction value is taxable only as excise duty and therefore, as per the interpretation made by the Hon'ble Supreme Court, the terminalling charges collected by the

appellant for loading LPG within the factory premise is nothing but the charge forming part of the cost and also the transaction value for which excise duty exemption was claimed by the appellants including the components of teminalling charges and therefore, no separate service tax could be charged on the same.

3. The Advocate also relied on the decision of this Tribunal in CCE Vs. Jubilee Fabrics Private Limited reported in 2007 SCC Online CESTAT 2901 in which CBEC Circular 139/8/2000-CX dated 03.01.200 was, inter alia, considered, wherein the Board has clarified that cost on account of any process not amounting to manufacture, if undertaken inside the same factory premises is part of the cost of the final product and therefore, included in the excisable value. It was also pointed out by the Advocate that in their own case, the Commissioner had dropped the show cause notice vide Order in original No. SUR-EXCUS-000-COMMISSIONER-021-18-19 dated 01.03.2019 which as far as his knowledge, has been accepted by the Revenue and no appeal is filed against the said OIO. Since, the issue has not been contested by the department any further, this case also deserves to be dropped. The position was got ascertained from the office of the Authorised Representative who vide letter dated 03.06.2025 indicated that they have been informed by the concerned field unit that the department has accepted OIO No.51/2016-CE dated 30.11.2016, which was pointed out by the learned Advocate. In view of the stated position, the AR leaves the matter to the discretion of this bench.

4. We have considered the rivals submissions. In view of the stated position which has been checked from the field unit in the appellant’s own case, the same issue was raised and terminalling charges were dropped by the adjudicating authority. The matter was not carried forward in appeal despite there being no bar of revenue implication. This court is inclined to allow the benefit to the appellant as the terminalling charges are nothing but part of the

cost component of excisable goods and having been incurred in loading and unloading goods within the factory. Therefore, being a part of the cost and hence, part of the transaction value same cannot be considered as being a separate service. Therefore, the service tax, per se cannot be demanded from the appellant.

5. In view of the foregoing, appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi