CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 27187 of 2013

(Arising out of Order-in-Original No.**26**-27/2013-ST dated 21.03.2013 passed by the Commissioner of Central Excise and Customs, Cochin)

M/s. Cochin Port Trust,
Willingdon Island,
Cochin-682 009.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
Customs & Service Tax,
Cochin Commissionerate,
C.R. Building,
I.S. Press Road,
Cochin-682 018.

Respondent(s)

WITH

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APPEARANCE:

Shri Kuriyan Thomas, Advocate for the Appellant

Shri Rajesh Shastry, Superintendent (AR) for the Respondent

CORAM:

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

Final Order No. 20868 - 20869 / 2025

DATE OF HEARING: 28.05.2025
DATE OF DECISION: 28.05.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the appellant is liable to pay service tax for the advance received by them towards the lease/renting of vacant land prior to 01.07.2010. The appellant had collected upfront premium/advance for renting of vacant land prior to 01.07.2010. However, when the activities carried out by the appellant i.e., 'port service' were brought under the service tax with effect from 01.07.2010, It is alleged that the balance amount of 'upfront premium' in the books of accounts as on 31.03.2010 is considered as consideration for the service tax for the future services. Accordingly, first show-cause notice was issued, in appeal No.ST/27187/2013, on the upfront premium collected by the appellant prior to 01.07.2010. As regarding the appeal No.ST/27188/2013, the demand is for lease rental received by the appellant after 01.07.2010 but relatable to leasing of vacant land given on lease prior to 01.07.2010. The adjudicating authority as per the impugned order confirmed the demand of service tax and aggrieved by the said order, present appeals are filed.

2. When the appeal came up for hearing, the learned counsel for the appellant drew our attention to the Notification No.36/2010-ST dated 28.06.2010 and the corrigendum issued dated 29.06.2010 wherein it is categorically stated that such advance payments is exempted from payment of service tax. Learned counsel also drew our attention to the details of payments made by them for the subsequent period and submits that the only issue to be considered is regarding the demand of service tax on the amount collected prior to introduction of service tax against 'port services'. The learned counsel further submits that the show-cause notice was issued demanding

service tax under the category of 'port services'. However, as regarding the Notification No.36/2010-ST dated 28.06.2010 as claimed by the appellant, the adjudicating authority denied the same on the ground that the said benefit of Notification cannot be extended since the activity carried out by the appellant is falling under the category of 'Renting of immovable property service'. Learned counsel further submits that the show-cause notice, demand was issued under 'port services'. Thus, only to deny the benefit of Notification, adjudicating authority has considered the said activity as 'renting of immovable property service' and finally, demand is confirmed under 'port services'.

3. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order.

4. Heard both sides. As regarding the **Appeal No.ST/27187/2013**, the entire demand is made on the advance received by the appellant prior to 01.07.2010 and as per the Notification No.36/2010-ST dated 28.06.2010, such advance payments are exempted from service tax. Accordingly, the demand confirmed by the adjudicating authority in Appeal No.ST/27187/2013 is unsustainable.

5. As regarding **Appeal No.ST/27188/2013**, as evident from the documents furnished by the appellant, total service tax demanded as per show-cause notice No.47/2012 dated 04.04.2012 is Rs.61,09,146/- and appellant had paid Rs.69,16,002/- including the interest for the delayed payment. However, the appellant is only challenging the demand of service tax for the relevant period against which advance received prior to 01.07.2010 and claiming the benefit of Notification No.36/2010-ST dated 28.06.2010 and the said demand is unsustainable. As regarding the penalty, the learned counsel submits that no suppression can be attributed to the appellant to invoke Section 77 and 78 of Finance Act, 1994 as the issue is basically on interpretation of the taxing provision and the scope

of exemption Notification. Further, there is no allegation of any element of fraud or wilful misstatement or intention on the part of the appellant to evade payment of service tax. Since ingredient of the Section 78 is not satisfied, penalty imposed under Section 78 is unsustainable. Learned counsel further submits that service tax on rent received after 01.07.2010 was initially not paid due to *bona fide* belief regarding nontaxability and thereafter, it is paid with interest and fact being so, the adjudicating authority ought to have invoked the provision of section 80 of the finance Act, 1994 and refrain from imposing penalties.

5.1 The learned counsel drew our attention to the following decisions:

- **CCE. Nagpur vs. Ballarpur Industries Ltd.: 2007 (215) ELT 489 (SC)**
- **Cosmic Dye Chemical vs. CCE, Bombay: 1995 (75) ELT 721 (SC)**
- **CCE, Bangalore (Adjudication) vs. Norther Operating Systems Pvt. Ltd.: 2022 (61) GSTL 129 (SC)**

6. Learned Authorised Representative (AR) reiterated the findings of the impugned order.

7. Heard both sides. It is an admitted fact that as per the Notification No.36/2010-ST dated 28.06.2010, the amount received as advance prior to 01.07.2010 is exempted from service tax against 'Port Services'. The show-cause notice was issued for demanding service tax against 'Port Services' and adjudicating authority has deviated from the demand under category of 'Port Services' as proposed in the show-cause notice to deny the benefit of the Notification No.36/2010-ST dated 28.06.2010 and such method of adopting dual stand is unsustainable. As regarding the demand of service tax after 01.07.2010, it is evident that appellant had paid entire service

tax is payable with interest. Considering the same, the penalties imposed are set aside.

8. To sum up:

(i) ST/27187/2013 is allowed.

(ii) Appeal No.ST/27188/2013, service tax demand against the advance received prior to 01.07.2010 alone is set aside. Penalties are also set aside.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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