

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21131 of 2018

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-18-17-18 dated 19.03.2018 passed by the Commissioner of Centra GST and Central Excise, Thiruvananthapuram.)

**The Commissioner of Central Tax
and Central Excise**

Central Revenue Building,
I.S. Press Road,
Cochin - 682 018.

Appellant(s)

VERSUS

M/s. Cochin Shipyard Ltd.

Perumanoor P.O.
Cochin - 682 015.

Respondent(s)

APPEARANCE:

Shri Vinod Kumar Garhwal, Superintendent, Authorised Representative (AR) for the Appellant/ Revenue.

Shri Kuryan Thomas, Advocate for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 22098 / 2025

DATE OF HEARING: 11.12.2025

DATE OF DECISION: 11.12.2025

PER: D.M. MISRA

This is an appeal filed by the Revenue against Order-in-Original No.COC-EXCUS-000-COM-18-17-18 dated 19.03.2018 passed by the Commissioner of Central Excise, Thiruvananthapuram.

2. Briefly stated the facts of the case are that the respondents are engaged in providing taxable services under the category of Technical Testing and Analysis and Technical Inspection and Certification Service; Erection, Commissioning or Installation service; Management, Maintenance or Repair service; Consulting Engineering service; etc., during the relevant period. On scrutiny of their ST-3 returns and audited final accounts, it was noticed that they had received an amount of Rs.76,27,10,041/- for the year 2012-13 towards ship repair service which alleged to attract service tax under the category of Management, Maintenance or Repair service; whereas the amount shown in the ST-3 returns under the head Management, Maintenance or Repair service was only Rs.71,97,15,372/-. Consequently, a demand notice was issued to the respondent. Similarly for the financial year 2013-14 and 2014-15, differences were noticed as per their financial documents and the value declared in ST-3 returns. Consequently, show-cause notice dated 21.03.2016 was issued for recovery of differential service tax amounting to Rs.4,14,49,507/- for the period 2012-13 to 2014-15 under the head Management, Maintenance or Repair service. Also, an amount of Rs.4,72,48,186/- short-paid due to adoption of lesser value for the period 2012-13 to 2014-2015; and also ineligible cenvat credit of Rs.14,52,66,531/- proposed to be recovered with interest and penalty. On adjudication, the learned Commissioner dropped the proceedings. Hence, Revenue is in appeal.

3. Reiterating the grounds of appeal, the learned Authorised Representative (AR) for the Revenue has submitted that the services rendered by the respondent is classifiable under 'Management, Maintenance or Repair service' as per Section 65(44) read with Section 62(105)(zzg) of the Finance Act, 1994 up to 30.06.2012 and as 'Taxable Service' with effect from

01.07.2012. Therefore, gross value should have been taken as taxable value for determination of service tax liability instead the respondent had adopted lesser taxable value resulting in short-payment of service tax.

4. Learned advocate for the respondent has submitted that the notional income is recognised as provided in the accounting standards issued by the Institute of Chartered Accountant of India. The Notional income is recognised on proportionate completion basis of the activity of repair dehors the fact that no consideration is received, no invoice is raised and there is no stage payment as per the contract. As per the Point of Taxation Rules, 2011, even in the case of continuous supply of service, there needs to be an obligation on the receipt of the service to make payment to the provider of service on completion of certain stages of the contract to fulfil the Point of Taxation. In absence of such contractual time lines, the Point of Taxation would be receipt of consideration or raising of invoices. The respondent having made payment of service tax on receipt of advance and on invoicing the customer, the valuation adopted by the respondent is in line with the provision of the Finance Act, 1994. The only case of the Revenue is that gross value should have been taken as taxable value. The said argument of the Revenue is in conformity with the allegation in the show-cause notice which states that the material portion separately indicated in the invoice, duplication of value and notional income included as required under the Accounting Standards issued by the Institute of Chartered Accountant of India which can be never treated as part of taxable value under the Finance Act, 1994.

5. Heard both sides and perused the records. A plain reading of the grounds of appeal which though vague leads to an understanding that the Revenue has disputed the impugned

order on the issue of demand of Rs.4,72,48,186/- on the ground that the correct assessable value was not shown and service tax was not discharged on the correct assessable value. Addressing the issue, the learned Commissioner held as follows:

“13. Now I may venture into the issue of difference in the income from ship repair services as per Financial Statements and that declared in the ST-3 returns. The assessee has contended that the difference is on account of two factors such as

(i) the inclusion of material portion in the financial statements, which is not forming part of the taxable value declared in the ST-3 returns(ii) Proportionate income accounted on a notional basis with regard to services which have not been completed but recognised in accounts as per the accounting Standards AS7, where no invoice has been raised since the service is not completed.

14. I find that the assessee has excluded the material portion of repair activity being the transfer of property in goods, during the course of execution of repair from the taxable value, while determining service tax liability. Prior to 01.07.2012, as per Notification no. 12/2003-ST dated 20.6.2003 exempted so much value of all taxable services as was equal to the value of goods and materials sold by the service provider to the service recipient subject to the conditions that there is documentary proof of such value of goods and materials. On the other hand, under the negative list scheme, specified descriptions of taxable services have been done away with and transactions that involve transfer of title of goods or are 'deemed to be sale of goods' under the Constitution are excluded from the ambit of services by the very definition of service as given under Section 658(44) of the Act. According to Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006 "Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. However, gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract.

After verifying the invoices issued by the assessee, I find that they have separately charged for the materials sold during the course of execution of the work and also charged the applicable tax under the KVAT on the material portion. Service tax has been separately charged on the service portion. Hence the valuation adopted by the assessee by excluding the value of material portion which is transfer of property in goods during the execution of repair activity which is separately charged in the invoices and determining the service tax liability on the service portion of the work is legally sustainable by virtue of the provisions under Rule 2A(1) of Service Tax 9 Determination of Value) Rules, 2006.

15. The next reason attributed for the difference in value as per P& L accounts and that in the ST-3 returns is Proportionate income accounted on a notional basis with regard to services which have not been completed but recognised in accounts as per the accounting Standards AS7, where no invoice has been raised since the service is not completed. The income as per the financial statements also includes notional income recognised on services pending completion and on which invoice would be raised only on completion of service. As Service Tax is payable only on completion of the service and / or raising of invoice, no service tax could be levied on the notional income recognised in the books of accounts.

16. The determination of point of taxation in the case of continuous supply of service was given under Rule 6 of The Point of Taxation Rules, 2011. But Rule 6 was omitted (w.e.f.01.04.2012) by Notification No.4/2012-ST dated 17.3.2012. However the explanation to Rule 6 has been shifted as proviso to Rule 3(b) of the Rules, by Notification No.4/2012-ST dated 17.3.2012. Continuous Supply of service (as per Rule 2(c) of POT Rules) means any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time. As per proviso to Rule 3(b) of POT Rules, where the provision of the whole or part of service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed the date of completion of the provision of service. The

Board vide circular No. 144/13/2011-ST dated 18.07.2011 had clarified that it is important to identify the completion of the service as the value of the services are required to be mentioned in the invoice. It was also clarified that the completion of service would not include only the physical part of providing the service but includes completion of other auxiliary services, that enable the service provider to issue an invoice, such as measurement, quality etc, which are essential pre-requisites for identification of completion of service. The Board further clarified that the interpretation regarding determination of date of completion of service shall also apply in the case of continuous supply of service.

17. In the case of services of repair of ships rendered by the assessee, from the nature of activity which is prolonged beyond a period of three months, it would be a continuous supply of services, but from the documents it is clear that they are not received any income during the course of repairing activity as instalment payments and the invoices are raised only on completion of services. In the case of receipts of any amount as advance, the assessee had remitted the service tax on such advances on the month of receipt. As per Rule 3 of POT Rules, the point of taxation shall be either the time when the invoice for the service is issued or the date of completion of service. The notional income recognised in the books of accounts periodically is neither on receipt of any income, nor the date of completion of any segment of service activity or the time of issue of any invoice, but in compliance with the Accounting Standards AS7. Hence I accept the contention of the assessee that service tax cannot be levied in the case of the notional income accounted in the financial statements, which have not been completed or where no invoice has been raised since the service is not yet complete. Therefore the non-inclusion of notional income in the taxable value for determination of service tax liability in ST-3 return is not in violation of the provisions under The Point of Taxation Rules, 2011.

2012-13

Turn over as per Financial accounts- Rs 68,59,93,041/-

Advance received added in the SCN- Rs. 7,67,17,000/-

{Adv. From Govt. Vessels (exempted – Rs.6,78,69,199) + Adv. Other Vessels – Rs.70,00,000 (ST already paid) + Adv. Lease rent –

Rs.18,47,817/- (ST remitted under Renting of Immovable Properties)=
Rs.7,67,17,000/-}

Total as per Financial Documents - Rs.76,27,10,041

Value of taxable Services after excluding the cost of materials involved -
Rs. 71,97 15,372

Value as declared in the ST-3 returns- Rs. 71,97,15,372/- (No difference)

2013-14

Turn over as per Financial accounts- Rs 62,11,23,834/-

Value of taxable Services after excluding the cost of materials involved -
Rs.47,21,88,942

Value as declared in the ST-3 returns- Rs 47,21,88,943/- (No difference)

2014-15

Turn over as per Financial accounts- Rs.61,88,84,971/-

Value of taxable Services after excluding the cost of materials involved -
Rs 49,20,94,782

Less value on advance receipts for which ST paid in 2013-14 -
Rs. 1,66,32,241/- [49,20,94,782 - 1,66,32,241 = 47,54,62,541/-] + Other
Works (Rs. 1378000) = Rs.47,68,40,541/-

Value as declared in the ST-3 returns- Rs.47,68,40,533/- (No difference)

As the difference in value as per P& L accounts and that in the ST-3 returns which is attributed to non inclusion of materials sold and the notional income recognised on services pending completion for which no invoices would be raised has been substantiated through their Workings, I hold that the demand on differential service tax on the account of difference in the figures in Financial accounts and that in the ST-3 returns is legally unsustainable and accordingly I drop the demand of Rs.Rs.4,14,49,507/- as proposed in Para 8 of the notice read with Para 24(1).

18. The second issue is differential service tax payable on account of difference in value as per accounts and the value as per invoices for the period 2012-13,2013-14, & 2015-16:1 find that the issue of differential tax had already been discussed in the Para 8 of the SCN So the demand of differential tax on the basis of difference in invoice value and that in accounts would amount to duplication. In the first issue the difference was arrived on the basis of the amount shown as Income in the P&L

Accounts and that declared in the ST-3 returns. On comparison I find that the value as per P& L accounts are on the higher side when compared to the Invoice value taken as shown in Para 11 of the notice. So the difference in taxable value which is comparison between the Income as per Ship servicing as per P& L Accounts and that in ST-3 returns which is proposed to be assessed in Para 24 (1), would naturally covers the issue of differential value between the invoice value and that shown in accounts as proposed in Para 24(ii) of the demand notice. This would result in duplication of demand. As the difference in the income as per Financial Statements and that declared in ST-3 returns was attributed due to factors such as non inclusion of cost of materials and the notional income recognised for the purpose of income tax, but the services of which are not yet completed for which the demand as proposed in Para 8 and assessed in Para 24(i) has been correctly addressed and the reasons for the same has been discussed in previous paras, I find it irrelevant to demand the same under Para 24(11) of the notice and accordingly drop the proposal to demand differential service tax of Rs.4.72.48.200d in ed in Para 11 of the SCN.

6. No rebuttal has been advanced by the Revenue in the grounds of appeal. Learned Commissioner has dropped the demand recording reason against each of the issue as narrated above. We do not find any discrepancy in the said observation of the Learned Commissioner. Consequently, the impugned order is upheld and the Revenue's appeal being devoid of merit is dismissed.

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

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)