

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 41755 of 2016

(Arising out of Order in Appeal No. 184/2016 (CXA – II) dated 30.05.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

The Port Department

Government of Puducherry
No. 1, Dumas Street
Puducherry – 605 001.

Appellant

Vs.

Commissioner of GST & Central Excise

Goubert Avenue
Beach Road
Puducherry – 605 001.

Respondent

APPEARANCE:

Shri Vikram Katariya, Chartered Accountant for the Appellant
Smt. G. Kripa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41398/2025

Date of Hearing: 25.11.2025
Date of Decision: 27.11.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 184/2016 (CXA – II) dated 30.05.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the Port Department of Puducherry planned to develop the Karaikal port through a BOT agreement with Marg Constructions Ltd. (MCL), which later assigned the project to its subsidiary, Karaikal Port Pvt. Ltd. (KPPL). KPPL, as concessionaire, was allowed to set tariffs for various port services on the premises and required to pay a 'concession fee' to the Puducherry Port based on

gross revenue from port services. The gross revenue included revenue generated by the concessionaire from the operation of the port or any other service in respect of vessels and cargo and all other revenues from the services within the port. The Central Excise Department held that the royalty/ concession fee/ lease charges received by the Port from KPPL represents the consideration received by the Port Department for providing services relatable to the taxable service defined under sec. 65(105)(zzzq) of the Finance Act, 1994 under the category of 'Support Services of Business or Commerce'. After following due process, the Ld. Adjudicating Authority confirmed the classification as proposed and demanded service tax for the period February 2012 to June 2012 with interest and imposed penalties. On appeal, the First Appellate Authority upheld the findings but granted cum-tax benefit where applicable and dismissed the penalty under section 76, leading to this current appeal.

3. The learned Chartered Accountant Shri Vikram Katariya appeared for the appellant and Smt. G. Kripa, Ld. Authorized Representative appeared for the respondent.

3.1 Learned Chartered Accountant Shri Vikram Katariya, representing the appellant, stated that the impugned Order pertains to the same dispute as in their earlier case covering the period from January 2007 to January 2012. The previous order was confirmed by the Learned Commissioner of Central Excise, Puducherry via Order-in-Original No. 4/2013 (ST)(C) dated 08.05.2013, under the category 'Support Service of Business or Commerce.' Consequently, the appellant challenged this decision before the Tribunal at Chennai. The Division Bench, through Final Order No. 40404/2023 dated

06.06.2023, adjudicated the matter on its merits in their favor, thereby setting aside the Order-in-Original. Accordingly, he requested that their appeal for the subsequent period may be similarly allowed.

3.2 Smt. G. Kripa, Ld. Authorized Representative took us through the impugned order and reiterated the findings given therein. She prayed that the appeal may be rejected.

4. We have heard the parties to the appeal and perused the connected documents. We find that as stated by the appellant the identical matter for the earlier period was decided by this Tribunal vide Final Order No. 40404/2023 in the appellant's own case. Para 6 of the Order states as below.

"6. We find that to bring the activity covered by the 'Concession Agreement For Development Of Karaikal Port Project', between the Port Department and KPPL under sec. 65(105)(zzzq) of the Finance Act, 1994, the "taxable service" provided or to be provided, to KPPL by the Port Department, should be in relation to support services of business or commerce, in any manner. Revenue is of the opinion that the entire activities carried out under the concession agreement are in the nature of composite services, which consists of a combination of different taxable service and therefore it should be classified as if it consisted of a service which gives the essential character in accordance with Section 65A of Finance Act, 1994. The said activity of the Port Department corresponds to the provision of "Infrastructural Support Services" in relation to business or commerce as defined under section 65(104C) of Finance Act, 1994 and is taxable accordingly. By the Concession agreement, the Appellant has entrusted upon KPPL the rights to develop / operate / maintain the Port including project facilities on a BOT basis. The expression "infrastructural support services" given under Section 65(104C), includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security. None of these services are being provided or to be provided, to KPPL by the Port Department. KPPL has developed the land, built a Port and are offering services to the trading community on the basis of fees fixed by KPPL. This contractual permission by the Port Department to KPPL for setting up and running port facilities cannot be termed as support services of business

or commerce, to be taxed at the Port Departments hands. The 'concession fee' paid by KPPL to the Puducherry Port as a percentage of gross revenue generated by the concessionaire each year is also not a payment for any support services of business or commerce given by the Port Department to KPPL. It is basically a payment for the rights to develop / operate / maintain the Port including project facilities. We are accordingly of the view that the impugned order has erred in classifying the activity of the BOT contract under sec. 65(105)(zzzq) of the Finance Act, 1994 and that the levy must fail."

5. Judicial discipline requires us to follow the judgment of the Coordinate Bench for an earlier period, especially when the issues therein have not been distinguished on facts by Revenue or the Order shown to have been set aside or modified by a superior Court. Having decided the matter in favour of the appellant, we do not deem it necessary to examine the other grounds of appeal and various judgments cited by the appellant supporting their view.

6. We hence set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 27.11.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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