IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

(1) <u>Service Tax Appeal No.92 of 2009</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.Commr./BBSR I/ST-02/2009 dated 29.01.2009 passed by Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I)

M/s Orissa Industrial Infrastructure Development Corporation
(IDCO Towers, Janpath, Bhubaneswar-751022, Dist.-Khurda)

Appellant

VERSUS

Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

WITH

(2) <u>Service Tax Appeal No.259 of 2012</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.Commr./B-I/ST/07/2012 dated 16.03.2012 passed by Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I)

M/s Orissa Industrial Infrastructure Development Corporation
(IDCO Towers, Janpath, Bhubaneswar-751022, Dist.-Khurda)

Appellant

VERSUS

Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

AND

(3) <u>Service Tax Appeal No.520 of 2012</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.Commr./B-I/ST/18/2012 dated 27.09.2012 passed by Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I)

M/s Orissa Industrial Infrastructure Development Corporation
(IDCO Towers, Janpath, Bhubaneswar-751022, Dist.-Khurda)

Appellant

VERSUS

Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

AND

(4) Service Tax Appeal No.75540 of 2014
(On behalf of Appellant)

(Arising out of Order-in-Original No.Commr./B-I/ST/05-06/2013 dated 31.01.2014 passed by Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I)

M/s Orissa Industrial Infrastructure Development Corporation
(IDCO Towers, Janpath, Bhubaneswar-751022, Dist.-Khurda)

Appellant

VERSUS

Commissioner of Central Excise,Customs & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

APPERANCE :

Shri B.S.Tripathy & Mr.Amaresh Mishra, both Advocates for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...77342-77345/2023

DATE OF HEARING : 13.09.2023

DATE OF PRONOUNCEMENT : **17.10.2023**

Per Ashok Jindal :

All the appeals are having a common issue, therefore, all are disposed off by a common order.

2. The facts of the case are that the appellant is a statutory Corporation established under IDCO Act, 1980 to carry out the Governmental functions for development of industrial infrastructures in the State of Orissa. In consequence of the IDCO Act, 1980, all these Income Heads of the appellant are related to land acquisition by IDCO of private lands under Land Acquisition Act, 1894 and Government Land settled with IDCO under Orissa Government Land Settlement Act,

1962. After acquisition & settlement, the land vested with IDCO under Section 31 (2) of IDCO Act, 1980 free from all encumbrances and thereafter, handed over to the industrialists/entrepreneurs on long term lease basis. The State Government in Industries Department formulated Industrial Policy Resolution (IPR) since 2001 with an object to create positive accumulated investment in industries by making provision of Land Bank Scheme and allowing IDCO land for industrial purposes. All Government lands alienated first Lease Deed in favour of IDCO, then IDCO sub-lease to Industrialists as per direction of the Government under Sections 32 & 33 of IDCO Act,1980 Acquisition and allotment of land after acquisition in respect of private land and after vesting of the Govt. land, the following statutory Act & Rules are followed:

i) IDCO Act, 1980 and IDCO Rules, 1981.
ii) Odisha Industrial Facilitation Act, 2004 & Rules.
iii) IPR, 2001 and 2007 and onwards.
iv) Land Acquisition Act, 1894 and Land Acquisition (Amendment) Act, 1894.
v) Land Acquisition (Company) Rules, 1963.
vi) Industrial Policy Resolutions (IPR) of State on Allotment/Transfer of both IDCO and Govt. land.
vii) Orissa Govt. Land Settlement (OGLS) Act, 1962 and OGLS Rules, 1983.
viii) Orissa Survey & Settlement Manual & Orissa Land Records Act.
ix) Govt. Grants Act, 1974.
x) Orissa Prevention of Land Encroachment (OPLE) Act, 1972 and OPLE Rules, 1985.
xi) Forest Conservation Act and Environment (Protection) Rules, 1986.
xii) Orissa Public Premises (Eviction) Act, 1872.
xiii) Odisha Irrigation Act ,1959 and Rules 1959.

2.1 In addition to land premium as per the rate prescribed by the Government for allotment of land, IDCO also collects Annual Maintenance Charge (AMC), Incidental Charges, Ground Rent & Cess and damage rent in case of occupation of land after cancellation of allotment as per Section 57 of IDCO Act, 1980.

2.2 In accordance to their activity, certain charges were recovered from the allottee of land for the maintenance and proper functions of the industrial area under certain headings, namely :

Sl. No.	Income head as per P/L Account	Income as per P/L Account for 2007-08 (in Rs.)	Income as per P/L Account for 2008-09 (in Rs.)
1	Administrative Charges Realized (LA)	54,13,65,311	57,38,37,685
2	Processing Fees	46,06,835	42,51,162
3	Transfer Fees	1,16,19,529	1,76,40,722
4	Supervision Charges	5,01,28,702	8,51,68,006
5	Works Income	5,11,144	5,58,843
6	Income from Ekamra Haat	12,44,347	16,47,174
7	Rent Received from Industrial Estates	37,39,763	9,56,399
8	Interest received on plots	2,00,70,374	32,87,162
9	Interest received on sheds	1,14,877	38,22,492
10	Occupation Charges realized from Industrial Estates	2,25,876	2,63,209
11	Water charges Realized from I.E.s , Buildings & Tenants	2,52,40,241	4,73,55,270
12	Ground Rent Collection	1,59,76,914	1,73,68,269
13	Cess Collection	1,17,10,510	1,30,21,469
14	Maintenance Charges Realized	95,79,254	1,02,36,022
15	Infrastructure Maintenance Charges Realized	1,73,89,233	1,92,17,751
16	Interest receipts on Land (Duburi Steel Complex)	0	2,61,581
17	Contract Receipts (construction)	1,63,44,050	1,20,81,389

2.3 The Revenue is of the view that on such amounts received by the appellant are the services rendered under various headings, namely, Real Estate Agent's Service, Consulting Engineer's Service, Technical Testing and Analysis Service, Renting of Immovable Property Service, Maintenance and Repair Service, Commercial and Industrial Construction Service. Therefore, it was alleged that on the charges recovered by the appellant from the allottee in addition to the land premium, the appellants are liable to pay service tax.

2.4 Therefore, various show-cause notices were issued to the appellants to demand service tax along with interest and to impose penalty on the appellants.

2.5 The show-cause notices were adjudicated and orders were passed demanding service tax along with interest and penalties were also imposed.

2.6 Against the said order, the appellants are before us.

3. The ld.Counsel for the appellants, submits that appellant being a statutory Corporation established under IDCO Act, 1980, is discharging statutory functions for acquisition of land and sovereign functions of the industries in terms of IDCO Act, 1980, which are related to various State Government's Order. Therefore, the appellants are not liable to pay service tax.

3.1 He further submits that for income from Ekamra Hat, the demand is sought under Renting of Immovable Property Service. The appellant is paying service tax under Mandap Keeper Service. The rent is collected as per the rate prescribed by the Central Government as well as State Government through Scheme for Development of Commercial Handicraft. Therefore, demand under Renting of Immovable Property Service under the said heading is not sustainable.

3.2 The appellant has contended that the service tax has been demanded under the following heads and given the clarifications thereof:

Income from Ekamra Hat:

The income pertains to rent received from Shops and Space inside Ekamra Hat Premises and rent realized from space in Ekamra Hat premises, which has been treated as Income from Ekamra Hat. IDCO has been paying Service Tax under Mandap Keeper Service Head. The rent is being collected as per the rate prescribed by both the Central Govt. as well as State Govt. through Scheme for Development of Commercial Handicraft. As a matter of fact, the repair and maintenance cost in Ekamra Hat is very high compared to the rent collected.

Rents Received from Industrial Estates:

Rents collected from Shops & Plots under Industrial Heads are collected from Entrepreneurs. The rent collected are to cover up the cost of repair, maintenance of Sheds, Plots in Industrial Estates, Capital Expenditure on Roads, Water and Engineering System as well as Electrical Installation. Such collection from Industrial Estates are statutory levy U/s.17 of IDCO Act, 1980.

Interest received on Plots/ Sheds:

The Circular dt.01.10.2002 of IDCO provided revision of rate of interest read with Govt. Revenue Department O.M. dt.26.11.2010 which are being charged w.e.f. 01.10.2002 on all the dues of the Corporation including HP dues, ground rent, cess, IMC, Water dues, non-payment of Shed cost in time with simple interest @12% p.a. and in case of default in payment in any type, additional penal interest @ 2% p.a. are being charged on the penalty amount for the defaulting period. Such collection is to bring discipline on allotment of property and recover deployment of employee cost. All the aforesaid Circular & Orders were issued in terms of Sec.35 of IDCO Act, 1980. IDCO Circular dt.01.10.2002 & Govt. Revenue Dept. O.M. dt.26.11.2010 are enclosed.

Occupation Charges realized from Industrial Estates:

Excess charges in the nature of penalty are being collected as per Sec.38 of IDCO Act,1980 from Entrepreneurs of Industrial Estate, who occupies IDCO land unauthorizedly beyond the period up to which land/sheds are regularized in their names and such collection is Occupation Charges and also for unauthorized construction and use of land contrary to the terms of holding held in terms of Section 38 of the IDCO Act. according to which any person awarded is in existence or apart any other person, undertakes or carries out construction or alternates any building in Industrial Estate or Industrial area contrary to the terms held under this Act, shall be of application to the extent of Rs.10,000/- in case of continuation of contravention further fine of Rs.200/- for over during his such first commission of offence.

Water Charges realized from Industrial Estates, Buildings and Tenants:

As per Orissa Irrigation Act, 1959 and Rules framed thereunder Govt. prescribed Water Rate @ Rs.250/- from 18 July 1998 per lakh gallon of water for Industrial/Commercial consumption. Copy of Revenue Department Gazette Notification dt.18.07.1998 is filed herewith.

Water charges are collected by IDCO from Entrepreneurs, Tenants from Industrial Estates and Industrial Areas have been deposited by IDCO in Govt Treasury. IDCO has been paying huge amount for deployment of employee to manage of Water Supply system.

Ground Rent & (xiii) Cess Collection

As per IPR, the ground rent was to be charged @ 1% of the land value. Further as per Section-73 of Orissa Land Reforms Act, 1960 payment of premium was to be as per the prescribed rate. Further the provisions were there for stamp duty. As per Section 70 the payment of premium of rent and cess of the land of IDCO as well as Govt. was in the nature of compulsory levy as per Sec. 17 of the IDCO Act. IDCO pays ground rent/cess to concerned Revenue Officers / Tahsildars on being collected from Entrepreneurs/ Industrialists @ 1% ground rent and @ 0.75 % as Cess as per demand raised by the concerned Tahsildars. All such collections are deposited with Govt of Odisha under different Revenue Collection Heads.

Maintenance Charges Realized:

Maintenance Charges realized @ Rs.4.00 per Sq.Ft. from tenants of IDCO's Buildings namely Fortune Tower / OCAC Building/ Shops & Sheds at Ekamra Hat used on rent for Commercial purposes for operation 24 x 7 100% power backup, security, cleaning of Toilet etc., and land spacing maintaining Environments. IDCO pays huge amount to outsourcing agencies for maintenance and pays for deployment of Lift Operators, Energy Charges and power backup.

Infrastructure Maintenance Charges Realized: -

In terms of Section 17 of IDCO Act, IDCO charges different IMC to different categories of property, Roads, electricity, Water Supply facilities. However, IDCO does not collect any IMD from Industrial Estates/ Power Infrastructures. IDCO provides Water Supply system and repair maintenance of those assurances and also suffer from huge loss on the said Account due to non-recovery of IMD from sick Industrial Estates/Units.

Interest receipts on Land (Duburi Steel Complex):

IDCO invested huge amount on purchase of land at Duburi area and spent a lot in rehabilitation and infrastructure development in that area. IDCO allotted lands to Industries on payment land cost to be paid on instalments during 36 to 60 months. Since there was default in payment of installments by some Units, interest was collected at Duburi Steel Complex from those defaulted Industrial Units for the defaulted period on defaulting amount of land cost .

Contract Receipts (Construction):

IDCO gets Work orders from Govt./ Corporations for construction of Govt./Corporation Buildings as per the direction of the Govt. and out of estimated amount, IDCO gets supervision charges @ 8% of the actual expenditure with additional incentive of 2% for timely compliance of the awarded work. Execution of work would be strictly in accordance with the plan, design prepared by IDCO and accepted by Govt. Building including Govt. College Buildings as per Work procedure issued by Govt. of Odisha in OPWD Code of Works Dept. In this context sample copy of Agreement for construction of the Odisha State Beverages Corporation & Ancillary Building for storage of Alcoholic Beverages, Chhatarpur and MoU for construction of new Class Room of Kunja Bihari College, Bhubaneswar, are filed.

3.3 It is his submission that the appellant is paying service tax under Mandap Keeper Service and Rent Receipt Service.

3.4 He also relied on the Notification No.41/2016-Service Tax dt.22.09.2016 to show that Central Government is exempted taxable service on State Government Industrial Development Corporation/ Undertakings to Industrial Units by way of long term 30 years or more lease of industrial plots from service leviable U/s.66(b) of the Act as is leviable onetime premium summary price cost by any other names payable for such lease.

3.5 He, therefore, prayed that the proceedings against the appellants be dropped.

4. On the other hand, the ld.A.R.for the Revenue, supported the impugned orders.

5. After hearing both sides, we find that the appellant is a statutory Corporation established under IDCO Act, 1980 and discharging functions of acquisition of land and allotted the same as per the guidelines of the Act to the various Industrial Units on lease basis and charged certain amounts in lieu of this and the Revenue is of the view that the said charges are taxable under the provisions of Finance Act, 1944. Therefore, each heading on which service tax has been demanded is being dealt separately as under :

(1) Administrative Charges Realized :

With reference to service tax demanded under the category of "Real Estate Agency's Service" for Administrative Charges Realized, we find that the said charges have been collected by the appellants with reference to the acquisition of land as prescribed under IDCO Act, 1980. Therefore, we hold that the said Administrative Charges Realized by the appellants are statutory charges for allotment of plot, which does not cover under "Real Estate Agency's Service". Accordingly, no service tax is payable on the said amount.

(2) Processing Fees :

With regard to Processing Fee, we find that the processing fee is collected from the land allotees for post-acquisition Allotment and consequential Transfer of property in their favour in Industrial Estate and Industrial area as per IDCO Act, 1980. Therefore, no service tax is payable one the said amount.

(3) Transfer Fees :

We find that the said charges have collected in terms of Circular issued by IDCO on mutual transfer of lease hold interest in IDCO allotted properties in Industrial Estate and Industrial Area on payment of processing fee and transfer fee and the same has been fixed by IDCO. The said services are in the statutory levy in nature, therefore, <u>no service tax is payable by the appellants on the said charges</u>.

(4) Supervision Charges :

We find that the Supervision Charges are collected from Government Companies, Government Projects, Local Bodies like Municipalities and Corporations at a fixed percentage on deposit work expenditure in terms of the Agreement issued as per Government direction and these Supervision Charges on deposit work are essentially treated as reimbursement of IDCO's office expenditure covering its' cost in floating Tender Call Notice, Engineering Operation, Design Cost, Manpower Cost employed for Estate Soil Testing supervision cost and fixed expenditure on Ministerial staff. The said Supervision Charges are required for Development of the Industrial Estate, which is statutory functions, which is to be discharged by the appellant. Accordingly, the same cannot be termed as "Consulting Engineering Service", therefore, <u>no service tax is payable by the appellants on the said Supervision Charges</u>.

(5) Works Income :

Under this Head IDCO, the appellants collected (i) Soil Testing Charges for Laboratory Expenses with reimbursement cost of Jr. Scientist of State Soil Testing Laboratory, Bhubaneswar and (ii)

Equipment Hire Charges including cost of Operator, repair and maintenance of equipment. Up to 2007-2008, there was Technical Testing conducted by IDCO through its own Mechanical Maintenance Division, which activity was closed since 2008 and has been undertaken through other Agencies on payment of cost. We find that the said activity has been hired by the appellants for testing of the soil of the industrial area, which were beneficiaries to the land allottees, which do not qualify as "Technical Testing and Analysis Service". Therefore, we hold that on the said amount received by the appellant, the appellant is not liable to pay service tax.

(6) Income from Ekamra Hat :

We find that this is a rent received from Shops and Space inside Ekamra Hat Premises and rent realized from space in Ekamra Hat premises and the appellant is paying Service Tax under Mandap Keeper Service. We find that such services are duly classified under Mandap Keeper Service because the appellant is collected rent/charges from the exhibition of Ekamra Hat from time to time and realized the amount as rent from the person. Space has been provided by the appellant and the said services is qualified as Mandap Keeper Service and the appellant is paying service tax under the said Head. Therefore, the said activity does not qualify as Renting of Immovable Property Service. In that circumstances, no service tax can be demanded from the appellants under Renting Immovable Property Service, but service tax paid under Mandap Keeper Service by the appellant is correct and the same is payable by the appellants under Mandap Keeper Services.

(7) Rent received from Industrial Estates :

The appellant is receiving rents from Shops & Plots. It is the contention of the appellant that this rent collected are to cover up the cost of repair, maintenance of Sheds, Plots in Industrial Estates, Capital Expenditure on Roads, Water and Engineering System as well as Electrical Installation under Section 17 of IDCO Act, 1980. We find that the same is statutory levy in terms of IDCO Act, 1980, therefore, no service tax is payable by the appellant on the said rent received by the appellant.

(8) Interest received on plots :
(9) Interest received on sheds :

The appellant has received the interest on delayed payment of dues of HP dues, Ground rent, cess, water charges and other payments from plot holders/share-holders. The said interest received is not related any service provided by the appellant. In that circumstances, the appellant is not liable to pay service tax.

(10) Occupation Charges realized from Industrial Estates :

This is the recovery from Entrepreneurs of Industrial Estate, who occupies IDCO land unauthorizedly beyond the period up to which land/sheds are regularized in their names and such collection is Occupation Charges and also for unauthorized construction and use of land contrary to the terms of holding held in terms of Section 38 of the IDCO Act, accordingly to which any person awarded is in existence or apart any other person, undertakes or carries out construction or alternates any building in Industrial Estate or Industrial area contrary to the terms held under the Head has to pay the said amount for commission of the said offence. We find that these charges are the levy as occupied the land unauthorizedly, which cannot be terms as Renting Immovable Property, therefore, no service tax is payable by the appellant from the said services.

(11) Water Charges realized from Industrial Estate, Buildings and Tenants :

The appellant is collecting water charges in terms of Orissa Irrigation Act, 1959 and required for water supply to the Industrial Estate, Buildings and Tenants. These are the water charges. Therefore, it cannot be termed as Renting Immovable Property. Therefore, the said activity is not liable to service tax under Renting Immovable Property. Therefore, no service tax is payable on the appellant on the said services.

(12) Ground Rent Collection :

(13) Cess Collection :

As per IPR, the ground rent is to be charged @ 1% of the land value As per IPR, the ground rent is to be charged @ 1% of the land value and as per Section-73 of Orissa Land Reforms Act, 1960 payment of premium was to be as per the prescribed rate. Further, the provisions were there for stamp duty and as per Section 70 the payment of premium of rent and cess of the land of IDCO as well as Government was in the nature of compulsory levy as per Section 17 of the IDCO Act. IDCO pays ground rent/cess to concerned Revenue Officers on being collected from Entrepreneurs/ Industrialist as per demand raised by the concerned officers. Therefore, the said collections are statutory levy, which the appellants collected from the allottees and transferred the same to the concerned officers, Revenue Department, Government of Orissa. Therefore, the said service cannot be said as Renting of Immovable Property and accordingly, no service tax is payable by the appellant on the said activity.

(14) Maintenance Charges Realized :

The appellant is realizing maintenance charges from the tenants of IDCO's Buildings which are used on rent for Commercial purposes such as, power backup, security, cleaning of Toilet etc., and land spacing maintaining Environments. IDCO pays huge amount to outsourcing agencies for maintenance and pays for deployment of Lift Operators, Energy Charges and power backup of maintaining activity. The charges have been collected for manufacture of building security, cleaning etc. therefore, the same is qualified under the category of "Maintenance and Repair Service". Therefore, on the said amount collected by the appellant, the appellant is liable to pay the service tax. It is the contention that the said services has been out-sourced by the appellant. In that circumstances, on payment by the appellant to the outsource agency and paid the service tax thereon, is also entitled for cenvat credit of service tax paid on hiring charges by the appellant. In that circumstances, the appellant is liable to pay service tax under the category of Maintenance and Repair Service on the maintenance charges recovered by the appellant.

(15) Infrastructure Maintenance Charges Realized

The appellant is maintaining roads, electricity supply facilities and provided water supply system and repair maintenance of those assurances and also suffer from huge loss on the said account due to non-recovery of IMD from sick units and the said charges have been recovered by the appellant in terms of Section 17 of IDCO Act, 1980 as these are the statutory levy and the maintenance and repair etc. are not chargeable to service tax, which are the statutory functions provided by the appellant. Therefore, the said services do not qualify as maintenance and repair service. Accordingly, no service tax is payable by the appellant on the said charges.

(16) Interest receipts on Land (Duburi Steel Complex)

The appellant has invested huge amount on purchase of land at Duburi area and spent a lot in rehabilitation and infrastructure development in that area. The appellant allotted lands to Industries on payment land cost to be paid on instalments and in case default in payment of installments, interest is collected by the appellant from Duburi Steel Complex. The said interest collected for lease of land to the industries is not chargable to service tax under the category of Renting and Immovable Property and the same cannot be terms as Renting and Immovable Property. In that circumstances, no service tax is payable by the appellant on the said services.

(17) Contract Receipts (Construction)

The appellant gets Work orders from Government/ Corporations for construction of Government/Corporation Buildings as per the direction of the Government and out of estimated amount, the appellant gets supervision charges @ 8% of the actual expenditure with additional incentive of 2% for timely compliance of the awarded work in accordance with the plan, design prepared by

IDCO and accepted by Government Building including Government College Buildings as per Work procedure issued by Government of Odisha in OPWD, Works Department. The appellant also gets works order from Companies as well as MNCs not being Government on competitive bidding on works contract basis. After completion of work, the appellant submits bill and gets payment of bills after deducting of income on service tax and the appellant pays service tax on such contract receipts. The said activity of the appellant of works order, the appellant is paying service tax under Commercial and Industrial Construction Services and the same is liable as "Commercial and Industrial Construction Service", therefore, the same amount is confirmed against the appellant.

6. In view of the above observations, the appellant is liable to pay the service tax on income from Ekama Hat under heading "Mandap Keeper Service", the charges under the category of "Maintenance and Repair Service" and contract receipts under the category of "Commercial and Industrial Construction Service".

7. In view of the above facts and circumstances of the case, no penalty is imposed on the appellants. Accordingly, the same is dropped.

8. Consequently, the appeals are disposed off in the above manner.

(Pronounced in the open court on **17.10.2023**)

Sd/

(Ashok Jindal)
Member (Judicial)

Sd/
(K.Anpazhakan)
Member (Technical)

mm