

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI  
COURT No. I**

**APPEAL No. ST/87588/2015**

(Arising out of Order-in-Original No. 14-19/STC-I/SKS/15-16 dated 12.8.2015 passed by Principal Commissioner of Service Tax, Mumbai-I)

<b>Commissioner of Service Tax-I, Mumbai</b>	<b>Appellant</b>
Vs.	
<b>Traffic Manager, Mumbai Port Trust</b>	<b>Respondent</b>

Appearance:

Shri Dilip Shinde, Assistant Commissioner (AR), for appellant  
Shri Bharat Raichandani, Advocate, for respondent

**CORAM:**

**Hon'ble Mr. S.K. Mohanty, Member (Judicial)**  
**Hon'ble Mr. Sanjiv Srivastava, Member (Technical)**

Date of Hearing: 26.12.2018  
Date of Decision: 26.12.2018

ORDER No. **A/88172/2018**

Per: S.K. Mohanty

Revenue is in appeal against the impugned order dated 12.8.2015 passed by the Principal Commissioner of Service Tax-I, Mumbai.

2. Brief facts of the case are that the respondent is registered with Service Tax Department for providing taxable service under the category of "Port Services", defined under the Finance Act, 1994. During CERA audit, it was observed that the respondent had entered

into agreement with M/s. ONGC, permitting it to lay pipelines for carrying within the Port Trust limit on land and sea. The pipelines in question, were buried under the land and concealed within the Port Trust limits. In consideration for allowing ONGC to lay sub-marine pipelines through the Port Trust limits, the respondent was paid compensation. The Service Tax Department interpreted that the compensation received by the respondent from ONGC is taxable under the category of Port Services. Since the respondent did not pay the service tax on such taxable service, show cause proceedings were initiated, seeking for confirmation of the service tax demand. While adjudicating the dispute, the learned adjudicating authority had dropped the show cause proceedings, holding that the services provided by the respondent pursuant to the agreement with ONGC was not conforming to the definition of Port Services. Revenue has assailed the impugned order on the ground that the services provided by the respondent to ONGC pursuant to the agreement, should appropriately be classifiable under the taxable category of "Renting of Immovable Property" service.

3. Heard both sides and perused the records.
4. We find that the show cause notice was issued to the respondent, seeking for confirmation of the service tax demand under Port Services. Upon proper analysis

of the case records, the adjudicating authority has held that such services provided by the respondent should not confirm to the taxable entry of Port Services and accordingly, dropped the show cause proceedings initiated against the respondent. For the first time, Revenue through this present appeal has raised a new ground regarding classification of service under the taxable entry of Renting of Immovable Property Service. Since classification under such service was never the subject matter of dispute before the lower authority and no specific show cause notice was issued to the respondent, alleging classification under such service, the Revenue is not permitted to take such new stand for deciding the appeal in its favour. In other words, since the respondent was not specifically put to notice regarding change of classification of the service, the present classification sought for by the Department at this juncture under entirely a new and different category of service cannot be sustained in the eyes of law.

5. Therefore, we do not find any merits in the appeal filed by Revenue. Accordingly, the same is dismissed.

(Pronounced in court)

**(Sanjiv Srivastava)**  
**Member (Technical)**

**(S.K. Mohanty)**  
**Member (Judicial)**