CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Service Tax Appeal No. 89884 of 2014

(Arising out of Order-in-Original No. 53/ST/COMMR/2014 dated 12.08.2014 passed by the Commissioner of Central Excise & Customs, Aurangabad)

M/s. Maharashtra Industrial Development Corporation **Appellant**
"Udyog Sarthi", Mahakali Caves Road,
Andheri (E), Mumbai 400 093.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO,
Aurangabad 431 003.

WITH

Service Tax Appeal No. 90066 of 2014

(Arising out of Order-in-Original No. 54/ST/COMMR/2014 dated 12.08.2014 passed by the Commissioner of Central Excise & Customs, Aurangabad)

M/s. Maharashtra Industrial Development Corporation **Appellant**
"Udyog Sarthi", Mahakali Caves Road,
Andheri (E), Mumbai 400 093.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO,
Aurangabad 431 003.

AND

Service Tax Appeal No. 85671 of 2015

(Arising out of Order-in-Original No. 55/ST/COMMR/2014 dated 14.08.2014 passed by the Commissioner of Central Excise & Customs, Aurangabad)

M/s. Maharashtra Industrial Development Corporation **Appellant**
"Udyog Sarthi", Mahakali Caves Road,
Andheri (E), Mumbai 400 093.

Vs.

Commissioner of Central Excise, Aurangabad **Respondent**
Town Centre, N-5, CIDCO,
Aurangabad 431 003.

Appearance:

Shri A.R. Krishnan, Advocate, for the Appellant

Shri Dilip Shinde, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/85081-85083/2022**

Date of Hearing: 04.01.2022
Date of Decision: 04.01.2022

PER: SANJIV SRIVASTAVA

These three appeals are directed against the orders of the Commissioner of Central Excise and Customs, Aurangabad, as detailed in table below:-

Sl. No.	**Appeal No.**	**Order-in-original No.**	**Service Tax demand**	
			Period	**(Rs.)**
1.	ST/89884/2014	53/ST/COMMR/2014 dated 12.08.2014	01.04.08 – 30.06.12	45,71,766/-
			01.07.12 – 31.12.12	6,52,431/-
			Total	**52,24,197/-**
2.	ST/90066/2014	54/ST/COMMR/2014 dated 12.08.2014	01.04.08 – 30.06.12	61,94,713
			01.07.12 – 31.12.12	7,60,933/-
			Total	**69,55,646/-**
3.	ST/85671/2015	55/ST/COMMR/2014 dated 14.08.2014	01.04.08 – 30.06.12	78,04,840/-
			01.07.12 – 31.12.12	11,68,438/-
			Total	**89,73,278/-**

2.1 The fact of the case is that the appellant is providing 'Management, Maintenance or Repair Service' inasmuch as they carry out maintenance and repair of streets, street lights, water supply, drainage etc. They collect from the lessees of the plots, an annual fee for providing such services, calling it as 'service charge'. The case of the Revenue is that the appellant is liable to pay service tax on such service under the category of 'Maintenance, Management or repair Service.'

2.3 We have heard Shri A.R. Krishnan, Advocate for the appellant and Shri Dilip Shinde, Assistant Commissioner, for the Revenue.

2.4 Learned counsel submits that –

- The issue is no longer res integra and has been decided in their favour by this Tribunal and also Hon'ble Bombay High Court for the following decisions:
  - i. Maharashtra Industrial Development Corporation [2018 (9) GSTL 372 (Bom.)].
  - ii. Maharashtra Industrial Development Corporation [Order dated 28.02.2018 of Hon'ble Bombay High Court].
  - iii. Maharashtra Industrial Development Corporation [Order No. A/85132/18 dated 29.01.2018 of the Tribunal].
- The Assistant Commissioner of GST & CX vide his letter dated 23.11.2021 has informed that the Board has decided not to challenge the order of Hon'ble Bombay High Court in Hon'ble Supreme Court as per letter issued vide F No. 276/203/2017-CX.8A dated 15.02.2018.
- Accordingly these appeals may be allowed.

2.5 Learned AR reiterates the findings recorded in the impugned order.

3.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

3.2 We find that Hon'ble Bombay High Court has considered the issue in the case of the appellant, reported at 2018 (9) GSTL 372 (Bom.), holding as follows:-

*"**5.** We have given careful consideration to the submissions. Firstly, it will be necessary to note what is set out in the circular*

dated 18th December, 2006 bearing No. 89/7/2006. Clauses 2 and 3 of the said circular read thus :

> *"2.The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of Taxable Service to a person and, therefore, no Service Tax is leviable on such activities.*
>
> *3.However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy then in such cases, Service Tax would be leviable. if the activity undertaken falls within the ambit of a Taxable Service."*
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> *(Underlines supplied)*

6. *Thus, the activities performed by sovereign or public authorities under the provisions of law which are in the nature of statutory obligations are covered by clause 2 which provides that the fee collected by such sovereign or public authorities for performing such activities is in the nature of compulsory levy Only if such authority performs service which is not in the nature of statutory activity and the same is undertaken for a consideration which is not in the nature of statutory fee, Service Tax would be leviable if the activity undertaken otherwise falls within the ambit of Taxable Service.*

7.*Going by the show cause notice, the allegation is that the Respondent - MIDC has collected service charges from the plot owners/plot allotters in consideration of having provided them various facilities including maintenance, management and* *repairs of the facilities in the MIDC area. As stated earlier, reliance is placed on clause (64) of Section 65 of the said Act. As pointed out earlier, MIDC is already registered under the category of "renting of immovable property" and for services covered by such category; MIDC is admittedly paying Service Tax.*

8.*At this stage, a reference will have to be made to certain provisions of the MID Act. The preamble of the Act shows that for securing orderly establishment of Industrial Areas and Industrial Establishments of Industries in the State of Maharashtra and for assisting generally in the organization thereof, MID Act has been enacted for the establishment of a Corporation (MIDC). As stated earlier, MIDC is set up under sub-section (1) of Section 3 of the MID Act. The functions of MID have been enlisted in Section 14 which reads thus*

> *"**14. The functions of the Corporation shall be.** -*
>
> *(i) Generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra, and*
>
> *(ii) In particular, and without prejudice to the generality of clause (i), to -*
>
> *(a) Establish and manage industrial estates at places selected by the State Government;*
>
> *(b) Develop industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves;*
>
> *(d) Undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith."*
>
> *(Emphasis added)*

9. *Hence, one of the statutory functions of MIDC is to establish and manage the industrial estates at places selected by the State Government. Clause (a) of Section 2 of MID Act defines amenity which reads thus :*

"amenity" includes road, supply of water or electricity, street "2(a) lighting, drainage, sewerage, conservancy and such other convenience as the State Government may, by notification in the Official Gazette specify to be an amenity for the purpose of this Act."

10. *In the case of Ramtanu Co-operative Housing Limited and Another, the Apex Court was dealing with the issue of constitutional validity of MID Act. In paragraphs 15 and 16, the Apex Court held thus :*

> *"15. The pith and substance of the Act is establishment, growth and Organisation of Industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principal and predominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose. When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the raison d'etre is gone. We, therefore, hold that the Act is a valid piece of legislation.*
>
> *16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by*

shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries."

(Emphasis added)

11. *The Apex Court categorically held that functions and powers of MIDC indicate that the said Corporation is acting as a wing of the Government. In the case of Managing Director, Haryana State Industrial Development Corporation, the Apex Court was considering the role played by Haryana State Industrial Development Corporation. The Apex Court held that the said Corporation discharges sovereign functions. The Apex Court also held that considering the objects and purport for which the said Corporation of Haryana has been constituted, the function discharged by the Corporation must be held as Governmental function.*

12. *We have already referred to Section 14 of the MID Act which provides that the function of the MIDC is not only to develop industrial areas but to establish and manage industrial* *estates. The role of MIDC is not limited only to establishing industrial estates and allotting the plots or buildings or factory sheds to industrial undertakings. The function and obligation of the MIDC is also to manage and maintain the said industrial estates as provided in Section 14. Therefore, it is the statutory obligation of the MIDC to provide amenities as defined in clause (a) of Section 2 of the MID Act to the industrial estates established by it. Thus, it is the statutory obligation of MIDC to provide and maintain amenities in its Industrial estates such as roads, water supply, street lighting, drainage, etc. Thus, we find that the activities for which the demand was made are part of the statutory functions of the MIDC under MID Act. As stated earlier, the demand is in respect of service charges collected from plot holders for providing them various facilities including maintenance, management and repairs. As provided in the circular dated 18th December, 2006, for providing amenities to the plot holders, the service fees or service charges collected by MIDC are obviously in the nature of compulsory levy which is used by MIDC in discharging statutory obligations under Section 14. We find that even in the Order-in-Original, there is no finding of fact recorded that the service rendered for which Service Tax was sought to be levied was not in the nature of statutory obligation.*

13. *Therefore, we find no error in the view taken by the Appellate Tribunal. No substantial question of law arises.*

14. *MIDC is a statutory Corporation which is virtually a wing of the State Government. It discharges several sovereign functions. In our view, the Revenue ought not to have compelled MIDC to prefer Appeals before Appellate Tribunal. Not only that MIDC was driven to prefer Appeals before the Appellate Tribunal, these groups of Appeals were preferred by the Revenue. Needless to add that MIDC was required to incur huge expenditure on litigation. All this could have been avoided by the Appellant."*

3.3 The said order of Hon'ble Bombay High Court has been accepted by the Board as per letter F No. 276/203/2017-CX.8A dated 15.02.2018.

3.4 Since the issue is squarely covered in favour of the appellant in their own case, the impugned orders cannot be sustained.

4. The appeals are allowed.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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