CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86661 OF 2023

[Arising out of Order-in-Original No: 25/RB/Commissioner/Belapur/2023-24 dated 28th April 2023 passed by the Commissioner of CGST & Central Excise, Belapur.]

RB Chavan Arjun Earthmovers JV
Plot No. 16, Office No.813, Vashi Infotech Park
Sector-30A, Vashi, Dist. Thane- 400 705 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai- 400 614 …***Respondent***

APPEARANCE:

Shri Rajkumar Maji, Advocate for the appellant

Shri Adeeb Pathan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86229/2025

DATE OF HEARING:	10/02/2025
DATE OF DECISION:	08/08/2025

PER: C J MATHEW

There are two aspects to the impugned proceedings which culminated in the impugned order[1] by which Commissioner of CGST

[1] [order-in-original no. 25/RB/Commissioner/Belapur/2023-24 dated 28th April 2023]

& Central Excise, Belapur had confirmed demand of tax of ₹ 5,87,26,680 under section 73 of Finance Act, 1994 for the period from April 2015 to June 2017, along with interest thereon under section 75 of Finance Act, 1994, besides imposing penalty under section 77 of Finance Act, 1994 as well as penalty of like amount under section 78 of Finance Act, 1994, against which M/s RB Chavan Arjun Earthmovers JV is in appeal.

2. The first of these is the determination that the impugned activity was 'works contract' and, despite having been provided to a governmental authority for which benefit of notification[2] was available, liable to tax owing to rehabilitation of 'breakwaters' being not exactly 'by way of' any of construction or erection or commissioning or installation or completion or fitting out by repair or maintenance or renovation or alteration with the said expression in serial no. 12A of the impugned notification held by the adjudicating authority to narrow down the scope of permissible activity. The other is the determination of value of 'taxable service', in the absence of any reporting by the appellant herein and the eliciting thereof from the reporting effected in the returns in the Income-tax Act, 1961, as ₹ 34,49,00,448 for 2014-15, ₹ 5,81,07,438 for 2015-16 and ₹ 26,14,835 for the remaining period by recourse to section 72 of Finance Act, 1994 on the part of the adjudicating authority.

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[2] [no. 25/2012-ST dated 20th June 2012]

3. The dispute itself arose from having undertaken ‘rehabilitation of breakwaters at Ullal, Karnataka awarded by the Department of Ports and Inland Water Transport, Government of Karnataka, and it was the contention of Learned Counsel for the appellant that the work itself was excluded from the scope of taxation by the impugned notification and that no tax had been collected from the ‘contract awarding authority’ in the bills raised for the said purpose. According to Learned Counsel for the appellant, in similar proceedings connected with the award of similar ‘works contract’ by the Maharashtra Maritime Board, Commissioner of Central Excise & GST, Thane Rural had dropped proceedings in order[3] which, having been accepted by the competent reviewing authority having jurisdiction over the adjudicating authority whose order is impugned in this appeal, had attained finality. It is further submitted that similar activity had also been held as exempted by further Authority for Advance Ruling, Maharashtra in the mater of *M/s Konkan LNG Private Limited [2019 (7) TMI 617 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA]*. It is also pointed out that in a dispute pertaining to availment of credit under the Central Goods & Service Tax Act, 2017 the Hon'ble High Court of Bombay, in *Konkan LCG Ltd v. Commissioner of State Tax, Mumbai [2024 (88) GSTL 228 (Bom)]*, had held that

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[3] [order-in-original no. 02/COM/VA/22-23 dated 21st April 2022]

'14 As seen from the facts presented before us, petitioner provides the services of regassification of LNG to Ratnagiri Gas and Power Company for which LNG is supplied to them by LNG carrier which are berthed at the captive jetty. LNG is then transferred to petitioner's unit for regassification. The breakwater has been constructed to ensure safety of the ship that are berthed at the jetty and also to allow the ship to reach the jetty and remain safe at any point of time irrespective of the severity in the weather conditions.

15 In such a situation, can this court uphold petitioner's contentions that the said breakwater constructed can be considered to be "plant and machinery"? Mr. Sridharan submitted that even though breakwater is an immovable property, it is covered under the term "plant and machinery" since accropode which are used to construct the breakwater are interlocking device fixed to the earth by foundation and those are "apparatus".

16 The dictionary meaning used by respondents for the term "plant" indicates that it would mean and include a place where the industrial activity takes place and/or factory where certain material is produced or machinery are used to carry out certain process or production. Mr. Sridharan in fairness stated that the breakwater or accropode cannot be called as "machinery". Even if we take both plant and machinery together, it should be interpreted to mean a place where certain manufacturing activities of production are carried out with the help of inputs. In the present case, the breakwater wall or accropode that are essential, certainly do not qualify as plant and machinery. The breakwater wall can hardly be called "plant or machinery". Accropode loses its identity when breakwater wall is constructed using accropode.

> *17 Explanation to Section 17 also provides that "plant and machinery" should be used for making outward supply of goods or services. In the instant case, breakwater wall is used for protecting the vessel from tides while unloading the LNG received and not for making outward supply of goods or services. Therefore, even on this count, petitioner does not satisfy the condition provided in the Explanation to Section 17 to be eligible for ITC.'*

4. According to Learned Authorized Representative, the impugned order has made it abundantly clear that the appellant had merely rehabilitated existing 'breakwaters' which was not in consonance with the expression and intent of serial no. 12A of the impugned notification owing to which consideration for the impugned activity was liable to tax under Finance Act, 1994. It would appear that the proceedings were born out of the difference reported to the income-tax authorities as receipt from the said activity and non-payment of tax thereon under Finance Act, 1994. The impugned order had adopted the declaration made in the former as value for the purpose of assessment under Finance Act, 1994 for 2015-16 and 2016-17 while dropping the proposed demand, computed by an arbitrary method without any explanation and that too by recourse to section 72 of Finance Act, 1994 which is a proceedings independent of section 73 of Finance Act, 1994, for the period thereafter. While the adjudicating authority had restricted the demand to the amounts declared to the income-tax authorities, it is now settled by several decisions of the Tribunal including in *Sarosh Homi*

Forbs v. Commissioner of Central Goods and Service Tax, Mumbai in final order[4] disposing off appeal[5] against order[6] of Commissioner of CGST and Central Excise (Appeals), Mumbai that the difference between the two returns is not proper basis for determining demand under section 73 of Finance Act, 1994.

5. Moreover, the impugned proceedings had accepted that the activity was 'works contract' and that it was rendered to a governmental authorities which should have sufficed for the purpose of the exemption notification inasmuch as the expression 'construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration' were identical in both the definition of 'works contract' as well as in the relevant entry in the exemption notification and while the former generally was purported to relate to movable or immovable property, the latter, by way of circumscribing, was limited to 'civil structure' meant predominantly for use other than for commerce, industry, or any other business or profession, which appears to have been overlooked by the adjudicating authority. Instead, the adjudicating authority placed emphasise on 'by way of' without adducing any reason thereof – either semantically or legally. It would appear that the deployment of the said expression, in the negative list regime, was intended to circumscribe the exclusion from among the several provided

[4] [no. 85324/2025 dated 13th March 2025]
[5] [ST/85287/2024]
[6] [order-in-appeal no.SK/CGST-A-I/MUM/267/23-24 dated 30th October 2023]

to the specified entities to just one rather than circumscribing all the enumerated activities. Furthermore, the purpose of ‘breakwater’ is to resist the force of wave action on waterfronts for protection of the coastline, as well as ports and harbours themselves, from erosion or deposit. By no stretch can it be said that such activity is intended ‘for commerce, industry or any other business or profession’ which is the intent and purpose of circumscribing the activities that are entitled to the exemption. That the service tax law considered such activity to be exempted is evident from the dropping of proceedings insofar as the demand on M/s Prashant Baban Chavan (M/s Arjun Earthmovers) by the Commissioner of CGST & Central Excise, Thane Rural.

6. In view of the above facts and circumstances, it would appear that the impugned order has erred in determining the eligibility for exemption for civil structure, that the breakwaters was, and which had not been established to be for the purpose of commerce, industry or any other business or profession in the show cause notice.

7. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 08/08/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*