

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**Service Tax Appeal No. 10983 of 2019  
ST/ORS/10554/2021**

(Arising out of OIA-AHM-EXCUS-003-COM-015-18-19 dated- 28/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax- AHMEDABAD

**Gujarat State Land Development Corporation Ltd** .....Appellant  
Balarambhavan Sector 10 A Gandhinagar  
Gandhinagar, Gujarat

VERSUS

**C.CGST & CEx-Gandhinagar** .....Respondent  
Commissioner, Central Gst & Central Excise, Custom House, Navrangpura  
Ahmedabad , Gujarat - 380009

**APPEARANCE:**

Shri Prakash Shah & Shri S.J Vyas, Advocates for the Appellant  
Shri Prabhat K Pameshwaram, Additional Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/ 10151 /2023**

DATE OF HEARING: 21.09.2022  
DATE OF DECISION: 20.01.2023

**RAJU**

This appeal has been filed by M/s Gujarat State Land Development Corporation against demand of service tax under the category of business Auxiliary Service. The Revenue is sought to change the cause title from "Service Tax Ahmedabad" to "Commissioner, Central GST & Central Excise , Gandhinagar Commissionerate, Custom House , Navrangpura, Ahmedabad". The change in cause title is allowed and cause title is accordingly amended.

2. Learned Counsel for the appellant pointed out that the appellant's are public sector undertaking of the state of Gujarat engaged in assisting government of Gujarat in its efforts for soil conservation and land reclamation. The appellants were not registered with service tax department. Based on Intelligence the Directorate General of Goods and Service Tax Intelligence officers visited the appellants premises and conducted certain investigation. After the investigation SCN was issued to the appellant seeking to demand of service tax under the category of Business Auxiliary Service, supply of tangible goods service and rent a cab service.

2.1 Learned Counsel argued that the main purpose of creation of the said public sector undertaking was to assist government in its effort for soil conservation and land reclamation. The activity was funded by government and certain funds were given to the appellant for conducting such activities .

2.2 Learned counsel pointed out that the state government releases the grants every year to carry out such activities for which the appellant do not charge any amount from farmers who are the beneficiaries of the scheme. The appellants have many offices situated at various district and taluka level. The appellants have no independent source of funds. A part of the fund is used for the administration of the appellant from the grants released by the government. The government allocates and releases the grants for establishment charges in the beginning of each financial year from which they incur its establishment expenditure.

2.3 Learned counsel pointed out that the Revenue is seeking to charge service tax under the category of Business auxiliary service, in the category of provision of service on behalf of the client. Learned counsel pointed out that the government of Gujarat is supposed to be the client of the appellant learned counsel pointed out that government of Gujarat is not engaged in any kind of business to qualify for any service under the category of business auxiliary service and therefore there cannot be any service in the nature of business auxiliary service that can be provided to the government .

2.4 Learned counsel further pointed out that they are merely being reimbursed for the salary paid to the employees and the administrative expenditure and the said reimbursement does not amounts to any consideration for purpose of levy of service tax. He further pointed out that 100 % shares of the appellant are owned by the Government. In these facts of the case learned counsel argued that the activity of managing the schemes for soil conservation and land reclamation do not amount to provision of business auxiliary service .

2.5 Learned Counsel further pointed out that demand is also been made under the category of supply of tangible goods service. It has been noticed that the appellant supplied bulldozers on rent to service recipient (other entities) and the said activity liable to be tax under the category of supply of tangible goods service . Learned counsel pointed out that the SCN does not specify as to how the charging of rent for bulldozers amounts to supply of tangible goods service. He further pointed out that there is no discussion whatsoever on the possession and effective control of the

bulldozer which is a key element on determining the liability of service tax. He pointed out that even impugned order does not disclose how mere renting of bulldozers amount to supply of tangible goods service.

The next issue raised in the proceeding relates to provision of rent a cab service. Learned counsel pointed out that employees of the organization are provided with official vehicles . However if and when the said official vehicles are used for private purpose then certain amount is charged to the appellant. It was argued that simply charging the employees for private use of official vehicle does not amount to provision of rent a cab service. He further pointed out that the impugned order also does not give any reason as to how this amount collected from the employees for private use of vehicle amounts to the provision of rent a cab service .

2.6 Learned counsel further pointed out that the appellants are Government entity and therefore cannot be any suppression, misdeclaration etc on the part of the appellant with the intention of evasion of duty. He pointed out that extended period of limitation has been invoked wrongly in the instant case.

Serial No. 12 and 25 of the Notification 25/2012 dated 20.06.2012 grants exemption to specified services provided to government, a local authority or a government authority by the way of

*a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation*

The said notification however extended benefit to the following with effect from 11.07.2014 :

- *Water supply, public health, sanitation conservancy , solid waste management or slum improvement and up gradation*
- *Repair or maintenance of a vessel*

Notification 25/2012 dated 20.06.2012 defines government authority as follows :-

*(i)A board or any other body set up by an Act of Parliament or State Legislature; or*

*(ii)Established by Government;*

*With ninety percent, or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243 W of the Constitution.*

*Learned counsel argued that they are also entitled to the exemption as they are engaged in providing service to government which covered by article 243W. He relied on the 12<sup>th</sup> Schedule under article 243 W reads as under:-*

*Article 243. Powers, authority and responsibilities of Municipalities etc.*

*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-*

*(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-*

*(i) the preparation of plans for economic development and social justice;*

*(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

*(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.*

*Matters listed in twelfth schedule are:*

*Twelfth Schedule  
( Article 243 W)*

- 1. Urban planning including town planning.*
- 2. Planning of land- use and construction of buildings.*
- 3. Planning for economic and social development.*
- 4. Roads and bridges.*
- 5. Water supply for domestic, industrial and commercial purposes.*
- 6. Public health, sanitation conservancy and solid waste management.*
- 7. Fire services.*
- 8. Urban forestry, protection of the environment and promotion of ecological aspects.*
- 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
- 10. Slum improvement and upgradation.*
- 11. Urban poverty alleviation.*

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries."

3. Learned AR relies on the impugned order. He took us through the provisions of MOA of the appellant to assert that the appellant is an entity created specifically to assist for implementing the schemes i.e. soil conservation and land reclamation.

4. We have gone through rival submissions. We find that it is not in dispute that the appellants are public sector undertakings created especially for assisting government for soil conservation and land reclamation. Since the appellants are required to maintain offices and pay for its man power certain grants are given by the government to cover such expenses. The appellants are 100 % owned by the government.

- Business auxiliary service is defined as follows :

"(19) "Business auxiliary service" means any service in relation to -

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or  
(ii) promotion or marketing of service provided by the client, or

(\*\*\*\*\*)

(iii) any customer care service provided on behalf of the client, or

(iv) procurement of goods or services, which are inputs for the client, or

**[Explanation:-** For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

[(v) production or processing of goods for, or on behalf of, the client;]

(vi) provision of service on behalf of the client,  
or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory

*management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,*

*and includes services as a commission agent, [but does not include any activity that amounts to manufacture of excisable goods]."*

4.1 The revenue is seeking to demand the service tax on the services provided by the public sector undertaking formed by the Government especially for the purpose of soil conservation and land reclamation. Notification No 25/2012 provides exemption to specified service including conservancy. The term "conservancy" is defined by the Merriam Webster dictionary as follows:-

**"Plural Conservancies**

- 1. British :** *a board regulating fisheries and navigation in a river or port*
- 2. a: CONSERVATION**  
**b:** *an organization or area designated to [conserve](#) and protect natural resources"*

The Britannica Dictionary defines conservancy as follows:-

**1 [count] :** *an organization that works to protect animals, plants, and natural resources especially by purchasing and caring for areas of land — usually used in the names of organizations*

**2 [count] British :** *a group of officials who control and protect a river or port*

**3 [non count] :** [conservation](#)

- *raising money for the conservancy of natural resources*
- *water conservancy"*

In terms of above definition the activity of soil conservation and land reclamation would be fall under the terms "conservancy".

4.2 In view of above the activity undertaken by the appellant would be specifically covered by the Notification No. 25/2012 –ST dated 20.06.2012 under Sr No.25 thereof. In view of above services provided by the appellant would be exempt with effect from 20.06.2012 onwards under aforesaid notification.

4.3 It is also noticed that the entire amount received by the appellant from the government in the shape of grant is in the nature of reimbursement i.e. to say the actual expenditure incurred for the provision of the service is reimbursed by the Government of Gujarat. For that reason also the amount paid by the Government to the appellant cannot be taxed as does not fall within the definition of consideration for service. In

these circumstances we do not find any merit in the demand of service tax under the head of business auxiliary service against the appellant. The demand on this count is set aside and the appeal on this count is allowed.

5. The next issue raised in the impugned order is relates to demand under the head of supply of tangible service. It has been argued by learned counsel in the written submission that the bull dozers/ dumpers are given on lease and the same was operated lessee. It has been argued that the bull dozers/ dumpers given by them on lease are under the possession and control of the lesseses It has been argued that there is a contract of bailment which implies that the possession and control of the equipment is transferred to the lessee. It has been argued by the learned counsel that no person of the appellant organization operates the said bull dozers/ dumpers leased out . It has been argued that the terms of contract specifically prohibits lessee not to transfer, assign and charge mortgage , sublet sale or dispose of in any way part with the possession of machinery. He argued that this position clearly indicate the possession of goods is transferred to the lessee.

5.1 We find that neither show cause notice nor the impugned order gives any grounds to substantiate the claim that the physical possession and effective control of the equipment is not transferred to the clients but is retain to the appellant. In these circumstances we do not find any evidence to support the charges levied on the appellant in regard to supply of tangible goods service. Demand on this count is also set aside and appeal is allowed.

6. The next issue is relates to the demand under the category of rent-a-cab service. It has been argued by the learned counsel that the amount on which service tax sought to be recovered is the amount recovered from the employees when the official vehicles are put to personal use by the employees. It has been argued that the appellants are not rent-a-cab operator and are not in the business of giving vehicles on hire. It has been argued that as per the policy of government employees on given certain benefits and one such benefit is permitting an employees to use the vehicle of appellant for private use upon certain payments. It has been argued the vehicle are not given to the public at large but only to employees in terms of the employment agreement. We find that substantial force in the argument of the appellant that this is not a service provider/ service recipient relationship. The appellants are not in the business of rent – a-cab providing rent a cab service and any recovery is made for private use of vehicle are in terms of the employment agreement. Thus, we do not

find any merit in the argument of the Revenue. Demand on this count is also set aside and appeal is allowed.

7. Accordingly, the impugned order is set aside and appeal is allowed. MA is also allowed.

(Pronounced in the open court on 20.01.2023 )

**RAMESH NAIR**  
**MEMBER (JUDICIAL)**

**RAJU**  
**MEMBER (TECHNICAL)**

geeta