REPORTABLE

 IN THE SUPREME COURT OF INDIA

 CIVIL APPELLATE JURISDICTION

 CIVIL APPEAL NOS.3347-3348 OF 2014

 COMMISSIONER OF CENTRAL

 EXCISE, BHAVNAGAR …APPELLANT

 VERSUS

 M/S GUJARAT MARITIME BOARD,

 JAFRABAD ...RESPONDENT

 J U D G M E N T

 R.F. Nariman, J.

 1. The issue raised in the present civil appeals is with

 regard to service tax payable on wharfage charges. The

 respondent - M/s Gujarat Maritime Board (hereinafter referred to

 as “GMB”) is a statutory body constituted under the Gujarat

 Maritime Board Act, 1981 (hereinafter referred to as “GMB Act”).

 This authority administers and operates minor ports in the

 State of Gujarat. GMB entered into an agreement dated 28.2.2000

 with Larsen & Toubro which ultimately became M/s Ultratech

 Cement Limited (hereinafter referred to as “UCL”) whereby a

 licence was granted to UCL to construct and use a jetty for

 landing of goods and raw materials manufactured by UCL in their

 cement factory which was situate close to the said jetty at

 Pipavav port. As the true construction of this agreement is the

 bone of contention between the parties, we will refer to it in a

 little detail hereafter.

 2. It is alleged that service tax was payable on wharfage

 charges by GMB collected by them from their licensee UCL under

 the taxable category of “port services”. The revenue

 authorities initiated investigation against GMB for under-

 valuation and short payment of service tax. Ultimately, a show

 cause notice dated 6.3.2009 was issued to collect 80% of service

 tax payable on wharfage charges which was not paid by the

 assessee. This was for the period 1.10.2003 to 31.3.2006, the

 differential amount being a sum of Rs.1,67,45,620/-. A further

 amount of Rs.12,53,076/- was also demanded for the period 2003

 October upto 2007-2008 on account of the provision of direct

 berthing facilities provided for captive cargo of a ship size of

 10,000 DWT and above on account of lease rent for use of the

 waterfront. By the order in original dated 16.7.2009, the

 Commissioner, Central Excise held that it is clear that the

 nature of service provided, which is wharfage, is squarely

 covered under the head “port services” as defined in the Finance

 Act, 1994. The amount of rebate/concession granted in wharfage

 charges amounting to 80% allowed to the licensee should,

 therefore, be included for purposes of calculation of service

 tax. Equally, the amount that was demanded on account of lease

 rent for waterfront usage was also confirmed, together with

 interest and penalty, which was imposed on the assessee.

 3. In appeal from this order, CESTAT by its judgment dated

 1.8.2013 reversed the Commissioner’s order holding that no

 service at all was rendered by the Gujarat Maritime Board in

 relation to any vessel and, therefore, no amount was payable by

 way of service tax. Equally, on an analysis of the agreement

 between GMB and UCL, it was held that 20% of wharfage charges

 which was payable under the agreement was really payable as

 licence fee/rental and, therefore, the balance 80% being of the

 nature of licence fee/rental and not being of the nature of

 payment for services rendered would equally render the payment

 bad in law.

 4. Shri Yashank Adhyaru, learned senior advocate appearing on

 behalf of the revenue has taken us through the Gujarat Maritime

 Board Act and the Finance Act, 1994. It is his contention that

 on a conjoint reading of the two Acts and in particular Section

 37 of the Gujarat Maritime Board Act and Section 65(82) of the

 Finance Act, 1994, it is clear on a correct reading of the

 agreement between GMB and UCL that service was rendered by GMB

 as owner of the jetty, the service being the provision of a

 space for landing of goods from vessels which are allowed to

 berth there. As an alternative argument, on a correct reading

 of the agreement, it was also argued that GMB had authorized UCL

 to render the service of wharfage and since what was collected

 was actual wharfage charges in accordance with the schedule of

 rates prescribed under the Gujarat Maritime Board Act, it was in

 relation to goods that were loaded or off-loaded from vessels on

 the said jetty. It was further argued by learned counsel that

 the reason why only 20% of the wharfage charges was collected

 and not the entire amount was a pure internal arrangement

 between GMB and UCL with which revenue is not concerned. He

 further assailed the findings of the Tribunal stating that the

 finding that the ownership of the jetty vests in UCL is contrary

 to the agreement between the parties and that 20% of wharfage

 levied and collected cannot be said to be rental or licence fee

 but is wharfage charges collected under the GMB Act for the

 service of allowing goods to be landed at the said jetty.

 According to learned counsel, the Gujarat Maritime Board was the

 owner and in control of the said jetty throughout the term of

 the agreement and all findings to the contrary by the Tribunal

 were incorrect.

 5. Shri P.P. Tripathi, learned senior advocate appearing for

 the respondent countered all the aforesaid submissions and

 supported the Tribunal judgment. According to learned counsel,

 the very basis for service tax was absent in the present case as

 there is no service rendered of any kind by his client the

 respondent on the facts of the present case to UCL nor has UCL

 been authorized by GMB to render any service mentioned in

 Section 37 of the Act and that, therefore, the authority to levy

 service tax was absent. He also argued that the 20% of wharfage

 charges that was paid under the agreement was really only a

 measure to calculate what is in fact payable as licence fee and

 that, therefore, the agreement read as a whole would lead to the

 conclusion that no service was in fact rendered by the

 respondent and, therefore, no service tax could be collected.

 6. It is important first to advert to the Finance Act, 1994

 under which the charge is laid for service tax. Section 65(82)

 defines “port service” as under:-

 “Port service” means any service rendered by a port or

 other port or any person authorized by such port or other

 port, in any manner in relation to a vessel or goods;”

 7. Such service tax is leviable under Section 65(105)(zn)

 which reads as follows:-

 “Taxable service” means any service provided or to be

 provided-

 “(zn) to any person, by a port or any person authorized by

 the port, in relation to port services, in any manner;”

 Further, under Section 67 of the said Act, the value of any

 taxable service shall be the gross amount charged by the service

 provider for such service provided or to be provided by him.

 8. The relevant provisions of the Gujarat Maritime Board Act

 are as follows:-

 “35. Power to permit erection of private wharves, etc.

 within a port subject to conditions:

 (1) No person shall make, erect or fix within the limits

 of a port or port approaches any wharf, dock, quay, stage,

 jetty, pier, place of anchorage, erection or mooring or

 undertake any reclamation of foreshore within the said

 limits except with the previous permission in writing of

 the Board and subject to such conditions, if any, as the

 Board may specify.

 (2) If any person makes, erects or fixes and wharf, dock,

 quay, stage jetty, pier place of anchorage, erection or

 mooring or undertakes reclamation of foreshore in

 contravention of sub-section (1) the Board may, by notice

 require such person to remove it within such time as may be

 specified in the notice and if the person fails so to

 remove it the Board may cause it to be removed at the

 expense of that person.

 37. Scales of rates for services performed by Board or

 other person:-

 (1) The Board shall from time to time frame a scale of

 rates at which and a statement of the conditions under

 which any of the services specified hereunder (except the

 State charges) shall be performed by itself or any person

 authorized under Section 32 at or in relation to the port

 or port approaches-

 (a) transshipping of passengers or goods between vessels

 in the port or port approaches;

 (b) stevedoring, landing and shipping of passengers or

 goods from or to such vessels, to or from any wharf, quay

 jetty, pier, dock, berth mooring stage, or erection, land

 or building in the possession or occupation of the Board or

 at any place within the limits of the port or port

 approaches;

 (c) cranage or porterage of goods on any such place;

 (d) wharfage, storage or demurrage of goods on any such

 place;

 (e) any other service in respect of vessels, passengers

 or goods excepting the services in respect of vessels for

 which fees are chargeable under the Indian Port Act, 1908

 (15 of 1908).

 (2) Different scales of rates and conditions may be

 framed for different classes of goods and vessels and for

 different ports.

 32. Performance of services by Board or other person:-

 1) The Board shall have power to undertake the following

 services:-

 (a) stevedoring, landing, shipping or transshipping

 passengers and goods between vessels in port and the

 wharves, piers, quays, or docks belonging to or in the

 possession of the Board;

 (b) receiving, removing, shifting, transporting, storing

 or delivering goods brought within the Board’s premises;

 (c) carrying passengers within the limits of the port

 approaches, by such means and subject to such restrictions

 and conditions as the State Government may think fit to

 impose; and

 (d) piloting, hauling, mooring, re-mooring, hooking or

 measuring of vessels or any other service in respect of

 vessels.

 (2) The Board may, if so requested by the owner, take

 charge of the goods for the purpose of performing the

 service or services and shall give a receipt in such form

 as the Board may specify.

 (3) Notwithstanding anything contained in this section,

 the Board may authorize any person to perform any of the

 services mentioned in sub-section (1) on such terms and

 conditions as may be agreed upon.

 (4) No person authorized under sub-section (3) shall

 charge or recover for such service any sum in excess of the

 amount leviable according to the scale framed under Section

 37, 38 or 40.

 (5) Any such person shall, if so required by the owner

 perform in respect of the goods any of the services and for

 that purpose take charge of the goods and give a receipt in

 such form as the Board may specify.

 (6) The responsibility of any such person for the loss,

 destruction or deterioration of goods of which he has taken

 charge shall, subject to the other provisions of this Act,

 be that of a bailee under Section 151, 152 and 161 of the

 Indian Contract Act, 1872 (IX of 1872).

 (7) After any goods have been taken charge of and a

 receipt given for them under this section, no liability for

 any loss or damage which may occur to them shall attach to

 any person to whom a receipt has been given or to the

 matter or owner of the vessel from which the goods have

 been landed or transshipped.

 9. Since a large part of the arguments on both sides revolved

 around the agreement dated 28.2.2000, between GMB and UCL, it

 would be important to advert to the various provisions of the

 agreement. The agreement begins as follows:

 “THE ARTICLES OF AGREEMENT made at Gandhinagar on this day

 28th February, two thousand between the GUJARAT MARITIME

 BOARD, a Board constituted under the Gujarat Maritime Board

 Act, 1981 – (Gujarat Act No.XXX of 1981) having its office

 at Opp. Air force station, ‘Chh’ Road, Sector No.10-A,

 Gandhinagar, hereinafter referred to as the “BOARD” (which

 expression shall unless it be repugnant to the context or

 meaning thereof mean and include its successors and

 assigns) of the one part and Larsen & Toubro Limited having

 its Registered Office at L&T House, Ballard Estate, Mumbai

 – 21, hereinafter referred to as the “LICENSEE’ (which

 expression shall unless it be repugnant to the context or

 meaning thereof mean and include its successors and

 assigns) of the other part;

 WHEREAS the Licensee approached the Board for permission

 for construction and use of a Captive Jetty at Port Pipavav

 in the State of Gujarat on a license basis for the purpose

 of handling, storage and transportation of raw-materials

 for manufacturing and finished products that are

 manufactured by the Licensee and for the purpose of the

 Board as well;

 AND WHEREAS the Board and the Licensee have already entered

 into License agreement which is modified and this license

 Agreement in modification of previous Agreement is entered

 into by and between the Board and the Licensee as appearing

 hereinafter;

 AND WHEREAS in consideration of the Licensee constructing a

 Captive jetty as aforesaid at its cost initially to be

 adjusted against the Rebate, that may be granted by the

 Board, the Board as empowered under Section 35 of the

 Gujarat Maritime Board Act, 1981 granted to the Licensee a

 license or permission for construction/use of the captive

 Jetty on the said port at the place aligned, demarcated,

 provided and approved by the Board upon the terms and

 conditions specified herein on Build, transfer, Operate and

 Maintain basis;

 NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS

 FOLLOWS:

 (c) ‘PORT CHARGES’ would mean port charges specified in

 schedule of port charges, notified by government/Board

 under the Indian Ports Act, 1908/Gujarat Maritime Board

 Act, 1981 and allied legislations/regulations from time to

 time.

 (e) ‘CAPTIVE JETTY’ would mean a Jetty constructed for

 landing and shipping by a port based industry, located in

 Gujarat for landing and shipping of their Captive Industry

 Raw Materials for manufacturing or their finished products

 that are manufactured by the Licensee, from the constructed

 Jetty for that specific industry.

 2. The Board has granted permission to the licensee for

 continuing with construction and use of the Captive Jetty

 at the site demarcated on the plan, a layout of which has

 been annexed to this agreement.

 3. The Licensee shall pay and continue to pay for the

 license granted under this Agreement a license fee of

 Rs.10,000/- (Rupees Ten Thousand only) per annum to the

 Board regularly on or before the 30th day of April every

 year during the currency of this agreement.

 12. The ownership of the structure so constructed vests in

 the Board and the Licensee shall have no right, title,

 interest or other proprietary right in respect of such

 structure or in respect of the land on which the structure

 is constructed, it being specifically understood that water-

 front is the sovereign right of the Government.

 13. The Licensee may however obtain a loan at its own risk

 and cost, on the basis of rights granted to him under this

 agreement and is entitled to create a charge or lien on its

 rights or property only on the basis of investment made by

 it for construction i.e. to say taking into consideration

 the extent of investment made by it in the construction;

 PROVIDED that and it is agreed that the cost can be divided

 for the purpose of obtaining finance for the Jetty

 construction, it being, however, clearly understood that

 the water-front is a sovereign right of Government and the

 right of the Licensee is limited only for the purpose of

 mortgage or hypothecation to the extent of investment made

 by it and its right to concur in the event of transfer or

 take over of the entire project to which the Jetty is

 attached, subject, however, to the prior approval of the

 Board for transfer of license. The Licensee shall not be

 allowed to transfer the jetty separately as the same is

 directly connected to the project to which the Captive

 Jetty is allowed to be constructed.

 PROVIDED further that whatever rebate and concession is

 granted by the Board against the cost of construction, the

 equivalent amount at the relevant time shall be utilized by

 the Licensee in repayment of loan so that at the end of the

 period of this agreement when the Licensee may not have

 right of rebate under this agreement, then the construction

 is free of any liability in respect of such loan.

 PROVIDED further that the Bank or financial institution

 granting loan to the licensee shall not have any right

 against the Board.

 PROVIDED further that in the event of a declaration of War

 in the Country or any Emergency or on account of national

 security or any other circumstances, the Board is entitled

 to exercise all rights in such kinds of situation and

 emergency. The Bank or financial institutions shall not be

 entitled in such event to exercise any right under loan

 documents even in respect of such construction. The

 Licensee shall obtain "No Objection Certificate" of the

 Board for the loan and for the terms and conditions on

 which the loan is sanctioned, and shall be bound to see

 that the relevant Clauses in pursuance of this Agreement

 are incorporated in loan documents.

 15. The Board may, in order to decide the safety of the

 structure or for any other purpose, carry out inspection

 every six months from the date of issue of the Completion

 Certificate. The Licensee shall carry out maintenance and

 repairs to the structure at its own cost, whenever so

 directed by the Board upon inspection. No alteration or

 extension of the Jetty shall be done without prior

 permission of the Board in writing PROVIDED that this

 clause shall not preclude the Board from carrying out

 inspection at any time, instead of every six months.

 16. The Licensee shall at its own cost repair and maintain

 the jetty in good order and condition to the satisfaction

 of the Board during the tenure of this agreement and on the

 failure of the Licensee to do so, the Board shall be

 entitled, but not bound, to do so at the cost of licensee.

 This condition however, does not entitle the Licensee to

 refrain from carrying out repair or maintain the Jetty in

 good order and condition and it is further agreed that non-

 performance by Licensee shall be considered as a breach of

 condition of this agreement.

 17. In consideration of the Board permitting the Licensee

 to construct the Captive Jetty at its own cost initially,

 the Board hereby agree that the Jetty to be so constructed

 by the Licensee shall mainly and initially as per the terms

 of this agreement, allowed to be used for the vessels

 belonging to the Licensee or chartered by the Licensee, on

 preferential basis, without any ousting priority and

 subject to Steamer Working (Priority) Rules as may be

 amended from time to time and subject to all other rules

 and regulations and the legislations prevailing at the

 relevant time and subject also to the further conditions of

 this agreement.

 18. It is agreed that subject to the priority right of the

 Licensee for user of Jetty under the preceding clause, it

 is further agreed that the Jetty shall when the same is not

 in use by the Licensee, be open to use by the Board for

 itself or for the traffic being regulated by the Board for

 the purpose of embarking or disembarking their ships,

 boats, tugs, etc. and for loading and discharging cargo.

 The Licensee or its Agents shall not by any act of

 commission or omission, restrict the use of the Jetty and

 back up area by the Board except when it is actually used

 by the Licensee for the purpose provided for in this

 agreement.

 PROVIDED that this clause shall not be construed to mean

 that Licensee has any ownership or transferable right in

 the property and the Licensee is not entitled to levy any

 charges or compensation from the Board.

 21. It is agreed that subject to what has been stated

 herein, the Licensee shall be liable to pay all the port

 charges and all other dues payable by the Licensee to the

 Board, and the Licensee shall not be eligible to get any

 other rebate or concession except that which is mentioned

 in Clause 22 and 24.

 22. It is agreed that in consideration of the Licensee

 constructing the Jetty at its own cost initially, the Board

 has agreed to grant rebate, to be adjusted against the cost

 of construction, as under:

 A. The Licensee shall have to pay landing/shipping fees

 (popularly known as wharfage charges) @ 20% of the actual

 landing and shipping fees specified in the Schedule of Port

 Charges prescribed for Captive Jetty. The landing and

 shipping fees shall be calculated for this purpose as per

 the schedule of landing and shipping fees, as may be

 revised or amended from time to time. This concession shall

 be called 'REBATE' and it will be set off as aforesaid

 against the Capital Investment (cost of construction as

 mentioned in Clause 24) made by the Captive Jetty holder,

 and the same shall be calculated in a prescribed format.

 Once the Capital Investment is recovered through the

 Rebate, the Captive Jetty holder shall have to pay

 thereafter, landing and shipping fees at the normal rate as

 per the Schedule of Port Charges in force from time to time

 prescribed for captive jetty.

 B. The Licensee shall also be entitled, as in the normal

 case to a concession in payment of landing/shipping fees

 for coastal transportation of the cargo from one port under

 the Board to another port under the Board @ 25% and from

 one port under the Board to another Indian Port or vice-

 versa @ 15% or at the rate as may be applicable from time

 to time.

 C. No Rebate will be given in respect of any other charges

 to be levied under Indian Ports Act and under Gujarat

 Maritime Board Act. The parties shall have to pay all the

 port charges at the rates specified in Schedule of Port

 Charges in force from time to time.

 ?25. In case the direct berthing facilities provided for

 captive cargo (ship size calling at jetty of 10,000 DWT and

 above) an amount of Rs.25.00 Lakhs (Rupees Twenty Five

 Lakhs only) per annum will be charged as lease rent for

 waterfront and way leave facility compensation.

 28. The Licensee shall provide all the services at or

 around the Jetty including dredging, navigation, water

 supply, fire fighting equipments, electricity, telephone,

 Very High Frequency (VHF) sets of HF sets and such other

 services and facilities which may be required at or around

 the Jetty and also such other services and facilities which

 the Board may require the Licensee to keep available at or

 around the Jetty. If the Licensee does not provide all or

 any of the aforesaid facilities, the Board may at its own

 discretion provide such facilities at the cost and risk of

 the Licensee and shall recover such costs from the

 Licensee. The decision of the Board regarding the amount of

 cost incurred for such services shall be treated as final.

 34. If the Licensee commits breach of any of the terms and

 conditions of this agreement or of any Rules, Regulations

 or Notifications as may be in force from time to time, the

 Board shall be entitled to give notice the Licensee to

 remove such breach within a period of 15 days from the date

 of notice and Port Authorities can temporarily suspend

 operation of captive port facility. If the said notice is

 not complied with, the Board shall give another Notice to

 terminate this agreement if the said breach is not complied

 with within a period of further 15 days and that on the

 expiry of such period of 15 days, the agreement shall

 automatically be deemed to have been terminated without

 further notice. Upon such termination of the agreement, the

 Board shall be entitled to take control or otherwise

 dispose off all or any part of the Jetty that may have been

 constructed, as well as the site thereof in such manner and

 may give the same to such person or party as may be decided

 by the Board and the Licensee shall not be entitled to any

 compensation, nor shall the Licensee have then a right in

 respect of the superstructure or the land/sea on which the

 Jetty was constructed, provided that even if the cost of

 construction of the Jetty is not adjusted against the

 aggregate of the amount of rebate availed off by the

 Licensee, the Licensee shall not be entitled to any refund.

 In case of any dispute or difference by and between the

 Licensee and the Board, the same shall be referred to the

 Arbitration of Secretary of the Government in Ports and

 Fisheries Department and it shall be held in accordance

 with the provisions of the Indian Arbitration and

 Reconciliation Act, 1996 or any statutory modification or

 re-enactment thereof for the time being in force.

 36. The agreement shall remain in force for a period of

 twenty five years or till such time as the aggregate of

 ‘REBATE’ availed off by the party equals the amount of the

 construction of the Jetty whichever is earlier from the

 date of commissioning of Jetty.

 PROVIDED further that even after aggregate of rebate

 availed of by the Licensee equals the amount of

 construction of Jetty, the Licensee will be allowed to use

 the Jetty for captive purpose subject to full payment of

 full wharfage charges so long as the project of the

 Licensee for which the permission is granted exists or

 continues to exist, i.e., continues to function.

 It is agreed and understood by the Licensee that out of the

 terms ‘Jetty’ the terms applicable for the purpose of this

 Agreement may be retained in this Agreement and other

 words/terms not applicable may be deleted.”

 10. A reading of the agreement as a whole would lead to the

 following conclusions:

 A. The agreement is a licence agreement entered into under

 Section 35 of the Gujarat Maritime Board Act under which a

 licence or permission for construction and use of a captive

 jetty in Pipavav Port is entered into on a Build, Transfer,

 Operate and Maintain basis on certain conditions.

 B. A licence fee of Rs.10,000/- per annum is payable by the

 licensee to the Board for the currency of the agreement

 unless terminated earlier.

 C. The ownership of what is constructed vests in the Board

 together with the landing on which it is constructed and

 the waterfront.

 D. The jetty is constructed for the project to which it is

 attached, namely, the cement factory of UCL. The licence

 granted to UCL is, therefore, a non-transferable one.

 E. The Board is entitled to carry out inspection every six

 months so that it can direct the licensee to maintain and

 repair the structure at its own cost, maintenance of the

 said jetty in good order and condition being that of the

 licensee alone, a breach of which is considered as a breach

 of the agreement.

 F. The jetty is to be used mainly for the goods of the

 licensee and when not in use by the licensee can be used by

 the Board itself.

 G. That in consideration of the licensee constructing the

 jetty at its own cost, the Board has agreed to grant rebate

 to be adjusted against the cost of construction of the

 jetty by paying 20% of wharfage charges specified in the

 schedule of charges prescribed for captive jetties. This

 concession is to be called a rebate and to be set off

 against the cost of construction of the said jetty. Once

 the entire cost of construction is recovered through the

 rebate, the licensee will have to pay thereafter wharfage

 charges at the full rate prescribed in the schedule of port

 charges for captive jetties.

 H. For direct berthing facilities provided for captive cargo

 in ships which call at the jetty of 10,000 DWT and above,

 an amount of Rs.25,00,000/- will be charged as lease rent

 for waterfront use.

 I. It is the licensee UCL that will provide all services at or

 around the jetty including dredging, navigation, etc. and

 if this is not done then the Board may on its own provide

 such facilities at the risk and cost of the licensee UCL.

 J. The licence is terminable on breach of the terms and

 conditions of the agreement or of any infraction of law.

 Upon such termination, the Board shall be entitled to take

 control or otherwise dispose of all or any part of the

 jetty that may have been constructed.

 K. The period of the agreement is to be 25 years from the date

 of commissioning of the jetty or such time as the rebate

 availed of by the party equals the construction cost of the

 jetty whichever date is earlier. However, even after the

 rebate and the construction cost square off, the licensee

 will be allowed to use the jetty for captive purposes

 subject to full payment of wharfage charges so long as the

 project of the licensee – i.e. the cement plant of the

 licensee continues to function.

 11. The question which arises on a reading of the said

 agreement is, therefore, whether any service is rendered by GMB

 or by any person authorized by GMB in relation to a vessel or

 goods. The agreement makes it clear that it is the duty of the

 licensee, i.e., UCL to maintain the jetty in good order and

 condition during the tenure of the agreement. (See: clauses 15

 and 16 set out above). Further, it is UCL that is to provide

 all services at or around the jetty including dredging,

 navigation, water supply etc. (See: clause 28 of the agreement).

 This makes it clear that during the currency of the agreement

 it is not the Board but the Licensee who keeps the said jetty in

 such condition that it is capable of enabling vessels to berth

 alongside it to load and unload goods. This being the

 position, we agree with Shri Tripathi, learned senior counsel on

 behalf of GMB that no service is rendered by GMB to UCL under

 the agreement. The agreement makes it clear that it is an

 agreement entered into under Section 35 of the GMB Act allowing

 the licensee - UCL to construct a jetty and thereafter maintain

 it at its own cost. We may add that the rebate in wharfage

 charges of 80% is a condition imposed statutorily under Section

 35 of the said Act. To say that it is in the nature of lease

 rent or licence fee, would not be correct inasmuch as a separate

 licence fee is payable under the agreement. (See: clause 3 of

 the agreement). To that extent we agree with Shri Adhyaru,

 learned senior advocate appearing on behalf of revenue that the

 CESTAT does not seem to be correct in this behalf. But this

 would make no difference to the result of this case inasmuch as

 the very first condition that must be met under the definition

 of “port service” is not met on the facts of the present case.

 12. Shri Adhyaru argued relying upon the definition of “wharf”

 and “wharfage” in Black’s Law Dictionary, Seventh Edition that

 all that is necessary is that a wharf be provided by the Board.

 The very provision of such wharf would entitle the Board to levy

 a fee which is nothing other than wharfage charges collected

 under the Schedule of rates mentioned hereinabove. To

 appreciate this argument we set out the definition of ‘wharf’

 and ‘wharfage’ from Black’s Law Dictionary as under:-

 Wharf. A structure on the shores of navigable waters,

 to which a vessel can be brought for loading or unloading.

 Private wharf. One that can be used only by its owner

 or lessee.

 Public wharf. One that can be used by the public.

 Wharfage 1. The fee paid for landing, loading, or

 unloading goods on a wharf. 2. The accommodation for

 loading or unloading goods on a wharf.

 We are afraid that we are unable to agree with Shri Adhyaru for

 the reason that though GMB is the owner of the jetty under the

 said agreement, yet for providing the service of allowing a

 vessel to berth at the said jetty, it is necessary for GMB

 itself to keep the said jetty in good order. Wharfage charges

 are collectible because they are in the nature of fees for

 services rendered. The expenses that are defrayed by the Board

 for the maintenance of the jetty is sought to be collected as

 wharfage charges. This amount would necessarily include all

 amounts that are spent for keeping the said jetty in good

 condition including dredging so that vessels can berth alongside

 the jetty. It is clear that so far as jetties operated by the

 Board are concerned, the Board itself defrays such expenses. It

 is only in cases like the present where the jetty is primarily

 meant for loading and unloading goods belonging to a particular

 private party that repair and maintenance expenses are to be

 borne by the private party and not by the Board. It is in this

 circumstance that we find that there is no service, therefore,

 rendered by GMB to UCL.

 13. The other limb of Shri Adhyaru’s argument is that in any

 case UCL is a person authorized by GMB within the definition of

 “port service” and that, therefore, in any case the Section

 would be attracted as there is no doubt that wharfage charges

 are a payment for services rendered in relation to a vessel or

 goods.

 14. As can be seen from Section 32 sub-sections (3) and (4),

 the Board may authorize any person to perform any of the

 services mentioned in sub-section (1) of the said Section which

 includes landing of goods at wharves. We asked Shri Adhyaru to

 show us where such authority is given and his reply was only

 that it was given under the self-same agreement referred to

 hereinabove. We are afraid that we are unable to agree with

 Shri Adhyaru. The authority given to perform any of the

 services must first and foremost be under terms and conditions

 as may be agreed upon by the Board and the private person.

 Further, under sub-Section (4) of Section 32, it is the private

 person who is then authorized to charge or recover any sum in

 respect of such service rendered. This is conspicuously absent

 in the aforesaid agreement. There is no doubt on a reading of

 the agreement that it is the Board itself that charges or

 recovers wharfage charges from the licensee - UCL and does not

 authorize UCL to recover such charges from other persons. This

 being the position, it is clear that no service is rendered by a

 port or by any person authorized by such port and, therefore,

 the very first condition for levy of service tax is absent on

 the facts of the present case. So far as the direct berthing

 facilities provided for captive cargo is concerned, the lease

 rent charged for use of the waterfront also does not include any

 service in relation to a vessel or goods and cannot be described

 as “port service”. This being so, it is unnecessary to go into

 any of the other contentions raised by both parties. To the

 extent that the impugned judgment is in conformity with our

 judgment, it is upheld. The appeals of the revenue are,

 therefore, dismissed accordingly.

 ……………………J.

 (A.K. Sikri)

 ……………………J.

 (R.F. Nariman)

 New Delhi;

 July 22, 2015