



સાચાં જાણવા માટે અમને સંપર્ક કરો: 1800 20 20 20 અથવા અમને મેસેજ કરો
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રાજકોષ સત્તા સંબંધિત નોંધણી નંબર: 10/2018-19

સંબંધિત નોંધણી નંબર: 10/2018-19

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અરજી નંબર: 10/2018-19

BTX-CUS-000-APP-120-2018-19

અરજી નંબર: 06.06.2018
 અરજી નંબર: 06.06.2018
 અરજી નંબર: 06.06.2018

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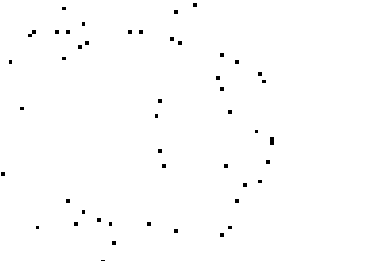
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:: ORDER ::

The present appeal has been filed by M/s Gujarat Pipavav Port Ltd., Pipavav, Unstaha, Taluka - Rajkot, District Amrali (hereinafter referred to as the appellant) against Order No. HHO-EXCH-000 LC 005 2017-16 dated 28.04.2017 (hereinafter referred to as the impugned order) passed by the Joint Commissioner, Central Excise & Service Tax, Jamnagar (hereinafter referred to as the lower adjudicating authority).

3. The brief facts of the case are that the audit of records of the appellant, finding Service Tax registration No. AAAC0975897001 revealed that they had availed CENVAT Credit on input services i.e. Consultancy Service, Design, Tendering & supervision for New Port Infrastructure and Layout, sitation, materials, etc. manufacturing simulators for selected vessels Consultancy Service in relation to 'Load & Mainline Geotechnical Investigation' for the proposed expansion of manufacturing at Pipavav, Gujarat.

2. Show Cause Notice for recovery of wrongy availed CENVAT Credit of Rs. 1,16,02,039/- was issued alleging that these consultancy services have no relation with output services and not covered under the purchase or modernization, replacement/repairs of provision of output services. The SCN also alleged that CENVAT credit availed by the appellant in relation to Consultancy Services for New Port Structure Proposed Expansion at Mainline facility at Pipavav, Gujarat is not in accordance with Rule 2(j) of the CENVAT Credit Rules 2004 (hereinafter referred to as the Rules) and credit availed in relation to these services was required to be reversed.



2.2. The SCN was adjudicated vide Impugned order where lower adjudicating authority confirmed demand of CENVAT Credit availed and utilized by the appellant under clause 14 of the Rules read with Section 75(2) of the Finance Act, 1994 (hereinafter referred as 'the Act'), issued to pay interest under Rule 15 of the Rules read with Section 75 of the Act and also imposed equal penalty under provisions of Rule 15 of the Rules read with Section 75 of the Act.

3. Being aggrieved by the impugned order, the Appellant, inter alia, filed the present appeal on the following grounds:

(i) The lower adjudicating authority has denied CEMSA Credit on the ground that the alleged input services are not actually used for existing output services and expansion and creation of new facility additions. Italy is a not-mixed code. The definition of input service, that alleged input services are in nature of consultancy services for expansion of existing facilities as well as new facilities and there is no doubt that existing facilities are used to provide certain services and any improvement/modernization or expansion of the same will also be used for providing output services only; that the lower adjudicating authority has accepted the fact that expansion/new facility will be used alternately for provision of certain services and hence there is no dispute to the extent that the services are in nature of input services and as the same will be used to provide certain services. Accordingly, the lower adjudicating authority are also of the view that alleged input services will be used for providing output services, there is no logic in not denying credit on the same on the ground that the same is not currently used but will be used in future and hence not eligible. That the Appellant provides port services to customers from the Port of Suez to carry out the business operations effectively and efficiently and to be competitive in the market, it is essential on the part of the Appellant to expand the capacities and use modern technologies. Accordingly, the Appellant has availed various technical consultancy services from vendors as alleged in the impugned order from time to time in relation to its port services only. That the term 'Input Service' is defined under the Rule 2(f) of Central Credit Rules, 2004 which states that any service which is used by a provider of output service for providing an output service, would qualify under the definition of input services. Therefore, any services which are used by a service provider for rendering output services shall be treated as an input service and thus, in the present case, since various technical consultancy services as alleged in the impugned order, are duly used by the Appellant for the provision of port services, the same are input services. Accordingly, the Appellant

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 Appellant, DN: cn=Appellant,
 o=Appellant, ou=Appellant,
 email=Appellant@Appellant.com,
 c=IN

is eligible to avail CENVAT Credit of service tax paid on the same.

- (i) That there is no direct nexus of fuel used for generating services availed by the Appellant with the port services being provided by them. It has already been discussed in above paragraphs that the said input services are explicitly covered under the definition of input services and hence eligible for input credit.
- (ii) The Appellant is in the business of providing port services including wide range of services like cargo handling services, well (i.e. pilorage, moorage, loading, unloading of cargo, loading/unloading, bulk and general cargo, LFO etc.) to provide services smoothly and in an efficient manner, the Appellant has to construct appropriate infrastructure for sea side services and also to upgrade, modernize and renovate such facilities from time to time with latest technologies and improved and latest facilities to meet the increasing demand and to increase in volume of business. It is necessary to expand or modernize the existing infrastructure to continue providing the services efficiently and on steady basis and to handle increased volume of cargo. In the present case, the Appellant has availed various services from various service providers and one expert in technical investigation in relation to port yard facilities, shore side services etc. Broadly the services availed are in the nature of technical investigation/review of projects, preparing project reports, preparing concept designs etc. The Appellant has carried out expansion/modernization and upgradation of the existing facilities as well as feasibility of additional facilities at the port and hence, availed *consultancy* services from these service providers, which have direct nexus with port services and hence, duly covered under input services.
- (iii) The present case of denial of CENVAT credit on input services on the ground that the same is in relation to expansion and is not entirely being used for the provision of port services. The Appellant would like to refer and rely on judgment by the Hon'ble CESTAT, Bangalore in the case of *Kasturba Services Ltd.* (2015) 40(8)S.T.R. 503 (Trib. Bangalore) where the facts of the case are very

Rajesh Kumar

akin to the existing case. It was categorically held by the I and the CESTAT as under:-

As a matter of fact, 0-68/2007- has been decided on the ground that the governmental investigation services were provided in relation to 7th berth and 7th berth was yet to come into existence. We are unable to accept this stand taken up by the Revenue. When, according to the findings, if the port authorities actually tendered such services here in an attempt at the governmental investigations may result in a situation that the procedure for 7th berth may not be issued in relation to the ground of non-existence of berth. A situation wherein services rendered may be related to port services or not, in our opinion, it may not be appropriate to deny the tax credit. It is not for want of the finding that 7th berth is not going to come into existence. Appellant's claim is that in respect of input tax credit claim, it is allowed as much as the credit has received and there is no need for an Applicant to wait till they are received, instead and consolidated. Their claim for credit is similar to the case on input tax credit. It is not some substance or form question of input tax credit and finding thereon, because the claim is for credit of CENVAT which is admissible when the input tax receipt would issue. At this stage, it may be possible to have the credit.

(ii) The appellant placed reliance on the following case laws:-

- (a) Karnax Microsystems (India) Ltd [2011 TOL 0774 CESTAT-BANG]
- (b) Galaxy Versatiles Limited [2014 (23) S.T.R. 19 (Trib. Del.)]
- (c) Sasa Cola India Pvt. Ltd Vs CCE [2005 VIL 05 HC-BOM-BT]
- (d) All India Federation of Tax Practitioners vs. UOI [2007 TOL 149 SC 51]
- (e) GTC Industries Ltd. [2009 (12) S.T.R. 409 (Trib. Cal.)]

(iii) During Financial Year 2010-11, the Appellant has already received CENVAT credit amounting to Rs 35,403/- in the books of account dated 30 June 2012. Accordingly, CENVAT credit of Rs 79,00,615/-

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available by the appellant during financial year 2012-13 has been reversed and hence, demand for wrong availing of CENVAT credit during the financial year 2012-13 should be reduced to nil extent.

- (c) The allegation regarding falsification and willful suppression of the facts is illogical, since the Appellant has regularly filed half yearly service tax returns declaring value of taxable services, service tax discharged, CENVAT credit availed & utilized in the respective returns in the service tax returns, that there was no requirement of submission of invoice-wise details of CENVAT Credit availed by them and hence the Appellant had not submitted invoice-wise information regarding the CENVAT Credit availed.

4. Persons hearing in the matter was assisted by Mr. Dhanraj Popatl, Manager Indirect Taxes who has intimate knowledge of the facts of appeal and also submitted that the Cenvat Credit has been wrongly denied on the ground that the facts about the same are not showing any output service whereas CESTAT & Hurdle High Courts have held that Cenvat Credit can be availed on this ground as long as you services have direct nexus with output services and they were providing Port Services and hence machinery to upgrade and provide new facilities to enhance port services are very much input services; that appeal may stand allowed.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order and grounds of appeal. All submissions made by the appellant. The issue to be decided in the instant appeal is whether the appellant is eligible to avail Cenvat credit for service tax paid on consultancy services as input services in terms of Rule 2(f) of the Rules or otherwise.

6. I find that the appellant is engaged in providing Port services including ancillary services under various categories as specified under the Finance Act, 1994 and availing CENVAT Credit on Central Excise Duty Service tax paid on inputs, Capital goods and other services under

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Rule 8 of Central Excise Rules, 2004. It also finds that the appellant had received consultancy services (i) in relation to design, funding and supervision for new port infrastructure from M/s AECOM India Pvt. Ltd. (ii) in relation to layout, station estimates, ship-manoeuvring simulations for acquisition of Berth 3 from M/s BMT Consultants India Pvt. Ltd. and (iii) in relation to Plans & Material Mechanical investigation from M/s High Contact Pvt Ltd to provide expertise of marine facilities at Tapesa Port, Gujarat.

It is found that the lower adjudging authority has relied on Central excise on the ground that services have been received for setting facilities which are ordinarily not being used to provide output services and same will be used for providing services after completion/creation of new facilities. It is held by this Tribunal that expansion and creation of new facility / additional facility are not unexcise under the definition of 'input services' under the CENVAT Credit Rules, 2004.

3.4 I would like to examine the definition of 'input services' appearing at the instance of the appellant as under:

Input services' means any service

- (i) used by a provider of taxable service for providing an output service;
- or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and distribution of final products from the place of his work.

and includes services used in relation to modernisation, reconstruction or expansion of a factory, purchase of plant or of output services in an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of input, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, repairs and training, computer maintenance, stock raising, share repurchase and security, inward transportation of inputs or other goods and materials and transportation up to the place of removal.

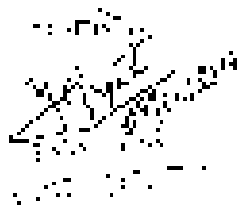
Port Ltd. and fill in relation to Land & Marine Geotechnical Investigation for M/s High Harbour Port Ltd. in respect of 109996 of number of berths and its ancillary facilities at Piploda Port, Ch. Gujarat.

8. Since the Central credit of service tax paid is admissible to the special conditions of invocation of extended period recovery of interest and moratorium of penalty provisions.

9. In view of above facts, aside the impugned order and allow appeal.

10. अतिरिक्त प्रमाणों के आधार पर निम्न कारणों से अपील को खारिज नहीं किया जाता है।

11. The order filed by the appellant is disposed of in above terms.




अध्यायक (अ.नि.)
अ.न.ए. (अ.नि.)

By Speed Post

To,
M/s Gujarat Piploda Port Limited,
Piploda, Post-1, Dabhasa,
Taluka : Rajula, District : Amreli

अ.न.ए. (अ.नि.)
अ.न.ए. (अ.नि.)
अ.न.ए. (अ.नि.)
अ.न.ए. (अ.नि.)

Copy To:

- 1) The Chief Commissioner, CGST & Central Excise Ahmedabad.
- 2) The Commissioner, CGST & Central Excise, Dabhasa.
- 3) The Joint Commissioner, CGST & Central Excise, Dabhasa.
- 4) Guard File.

