

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10210 of 2016

(Arising out of OIO-SUR-EXCUS-001-COM-013-15-16 dated 03/11/2015 passed by Commissioner of Central Excise and Service Tax-SURAT-I)

Essar Bulk Terminal Limited

27km,Surat-HaziraRoad,
Hazira,Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat- 395001

.....Respondent

APPEARANCE:

Shri Vipin Jain, Ms Dimple Gohil, Ms Isha Shah, Shri Vishal Agarwal, Shri Alice,
Advocates for the appellant

Shri Deepak Kumar, Special Counsel for the Respondent

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

Final Order No. A/ 12358 /2021

DATE OF HEARING: 03.08.2021
DATE OF DECISION: 17.09.2021

Ramesh Nair

Brief facts of the case are that M/s Essar Bulk Terminal Limited 27th KM. Essar House, Surat - Hazira Road, Hazira, Surat - 394270 (hereinafter referred to as the M/s EBTL" for the sake of brevity) are having Service Tax Registration No. AACH4005JST001 for providing various taxable services including Port Service & Cargo Handling Service under section 69 of the Finance Act, 1994 and also availing the CENVAT credit on inputs, input Services and capital goods under CENVAT Credit Rules, 2004.

1.2 During the course of verification of records by the officers of Vadodara Audit-II Commissionerate, Surat, it was noticed that Essar Group formed a SPV company viz. Essar Bulk Terminal Limited (EBTL) registered under the provision of the Companies Act, 1956 with equity contribution from the Group Companies namely Essar Steel Limited, Essar Shipping and Logistics Limited and Essar Shipping Limited, specially to develop the Deep Water Bulk Terminal Facility at Hazira including construction of a 550 meters jetty.

1.3 A license agreement between Gujarat Maritime Board (GMB), M/s EBTL and M/s. Essar Steel Limited for construction and use of 550- meters Deep

water jetty (Second Phase Extension of existing captive jetty of Essar Steel Limited) at Hazira in port Magdalla By M/s. EBTL was signed on 25.03.2010 with condition that the ownership of deep water captive jetty shall vest in Gujarat Maritime Board (GMB) 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 such structure is constructed (it being specifically understood that water front is the sovereign right of the Government). For the purpose of setting up of captive jetty, Gujarat Maritime Board (GMB) vide letter No. GMB/N/PVT/ESSAR/472/II/147-2395 dated 14.05.2007 issued a No Objection Certificate (NOC) to M/s. EBIL for dredging of common channel subject to conditions including that.

(a) the new channel to be created by ESSAR will be common user channel and will be allowed to be used by all other port users. Essar shall not be entitled to recover any charges from other users, if they use the new channel;

(b) Essar shall take all navigational safety measures and it should not affect the present operation at various captive and Gujarat Maritime Board (GMB) jetties at Magdalla and Hazira, adversely;

(c) that the ownership of reclaimed land shall vest with the Government of Gujarat/Gujarat Maritime Board (GMB);

(d) ESSAR shall not have any reimbursement claim for any expenditure incurred for this reclamation;

From the above condition, it appeared that the Gujarat Maritime Board has permitted M/s EBTL to reclamation of the common channel by way of dredging with the conditions that the ownership of reclaimed land shall be vest with the Gujarat Maritime Board and it shall be a common channel which can be used by other port or captive jetties. During the audit, it was noticed that M/s EBTL has appointed sub-contractors viz M/s Van Oord Dredging and Marine Contractor and M/s Van Oord India Pvt. Ltd to reclaim the said common navigation channel owned by the Gujarat Maritime Board by way of dredging during the period from April, 2010 to September, 2014. After reclamation of common channel owned by The Gujarat Maritime Board, M/s. EBTL has availed Cenvat credit on the dredging service provided by the sub contractors for reclaim of common navigation channel, treating it as input service for providing output service viz. port Services. The audit officers observed that dredging was undertaken in the navigation channel which leads to jetty of M/s EBTL is not their private property but belongs to

the Gujarat Maritime Board and the channel is also used not only by M/s EBTL but also by several others and, therefore, it cannot be said that the benefit of dredging channel accrues to M/s EBTL only in relation to the activity undertaken by them and not to other, As the said dredging activity for reclamation of common navigation water channel was done by EBTL on behalf of the Gujarat Maritime Board for common users, therefore, it appears that the activity of dredging on which Cenvat credit has been taken by M/s EBTL has no nexus between the dredging service and output service provided M/s EBTL, hence, does not falls under the purview of input service under Rule 2 (I) of the Cenvat Credit Rules, 2004 as amended.

1.4 Due to aforesaid contention of the revenue a show cause notice dated 13.04.2015 was issued wherein it was proposed to deny the Cenvat credit in the dredging service and also demanded interest under Rule 14 of Cenvat Credit Rules, 2004 and proposed penalty under rule 15 of Cenvat credit Rules, 2004 read with 78 of the Finance Act. The Adjudicating authority i.e. Commissioner of Central Excise and Service tax, Surat-II vide order dated 03.11.2015 confirming the demand of cenvat credit order to recover interest and imposed amount of penalty. Therefore, the present appeal.

2. Shri Vipin Jain, Learned Counsel along with Ms Dimple Gohil, Ms Isha Shah, Shri Vishal Agarwal & Shri Alice, Advocates appeared on behalf of the appellant. Shri Jain submits that the dredging services was availed by the appellant are integral to providing the output services i.e. Deep Draft cargo handling services for the ships calling at the appellant's jetty. Without the dredging services having been availed for the channel, the appellant would not be able to provide its Output Services. He submits that even the respondent does not dispute the nexus of the dredging services availed by the Appellants with the output services provided by it. He submits that in terms of its agreement that the Esaar Steel Ltd it undertook to dredge the channel from the anchorage to its jetty so as to create sufficient draft (minimum of 10 mtrs) for mother vesesels to directly call upon its jetty for offloading the cargo. It is not only because the appellant has created a channel with sufficient draft to its jetty that Essar Steel engaged it for rendering port services and has entered into a contract with a minimum assured volume of approximately 25 million tons annually of cargo handled for a period of about 15 years. The dredging of channel was therefore essential for enabling the appellant to provide the kind of port services expected by its customers ESIL. He further submits that the substantive

definition of input services in Rule 2(I)(i) of CCR, 2004 has been squarely satisfied i.e the dredging services have been used for provision of output services and hence the said services fall under the definition of input services. There is a direct nexus between the input services and output services as held in the case of Adani Port & Special Economic Zone Ltd Vs CST, Ahmedabad- 2016 (42) STR 1010(Tri- Ahd) and hence , cenvat credit is eligible on the said services. Since the said services do not fall under any of the exclusions provided under Rule 2(I), the credit cannot be denied.

2.1 He, without prejudice of the above submits that due to mere facts that benefit of a service may also accrue to a third person cannot be a ground for denying credit as long as the input service availed was necessary for providing the taxable output service. The only stipulation under CCR, 2004 for being eligible to avail cenvat credit is that the input service should be used for providing output service. Here is no dispute that the dredging service is utilized by the appellant for rendering port services and cargo handling services. The mere fact that the benefit of the said dredging service could theoretically be enjoyed by a third party , cannot be a ground for contending that the service have not been availed and /or utilized by the appellant or provision of its output services which is sole criteria for availing cenvat credit. He further submits that there is no requirement under CCR, 2004 that for being eligible to avail cenvat credit of an input service, the property on which the services have been availed of must be owned by the service recipient. It is his submission that even if the one was to assume for the sake of argument that the benefit of dredging services was not entirely accrue to the appellant as the channel could have been denied as it is nobody's case that any extra input service was availed to confer any benefit to a third party. The entirety of the input services was used only for providing the taxable output services of the appellant. It is not permissible to have provided the taxable output services of the appellant. It was not possible to have provided the taxable output services by using a lesser quantum of input services in question. Therefore, the ration laid down by the Hon'ble High court of Gujarat in the case of CCE vs Sterling Gelatin 2011(270) ELT 200 is applicable. Further in any event there was also no mechanism prescribed in law to reverse/apportion the credit in such a situation. He placed reliance in this regard on the decision of Hon'ble Apex Court in the case of CIT vs. B.C Srinivasa Setty (128 ITR 294) wherein it was held that capital gains cannot be levied on the sale of goodwill since the law did not intend to tax sale of goodwill and consequently did not prescribe any mechanism to determine cost of acquisition. Applying the principle laid

down by the Hon'ble Apex court to the present case, appellant submits that the law does not envisages disallowing cenvat credit in the hands of the service recipient, merely because of the benefit of the same can also accrue to a third party and consequently it has not provided for a mechanism for reversal /apportionment of credit in such a situation. This being the case, cenvat credit on dredging services in the hands of the appellant cannot be denied.

2.2 Without prejudice, he further submits that even though the navigation channel is common yet, the dredging has been done only up to the appellants jetty alone. It is his submission that the Navigation channel dredged by is has not been used , is incapable of being used by others as all the other jetties are further away towards the landside which cannot be accessed from the appellants jetty unless the channel is further dredged. Thus for only other users to use the channel it would have to dredged further up to the said user's jetty. The appellant has been given the responsibility of navigational safety measures which in turn does not affect the operations of other jetties adversely. Since the appellant's dredged channel has been deep draft only until its jetty, no other user is allowed to use the deep draft as it can result in catastrophic damages due to grounding of ships if deep draft ships navigate into waters which do not have the required depth.

2.3 Shri Vipin Jain further submits that it is also an undisputed fact that entire expenses for dredging and the service tax thereon has been borne by the appellant. In terms of the permission granted to the appellant, it is debarred by GMB from recovering any charges for usage of said channels from others and the same forms a part of the output services being rendered by the ESIL. In this regard he placed reliance on Hon'ble Gujarat High Court Judgment in the case of Essar Oil – 2016 (41) STR 389 wherein it was held that cenvat credit in respect of any expense that forms a part of the output service / cost of production of an assessee cannot be denied. As regard the grounds for denial of credit is that the ownership of navigation channel does not vest with it and is to remain the property of the GMB. He submits that the CCR, 2004 do not require ownership of an asset to be a necessary condition for availment of credit. In fact Rule 4(3) of CCR, 2004 specifically provides that the cenvat credit in respect of capital goods shall be allowed even if the capital goods are acquired on lease, hire purchase or loan agreements from financing companies. Title of the property is not relevant for the purpose of availment of credit as has been held by the

Hon'ble Tribunal in the case of CCE vs JSW Ispat Steel Ltd- 2015 (327) ELT (549), following the judgment of the Punjab & Haryana High Court in the case of the Pepsi Foods Ltd 2010(254) ELT (284).

2.4 He submits that even though the channel may be the property of GMB, as long as the appellant had the license / permission to use the same it was entitled to avail credit of all input services used for rendition of its output service. He submits that once there is no dispute regarding use of the service in rendition of output service, the credit of service tax paid cannot be denied, especially when the service tax paid is duly reflected in the invoices which are in the name and address of the recipient of the service. As regard the case law relied upon by the respondent, he submits that the respondent as misplaced his reliance on the tribunal decision in the cases of Welspun Maxsteel Ltd; Sanghi Industries and Tuticorin Port trust. While in the case of Tuticorin Port trust he challenge was only to the imposition of penalty, the orders in the case of Welspun Maxsteel Ltd & Sanghi Industries are interim orders. Appellant therefore, submits that none of the order cited by the revenue deal with the merits of the issue and give a final view thereon.

2.5 He submits that the issue in dispute is no longer res-integra and has been decided by this Hon'ble Tribunal in the following final orders:

- a. Adani Port & Special Economic Zone Ltd vs. CST, Ahmedabad- 2016 (42) STR 1010(Tri- Ahd)
- b. Sanghi Industries vs. CCE 2020- TIOL-328- CESTAT –AHM
- c. Ultratech Cement vs. CCE 2021- TIOL-161- CESTAT-AHM
- d. Saurashtra Cement Ltd vs. CCE 2018-TIOL-2749-CESTAT-AHM

2.6 Without prejudice, He further submits that the demand raised in the present case is time barred as it has been raised beyond the normal period of limitation. The appellant was duly registered with the Service Tax Department and regularly filed its ST-3 returns wherein availment of credit is duly reflected. Copies of the agreements entered into with GMB have been submitted to the department and to the audit parties visiting the site. Therefore, it cannot be said that that appellant has suppressed any information from the department. The SCN seeks to invoke extended period solely on the ground that it has suppressed the fact of the license agreement dated 25.03.2010 for construction and use of deep water jetty. However, the agreement was duly submitted to the department from time to time during

the various audits conducted by the Department viz in March 2011 and June-July 2012. Appellant submits that the audit report dated 07.09.2012 particularly recorded the license agreement and referred to condition 22 thereof for pointing out a short payment of service tax by GMB on wharfage charges. Therefore, Shri Vipin Jain by making above submission prays for setting aside the impugned order and allowing appeal.

3. Shri Deepak Kumar, Learned Special counsel appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have heard both the sides and perused the records. The limited issue involved in the present case is that whether the appellant operating the port/jetty is entitled for cenvat credit in respect of dredging service against the provision of output service viz. port services and cargo handling services. We find that the Adjudicating Authority has denied the cenvat credit on the following counts:

1) Dredging services has no nexus with the output services i.e. Port service and Cargo handling services.

2) Since navigation channel for which dredging service was availed is not a private property of EBTL as per the agreement between EBTL, GMB and Essar Steel.

3) The dredging activity i.e. reclamation was done by EBTL on behalf of GMB for common users. Therefore, dredging service cannot be considered as input service for the appellant.

4.1 As regard the issue that whether the dredging services has nexus with the output service namely port service and cargo handling service, we find that dredging service availed by the appellant is integral to providing output services for ships to come at the appellant's jetty, without availing the dredging service the appellant could not be able to provide the output service of cargo handling. The dredging service was availed exclusively for the purpose of making channel at port Magdalla which was very shallow and as a consequence of mother vessels which required a higher deep draft could not have reached the said port. As per the agreement with Essar Steel Ltd the appellant undertook the dredging of channel from the anchorage to its jetty so as to create a sufficient draft for mother vessels to directly call upon its jetty offloading the cargo. It is only due to the creation of the channel with sufficient draft to its jetty that Essar engaged it for rendering port services and has entered into the contract for handling the cargo for the period of about 15 years. Therefore, there is absolutely no doubt that the

dredging of channel was therefore essential for enabling the appellant to provide the port services expected by its customer Essar steel. Therefore, the dredging service has direct nexus with the output services of port services and cargo handling services.

4.2 As per the definition of input service in rule 2(l)(i) of Cenvat credit rules, 2004 the dredging service which have been used for provision of Output service clearly fall under the definition of input service. This issue is no longer res-integra as the similar services has been allowed as input service for the same output service in the case of Adani Port & Special Economic Zone Ltd Vs CST-2016(42) STR1010 (Tri.Ahd). The relevant extract of the order is reproduced below:

"18. We find that the Notification No. 25/2007-S.T. (supra) exempts from payment of service tax on the Commercial or Industrial construction services. It would apply to a commercial concern in relation to construction of Port or other Port provided service to any person exempted from the whole of service tax leviable thereon. In the present case, the Port was constructed by the contractor appointed by the appellant for construction of Jetty, the exemption is applicable to the contractor. The contractors are not eligible to avail Cenvat credit. On the other hand, the appellant paid service tax on Port service. Hence, the appellants are entitled to avail Cenvat credit on the inputs used for taxable output services, Port service. We find that the Hon'ble Gujarat High Court in the appellant's own case, as stated above, held that appellant is entitled for input credit and it cannot be denied since construction of jetty was exempted. So, the findings of the adjudicating authority on this issue, is not sustainable."

- Sanghi Industries vs. CCE 2020- TIOL-328- CESTAT –AHM

"6.6 In respect of dredging services we find that the same was in respect of jetty in the factory premises and is used for transportation as well as import and export of goods. Since the services are related with the business of the company, the appellant are eligible to avail credit of the same . As regard denial of credit on excess tax charged by the service provider, we find that the assessment at the end of the service provider has not been challenged. The appellant has paid the amount of service tax charged to them. In such case, the credit cannot be denied to them. We thus are of the view that the appellant are eligible for availing cenvat credit on impugned services, Resultantly we allow all the appeals filed by M/s Sanghi Industries Ltd in the above terms with consequential relied if any."

In view of the above judgments it is clear that the dredging services used for providing the port service/Cargo handling service is admissible as input service.

4.3 As regard the ground for denial of cenvat that the Navigation channel for which dredging was availed is not a private property of the appellant but it was done on behalf of GMB, We find that the entire coastline is a sovereign

property of Government of India through various Port Trust, Maritime Board etc. In none of the case of constructing the port the ownership belongs to the operator of the port. The sea coast parcel on which construction of the port is allowed is always on lease basis and not on the ownership basis however, the operation of port is carried out by the port operator. It is also undisputed position that the entire port operation on the port including the Port service and cargo handling service are liable to payment of service tax on the said output service. Therefore, any service is availed in relation to the operation of port or construction of port is indeed the input service. Accordingly, the assessee is entitled for cenvat credit in respect of such input service i.e. dredging service used for providing output service i.e. Port Service.

4.4 In the present case also even though the appellant was allowed to construct the port/jetty in particular navigation channel by GMB but the fact remains that the operation of the port is solely carried out by the appellant. It is a settled position that for availing the cenvat credit it is not necessary that the location from where the output service is provided should be owned by the service provider. As long the service is provided by the service provider for which any input service is received and used for providing output service, the cenvat credit on such input services shall be available for utilizing the said cenvat credit for payment of service tax on the output service. Therefore, the ownership of the location from where the service is provided is immaterial for availing the cenvat credit on input services as well as for payment of service tax on the output services. If the contention of the revenue is accepted that the appellant is not entitled for the cenvat credit on the ground that the jetty is not owned by them in such case even the service tax liability will also not cast on appellant but on the so called owner of the jetty as per the department, which is not provided under the Finance Act, 1994. Therefore, on the ground of ownership of jetty belongs to GMB the cenvat credit cannot be denied. The issue whether the ownership of the location is relevant for availment of cenvat credit or otherwise the courts has passed various judgments. Some of the judgments are reproduced below:

- CCE vs JSW Ispat Steel Ltd- 2015 (327) ELT (549)

"5.2 *In the decisions relied upon by the appellant, the issues contested by the Revenue have been adequately addressed. For example, in the case of Pepsi Foods (supra), it has been held that ownership of goods is not a criterion for denial of credit on capital goods and even if it is leased for a particular period, the assessee is*

eligible to take Cenvat credit. In the present case, merely because M/s. Inox Air Products Ltd. has leased out the plant to the appellant, that does not disentitle the appellant from availing Cenvat credit of the excise duty paid on capital goods. Similarly, in the case of Gujarat Ambuja Cement Ltd. (supra), Rajarambapu Patil SSK Ltd. (supra) and KCP Ltd. (supra), this Tribunal and the Hon'ble High Court of Himachal Pradesh held that Cenvat credit of excise duty paid on parts, components and accessories would be admissible under the Capital Goods Credit scheme even if they are assembled into goods which are immovable or exempted. Similarly, in the ICL Sugars Ltd. (supra), it was held that immovability has no bearing on eligibility for availment of Cenvat credit on capital goods. In the light of these decisions, the interpretation of law undertaken in the impugned order does not appeal to any common sense or logic. So long as the individual machinery, equipment or appliance or parts and components thereof fall within the definition of capital goods under Rule 2(A) of the Cenvat Credit Rules, 2004 and so long as they are used within the factory of production for the manufacture of excisable goods which are chargeable to duty, the benefit of capital goods credit cannot be denied and we hold accordingly."

- Pepsi Foods Ltd 2010(254) ELT (284)(P&H)

"5. Counsel for the respondent has submitted that Modvat credit cannot be denied to the respondent in view of the law laid down in Sharda Motors Industries Ltd. v. CCE, Chennai, reported as [2002 \(150\) E.L.T. 759](#) and His Automotives Ltd. v. CCE, Chennai, reported as [2004 \(163\) E.L.T. 116](#), wherein it has been held that ownership of goods is no criteria for denying Modvat credit in view of the Circular of the Board dated 1-3-1999. Counsel for the respondent has also placed reliance on Union of India v. Marmagoa Steel Ltd., reported as [2008 \(229\) E.L.T. 481](#) (S.C.).

6. We have gone through the order passed by the Tribunal as well as the case law cited by the counsel for the parties. In the present case, although the capital goods were imported by M/s. Frito Lay India, but the endorsement in the Bill of Entry was made in favour of the respondent. In Sharda Motors' case (supra) it has clearly been held that ownership of goods is no criteria for denying Modvat credit, specially in view of the Circular dated 1-3-1999. Since in the present case, the Bill of Entry was made by M/s. Frito Lay India in favour of the respondent, thus, Modvat credit could not be denied to the respondent.

7. In view of the above, we are of the considered opinion that the Tribunal was correct in allowing the Modvat credit on the capital goods received by the respondent particularly when the endorsement in the Bill of Entry was made in its favour by M/s. Frito Lay India. Accordingly, both the questions of law are answered in favour of the assessee and against the Revenue. The order of the Tribunal is upheld."

In view of the above judgments it is settled that ownership has no criteria either for allowing the cenvat or for charging service tax on the output services. For cenvat credit as well as for charging service tax the only criteria is that there should be service provider and service recipient irrespective of ownership of the premises from where the service is provided. It is very common in commercial parlance that the service provider takes the premises on lease which is owned by the lessor. However,

irrespective of services received related to such premises or not but the credit cannot be denied on the service received by the service provider in respect of the leased premises for a simple reason such that such leased premises is used by the service provider for providing the output service. The only condition is that in respect of input service the relationship between the service provider and input service recipient is that of service provider and the service recipient. The payment of any service including the service tax is charged by the service provider and the same is borne by the input service recipient. In the present case also as regard the service provision of dredging service there is a direct contract between the service provider viz M/s Van Oord Dredging and Marine Contractor and M/s Van Oord India Pvt. Ltd and the appellant. The said service providers rendered the service to the appellant only and not to the Gujarat Maritime Board. Therefore, the appellant being the sole recipient of the service entitled for the cenvat credit. It also not disputed that the entire service charges along with service tax there on for dredging of navigation channel was paid by the appellant to the aforesaid contractors who carried out the dredging services. In this undisputed fact the appellant is the service recipient for dredging service which is undisputedly used for providing Port Services and cargo handling services, hence, the appellant is entitled for taking cenvat credit on dredging services.

4.5 As regard the allegation of the department that the navigation channel is meant for other users also therefore, credit is not admissible to the appellant, We find that firstly, the entire contract of dredging of navigation channel is between the service provider i.e. M/s Van Oord Dredging and Marine Contractor and M/s Van Oord India Pvt. Ltd and the appellant. The entire service charge along with service tax was borne by the appellant no other persons are involved in the transaction of said services. Therefore, the appellant only is the sole recipient of the services. Accordingly, the appellant is entitled for the entire cenvat credit. Without prejudice to our above finding we further find that, it is the theoretical terms in the agreement with Gujarat Maritime Board that the said navigation channel can be used by other users also. However, as submitted by the appellant and the fact on record the navigation channel was dredged only upto the location of the appellant's jetty. Therefore, looking to the factual location of the jetty no other users can pass through that channel because the channel has no free through way, for this reason the said navigation channel has the dead end at one side of the jetty. In this position even though there is a condition in the agreement with GMB to allow the navigation channel to others but practically

the said channel cannot be used by others. Moreover, the revenue has not adduced a single incident of the said navigation channel being used by any other persons. Therefore, even though the condition for allowing the navigation channel to other as per the agreement but in fact there is no user of said navigation channel except the appellant. Accordingly, the case of the revenue is not sustained on this count also.

4.6 The very same issue has been considered by this tribunal in the case of Saurashtra Cement Ltd 2018-TIOL-2749 CESTAT –AHD wherein the cenvat credit was allowed even though the private jetty does not belong to the assessee and consequently it was used by other jetty owners also. The tribunal after considering various judgments given the following order:

"On careful consideration of the submissions made by both the sides and perusal of the records, I find that the Jetty is a captive active jetty of the appellant, which is exclusively used by the appellant only. At time, the appellant have to get the dredging done at the jetty for proper function of jetty to improve the draft. Since jetty is used primarily for import of coal which is used in the manufacture of final product, Dredging Service is qualified as input service. It is also a fact that dredging service is nothing to do with the customer to whom final product is sold. The service charge of dredging service is borne by the appellant obly which stands absorbed in the overall coszt of manufacturing of cement. Therefore, it cannot be said that the Dredging service is used for the removal of final product from palce of removal. Also as per Hon'ble Bombay High Court judgment in the case of CC Ex, Nagpur vs Ultratech Cemnet Ltd 2010(20) STR 577(Bom.)-2010-TIOL-745-HC-MUM-ST it was held that if the cost of input service borne by the assessee and the same stand absorbed in the cost of final product, such services are qualified as input services and accordingly Cenvat Credit is admissible. Considering the ratio laid down by the Hon'ble High Court and the facts of the present case, I am of the considered view that the Dredging services used by the appellant is an input sevice, hence, Cenvat Credit is admissible. I also observed that merely because the service was availed outside the factory of the appellant the credit cannot be denied. Whether the service is availed in the factory or outside the factory, only requirement is that it should be in relation to the manufacture of final product, therefore, the Cenvat Credit is admissible. Accordingly, I set aside the impugned order and allow the appeal."

4.7 The Similar issue once again considered by this tribunal in the case of Ultra tech Cement Ltd – 2021 TIOL 161 CESTAT-AHD wherein the following the orders in the case of Saurashtra Cement (Supra) and Sanghi Industries (Supra) the cenvat credit on dredging service for jetty was allowed.

4.8 In view of the above judgments which are on identical issue and the fact which is in the present case the issue is no longer res-integra.

4.9 The appellant have also raised the issue on limitation that the demand for the extended period is not sustainable as there is no suppression of fact. On the careful scrutiny of the records and submission made by the appellant we find that the appellant have undisputedly intimated to the department regarding approval given by GMB for construction of the 550 meters deep water cargo handling terminal facility as well as permission for approval of transfer from Essar steel to the appellant. It was also intimated to the department that the port is under construction and the GMB will give permission for commencement of the operation for which the agreement was signed on 25.03.2010. The availment of cenvat credit on dredging service utilized for construction of port and the water channel was in the knowledge of the department as during the course of EA 2000 audit conducted in March 2011, June & July 2012 for the period 2010-2011 and 2011-2012, several objections were raised regarding the availment of credit. The audit report No FAR/190/ST/2012-13 dated 07.09.2012 was conveyed to appellant by the Jurisdictional Superintendent vide its letter dated 01.02.2013 wherein it was specifically referred to condition no 22 of the appellant's license agreement dated 25.03.2010 with GMB and has pointed out short payment of service tax on wharfage charges as the service tax was paid on the concessional rate granted to the appellant and not on the full rate. This makes it clear that copy of agreement dated 25.03.2010 entered into by the appellant with GMB along with its all enclosures including NOC dated 14.05.2007 was submitted to the department and it is on the basis of this agreement only the entire present case of cenvat credit was made out therefore the details of the agreement was in the knowledge of the department.

4.10 In this fact all the information regarding dredging service availed by the appellant, Cenvat credit availed there on etc were in the knowledge of the department therefore there is no suppression of fact or mis declaration with intent to evade duty on the part of the appellant. From the Show cause Notice it was observed that the appellant had availed Cenvat credit on dredging services from 19.04.2010 to 1.12.2012 whereas the Show Cause Notice denying the said Cenvat credit was issued on 13.04.2015. Therefore, the entire demand is under the extended period, hence in view of the above facts the demand is not sustainable on limitation also.

5. As per our above discussion and finding the demand of cenvat credit is not sustainable on merit as well as on limitation. Accordingly, impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 17.09.2021)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Geeta