

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12243 of 2019

(Arising out of OIO-SUR-EXCUS-000-COM-004-19-20 dated 28/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Essar Bulk Terminal Limited

.....Appellant

27, Km, Surat- Hazira Road, Hazira
Surat, Gujarat

VERSUS

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

.....Respondent

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

With

Service Tax Appeal No.10473 of 2019

(Arising out of OIA-CCESA-AUDIT-SRT-VK-29-2018-19 dated 12/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Essar Bulk Terminal Limited

.....Appellant

27, Km, Surat- Hazira Road, Hazira
Surat, Gujarat

VERSUS

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

.....Respondent

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

APPEARANCE:

Shri Vishal Agrawal & Ms. Dimple Gohil, Advocates for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11047-11048 /2022

DATE OF HEARING: 02.08.2022
DATE OF DECISION: 29.08.2022

RAMESH NAIR

In both the appeals, the common issue involved is that whether the dredging services received by the appellant for dredging the navigation channel leading to its jetty on which cenvat credit has been availed falls

under the purview of input service under Rule 2(I) of Cenvat Credit Rules, 2004.

02. Shri Vishal Agrawal & Ms. Dimple Gohil, Advocates appeared on behalf of the appellant. Shri Vishal Agrawal, learned counsel briefed the facts of the case and submits that the identical issue in the appellant's own case has been finally decided by the CESTAT vide Final Order No. A/12358/2021 dated 17.09.2021. He submits that in view of the aforesaid decision of the tribunal, this issue does not remain under dispute. He also placed reliance on the following judgments:-

- ADANI PORTER & SPECIAL ECONOMIC ZONE LTD.- 2016 (42) STR 1010 (Tri.-Ahmedabad)
- SANGHI INDUSTRIES- 2020-TIOL-328-CESTAT-AHM
- ULTRATECH CEMENT- 2021-TIOL-161-CESTAT-AHM
- SAURASHTRA CEMENT LTD.- 2018-TIOL-2749-CESTAT-AHM

2.1 He further submits that the entire expense for dredging and the service tax thereon has been borne by the appellant M/s. EBTL. In terms of the permission granted to EBTL, it is debarred by GMB from recovering any charges for usage of such channels from others and the same forms a part of the output services, being rendered to ESTL. He placed reliance on the judgments in the case of Coca Cola India Pvt. V/s. Commissioner of Central Excise, Pune-III- 2009 (15) STR 657 (Tri.-Mum.) and the Hon'ble Gujarat High court in the case of Essar Oil- 2016 (41) STR 389 that cenvat credit in respect of any expense that forms part of the output service/cost of production of an assessee cannot be denied. As regard the judgments relied upon by the revenue, he submits that the respondent has misplaced his reliance on the tribunal's stay order in the case of Welspun Maxsteel Ltd.- 2014-TIOL-1065-CESTAT-MUM, Sanghi Industries- 2009 (14) S.T.R. 502 (Tri.-Ahmd) and Tuticorin Port Trust- 2008 (12) S.T.R. 382. He submits that in none of the cases the revenue dealt with the merits of the issue and given a final view thereon, the same cannot be relied upon.

03. On the other hand, Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the lower authorities have denied the cenvat credit in respect of dredging service to the appellant on the ground

that the land of jetty is owned by GMB, the channel developed by the EBTL is not for their exclusive use by the appellant. We find that this tribunal in Order No. A/12358/2021 in the appellant's own case on these issues which are involved in the present case also and by giving a detail finding, relying on some judgments held that the dredging service received by the appellant for construction of navigation channel is an input service and the credit was allowed. The relevant part of this tribunal decision is extracted below:-

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.

.....

4.3 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.

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

....”

From the above judgment, it is seen that the entire fact and the legal position of the present case is exactly same as was in the above cited decision of this tribunal. The only difference is, in the present case the show cause notice are periodical whereas, the allegation and contents of the show cause notice are common. In this position, we do not find necessary to again repeat our discussion and finding. We find that the issue is squarely covered in the appellant's own case in the above cited judgments of this tribunal. Following the same, we do not find any merit in the impugned orders.

4.1 Without prejudice to above, as regards submission of the appellant that the cost of service was borne by the appellant only hence credit is available to them, we find that it is undisputed fact that the entire cost charged by the service provider to the appellant only and the same was expenditure exclusively of the appellant. For this reason also as held by the Hon'ble Bombay High Court in Coca Cola case, the appellant is entitled for cenvat credit on input service, dredging service.

05. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 29.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)