

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH REGIONAL BENCH AT HYDERABAD  
BENCH - SM  
COURT - I**

Appeal(s) Involved:

**ST/30647/2018-SM**

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-249-17-18 dated 26/02/2018 passed by Commissioner of Central Excise & Service Tax (Appeals), Visakhapatnam)

**Visakhapatnam Port Trust**

Appellant(s)

**Versus**

**Commissioner of Central Excise &  
Service Tax, Visakhapatnam**

Respondent(s)

**Appearance:**

Ms A.S.K Swetha, Adv for the Appellant.

M Arun Kumar, A.R. for the Respondent.

**CORAM:**

**HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)**

Date of Hearing: 05/12/2018

Date of Decision: 05/12/2018

**Final Order No. A/ 31555 / 2018**

**[Order per: M.V.Ravindran. ]**

This appeal is directed against order-in-appeal No. VIZ-EXCUS-001-APP-249-17-18 dated 26/02/2018 dated

2. Heard both sides and perused the records.
3. The issue involved in the case in hand is regarding denial of CENVAT credit to appellant on various items like steel plates, FRP corrugated sheets, tongue rail, fasteners, rail sleepers, MS bolts with nuts etc. The case of

the Revenue in the show-cause notice is that these goods are not capital goods nor can they be considered as inputs. Hence the availment of CENVAT credit is incorrect. The contest of the appellant was dismissed by the adjudicating authority relying upon the decision of the Tribunal in the case of Mundra Port & Special Economic Zone wherein the Bench has held the same view. Aggrieved by such an order of the adjudicating authority, an appeal was preferred to the 1<sup>st</sup> Appellate Authority. The 1<sup>st</sup> Appellate authority has in the impugned order, upheld the arguments put forth by the adjudicating authority and rejected the appeal.

4. Learned counsel after drawing my attention to the show-cause notice, order-in-original and order-in-appeal submits that these items are used for laying railway tracks and the appellant being a major port, utilises these railway tracks for rendering taxable output services i.e. port services. Subsequently she reads the definition of inputs wherein it is stated that goods used for providing any output services are eligible for CENVAT credit. It is her submission that the reliance which was placed by the adjudicating authority on the case of Mundra Port and SEZ was negated by the Hon'ble High Court of Gujarat as reported at 2015 (39)STR 726(Guj) holding that CENVAT credit on cement and steel used for construction of jetty was allowed as Mundra Port is also rendering port services. Further she brings to my notice the judgment of this Bench in the case of Atlas Offshore Pvt Ltd Vs CCE, ST & C [2017(10) TMI 27- CESTAT Hyderabad (wherein I was one of the Members) wherein CENVAT credit used for fabricating/manufacturing vessels, barges was sought to be denied but was allowed by the Tribunal in favour of the assessee therein and it is her submission that further in a similar case in the case of CC & CE Raipur Vs Vimla Infrastructure (India) Pvt Ltd [2016 (8)TMI 618-CESTAT New Delhi], the Bench held that railway

sleepers, RLS rails used for construction of railway sidings which were further used for providing the services of cargo handling are eligible for CENVAT. This judgements of the Tribunal in the case of Vimal Infrastructure has been upheld by the Hon'ble High Court of Chattisgarh as reported at 2018(3)TMI 1493 Chattisgarh High Court.

5. Learned A.R. reiterates the findings of the 1<sup>st</sup> Appellate Authority as well as the adjudicating authority and submits that the credit should not be allowed.

6. On a careful consideration of the submissions, I find that there is no dispute as to the fact that the CENVAT credit was availed on various items which were used for laying a railway track within the port premises of the appellant. It is also undisputed that appellant is discharging appropriate service tax liability on the port services rendered by them. Keeping this in mind, it is to be seen that the definition of inputs under Rule 2(k) of the CENVAT Credit Rules specifically states that credit is allowed on all goods used for providing any output services. I do find merit in the contentions raised by the learned counsel that the issue is now settled by the judgement of the Hon'ble Gujarat High Court in the case of Mundra Port & SEZ (supra) and Tribunal in the case pf Vimal Infrastructure (Indi) Pvt Ltd (supra). In view of the foregoing, in the facts and circumstances of this case, I hold that the impugned order is unsustainable and liable to be set aside and I do so. The impugned order is set aside and the appeal is allowed.

(Order pronounced and dictated in open court)

**M.V.Ravindran**  
**MEMBER (JUDICIAL)**

Neela Reddy