CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 3128 of 2012
(Arising out of **Order-in-Original** No.VIZ-STX-001-089-12 dated 09.07.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

M/s Dredging Corporation of India Ltd., .. **APPELLANT**
Dredge House,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

VERSUS

Commissioner of Central Excise and Service Tax Visakhapatnam – I .. **RESPONDENT**
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri S. Thirumalai, Advocate for the Appellant.
Shri Ch. Venkat Reddy & Shri A. Rangadham, Authorized Representatives for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30569/2025

Date of Hearing: 01.12.2025
Date of Decision: 01.12.2025

[ORDER PER: A.K. JYOTISHI]

M/s Dredging Corporation of India Ltd., (hereinafter referred to as appellant) are in appeal against the Order-in-Original dated 09.07.2012, whereby, certain demands have been confirmed along with penalty and interest.

2. The issue, in brief, is that the appellants are providing dredging services, which was brought under the service tax with effect from 16.06.2005 and were paying service tax @ 10%. The said rate was enhanced from 10% to 12% with effect from 18.04.2006. Department felt that since the invoices have been issued, as well as payments have been received post this date, the applicable

rate shall be 12%. Whereas, the appellant's contention was that since the services were already rendered prior to this date 18.04.2006, therefore, the applicable rate should be 10%. Similarly, the Department also noticed that appellant had taken credit in respect of certain inputs which Department felt was more in the nature of capital goods. Appellant had taken credit in terms of Rule 3(3) of Cenvat Credit Rules 2004 (CCR) which allowed taking of credit in respect of 'inputs' on stock lying on the date of an exempted service coming under dutiable service. Department also noticed that they had availed 100% credit in respect of capital goods, whereas, as per the extent provisions, they were entitled to take 50% in the first year and remaining 50% in the next year. There is also a small issue of payment of interest in respect of taking of credit and reversing it subsequently and therefore the interest was demanded for the period it was not reversed though admittedly it was not utilized.

3. Learned Advocate submits that in so far as the issue of applicability of service tax @10% or 12% is concerned, there is enough evidence on record to suggest that the services were rendered prior to 18.04.2006. In this regard, he has taken us through copies of debit notes and invoices which clearly show that these services were rendered prior to that date. Therefore, rendering of services prior to the cut-off date is not disputed. In so far as the issue whether it would be 10% or 12%, we find that the similar issue came up before the Co-ordinate Bench at Delhi in the case of Nokia India Pvt Ltd., Vs Commissioner of Service Tax, New Delhi [2024-VIL-1580-CESTAT-DEL-ST]. Similarly, the same issue was also considered by the High Court of Delhi in the case of Vistar Construction (P) Ltd., Vs Union of India & Ors [2013-VIL-119-DEL-ST].

4. We have gone through the cited judgments and we find that the issue in the case of Nokia India Pvt Ltd., supra, was also on the similar lines, wherein, the subject circular dated 25.04.2003 and 28.04.2008 were the subject

matter. It is an admitted fact that the Department has relied on these two circulars for levying 12% service tax instead of 10%. This Tribunal, after going through the said circular as well as judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur Vs Rattan Melting & Wire Industries [2008-VIL-04-SC-CE-CB], held that since the rendition of service is the point of taxation and therefore service tax payable at 10.12% was correct. In the case of Vistar Construction (P) Ltd., supra, also the Hon'ble High Court also considered the circular dated 28.04.2008 and held that in so far as the taxable event under service tax is concerned, it is the rendition of service. Relevant paras of the circular are cited below:

> 7. On going through the said instruction and particularly para 3 thereof it appears that the view of the respondents is that service tax becomes chargeable on receipt of payment for the service whether or not the services are performed. This view is clearly wrong. We say so because the Supreme Court in the case of Association of Leasing & Financial Service Companies Vs UOI: 2010 (20) STR 417 (SC) = 2010-VIL-17SC-LB-ST has categorically held as under:
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> > "Thus, the impugned tax is levied on these services as taxable services. It is not a tax on material or sale. The taxable event is rendition of service."
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> 8. Therefore, the taxable event, in so far as service tax is concerned, is the rendition of the service. That being the position, the taxable events in the present writ petition had admittedly occurred prior to 01.03.2008. At that point of time the rate of service tax applicable in respect of the services in question was 2% and not 4%, which came into effect only on or after 01.03.2008. In both the writ petitions the date of receipt of payment was subsequent to 01.03.2008 but that would not make any difference because it is not receipt of payment which is the taxable event but the rendition of service. In WP(C) 5636/2010 the relevant period is March, 2008 and in WP(C) 3632/2012 the relevant period is April, May and July, 2008.
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> 9. It should also be mentioned that at that point of time neither was Rule 58 of the Service Tax Rules, 1994 in effect nor was Section 67A of the Finance Act, 1994 inasmuch as the latter provision was inserted in 2012 which came in effect from 28.02.2012. Furthermore, even Rule 4(a)(i) of the Point of Taxation Rules, 2011 was not applicable to the facts of the present case in as much as those rules also came into effect much later in 2011. Recently, we had to consider a similar issue in Commissioner of Service Tax Vs Consulting Engineering Services (I) Pvt Ltd., = 2013-VIL-05-DEL-ST in ST. Appl.76/2012 decided on 14.01.2013 wherein we held that in the absence of any rules, we would have to examine as to what is the

taxable event. In that context we had held that the taxable event as per the Finance Act, 1994 was the providing or rendition of the taxable services. This is exactly what the Supreme Court had held in Association of Leasing & Financial Services Companies (supra).

10. Therefore, the rate of tax applicable on the date on which the services were rendered would be the one that would be relevant and not the rate of tax on the date on which payments were received. The instruction dated 28.04.2008 which is contrary to the law declared by the Supreme Court is clearly invalid. In Commissioner of Central Excise, Bolpur Vs Ratan Melting & Wire Industries 2008 (12) STR 416 (SC), a constitution bench of the Supreme Court observed as under:

"Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

11. It is obvious that the said instruction being contrary to the law as declared by the Supreme Court can have no existence in the eye of the law. As a result we declare the instruction dated 28.04.2008 to be invalid. Consequently, the show cause notice and all the demands raised against the petitioner which are impugned in these writ petitions are also invalid.

5. We find that the Department has not relied on this circular and has instead relied on the circular No. 56/5/2003 dated 25.04.2003. The issue in the Board Circular is more or less same as to what should be the rate applicable subsequent to change in the rate of duty. Therefore, we find that the judgment of Hon'ble High Court in the Vistar Construction (P) Ltd., supra, is equally applicable in the context of circular dated 25.04.2003 also. Therefore, we find that the appellants were required to pay only @ 10% and

not @ 12% in as much as the taxable event has occurred prior to the date of enhancement of rate.

6. In so far as the second issue is concerned, we find that in respect of the same appellant, this Bench while examining the issue of eligibility of the credit in respect of various input/capital goods, inter alia, vide Final Order No. A/30225-30231/2025 dated 24.06.2025, held that such spares and parts utilized for repair of dredgers can be considered as inputs for providing output service. Para 7 of this Bench's Final Order No. A/30225-30231/2025 dated 24.06.2025 is cited below:

> 7. We find that the short question for decision is whether the items imported by the appellant could be considered as input or capital goods for the purpose of taking credit when the same is admittedly used for repair of dredgers, which in turn has been used for providing taxable service. We find that the issue whether an item can be both capital good as well as input for the purpose of providing taxable output service has been dealt with extensively by the Hon'ble Supreme Court in the case of Bharti Airtel Ltd., supra, where, interalia, they held as follows:
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> > "11.11.12 We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assesses would be entitled to CENVAT credit on the excise duties paid on these goods."
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> Similarly, observations in para 11.12.5 is also relevant and we reproduce the same as under:

> "11.12.5 What we have noted also is that the CESTAT rejected the plea of the Assessee that towers and parts thereof are inputs under Rule 2(k) by observing that the towers are admittedly immovable structures and hence ipso facto non-marketable and non-excisable and these do not lead to manufacture of goods and that towers and PFBs certainly are not used for providing mobile services. By relying on Explanation-2 to Rule 2(k) which provides that input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, the CESTAT held that these items are not inputs. However, in our view, invoking Explanation-2 is neither appropriate nor necessary as sub-clause (ii) of Rule 2(k) itself clearly provides that "input" means all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service. Even though tower and the PFBs are not electrical items/equipment in the sense that these do not transmit signals, yet these are indispensable for the effective functioning of antenna by which the radio signals are received and transmitted and accordingly, used for providing the mobile telephonic services to the subscribers. Thus, towers and PFBs, though are not electrical equipment for transmission of signals, yet these are used for transmission of signal by the antennas. Therefore, there can be no denying of the fact that there is a close proximity and nexus between their functioning and the ultimate transmission of radio signals which is the output service rendered by the MSPs. Hence, the view of the CESTAT which has not been disturbed by the Bombay High Court does not commend our acceptance."

Therefore, in view of this settled position, clearly these goods were to be treated as input and therefore, they were eligible for taking credit in terms of Rule 3(3) of CCR 2004.

7. Further, as far as third issue is concerned, since these goods have been treated as input and not as capital good and therefore this demand would also not sustain and as there is no bar in taking 100% of credit in respect of export.

8. In so far as the fourth issue is concerned regarding charging of interest on the credit reversed by them, we find that this is now a settled matter following the Supreme Court's judgment in the case of Union of India & Ors Vs

Ind-Swift Laboratories Ltd., [2011 (2) TMI 6 – SC] and therefore they are required to pay interest even when it was reversed, during the relevant period. Thus, an amount of Rs. 34,996/- is required to be paid by them.

9. In view of the above, we find that except for payment of interest on the credit reversed by them, other confirmation of demand in the impugned order would not sustain and therefore to that extent the impugned order is set aside.

10. Appeal allowed partly.

(Dictated and pronounced in open court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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