**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**APPEAL No.ST/86439 & 88312/2018**

(Arising out of Order-in-Appeal No.IM/CGST A-I/MUM/168 & 169/17-18 dated 29/01/2018 passed by the Commissioner of Central Tax (Appeals), Mumbai)

**Bay Container Terminal Pvt. Ltd.,** : **Appellant**

**VS**

**C.C.E & ST., Mumbai South** : **Respondent**

**Appearance**

Shri.S.P. Seth, Advocate for Appellant
Shri.M.P. Damle, Asst. Comm. (A.R) for respondent

**CORAM:**

**Hon'ble Shri S K Mohanty, Member (Judicial)**

**Date of hearing : 04/10/2018**
**Date of decision : 04/10/2018**

**ORDER NO. A/87775-87776/2018**

1. Brief facts of the case are that the appellant is engaged in the business of container depot operations and offering services to its clients for storage, handling and repair of marine containers, belonging to shipping lines. The appellant is duly registered with the service tax department for providing taxable services under the category of storage and warehousing service, management, maintenance and repair service, defined under the Finance Act, 1994. During the disputed period, the appellant had availed Cenvat Credit of Service Tax paid on the input services for repair and maintenance of the hard surfaced container yard installed in the ground located within the yard. Taking of such Cenvat Credit was disputed by the department on the

ground that such services were used/utilized for construction of platform, which is exclusively excluded from the purview of the input service in terms of Rule 2 (l) of the Cenvat Credit Rules, 2004. Accordingly, upon initiation of show-cause proceedings, the matter was adjudicated against the appellant, in confirming the Cenvat demand along with interest and imposing penalties on the appellant. On appeal, the learned Commissioner (Appeals) vide impugned order dated 29/01/2018 has upheld confirmation of the adjudged demands. Feeling aggrieved with the impugned order, the appellant has filed these appeals before the Tribunal.

2. Ld. Advocate appearing for the appellant submits that the appellant is providing services of storage and handling of empty marine containers for the last two decades and the hard-surfaced container yard for smooth functioning of the containers was erected during the course of initial setting up of business activities. He further submits that the disputed services were availed/utilized by the appellant only for repair of the hard surface, which cannot be termed as construction of a new platform. He also referred to the definition of input service both under the un-amended and amended Rule 2 (l) of the Rules, to state that repair and maintenance activities were covered under the definition for consideration as input service.

3. On the other hand, the learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is not the case of Revenue that the appellant had constructed platform for the first time during the disputed period to transact its business. Since the appellant had undertaken the construction activities much before and only awarded the job for the purpose of repair, maintenance and renovation of such hard-surfaced container yard, it cannot be said that the disputed services were used for the construction activities. In contest with the work executed for such assigned task, I have perused some of the photographs and documents placed by the appellant in the appeal records. On perusal of the documents as well as the photographs, it transpires that no new construction activities were carried out by the service provider, in order to fall under the exclusion clause provided in the definition of input service in Rule 2 (l) of the Rules. Since the activity of repair is specifically finding place in the inclusive parts of the definition, for consideration of the service as input service, the benefit of Cenvat Credit cannot be denied to the appellant.

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeals in favour of the appellants.

(Pronounced and dictated in court)

**` (S K Mohanty)**
***Member (Judicial)***

***PJ***