CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85732 of 2014

(Arising out of Order-in-Original No. 106-108/MAK(106-108)COMMR/RGD/13-14 dated 27.11.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad)

M/s. JSW Steel (Salav) Ltd. **Appellant**
(Earlier known as Welspun Maxsteel Ltd.)
Village Salav, Post Revdanda, Raigad 402 202.

Vs.

Commissioner of Central Excise , Raigad **Respondent**
Utpad Shulk Bhavan, Plot No.1, Sector 17,
Khandeshwar, Navi Mumbai 410 206.

WITH

Service Tax Appeal No. 702 of 2011

(Arising out of Order-in-Appeal No. US/288/RGD/2011 dated 26.09.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Welspun Maxsteel Ltd. **Appellant**
(Earlier known as Vikram Ispat)
Village Salav, Post Revdanda, Raigad 402 202.

Vs.

Commissioner of Central Excise , Raigad **Respondent**
Utpad Shulk Bhavan, Plot No.1, Sector 17,
Khandeshwar, Navi Mumbai 410 206.

AND

Service Tax Appeal No. 863 of 2012

(Arising out of Order-in-Original No. 18-22/AT(18-22)COMMR/RGD/12-13 dated 12.09.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Navi Mumbai)

M/s. JSW Steel (Salav) Ltd. **Appellant**
(Earlier known as Welspun Maxsteel Ltd.)
Village Salav, Post Revdanda, Raigad 402 202.

Vs.

Commissioner of Central Excise , Raigad **Respondent**
Utpad Shulk Bhavan, Plot No.1, Sector 17,
Khandeshwar, Navi Mumbai 410 206.

<u>Appearance:</u>

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Sydney D'Silva, Additional Commissioner, Authorised Representative for the Respondent

<u>CORAM:</u>

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87395-87397/2021

Date of Hearing: 25.11.2021
Date of Decision: 25.11.2021

PER: SANJIV SRIVASTAVA

These three appeals are directed against Order-in-Original No. 106-108/MAK(106-108)COMMR/RGD/13-14 dated 27.11.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad, Order-in-Appeal No. US/288/RGD/2011 dated 26.09.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II and Order-in-Original No. 18-22/AT(18-22)COMMR/RGD/12-13 dated 12.09.2012 passed by the Commissioner of Central Excise, Customs & Service Tax, Navi Mumbai. The details of the appeals are indicated in the table below:-

Appeal No.	**ST/702/2011**	**ST/863/2012**	**E/85732/2014**
Period(s) of	1.1.2009 to	1.1.2010 to	1.7.2011 to
Show cause notice(s) dated	03.02.2010 19.03.2010 13.05.2010 5.08.2010 18.10.2010	09.12.2010 05.08.2011 03.10.2011 01.12.2011 31.01.2011	30.07.2012 01.10.2012 23.01.2013
Order-in-Original dated	24.12.2010	12.9.2012	27.11.2013
Order-in-Appeal dated	26.09.2011	-	

Demand(s) of service tax	Rs. 14,08,132/- for the period 1.1.2009 to 28.2.2009 Rs. 49,05,262/- for the period 1.3.2009 to 30.4.2009 Rs. 33,61,991/- for the period 1.5.2009 to 30.6.2009 Rs. 35,03,727/- for the period 1.7.2009 to 30.9.2009	Rs. 74,00,619/- for the period 1.1.2010 to 30.6.2010 Rs. 1,13,18,628/- for the period 1.7.2010 to 31.8.2010 Rs. 73,19,665/- for the period 1.9.2010 to 31.10.2010 Rs.	1. Rs. 47,25,329 for the period 1.7.2011 to 31.8.2011 2. Rs. 42,83,546 for the period 1.9.2011 to 31.12.2011 3. Rs. 1,72,64,710 for the period

	Rs. 38,41,363/- for the period 1.10.2009 to 31.12.2009 **Total Rs. 1,70,20,475**	35,20,718/- for the period 1.11.2010 to 31.12.2010 Rs. 1,41,16,487/- for the period 1.1.2011 to 30.6.2011 **Total Rs. 4,36,76,117**	1.1.2012 to 31.8.2012 **Total Rs. 2,62,73,585**
Penalties imposed	1. Rs. 2,80,000/- for the period 1.1.2009 to 28.2.2009 under Rule 15(1) of Cenvat Credit Rules, 2004	1. Rs. 4,36,76, 117 penalty under the provisions of rule 15(1) of Cenvat Credit Rules r.w.s. 11 AC of the Central Excise Act.	1. Rs. 24,00,000 for the period 1.7.2011 to 31.8.2011 u nder Rule 15(1) of Cenvat Credit Rules, 2004
	2. Rs. 9,80,000/- for the period 1.3.2009 to 30.4.2009 under Rule 15(1) of Cenvat Credit Rules, 2004 3. Rs. 6,80,000/- for the period 1.5.2009 to 30.6.2009 under Rule 15(1) of Cenvat Credit Rules, 2004 4. Rs. 7,00,000/- for the period 1.7.2009 to 30.9.2009 under Rule 15(1) of Cenvat Credit Rules, 2004 5. Rs. 7,80,000/- for the period 1.10.2009 to 31.12.2009 under Rule 15(1) of Cenvat Credit Rules, 2004 **Total Rs. 34,20,000**	**Total Rs. 4,36,76,117**	2. Rs. 22,00,000 for the period 1.9.2011 to 31.12.2011 under Rule 15(1) of Cenvat Credit Rules, 2004 3. Rs. 86,00,000 for the period 1.1.2012 to 31.8.2012 under Rule 15(1) of Cenvat Credit Rules, 2004 **Total Rs. 1,32,00,000**

2.1 The issue involved in these appeals is in respect of permissibility of cenvat credit on input services that were received by the appellants outside their factory premises.

2.2 The appellants have a fully operational port facility (jetty) at Salav which is shown in the ground plan submitted to the Excise department. The appellants have entered into 30 years lease agreement with Maharashtra Maritime Board and the Board has given them permission to construct captive jetty.

2.3 The jetty is used for unloading of raw materials received by the appellants for use in the manufacturing of finished goods and for exporting the finished goods.

2.4 The appellants have taken credit of various input services such as maintenance and repair services, manpower recruitment services, technical analysis and testing services, cleaning services, supply of tangible goods etc., received by them in respect of vessels – MBC's (mini bulk carriers) and barges for their maintenance, staffing, technical inspection etc.

2.5 Show cause notices as indicated in para 1 above were issued to the appellants seeking to deny the credit, stating that these services have not been used directly or indirectly in relation to manufacture of final products and clearance of final products upto the place of removal. As per the department, the services were received in relation to vessels, tugs and port and hence do not have any nexus with the manufacturing activity.

2.6 The show cause notices were adjudicated as indicated in para 1 above, placing reliance upon the decision in the case of Vikram Ispat [2010 (19) STR 52 (T)].

2.7 Aggrieved by the impugned orders referred to in para 1 above, the appellants have filed these appeals.

3.1 We have heard Shri Rajesh Ostwal, Advocate for the appellants and Shri Sydney D'Silva, Additional Commissioner, Authorised Representative for Revenue.

3.2 Arguing for the appellants, learned counsel submits that,-

- Rule 2(l) of the Cenvat Credit Rules, 2004 defines input services and as per the inclusive part of the definition the services in relation to procurement of inputs, inward transportation of inputs have been specifically included. Since these services are covered by the inclusive part, they are eligible as input services as defined under Rule 2(l).
- Even if we go by the main part of the definition where as per clause (ii), input services are used by manufacturer whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal are input services.
- The services received by the appellant have been received for procurement of goods and clearance of finished products for export. Therefore these services should be treated as connected with the process of manufacture of final products. Hence credit should be admissible in respect of these services.
- Reliance is also placed on the following decisions:-
    - Ultratech Cement Ltd. [2010 (20) STR 577 (Bom.)].
    - Essar Bulk Terminal Ltd. [2021 (9) TMI 816-CESTAT Ahmedabad].
    - Saurashtra Cement Ltd. [2018 (8) TMI 460-CESTAT Ahmedabad]
    - Ultratech Cement Ltd. [2021-TIOL-161-CESTST-AHM].
- Prior to 2011 which is the subject matter of the first two appeals, the services were used in activities relating to the business and hence should be covered by phrase also.
- Reliance is placed on the following decisions:-
    - Cola India Pvt. Ltd. [2009 (15) STR 657 (Bom.)].
    - Stanzen Toyotetsu India (P) Ltd. [2011 (23) STR 444 (Kar.)].
    - Welspun Maxsteel Ltd. [2013 (31) STR 64 (T)].
- There is no requirement in the definition that input services should be received within the factory of manufacture for making them eligible for the cenvat credit.
- Reliance is taken on the following case:-

  - Deepak Fertilizers and Petrochemicals Corporation Ltd. [2013 (32) STR 532 (Bom.)].

- In the appellants' own case, the issue has been decided in their favour by this Tribunal in the following decisions holding the credit to be admissible:-
  - JSW Steel (Salav) Ltd. [2016 (46) STR 863 (T)].
  - Tribunal Order No. A/235-240/13/SMB/C-IV dated 08.03.2013.

3.3 Learned Authorised Representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned orders along with the submissions made in appeals and during the course of argument.

3.2 We find that the issue is squarely covered by the decision of the Tribunal in appellants' own case as reported in 2016 (46) STR 863 (Tri.-Mumbai), where in para 4 the Tribunal has held as follows:-

"4. I have gone through the rival submissions. I find that the Service Tax credit in respect of shipping fees and services availed in respect of vessels and barges is covered by the order of Tribunal in the appellant's own case vide order dated 11-3-2014 and 8-3-2013. In view of the above, credit of these services is available and is allowed."

3.3 In appellants' own case vide order No. A/235-240/13/SMB/C-IV, S/291-296/13/SMB/C-IV & M/242-245/13/SMB/C-IV dated 08.03.2013, credit in respect of tugs and barge services and repair and maintenance services have been held admissible stating as follows:-

"6. Considering the fact that the issue has already been settled by the Hon'ble High Court of Bombay in the case of Ultra Tech Cement Ltd. 2010 (260) ELT 369 (Bom), wherein the Hon'ble High Court has held that any service availed by a manufacturer of excisable goods in the course of their business activity is entitled for input service credit. On examination, I find that these services are availed in the course of business of

manufacture. Therefore issue is no more res integra. Accordingly, appellants are entitled for input service credit availed by them."

3.4 We also note that for availing cenvat credit in respect of input services, no condition has been prescribed of receipt of the said services within the factory premises. The input service credit is available only on the receipt of the services received by the manufacturer of the finished goods. The inclusive part specifically states that in respect of services in relation to procurement of goods and inward transportation of inputs is admissible.

3.5 Since the services in the present case are received at captive jetties which are used for procurement and inward transportation of the goods, cenvat credit could not have been denied. The decision of the Tribunal in the appellants' own case (Vikram Ispat [2010 (19) STR 52(T)]) is distinguishable for the following reasons:-

❖ The Tribunal has not considered the case where the services were received at a captive jetty of the appellant as the ground plan was never produced and examined by the Tribunal.
❖ The Tribunal has not considered that these services are received in relation to procurement and inward transportation of the goods. Hence on facts they have not considered the implication of inclusive part of the definition.

3.6 We are of the view that the activities of manufacture and clearance of the goods by the appellants were not possible if these services were not received. There is no condition under the Cenvat Credit Rules for receipt of input services within the factory premises of the appellant. This stipulation to the effect that for availing the Cenvat credit on input services, the services should have been received in the factory premises as per the impugned order, goes contrary to the entire scheme of input service distributor whereby an input service distributor distributes cenvat credit on the services received by him to his various entities engaged in the manufacture of finished goods.

3.7 Thus we are of the view that till the time it can be shown that input services have been used by the manufacturer of finished goods, in the process of manufacture or for conducting this business of manufacture of finished goods, the Cenvat credit on the input services cannot be denied, even if the said services are received at place other than factory premises. Even in the case of inputs, Hon'ble Bombay High Court in the case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. [2013 (32) STR 532 (Bom.)], held as follows:-

"***5.*** *Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(l) then provides an inclusive* *definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(l). The first part of Rule 2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l).The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."*

4. In view of above discussions, we do not find any merit in the impugned orders, set aside the same and allow the appeals.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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