

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 180 of 2012-DB

[Arising out of Order-in-Original/Appeal No STC-02-COMMR-AHD-2012 dated 13.01.2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

Commissioner of Central Excise & ST, Ahmedabad Appellant

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi, Ahmedabad,
Gujarat - 380015

VERSUS

Hazira Port Pvt. Limited Respondent

101-103, Abhijeet-II, Mithakhali Circle,
Ellis Bridge, AHMEDABAD, GUJARAT-380006.

APPEARANCE :

Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Appellant-Revenue
Shri Jigar Shah, Advocate for the Respondent - Assessee.

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

DATE OF HEARING : 20.09.2022
DATE OF DECISION : 23.09.2022

FINAL ORDER NO. A/11157 / 2022

RAMESH NAIR :

The brief facts of the case are that the appellant was issued show cause notice dated 14.10.2010 proposing demand of Cenvat credit of service tax paid under Section 66A for the services of Maintenance or Repairs service, Consulting Engineer Service, Management Consultant Service, Erection & Commissioning service and Information Technology services received from a foreign service provider on reverse charge mechanism. Whereas, as per Rule 3 of Cenvat Credit Rules, 2004, Cenvat credit is allowable only in respect of service tax liable under Section 66 of Finance Act, 1994. The Adjudicating Authority dropped the demand on the ground that Section 66A has been added in the list of eligible credit in Rule 3 with

effect from 18.04.2006 by retrospective amendment in the Bill and the same was also clarified by Board Circular F.No. 345/1/2008-TRU dated 27.06.2008. The Revenue filed the present appeal on the ground that the Adjudicating Authority while dropping the demand should have examined that whether the services in question were admissible input service in terms of Rule 2(l) of Cenvat Credit Rules, 2004, therefore the order is not legal and proper.

2. Shri Dinesh M. Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the Revenue submits that the Adjudicating Authority has erred inasmuch as he has not examined whether the input service is admissible in terms of Rule 2(l) which is basic requirement for allowing the Cenvat credit therefore, the matter may be remanded to the Adjudicating Authority.

3. Shri Jigar Shah, learned Counsel appearing on behalf of the respondent submits that the limited issue raised in the show cause notice was only that since service tax was paid under Section 66A, credit is not admissible. The issue related to admissibility of Input Service was not in question in the show cause notice. The present appeal raises the ground which is not arising either from the show cause notice or from the order. Therefore, the Revenue cannot make a new ground which is not arising out of impugned order. He placed reliance on the following decisions:-

(a) Commissioner vs. Reliance Ports & Terminals Limited - 2016 (334) ELT 630 (Guj.)

(b) CCE vs. Ballarpur Industries Limited - 2007 (215) ELT 489(S.C.)

(c) CCE vs. Gas Authority of India Limited - 2008 (232) ELT 7 (S.C.)

(d) CCE vs. Metzeller Automotive India (P) Limited - 2017 (52) STR 377 (Tri.)

(e) Repro India Limited vs. CCE - 2013 (32) STR 617 (Tri.)

(f) Glyph International Limited vs. UOI - 2012 (25) STR 209 (All.)

(g) Reliance Industries Limited vs. CCE - 2016 (42) STR 384 (Tri.)

(h) Aditya Birla Nuvo Limited vs. CCE - 2016 (3) TMI 619-CESTAT
Ahmedabad

4. We have carefully considered the submissions made by both the sides and perused the record. We find that admittedly the show cause notice has alleged that appellant is not entitled for the Cenvat credit in respect of services namely Maintenance or Repairs service, Consulting Engineer Service, Management Consultant Service, Erection & Commissioning service and Information Technology services on the ground that service tax paid under reverse charge mechanism under Section 66A of the Finance Act, 1994 whereas Rule 3 prescribes the Cenvat credit in respect of service tax leviable under Section 66. This issue was correctly decided by the Adjudicating Authority inasmuch as Section 66A was added retrospectively in Rule 3 for allowing Cenvat credit. As regards the issue that whether the services in question are admissible input service in terms of Rule 2(I), this issue was never raised in the show cause notice. Therefore, it cannot be expected from the Adjudicating Authority to pass order on the issue which is beyond the scope of show cause notice. It is settled law that any issue which is not flowing from the show cause notice being beyond the show cause notice, need not be addressed by the authority. Therefore, we do not find any error on the part of the Adjudicating Authority for not considering the issue of admissible input service in terms of Rule 2(I). The Adjudicating Authority has correctly passed order addressing the only issue which was raised in the show cause notice. The judgments cited by the learned Counsel clearly support their case. Moreover, all the services on which the

assessee has availed Cenvat credit are *prima-facie* appears to be input service.

5. As per our above discussion, we do not find any infirmity in the impugned order. Accordingly, the same is upheld and Revenue's appeal is dismissed.

(Pronounced in the open court on 23.09.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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