

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85484 of 2020

(Arising out of Order-in-Appeal No. AJV/104-105RGD APP/2019-20 dated 14.02.2020 passed by the Commissioner of Central Tax (Appeals), Raigad)

M/s Jawaharlal Neharu Port Trust **Appellant**
Nhava Sheva, Administrative Building, (Finance Dept.),
Raigad, Maharashtra – 400707.

Versus

Commissioner of Central Tax - Raigad **Respondent**
5th Floor CGO Complex, CBD Belapur,
Navi Mumbai – 400614.

WITH

Service Tax Appeal No. 85489 of 2020

(Arising out of Order-in-Appeal No. AJV/104-105RGD APP/2019-20 dated 14.02.2020 passed by the Commissioner of Central Tax (Appeals), Raigad)

M/s Jawaharlal Neharu Port Trust **Appellant**
Nhava Sheva, Administrative Building, (Finance Dept.),
Raigad, Maharashtra – 400707.

Versus

Commissioner of Central Tax - Raigad **Respondent**
5th Floor CGO Complex, CBD Belapur,
Navi Mumbai – 400614.

Appearance:

Shri Mehul Jivani, Chartered Accountant for the Appellant

Shri Vinod Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85242-85243/2023

Date of Hearing: 20.02.2023

Date of Decision: 20.02.2023

Per: Anil G. Shakkarwar

Above two appeals are taken together for decision since they involve the same issue and the appellants are also the same.

2. The appellants are providing port services and also providing facility of toilets to the users of port services. Service Tax is paid on maintenance of toilets and the credit of same is taken for discharge of Service Tax on port services. The dispute is whether the Service Tax paid on service charges of toilets located in port user building and residential building is admissible or not. The proceedings at original and appellate have denied the appellants Service Tax credit on the said account. The appellant had submitted that they are convinced that the residential area does not provide any business activity and therefore they have stopped taking CENVAT Credit of Service Tax paid on maintenance of toilets in the residential area. The Learned Counsel for the appellant also stated that CENVAT Credit related to residential building involved in this appeal has been reversed by them. Appellant has submitted that the said Service Tax paid on servicing of toilets in port user area is denied to them by the adjudicating authority stating that the said building is outside the port area. He contested that the location of port user area is irrelevant and it is to be examined whether the port user building is used for business activity for providing output service.

3. The Learned AR relies on the impugned Order-in-Original and brings the attention to para 6.2 of the impugned order wherein it is stated that the port user building is beyond the territorial location of the port and therefore the appellate authority has denied the credit.

4. I find that the territorial location cannot decide the admissibility of CENVAT Credit under the provisions of Rule 2(I) of CENVAT Credit Rules, 2004. Issue is covered by the definition of input service as defined under Rule 2(I) of CENVAT Credit Rules, 2004. The general understanding emerges from the reading of the said rule is that the input service should be used for providing output service to be eligible for CENVAT Credit. The Revenue has not established that the services used in port user building are not used for providing output service. Therefore, I hold that the CENVAT Credit of Service Tax paid on services of toilets located in port user building is admissible to the appellants.

5. In the above terms both the appeals are partially allowed. The appeals related to CENVAT Credit regarding residential area stand withdrawn.

(Order pronounced and dictated in open court)

(Anil G. Shakkwar)
Member (Technical)