

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

O/20, New Mental Hospital Compound, Meghani Nagar, AHMEDABAD -380016
TELEPHONE NO. 079- 22683202 FAX NO.079- 22683276

1403

File NO. ST/S-674, 675/11-SMC-ST/332, 333/2011

Dates: 17th AUGUST, 2011

From: THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD
In the matter of

M/S RELIANCE PORTS & TERMINALS LTD
(RELIANCE ENGINEERING ASSOCIATES P. LTD.)
P.O.-DIGVIJAY GRAM,
VILL-MOTI KHAVDI,
JAMNAGAR.

Vs

CCE, RAJKOT
CCE, RAJKOT - Commissioner of Customs, Central
Excise & Service Tax, Central Exice Bhavan, Race
Course Ring Road, Rajkot - 360001

APPELLANT

સચુક્ત મુદત્ત વિષયક નોંધણી નંબર
અમદાવાદ/AHMEDABAD

29

RESPONDENT

I am directed to transmit herewith a certified copy of
Order No. S/1123-1124/WZB/AHD/2011 Dated 11.08.2011 passed by the Tribunal
under Section 35(1) of the Central Excise Act, 1944, Section 129(B) of the Customs Act, 1962
and Finance Act, 1944.


ASSISTANT REGISTRAR

Copy to :

- (1). Chief Commissioner Customs & Central Excise: AHMEDABAD
- (2). ~~Commissioner~~ Commissioner Customs & Central Excise (Appeal): RAJKOT
- (3). Jt. CDR CESTAT, Ahmedabad
- (4). CESTAT Bar Association, Ahmedabad
- (5). CESTAT Bar Association, New Delhi
- (6). Master File.
- (7). Centax Publication (P) ltd.
- (8). M/S Taxmann Allied Allied Service P.Ltd
- (9). M/S Company Law Institute of India Pvt Ltd.
- (10). Easy Service Tax Online Dot Com P Ltd
- (11). LawcruX Advisors Pvt. Ltd. Ltd
- (12). Taxindiaonline.com Pvt Ltd
- (13). Advocate/ Consultant

SH J C PATEL, ADV
JAHANGIR BUILDING
3RD FLOOR, 133,
M G ROAD, FORT
MUMBAI-400001


ASSISTANT REGISTRAR

SMC-P(AR)—15



**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad**

COURT : II

Application No. : ST/S/674-675 of 2011
Appeal No. : ST/332 & 333 of 2011
Arising out of : OIA No. 22 to 23/2011/Commr(A)/CMC/Raj dt. 14.02.2011
Passed by : Commr. (Appeals) C.Excise. & Cus Rajkot
Appellant (s) : **M/s. Reliance Ports & Terminals Limited**
Represented by : Shri J.C. Patel, Advocate
Respondent (s) : **Commissioner of Central Excise, Rajkot**
Represented by : Shri R.S. Srova, JDR

CORAM :

Hon'ble Mr. B.S.V. Murthy, Member (Technical)

Date of Hearing : 11.08.2011

Date of Decision : 11.08.2011

ORDER No. S/1123-1124/MZB/AHD/2011

Per : Mr. B.S.V. Murthy;

In both the appeals, cenvat credit of service tax paid on input services have been denied to the appellants on the ground that invoice is only evidence of proof of payment of service tax, were dated prior to registration taken by the appellant i.e. 11.10.2004.

2. Learned counsel submits that the appellants are engaged in providing construction service which was introduced on 10.09.2004. Appellants took registration on 11.10.2004 and even in respect of the constructions which were in progress and part completed as on 10.09.2004, the appellants paid full service tax. However, they also took


Per



cenvat credit in respect of the input services used by them for providing the services. He submits that department has denied cenvat credit on these input services on the ground that the input services invoices related to the period prior to 11.10.2004. He relied upon following decisions of the Tribunal to submit that registration is not necessary for availing cenvat credit. If the output service is taxable and tax has been paid prior to this date. The decisions are as under :-

- (a) Sutham Nylocots vs. CCE Coimbatore - 2005(188) ELT 26 (Tri.Chennai)
- (b) Well known Polyesters Limited vs. CCE, Vapi - 2011-TIOL-989-CESTAT-AHM.
- (c) Amar Remedies vs. CCE, Surat - 2010 (257) ELT 552 (Tri. AHmd)
- (d) CCE, AHmd vs. Fine Care Bio-systems - 2009 (244) ELT 372 (Tri. AHmd.)

3. I have considered the submissions. I find that the only ground taken by the Revenue for refusing cenvat credit is that the same was taken prior to the date of registration. The decisions cited by the learned counsel take a view that credit can be taken even when the unit was not registered. It is settled law that the dutiability of the final products or inputs, the benefit of cenvat credit in respect of inputs and input services is made available, provided the assessee has necessary documentary evidence and necessary evidence to show utilisation of such input services and in this case, there is no finding that input services were not utilised in providing output services, for which service tax has been paid. In view of the several Tribunal decisions cited, which I find that are applicable to the facts of the case, I find that appellant prima facie made out a case for




grant of stay. Accordingly, the requirement of pre-deposit of amounts demanded is waived and stay against recovery of the same is granted during the pendency of appeal.

(Dictated and pronounced in the Court)

sd/-
 (B.S.V. Murthy) 16/8/11
 Member (Technical)

...KL

आदेश को प्रति निम्न आवेदित
 Copy of the Order Forwarded and
 कर दाता/कमिश्नर/विभागीय प्रतिनिधी
 The Assesses/The Commissioner/The
 DR., C.E.S.T.A.T.
 पत्तयाभित प्रतिनिधि
 TRUE COPY


 सहायक रजिस्ट्रार
 Assistant Registrar
 सीमाशुल्क उत्पादशुल्क और सेवा
 शुल्क अपील अधिकरण
 Customs, Excise & Service Tax
 Appellate Tribunal

18 AUG 2011

