Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

Excise Appeal No. 10180 of 2024
(Arising out of OIA No. CCESA-SRT-APPEA-PS-114-115-2020-21 dated 28.10.2020 passed by Commissioner (Appeals) - Surat)

M/s Prakash Steelage Ltd. **...Appellant**
Unit No. 2, Survey No. 138/131 Umbergaon
Sanjan Road, Umbergaon, Valsad-Gujarat-396171

VERSUS

CGST & Central Excise, Surat **...Respondent**
CGST & Central Excise Commissionerate Surat,
Central Excise Building, Chowk Bazar, Surat,
Gujarat-395001

WITH

Excise Appeal No. 10181 of 2024
(Arising out of OIA No. CCESA-SRT-APPEA-PS-114-115-2020-21 dated 28.10.2020 passed by Commissioner (Appeals) - Surat)

Vipin Chaturvedi **...Appellant**
Vice President of Prakash Steelage Ltd., Unit No. 2,
Survey No. 138/131 Umbergaon
Sanjan Road, Umbergaon, Valsad-Gujarat-396171

VERSUS

CGST & Central Excise, Surat **...Respondent**
CGST & Central Excise Commissionerate Surat,
Central Excise Building, Chowk Bazar, Surat,
Gujarat-395001

APPEARANCE:
Shri Devashish Trivedi, Advocate appeared for the Appellant
Shri P. Ganesan, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10830-10831 /2025

DATE OF HEARING: 24.09.2025
DATE OF DECISION: 01.10.2025

SOMESH ARORA:

The period in dispute in the present case is from April 2007 to April 2009. The issue is that the Appellant was found to have taken CENVAT credit of duty paid on TMT Bars, MS Channels, MS Beams, MS Angles, MS round Bars, etc., falling under CH.72.14 & 72.16 of CETA as the same were used for manufacture of 'Capital Goods', as per the department During the period in dispute, Section 2(k) of CENVAT Credit Rules, 2004 defined 'Inputs'. The said definition is as follows:

> *(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.*
>
> *(ii) all goods except light diesel oil, high speed diesel oil and motor spirit and motor vehicles used for providing any output services.*
>
> *Explanation 1.- Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.*
>
> *Explanation 2. Inputs include, goods used in the manufacture of capital goods which are further used in the factory of the manufacturer.*

1.1 The goods used for manufacture of 'Capital Goods' was included in the scope of 'Inputs'. This fact is not in dispute. However, w.e.f. 07.07.2009 (i.e. after the period in dispute of the present case), the Explanation - 2, which previously explained that goods used for manufacture of 'Capital Goods' are included in the scope of 'inputs' was amended. The amended explanation is reproduced as follows:

> *Notification No.16/2009 G.S.R. (E). - In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely: -1. (1) These rules may be called the CENVAT Credit (Amendment) Rules, 2009. (2) They shall come into force on the date of their publication in the Official Gazette.*
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> *2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, in clause (k), in Explanation 2, after the words "factory of the manufacturer", the following shall be inserted, namely: -*
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> ***"but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods".***

The same incorporated that inputs shall not include cement, angles, channels, Centrally Twisted Deform Bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of 'Capital Goods'. A decision of Larger Bench of Hon'ble Tribunal in the case of Vandana Global Limited versus Commissioner of C. Ex., Raipur, 2010

(253) ELT 440 (Tri. LB) (Order dated 04.05.2010) was passed whereby it was held that goods like cement & steel items used for laying foundation and for building supporting structures cannot be treated either as inputs for 'Capital Goods' or as inputs in relation to the final product and therefore, no credit or duty paid on the same can be allowed under CENVAT Credit Rules for impugned period. The period in dispute in the said case was prior to the amendment in Explanation-2 i.e. it was prior to 07.07.2009. Because of the said judgement of Hon'ble Larger Bench of Tribunal, Show-cause-Notice dated 30.05.2012 came to be issued proposing to recover CENVAT Credit along with interest and also imposing penalty. The Show-cause-Notice was confirmed vide Order-in-Original dated 05.08.2013. The same was upheld vide Order-in-Appeal dated 20.01.2014. On filing appeal against the order, the matter was remanded back by Hon'ble Tribunal vide order dated 03.10.2017. However, once again the Show-cause-Notice was confirmed vide Order-in-Original dated 06.07.2020 and the same Order-in-Original was upheld by Order-in-Appeal dated 28.10.2020. The present appeal is against the said Order-in-Appeal.

2. It was submitted by the appellant that the judgement of Larger Bench of Tribunal in the case of Vandana Global Limited (supra) stands reversed by Hon'ble Chhattisgarh High Court vide judgement reported at 2018 (16) GSTL 462 (Chhattisgarh). And it was held that goods like angles, joist, beams, bars, plates which go into fabrication of structures embedded to earth are to be treated as 'inputs' used in relation to their final products as inputs for 'Capital Goods' during the period prior to amendment i.e. prior to 07.07.2009. Thus, the matter is settled in favour of the Appellant herein. Similarly, same view was also taken by Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Limited versus C.C.E. & Cus. Reported at 2015 (39) STR 726 (Guj.). Hon'ble Gujarat High Court has observed that the view of Larger Bench of the Tribunal was based on conjectures and surmises.

3. Further, reliance by the appellant was also placed on the judgement of Hon'ble Tribunal in the case of Vikas Metalliks & Energy Ltd., versus Commissioner of C.Ex., Raipur reported in 2017 (3) GSTL 404 (Tri. - Del.) wherein it is held that credit of duty paid on supporting structures for 'Capital Goods' is admissible. Reliance was also placed on judgement of Hon'ble Madras High Court in the case of COMMR. OF C. EX. & SERVICE TAX, TIRUCHIRAPALLI versus CESTAT, Chennai reported in 2017 (356)

ELT 201 (Mad.) and THIRU AROORAN SUGARS versus CESTAT, Chennai reported in 2017 (355) ELT 373 (Mad.). It was held in both that the goods in questions are inputs and the credit of the same is available.

SUBMISSIONS WITH REGARD TO APPEAL NO.E/10181/2024 OF VIPIN CHATURVEDI, VICE PRESIDENT OF PRAKASH STEELAGE LTD.

3.1 All the submissions made for the main party, were adopted. It only difference is that personal penalty imposed on the Appellant herein only because he is a Vice President of M/s Prakash Steelage Ltd. Both the appeals arise out of the said Impugned Order.

3.2 It was therefore, submitted that above co-arguments in the appeal of Prakash Steelage Limited deserve to be allowed. For the same reason, personal penalty imposed on the Appellant herein deserves to be set aside and the appeal of the Appellant herein deserves to be allowed.

4. Learned AR, on the other hand, placed reliance on the findings as contained in the impugned order and rely upon following case laws:

- Vandana Global Ltd. 2010 (253) ELT 400 (Tri. LB)
- CCE vs Solaris Chemtech Ltd. 2007 (214) ELT 481 (SC)
- Maruti Suzuki Ltd. 2009 (240) ELT 641 (SC)

5. This court has considered the issue in hand, the material on record and relevant submissions. It finds that the issue in hand is whether cenvat credit of Rs. 9,11,804 is allowable in terms of Rule 2A of Cenvat Credit Rules, 2004 or items like TMT Bars, MS Channels, MS Beams, MS Angles and MS Round Bars etc and whether they will qualify in the category of capital goods or not? The department is of the view that the term capital goods which was at the relevant time defined as follows in Rule 2(a):

> “(a) "Capital Goods" means:-
>
> (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90. [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;
>
> (ii) pollution control equipment;
>
> (iii) components, spares and accessories of the goods specified e(i) and (ii);
>
> (iv) moulds and dies, jigs and fixtures;
>
> (v) refractories and refractory materials:

(vi) tubes and pipes and fittings thereof; and

(vil) storage tank used

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
(2) for providing output service;"

There is no scope of permitting usage of TMT Bars, MS Channels, MS Beams etc as it neither fall under Chapter 82, 84 and 84 or 90 of Central Excise Tariff Act, 1985 now in the nature of materials which are permitted to be considered as capital goods as per the scope of definition as indicated above. The party, on the other side is of the view that explanation 2 of Rule 2(k) permits sufficient scope for credit to be allowed as they are not of the nature which are used for construction of factory shed or allowing of fabrication for making a construction for support of capital goods. They in support rely on the decision the decision of Vandana Global which after initial pronouncement of a Larger Bench of the Tribunal as reported in 2010 (253) ELT 440 (LB) was eventually reversed after due consideration of all facts by the Hon'ble High Court of Chattisgarh as reported in 2018 (16) GSTL 462 Chattisgarh and they also relied on Mundra Ports and Special Economic Zone Limited vs CCE & Customs reported in 2015 (39) STR) 726 Gujarat which made such credit permissible on such items. This court finds that in para 11.6 of the Order-In-Original the department observed as follows:

"11.6 Further, The subject issue is no more res integra as the same has been decided by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. | 2010(253) ELT440(Tri-LB)). The Larger Bench of Tribunal considered the following questions:-

(a) Whether the term "capital goods" can include plant, structures embedded to earth?

(b) Whether the goods like angles, joists, beam, channels, bars, flats which go into fabrication of such structures can be treated as "inputs" in relation to their final products as inputs for capital goods, or none of the above?

(c) Whether the credit can be allowed in respect of goods like angles, joists. beam, channels, bars, flats which go into fabrication of such structures and plant?

Disapproving the decision of Tribunal in the case of Bhushan Steel and Strips Ltd. V CCE, Raigad 12008(223)ELT517(Tri-Mumj/ and endorsing the decision of the Tribunal in the case of Vikram Cement V CCE. Indore 12009(242)ELT545], the Larger Bench held that:-

(a) The foundation and supporting structures are neither inputs nor components, spares and accessories of machinery, nor have they been listed for such inclusion in the definition of capital goods.

(b) Amendment to Explanation 2 to Rule 2(k) of Cenvat Credit Rules, 2004 is a clarificatory amendment and that the same is applicable retrospectively.

In the present case, it is clear that the materials like TMT Bars. M S Channels, MS Beams, MS Angles, MS Round Bars etc. have been used only for making road and construction of factory building etc. Therefore, the noticee is not eligible for credit of duty paid on these materials as these materials are neither capital goods nor inputs under Cenvat Credit Rules."

5.1 Thus, it is clear that the department has disallowed capital based on the reasoning of the Larger Bench of Vandana Global Limited 2010 (253) ELT 440 Tribunal Larger Bench which stand reversed in Vandana Global Limited vs Commissioner of Central Excise, Raipur as reported in 2019 (16) GSTL 462 Chattisgarh. The relevant para of the decision which, inter alia, is based on the decision of Hon'ble Gujarat High Court in Mundra Ports and Special Economic Zone Limited vs CCE & Customs reported in 2015 (39) STR) 726 (Gujarat) decided the matter as follows:

> "**2.** The short facts of the present case are that M/s. Mundra Port and Special Economic Zone Limited, Mundra Port, Mundra - appellant herein is *inter alia* engaged in providing Port Services. The appellant is registered for Service Tax under the taxing entries of "Port Services", "Storage and Warehousing Services" and "Cargo Handling Services". The appellant uses/consumes various input services during the course of providing output services. The appellant avails Cenvat credit of the Service Tax paid on such input services. A show cause notice No. V.ST/AR-G.dham/COMMR/035/2006, dated 17-4-2006 was issued wherein the appellant was asked to show cause as to why credit of the Excise duty paid on the cement and steel used in the construction of new jetties and other commercial buildings should not be denied to them. The appellant filed a reply dated 5-7-2006 to the show cause notice. In the said reply, the appellant denied the allegations made in the show cause notice in their entirety and submitted that the Cenvat credit of the Excise duty paid on cement and steel was available to them as they qualified as inputs as defined under the Cenvat Credit Rules, 2004. A second show cause notice No. V.ST/AR-G.dham/COMMR/032/2007, dated 13-4-2007 was issued wherein the appellant was asked to show cause as to why credit of (a) Excise duty paid on the cement and steel used in the construction of new jetties and other commercial buildings should not be denied to them; (b) Excise duty paid on air-conditioners installed in the premises of the appellant and used by the electrical department should not be denied to them; and (c) Service Tax paid on various services such as CHA Fees, Surveyors fees, Rent-a-Cab operator, bank charges, labour charges, installation charges, etc., should not be denied to them. The appellant filed a reply dated 1-6-2007 to the second show cause notice. In the said reply, the appellant denied the allegations made in the show cause notice in their entirety and submitted that the Cenvat credit of the Excise duty paid on cement and steel was available to them as they qualified as "inputs" and the services used by the appellant were "input services" as defined under the Credit Rules. A personal hearing in respect of both the show cause notices took place on 26-6-2007 wherein the factual background of the appellant was discussed in detail and in view of the nature of the business of the appellant, the submissions in the show cause notice replies on input and input services were reiterated.
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> **3.** The Commissioner of Central Excise, Rajkot vide common order dated 26-7-2007 in respect of both the show cause notices confirmed the demand along with interest and penalty upholding the allegations made in the show cause notices. Against which, the appellant preferred the appeal before the Tribunal. By the impugned order, to the extent cement and steel are used in the construction of jetty and port building are concerned, the Tribunal held that the same are not eligible inputs used in providing output service and accordingly confirmed the demand on this account. The said order of the Tribunal has been challenged in the present Tax Appeal.
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> **4.** This Tax Appeal has been admitted on 22-1-2009 on the following substantial question of law :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the claim of the assessee in light of the provisions of Rule 2(k) of the Cenvat Credit Rules, 2004?"

5. We have heard Mr. Hardik Modh, learned counsel for the appellant and Mr. Y.N. Ravani, learned counsel for the respondent.

6. Before deciding the question, we deem it appropriate to extract Rule 2(k) and 2(l) of the Cenvat Credit Rules, 2004.

"Rule 2(k) "input" means -

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service.

Explanation 1. - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. - Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

(l) "input service" means any service, -

(i) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes service used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal."

7. It is not disputed that jetty was constructed and input credit was claimed on cement and steel. The aforesaid definition of Rule 2(k) was applicable and Explanation 2 did not provide that cement and steel would not be eligible for input credit. According to learned Counsel for the appellant, the appellant is not manufacturer and, therefore, the provisions of Explanation 2 of Rule 2(k) would be applicable only to the factory and manufacturer. The appellant is neither having any factory nor he is manufacturer. The appellant is a service provider of port. We need not go into this question as to whether the appellant is a factory or manufacturer or service provider in view of the fact that it is not disputed by Mr. Y.N. Ravani, learned counsel appearing for the Revenue in this Tax Appeal that the appellant provides service on port for which he is getting jetty constructed through the contractor and the appellant has claimed input credit on cement and steel. The cement and steel were not included in Explanation 2 from 2004 up to March, 2006. The Cenvat Credit Rules, 2004 were amended in exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 with effect from 7-7-2009, the date on which it was notified by the Central Government from the date of the notification. According to learned Counsel for the appellant, this amended definition would apply only to the factory or manufacturer and would not apply to the service provider. According to him, either before the amendment made in the year 2009 or thereafter, the appellant was neither factory nor manufacturer and he has only constructed jetty by use of cement and steel for which he was entitled for input credit as jetty was constructed by the contractor, but the jetty is situated within the port area and the appellant is a service provider. According to the appellant, his case is squarely covered by the judgment of the Division Bench of the Andhra Pradesh High Court in *Commissioner of Central Excise*, *Visakhapatnam-II* v. *Sai Sahmita Storages (P) Limited*, 2011 (270) E.L.T. 33 (A.P.) = 2011 (23) S.T.R. 341 (A.P.) wherein in Paragraph 7, it has been clearly held that a plain reading of the definition of Rule 2(k) would demonstrate that all the goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing an output service are eligible for Cenvat credit. It is not in dispute that the appellant is a taxable service provider on port under the category of port services. Therefore, the appellant was entitled for input credit and the decision of the Division Bench of the Andhra Pradesh High Court squarely applies to the facts of the case and answered the question on which the appeal has been admitted.

8. Mr. Y.N. Ravani, learned counsel for the Revenue has placed reliance on the decision of the Larger Bench of the Tribunal in *Vandana Global Limited* v. *Commissioner of Central Excise, Raipur,* 2010 (253) E.L.T. 440. We have carefully gone through the decision of the Larger Bench of the Tribunal. We do not find that amendment made in Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification of particular thing or goods and/or input and as such, the amendment could operate only prospectively. In our opinion, the view taken by the Tribunal is based on conjectures and surmises as the Larger Bench of the Tribunal used the expression that intention behind amendment was to clarify. The coverage under the input from where this intention has been gathered by the Tribunal has not been mentioned in the judgment. There is no material to support that there was any legislative intent to clarify any existing provision. For the same reason, as mentioned above, the decision of the Apex Court in *Sangam Spinners Limited* v. *Union of India and Others,* reported in (2011) 11 SCC 408 = 2011 (266) E.L.T. 145 (S.C.) would not be applicable to the facts of the instant case.

9. Mr. Ravani has also vehemently urged that since jetty was constructed by the appellant through the contractor and construction of jetty is exempted and, therefore, input credit would not be available to the appellant as construction of jetty is exempted service. The argument though attractive cannot be accepted. The jetty is constructed by the appellant by purchasing iron, cement, grid, etc., which are used in construction of jetty. The contractor has constructed jetty. There are two methods, one is that the appellant would have given entire contract to the contractor for making jetty by giving material on his end and then make the payment, the other method was that the appellant would have provided material to the contractor and labour contract would have been given. The appellant claims that he has provided cement, steel, etc., for which he was entitled for input credit and, therefore, in our opinion, the appellant was entitled for input credit and it cannot be treated that since construction of jetty was exempted, the appellant would not be entitled for input credit. The view taken contrary by the Tribunal deserves to be set aside."

6. In view of foregoing position, the stand of the department is no more res-Integra and the view taken by the COmmissioenr (Appeals) is not in consonance with the views of Hon'ble High Courts of Chattisgarh and Gujarat. Same is therefore rejected. Appeals are allowable. Same are allowed with consequential relief to the main company as well as the Director.

(Order Pronounced in the open court on 01.10.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha