CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 1

EXCISE APPEAL NO.10466 OF 2020

(Arising out of Order-in-Appeal No.CCESA-SRT(APPEALS)/PS-564/2019-20 dated 26.12.2019 of Commissioner (Appeals) Central Excise & CGST, Surat)

M/s J.K Lakshmi Cement Limited, **.....Appellant**
(Block No.47-51P, Dastan, Surat-394310)

Vs.

Commissioner of Central Excise & CGST, Surat **......Respondent**
(Commissionerate, Surat)

APPEARANCE:

Shri Sanjay Khatri, Advocate for the Appellant
Shri R.K. Agarwal, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10467/2026

DATE OF HEARING	:	13 March, 2026
DATE OF DECISION	:	13 March, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Appeal No. CCESA-SRT (APPEALS)/PS-564/2019-20 dated 26.12.2019 of the Commissioner Central Excise & CGST Appeals, Surat. By the impugned order appeal filed by the appellant against order in original No 10/ADJ/JC-AK/DEM/2019-20 dated 20.09.2019, holding as follows has been dismissed:

"ORDER

(i) I confirm the demand and order to recover the amount of Cenvat Credit of Rs. 50,41,120/-including cesses Rupees Fifty lakhs forty one thousand one hundred twenty) availed wrongly by the noticed during the period from August 2014 to February 2016 in terms of Rule 14

(1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944,

(ii) I order for recovery of interest on the confirmed demand at (i) above under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

(iii) I impose penalty of Rs. 50,41,120/-(Rupees Fifty lakhs forty one thousand one hundred twenty) under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 In case the amount of demand confirmed as referred to in (1) above and interest payable thereon under Section 11AA is paid within 30 days of communication of this order then the quantum of the penalty shall be reduced to 25% of such penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

25. I disposed off the SCN No. V.(a)Ch.54/09/ADC/Srt-Audit/18-19 dated 13.02.2019 accordingly.

26. This order is issued without prejudice to any other action that may be taken against the noticee under the Central Excise Act, 1944 and the rules framed there under or under any other law for the time being in force in India. This order is governed under Section 174 & 142 of CGST Act, 2017."

2.1 Appellant was engaged in the manufacturing of Cement-OPC and Cement-PPC falling under Chapter-25 of first schedule to the Central Excise Tariff Act, 1985 and was holding Central Excise Registration bearing No. AAACJ6715GEM028. They were also availing the benefit of CENVAT Credit on inputs, capital goods and Service Tax under the provisions of CENVAT Credit Rules, 2004.

2.2 During the course of EA-2000 audit, on scrutiny /verification of the details of CENVAT Credit of Service Tax availed by the appellant, it was noticed that they have availed CENVAT Credit on various services, viz. Project Management Service, Engineering Services, Construction Supervision Services, Store Material Unloading Services, Installation and Erection Service, Repair & Maintenance Services, Supervision Services etc. for setting up a new Cement plant/ projects to manufacture cement. They have availed CENVAT Credit on these input services prior to the commencement of the production of Cement at their new plant/projects during the period from August 2014 to February 2016. During this period, the appellant has availed CENVAT Credit of service tax amounting to Rs.50,41,120/-, in respect of services received and used for setting up a new plant / projects to manufacture cement, on the basis of the invoices issued by various service providers.

2.3 The expression 'Setting up' has been deleted from the inclusive part of the definition of input services vide Notification No. 03/2011-CE (NT) dated 01.03.2011, therefore, the new definition of 'Input Services' effective from 01.04.2011 does not cover the service used for 'setting up' which were rendered prior to the commencement of manufacturing activity.

2.4 In the present case, the appellant had availed the input service tax credit in respect of the services received and used for setting up new projects / plants which was not admissible to them as per the new definition of 'Input Service.

2.5 A Show Cause Notice bearing dated 13.02.2019 was issued to the appellant asking them to show cause as to why;-

(i) *The Cenvat credit of service tax of Rs. 50,41,120/-including cesses(Rupees Fifty lakhs forty one thousand one hundred twenty) availed and utilized wrongly during the period from August 2014 to February 2016 not be disallowed and recovered from them under Rule 14 (1)(ii) of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 as amended and applicable time to time.*

(ii) *Interest at the applicable rates, on the amount mentioned at sub para (i) above not be demanded and recovered from them under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 as amended and applicable time to time.*

(iii) *Penalty not imposed upon them under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 as amended and applicable time to time.*

2.6 The show cause notice was adjudicated as per the order in original referred in para 1 above.

2.7 Aggrieved, the appellant filed appeal before the Commissioner (Appeal) which has been dismissed.

2.8 Hence, the present appeal.

3.1 We have heard Shri Sanjay Khatri, Advocate for the appellant and Shri R K Agarwal, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted that:

- A manufacturing plant or machinery cannot function and accomplish the process of production without proper installation. Thus installation and setting up of plant and machinery is directly associated with the production process.
- The definition of "input services" constructed afresh and enacted w.e.f. 01-04-2011 vide Notification No. 3/2011 C.E.(N.T.) dated 01-03-2011, was intentionally and rationally bifurcated into three parts. First is the 'main part', second is 'inclusionary clause' and third in 'exclusionary clause'. The 'main part' lay down the principal condition of eligibility and very categorically mandate and provide eligibility to input services which are used by a manufacturer, 'directly or indirectly, in or in relation to the manufacture of final products. The second part, that is to say, the 'Inclusionary part of the definition covers those services which are deemed debatable or borderline, intending to avoid uncertainty and scope of mis-interpretation. Third part viz., the 'exclusionary part' covers the instances which though qualify in the 'main part' of the enactment but which the legislature intends to exclude from the purview of the CENVAT scheme.
- Thus simply for the reason of that 'inclusionary part' the definition has undergone certain changes during the course of construction afresh of the definition in entirety, does not grant revenue with an authority and opportunity to bypass the 'main part' of the enactment and deny the benefit of CENVAT Scheme on the basis of superficial and vague analysis of the re-constructed definition of "input services" against the very spirit and intent of the Legislature, mechanically making word to word comparison of the 'inclusionary part of both the definitions,

without reading all the three parts of the new definition in the context with the CENVAT Scheme.

- Appellant is submitting Chartered Engineer Certificate to establish that the services in respect of which the CENVAT Credit is claimed were not construction services covered by the exclusion clause.
- Issue is no longer res-integra and has been decided in the favour of the appellant as per following decisions:
  - Supreme Industries Ltd. [2020 (373) ELT 97 (T-Ahmd)]
  - Pepsico India Holdings (Pvt.) Ltd. [2022 (56) GSTL 22 (T-Hyd)
  - Mangalam Cement Ltd. [2024 (24) CENTAX 38 (T-Del)]
  - Aditya Aluminium [2023-TIOLL-802-CESTAT-KOL]
  - Jindal Steel and Power Ltd. [2023-TIOL-617-CESTAT-KOL]
  - Kellogg India Pvt. Ltd. [2020-TIOL-1040-CESTAT-HYD]
- Demand is barred by limitation.

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the argument of the case.

4.2 Impugned order records the findings as follows:

"5.2 I find that in order to avail CENVAT Credit, any service availed must qualify to be an 'Input Service' as defined under Rule 2(1) of the CENVAT Credit Rules, 2004. The relevant portion of the definition of 'Input Service' is as under.

"Definition prior to 01.04.2011:

"Input Service" means any service

(i) used by service provider of taxable service for providing of output service; or

(ii) used by the manufacture, whether directly or indirectly, 'in or in relation to the manufacture of final products' and clearance of final products upto the place of removal and

includes services used in relation to setting up, modernization, renovation or repair of a factory or premises of output service provider or an office relating to such factory or premises, *advertisement or sales promotion, market research, storage of upto the place of removal, procurement of inputs, activities relating to business such as financing, recruitment and Quality control, coaching and training, computer accounting, auditing, networking, credit rating, share registry and security, inward transportation of Inputs or Capital Goods and outward transportation up to place of removal.*

Definition with effect from 01.04.2011:

"Input Service" means any service

(i) used by service provider of taxable service for providing of output service; or

(ii) used by the manufacture, whether directly or indirectly, 'in or in relation to the manufacture of final products and clearance of final products upto the place of removal and

includes services used in relation to modernization, renovation or repairs of a factory, premises of output service provider or an office relating to such factory or premises, advertisement or sales promotion, market research, storage of upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and Quality control, coaching and training, computer networking, credit rating, share registry and security, business exhibition, legal services, inward transportation of Inputs or Capital Goods and outward transportation up to place of removal, but excludes:

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by not a capital goods; or

(BA) services of general insurance except when used by

(a) ….

(b) ….

(C) such as those provided in relation to outdoor catering... any employee."

5.3 On going through the definition, it is clear that the term 'Input Service' has two essential parts i.e. the 'substantive part' and the 'inclusive part'. The substantive part of the definition because of the expression "used by a manufacturer whether directly or indirectly, in or in relation to the manufacture of final products" would cover all the services which have nexus with manufacture of final products, whether directly or indirectly. In the present case, the appellant had availed the credit of services used for setting up new project/ plants for manufacture of Cement. All these services were received and utilized prior to the commencement of manufacturing activities; therefore these services do not have nexus with the manufacture of final products. Thus, the said services do not qualify to be an input service as per the substantive part of the definition of input service.

5.4 Further, I find that the inclusive part has extended the scope of service to fall in the category of input service. As per the definition of "input service' prior to 01.04.2011, the inclusive part of the definition covered the services which are rendered prior to the commencement of the manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and included services rendered in relation to business such as auditing, financing etc. Since 01.04.2011, expression 'Setting up' has been deleted from the inclusive part of the definition of input services vide Notification No. 03/2011-CE (NT) dated 01.03.2011, therefore, the new definition of the 'input service' effective from 01.04.2011 does not cover the services used for 'setting up which were rendered prior to the commencement of manufacturing activity. In the present case, the appellant had availed the input service tax credit in respect of the services received and used for setting up *new projects/plants prior to the commencement of manufacturing activity.*

Therefore, the inclusive part of the definition of input service also does not cover the said services used in relation to setting up of new projects/plants.

5.5 In view of the facts discussed above, it is clear that all the services used for setting up new projects / plants for manufacture of Cement did not fall in the ambit of the definition of the 'Input Service'.

5.6 If the intention of the Government was to provide credit of service tax paid on such setting up, the definition of "input service" provided under rule 2(1) of the CENVAT Credit Rules, 2004 would not have been amended. This shows that the intention of the legislature was not to provide such credit. I find that the Government has intentionally amended the definition of input service and if the manufacture fall within the criteria defined in the input service amended definition, then only they are eligible to avail the CENVAT Credit of Service Tax on such services. Further, I find that by no stretch of imagination, such setting up can be treated as input service.

5.7 In support, I refer to the judgement of Tribunal in the case of Mahadev Manufacturers Vs CCE, Rajkot reported 2018(364) ELT 1101 (Tri-Ahmedabad) wherein Hon'ble CESTAT, Ahmedabad has observed that

"5. There is no dispute about the fact that the appellant has used construction service in setting up windmill which, in my opinion, is inadmissible to credit after 1-4-2011."

5.8 It is further contended by the appellant that if CENVAT Credit is allowed on capital goods and inputs which is used in setting up of a manufacturing plant, then credit on inputs service should also available. I find that such an interpretation is not correct and would result in incorrect interpretation and then the very purpose of the CENVAT Credit Rules, 2004 would be defeated. The credit is allowed subject to certain terms and conditions and subject to the definition *of "input service" provided under rule 2(l) of the CENVAT Credit Rules, 2004. Therefore, this plea is of no help to the appellant.*

5.9 I further find that it is a settled rule of interpretation that while interpreting a word/expression in a fiscal statute meaning must be given to each word of the statute and it cannot be ignored on the basis that the same does not appear to be logical. Therefore, what has been consciously deleted by the legislature should deem to have been disallowed from the effective date. In support, / refer to the judgment of the Hon'ble Karnataka High Court in the case of Suraj Enterprises vs Authority for clarification & Advance Ruling, Bangalore 2010 (262) ELT 119 (Kar.).

5.10 In view of the above discussion, I find that the appellant is not entitled for the CENVAT Credit availed in respect of the said services used in relation to "setting up" of new projects / plants and the same is liable to be recovered from them under Rule 14(1) (ii) of CENVAT Credit Rules, 2004 read with under Section 11A(4) of Central Excise Act, 1944 as amended and applicable time to time.

5.11 The appellant had further challenged the impugned order for confirmation of demand of interest. However, since it is established that the appellant has availed the credit wrongly, I see no reason to disagree with the findings of the adjudicating authority, confirming the demand of interest.

5.12 The appellant had also challenged the impugned order on the ground of limitation and challenged the imposition of penalty. The appellant has pleaded that no penalty can be imposed because the issue involves interpretation of the provisions of CENVAT Credit Rules, 2004. As already discussed, the change in the provision of CENVAT Credit Rules, 2004 pertaining to credit related to input services was brought in the year 2011 and effective from 01.04.2011 services related to "setting up" of new plant stands deleted from the inclusive part of the definition of "input service". The same got wide publicity and whether 'input service' credit related to 'setting up of new unit/factory/plant' is available or not was a matter of wide speculation and was extensively discussed in print media, audio-visual media as well as social media. Thus even *if it is treated as a matter of interpretation, looking into the fact that there was wide speculation on the availability of the credit, it would have been more proper on the part of the appellant that before taking credit of such services they inform the department, which would have established that there was no mens rea on their part. The appellant has also not produced any judgment wherein post 01.04.2011, the credit on "setting up" has been allowed by any judicial forum, which might had led them to believe that the credit was admissible to them. Thus the plea of limitation does not stand on the ground that the appellant had not disclosed to the department the fact that they had taken credit of such services. It is only during the course of internal audit of the appellant unit, the said fact came into notice. Had it not come to the notice of audit, the wrong availment of credit would have gone unnoticed. Accordingly invocation of extended period in the show cause notice and imposition of equal penalty in the impugned order is justified."*

4.3 The only issue involved in the matter is in respect of the interpretation of definition of "input service" as per Rule 2 (l) of the CENVAT Credit Rules, 2004, pre and post amendments made vide Notification No 3/2011-CE (NT) dated 01.03.2011. Impugned order holds that as the phrase "setting up" was deleted by the amendment made by the said notification from the definition of Input Service, the input services used for setting up the plant would not be admissible post 01.04.2011 (date from which the amendment has been made effective.

4.4 We observe that the Rule 2 (l) defines the "input services" by use of "means" and also by "includes". The amendment which is in dispute is in respect changes made in the inclusive clause of the definition. It is settled position in law that "inclusive" definition is indicative and not exhaustive, i.e. the inclusive part of definition do not restricts the application of the definition to the terms/ phrases employed in the inclusive part only. In case of Millipore (India) Pvt. Ltd. [2012 (26) S.T.R. 514 (Kar.)] Hon'ble Karnataka High Court has held as follows:

"7. That apart, the definition of input services is too broad. **It is an inclusive definition. What is contained in the definition is only illustrative in nature.** Activities relating to business and any services rendered in connection there- with, would form part of the input services. ….”

4.5 In case of Supreme Industries Ltd. [2020 (373) ELT 97 (T-Ahmd)] following was observed:

> ***“4.*** *I have gone through rival submissions. I find that the original adjudicating authority has clearly held that the services in dispute are covered by the expression used in or in relation to manufacture of final products and, therefore, even if the words ‘setting up’ are deleted from the definition of input services, it makes no difference. I also find that the impugned order does not dispute the finding of the Original Adjudicating Authority that the services are covered by the expression “used in or relation to manufacture of final product”. The impugned order solely relied on the omission of words ‘setting up’ from the definition of input services. It is seen that the Original Adjudicating Authority had not allowed the benefit under that expression of the definition which has been challenged by Revenue. In these circumstances I find that the findings of the Original Adjudicating Authority that the said services are covered by the expression used in or in relations to manufacture of final products remains undisturbed by the impugned order. Consequently, the appellant remains entitled to Cenvat credit of the disputed services under the expression “used in or in relation to manufacture of final products”….”*

4.6 In case of Pepsico Holdings (Pvt.) Ltd. [2022 (56) GSTL (T-Hyd)] following was observed:

> ***“22.*** *All four of the above qualify as input service as per Rule 2(l)(ii) as applicable post 1-4-2011. Although setting up the factory is not manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture.* ***Services used in setting up the factory are, therefore, unambiguously covered as ‘input services’ under Rule 2(l)(ii) of the Cenvat Credit Rules, 2004 as they stood during the relevant period (post 1-4-2011). The mere fact that it is again not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main***

part of the definition of input service, unless it is specifically excluded under the exclusion part of the definition, the appellant is entitled to Cenvat credit on the input services used. *This Bench has already taken this view in Kellogs. Similar views have been taken by the other Benches in the other cases mentioned above."*

4.7 In case of Mangalam Cement Ltd. [2024 (24) CENTAX 38 (T-Del)] following was held:

11. For reference, we would like to take note of the observations made by the Tribunal in the earlier decisions on the inclusive part of the definition, w.e.f. 01.04.2011. In the case of eligibility of cenvat credit after the 'input service', excluding the setting amendment of the definition of up process of a factory from the Hindustan Zinc Ltd., (supra) it has been held:

"37. As noticed above, emphasis has been placed by the appellant on the „means' clause of the definition of „input service' under rule 2(l) of the Credit Rules. The Department however has placed emphasis on the „includes' clause of the definition as also the „excludes' clause of the definition of „input service'. The decision of the Tribunal in Pepsico India Holdings, on which reliance has been placed by the appellant, also interpreted the "means" clause of the definition of "input service". It would, therefore, be appropriate to consider this decision.

38. What came up for decision before the Tribunal in Pepsico India Holdings was whether the appellant was entitled to CENVAT credit on the "input services" used in the "setting up" of the plants. In particular, what was considered was whether "setting up" of the plants would be a service falling in the "means" clause of the definition of "input service", even if "setting up" was deleted from the "includes" clause of the definition of "input service" w.e.f. 01.04.2011. The Tribunal observed that the definition of the "means" part of the definition was very wide and services used in "setting up" of *the factory would be covered under the „input services', under rule 2(l) of the Credit Rules in the "means" part of the definition of "input service" even if the said service had been deleted from the "includes" part of the definition of "input service". The relevant portion of the decision is reproduced below:*

> *"11. Before 1.4.2011, the term "input service" had number of types of services included in the main part of the definition and then it had a "inclusive" part of the definition which specifically provided for credit of service tax paid on services used in setting up of the plant. After 1.4.2011, the definition was revised and it had three parts, the main part, an inclusion part and an exclusion part. The cenvat credit on input services used in setting up of the plant was neither in the inclusive part of the definition nor in the exclusive part of the definition. However, he would argue that these services were necessary to set up the plant and manufacture the goods. Thus, these services are directly connected to the manufacture of the goods and hence they are covered in the main part of the definition of the 'input service' after 1.4.2011 and therefore credit is available even though such services were no longer specifically in the inclusive part of the definition. Such a view was taken in the case of Kellogs by this Bench and in other cases cited above. He, therefore, prays that the appeals may be allowed and the impugned orders may be set aside.*
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> *12. Learned Departmental Representative vehemently opposes these arguments and supports the impugned orders and asserts that since the services related to setting up of a factory were removed from the inclusive part of the definition, it would mean no CENVAT credit was available. On a specific query from the bench, he submits that in the case of Kellogs this Bench held that*

CENVAT credit was available and the Revenue has appealed against the order which appeal is pending before the High Court of Andhra Pradesh for admission.

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15. The department wants to deny them the benefit of the CENVAT credit on the ground that 'services related to setting up of a factory' which were specifically included prior to 1.4.2011 were no longer specifically included post 1.4.2011.

16. We find that the definition of 'input service' prior to 1.4.2011 had two parts- a main part of the definition and an inclusive part of the definition. This inclusive part specifically included the services availed for setting up the factory. After 1.4.2011, it has three parts- a main part, an inclusive part and an exclusive part. The services used for setting up the factory are neither in the inclusive part of the definition nor the exclusive part of the definition. Therefore, such services were neither specifically included nor were specifically excluded.

17. It takes us to the main part of the definition which must be examined. If it is wide enough to cover the services in question, CENVAT credit will be available, otherwise it will not be available. The main part includes "services used by a 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." The term manufacture is not defined in the Rules.

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21. For a service to qualify as 'input service' under CENVAT Credit Rules, 2004 post 2011, the service in question need not be covered even by the very wide *definition of manufacture under section 2(f) of the Central Excise Act. Any service which is used not only in manufacture but also 'in relation to' manufacture will also qualify as input service. The scope of input service is further enlarged with the expression whether directly or indirectly used in the definition of input service. Thus, there are:*

(a) Actual manufacture;

(b) Processes incidental or ancillary to manufacture which are also manufacture;

(c) Activities directly in relation to manufacture (i.e., in relation to 'a' and 'b' above);

(d) Activities indirectly in relation to manufacture (i.e., in relation to 'a' and 'b' above);

22. All four of the above qualify as input service as per Rule 2(l) (ii) as applicable post 1.4.2011. Although setting up the factory is not manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture. Services used in setting up the factory are, therefore, unambiguously covered as 'input services' under Rule 2 (l) (ii) of the CENVAT Credit Rules, 2004 as they stood during the relevant period (post 1.4.2011). The mere fact that it is again not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main part of the definition of input service, unless it is specifically excluded under the exclusion part of the definition, the appellant is entitled to CENVAT credit on the input services used. This Bench has already taken this view in Kellogs. Similar views have been taken by the other Benches in the other cases mentioned above."
(emphasis supplied)

> *39. It needs to be noted that in Kellogs India Pvt. Ltd v. Commissioner of Central Tax, Tirupathi [2020 (7) TMI 414 -CESTAT Hyd], the Tribunal observed:-*
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> > *"11. Therefore, we find that the services used in relation to setting up of a plant are neither specifically included nor specifically excluded during the relevant period. That takes us to the main part of the definition which, with respect to manufacturer allows CENVAT credit of services used in or in relation to manufacture whether directly or indirectly. This definition, in our considered view, is wide enough to cover in its compass any services used for setting up a Plant especially when the services are used for obtaining the land on lease. Without such land no factory can be set up nor can any manufacture take place. We find a direct nexus between the manufacture of the final products and the services used for setting up of plant by leasing the land."*

12. The findings recorded above are squarely applicable to the facts of the present case and therefore we do not find any justification in denying the benefit of cenvat credit to the appellant. Here MGU was a part of the existing unit itself. The services so utilized for setting up of the factory which were availed prior to the commencement of production shall fall within the „means clause' of the definition of „input service', which has been held to be wide enough to allow cenvat credit of services used in or in relation to manufacture whether directly or indirectly. It is pertinent to appreciate that grinding unit was set up so as to utilize the excess production of clinker in the main fatory and applying the principle laid down in the case of Kellogs (supra), there is a direct nexus between the manufacture of the final product & the services used for setting up the grinding unit, MGU.

13. The findings of the authorities below that services related to Erection, Commissioning & Installation services, Works Contract service & hiring of JCB & Earth Moving machinery service have been received in relation to construction activity which under the exclusion clause (A) under Rule 2(l) are not admissible services to avail cenvat credit cannot be sustained as these services have been utilized for installation of plant & machinery & for augmentation of existing track capacity at railway siding of MGU for inward transport of inputs & outward clearance of goods & not for constructing any building or civil structure. Referring to the meaning of the term construction as per the Finance Act, 1994, the Tribunal in Reliance Industries Ltd., v. CCE & ST Rajkot -2022 (4) TMI 729 CESTAT Ahmedabad, held:-

> *"4.4 From the above meaning of construction it is clear that the construction means commercial or industrial construction of a building or a civil structure or a part thereof. However, the exclusion provided in the definition in respect of roads, airports, railway, transport terminal, bridge, tunnel, and dam etc. further reinforce the contention of the appellant that only those constructions which is in respect of building and civil structure will fall under construction. However, in the present case the ECIS services were not used for construction of building or a civil structure, it is admittedly used for erection installation of plant and machinery therefore the ECIS were not used for construction of building or civil structure".*
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> *----*
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> *There is no dispute that the ECIS service is in respect of technological, mechanical or industrial structure, the fabrication of such structure by any stretch of imagination cannot be construed as construction of civil structure. As per the Finance Act, 1994 reference to civil structure is construction using still, cement, sand etc. and to a similar building, road, dam, airport etc., therefore there is a vast difference between the civil structure, building, etc. and*

technological structure which in the present case, the appellant have erected and installed by using ECIS".

4.8 In case of Bellsonica Auto Components India P. Ltd. [2015 (40) S.T.R. 41 (P & H)] while considering the scope the services used for setting up the factory, in pre-amended definition, Hon'ble Punjab and Haryana High Court observed as follows:

"6. *The department contended that the said services were not eligible for Cenvat credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of "input service" is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of "input service" and that a line has to be drawn somewhere to avoid undue extension of the phrases 'directly or indirectly' and 'in or in relation to' by adopting a common sense approach. Immovable property is neither service nor goods and, therefore, input credit cannot be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to Service tax. In this regard, the Commissioner referred to a C.B.E&C. Circular, dated 4-1-2008. The Commissioner also held that the Service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. metal-sheet.*

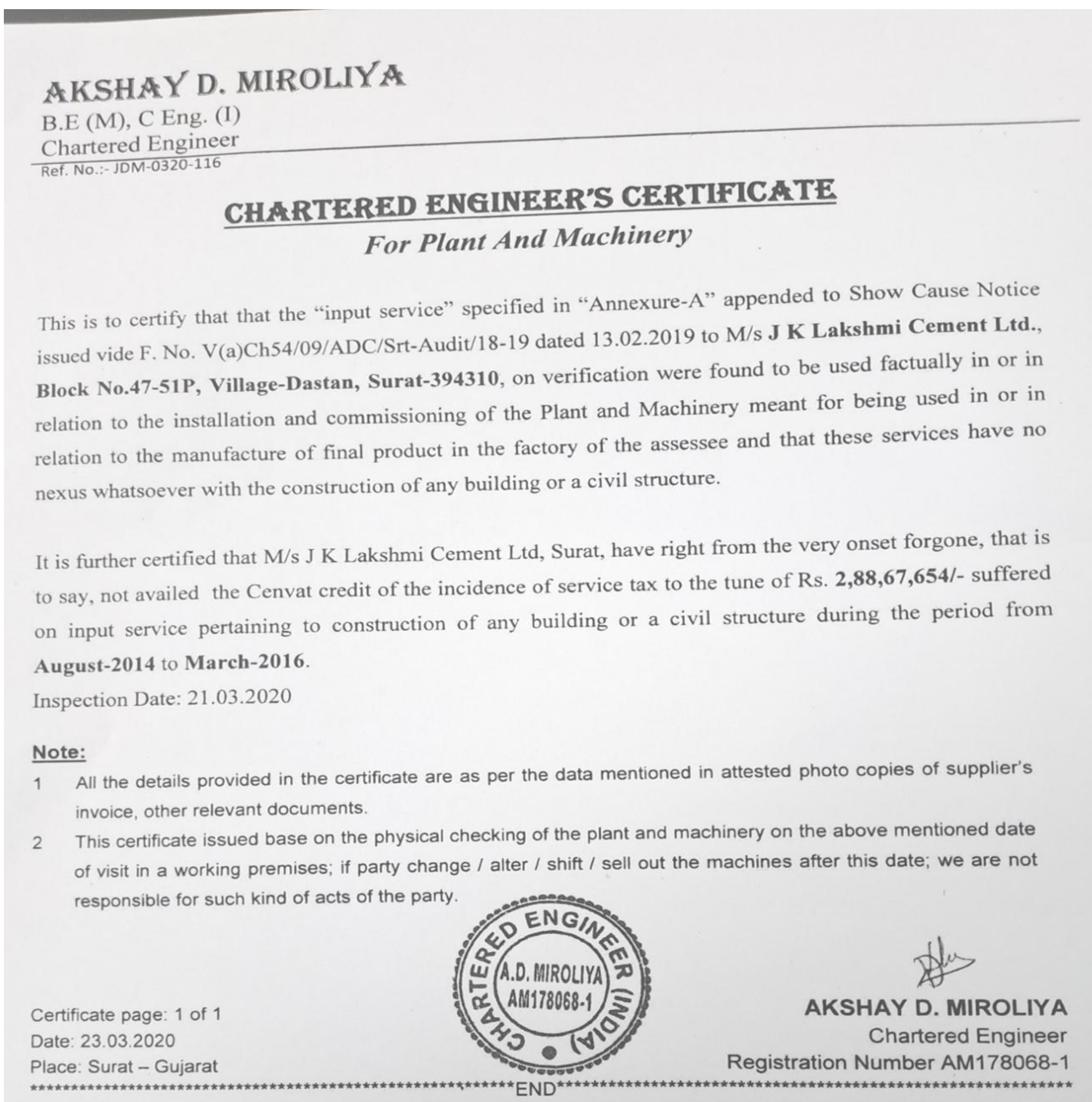
7. *We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(l) by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.*

8. *The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(l) aptly referred to by Mr. Amrinder Singh as the "means part."*

9. *The respondents' case also falls within the second part of Rule 2(l) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(l)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(l)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can* *hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product."*

4.9 The ratio of all the above decisions lead to inevitable conclusion that the services received by the appellant for setting up the plant are covered by the first limb of the definition of "input services" and hence the deletion of the phrase "setting up" from the second limb i.e. inclusive clause of the definition, will not impact the admissibility to the cenvat credit in respect of these services. It is not even the case of revenue that these services fall within the "exclusion clause" of the definition post amendment.

4.10 In support of their claim that the input services do not fall within the category of construction services which are covered by exclusion clause, appellant has produced a Chartered Engineer Certificate as reproduced below:



AKSHAY D. MIROLIYA
B.E (M), C Eng. (I)
Chartered Engineer
Ref. No.:- JDM-0320-116

CHARTERED ENGINEER'S CERTIFICATE
For Plant And Machinery

This is to certify that that the "input service" specified in "Annexure-A" appended to Show Cause Notice issued vide F. No. V(a)Ch54/09/ADC/Srt-Audit/18-19 dated 13.02.2019 to M/s **J K Lakshmi Cement Ltd.**, **Block No.47-51P, Village-Dastan, Surat-394310**, on verification were found to be used factually in or in relation to the installation and commissioning of the Plant and Machinery meant for being used in or in relation to the manufacture of final product in the factory of the assessee and that these services have no nexus whatsoever with the construction of any building or a civil structure.

It is further certified that M/s J K Lakshmi Cement Ltd, Surat, have right from the very onset forgone, that is to say, not availed the Cenvat credit of the incidence of service tax to the tune of Rs. **2,88,67,654/-** suffered on input service pertaining to construction of any building or a civil structure during the period from **August-2014** to **March-2016**.
Inspection Date: 21.03.2020

Note:
1 All the details provided in the certificate are as per the data mentioned in attested photo copies of supplier's invoice, other relevant documents.
2 This certificate issued base on the physical checking of the plant and machinery on the above mentioned date of visit in a working premises; if party change / alter / shift / sell out the machines after this date; we are not responsible for such kind of acts of the party.

CHARTERED ENGINEER (INDIA) A.D. MIROLIYA AM178068-1

Certificate page: 1 of 1
Date: 23.03.2020
Place: Surat – Gujarat

AKSHAY D. MIROLIYA
Chartered Engineer
Registration Number AM178068-1

**************************END**************************

Since the services in respect of which the appellant is claiming the CENVAT Credit are not construction services which are excluded from the definition of "input services" as per amended Rule 2(l), the decision of Mahadev Manufacturers [2018 (364) ELT 1101 (Tri-Ahmd)], relied in the impugned order has no applicability and is clearly distinguishable.

4.11 Thus in view of the above we do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

akp