

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No 21100 of 2019

(Arising out of Order-in-Appeal No.MLR-EXCUS-APP-MS-045-2019-20 dated 08.07.2019 passed by the Commissioner of Central Tax (Appeals), Belgaum.)

M/s. Ashtech (India) Pvt. Ltd.)

UPCL Compound, Pillar Post,
Village: Yellur,
Udupi District - 574 113.

Appellant(s)

VERSUS

**The Commissioner of Central Excise
& Central Tax**

7th Floor, Trade Centre,
Bunts Hostel Road,
Mangaluru - 575 003.

Respondent(s)

APPEARANCE:

Shri A. Jatin Chirstopher, Chartered Accountant for the Appellant.

Shri Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 22102 / 2025

DATE OF HEARING: 03.12.2025

DATE OF DECISION: 03.12.2025

PER: R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No.MLR-EXCUS-APP-MS-045-2019-20 dated 08.07.2019 passed by the Commissioner of Central Tax (Appeals), Belgaum.

2. Briefly the facts are that the appellant M/s. Ashtech (India) Pvt. Ltd., are manufactures of PPC cement and during the course of audit, it was observed that the appellant had taken ineligible cenvat credit on certain inputs and input services, accordingly, show-cause notice was issued denying the benefit of cenvat credit. On adjudication, the demands were confirmed along with interest and penalty. Aggrieved by this, they filed an appeal before the Commissioner (A). The Commissioner (Appeals) denied the benefit on certain capital goods on the ground that they are embedded to earth and become immovable. The credit on input services was also denied as they were used for setting up the plant and since w.e.f. 01.04.2011 the word 'setting up' had been deleted the appellant was therefore ineligible for cenvat credit. Aggrieved by this order, the appellant has filed this appeal.

3. The Learned Chartered Accountant submits that the appellant is manufacturer of cement and trades in cement and fly ash. With regard to cenvat credit on capital goods, it is submitted that various suppliers supplied the capital goods on turnkey basis where the alleged plant was setup. He submits that denial of cenvat credit on the capital goods on the ground that capital goods were delivered directly to the registered factory premises of the appellant and the plant had become immovable is no longer good law in as much as the Hon'ble Supreme Court in the case of **Bharti Airtel Ltd. Vs. CCE 2024 S.C.C online 3374** had settled the issue.

3.1 With regard to denial of cenvat credit on input service on the ground that the word 'setting up' has been omitted w.e.f. 01.04.2011 is also settled by the Tribunal in the case of **Kellogs India (P) Ltd. Vs. CCE: 2020 (7) TMI 414 -CESTAT Hyd.** wherein the benefit has been extended even after 01.04.2011.

3.2 On limitation, it is submitted that since it is an interpretation issue, no suppression or intention to avail irregular credit against the appellant can be alleged and hence, invocation of extended period of limitation cannot be sustained.

4. The Learned Authorised Representative (AR) reiterated findings of the Commissioner (Appeals).

5. Heard both sides. The first issue relates to whether the appellant is eligible for credit on the capital goods used in plant and machinery assembled at site and the period of dispute is from May 2013 to September 2014. The definition of 'Capital Goods' with effect from 01.04.2012 onwards reads as:

The definition of capital goods as provided in rule 2(a) of the CENVAT Rules, 2004 credit (a) "Capital goods" means: w.e.f. 01.04.2012, is as below:

(A) the following goods, namely:-

(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 at (i) and (ii)

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof

(vii) Storage tank, and

(viii) motor vehicles other than those falling tariff headings 8702,8703,8704,8711 and their chassis (but including dumpers and tippers).

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

"(IA) outside the factory, of the manufacturer of the final products for generation of electricity for captive use within the factory; or"

(2) for providing output service;

B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider,

(i) providing an output service of renting of such motor vehicle; or

(ii) Transportation of inputs and capital goods used for providing an output service; or

(iii) Providing an output service of courier agency;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-

(i) Transportation of passengers; or

(ii) Renting of such motor vehicle; or

(iv) Imparting motor driving skills;

[substituted w.e.f. 01-07-2012 vide Notification No.28/2012 CE(NT) dated 20.06.2012)

(D) Components; spares and accessories of motor vehicles, which are capital goods for the assessee;

[substituted wef 01.04.2012 vide Notification No.18/2012 CE(NT) dated 17.03.2012.]

(clause (viii) inserted vide notification No.18/2012 CE (NT) dated 17.03.2012 WEF 01.04.2012]

6. The original authority and the Commissioner (Appeals) in the impugned orders denied the cenvat credit on capital goods on the ground that the capital goods were used in the plant and machinery which were embedded to earth and became immovable relying on the Board `s Circular, which is reproduced below:

Plant and machinery assembled at site — Excisability of — Clarifications
Order No. 58/1/2002-CX, dated 15-1-2002 F. No. 154/26/99-CX.4

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Excisability of plant and machinery assembled at site - regarding.

In exercise of the power conferred under Section 37B of the Central Excise Act, 1944, the Central Board of Excise and Custom considers it necessary, for the purpose of uniformity in connection with classification of goods erected and installed at site, to issue the following instructions.

2. Attention is invited to Section 37B Order No. 53/2/98-CX, dt. 2-4-98 (F. No. 154/4/98-CX. 4) [1998 (100) E.L.T. T9] regarding the excisability of plant and machinery assembled at site.

3. A number of Apex Court judgments have been delivered on this issue in the recent past. Some of the important ones are mentioned below :

- (i) Quality Steel Tubes Pvt. Ltd. v. CCE [1995 (75) E.L.T. 17 (S.C.)]
- (ii) Mittal Engineering Works Pvt. Ltd. v. CCE, Meerut [1996 (88) E.L.T. 622 (S.C.)]
- (iii) Sirpur Paper Mills Limited v. CCE, Hyderabad [1998 (97) E.L.T. 3 (S.C.)]
- (iv) Silica Metallurgical Ltd. v. CCE, Cochin [1999 (106) E.L.T. 439 (Tribunal)] as confirmed by the Supreme Court vide their order dated 22-2-99 [1999 (108) E.L.T. A58 (S.C.)]
- (v) Duncan Industries Ltd. v. CCE, Mumbai [2000 (88) ECR 19 (S.C.)]
- (vi) Triveni Engineering & Industries Ltd. v. CCE [2000 (120) E.L.T. 273 (S.C.)]
- (vii) CCE, Jaipur v. Man Structurals Ltd. [2001 (130) E.L.T. 401 (S.C.)]

4. The plethora of such judgments appear to have created some confusion with the assessing officers. The matter has been examined by the Board in consultation with the Solicitor General of India and the matter is clarified as under :-

- (i) For goods manufactured at site to be dutiable they should have a new identity, character and use, distinct from the inputs/ components that have gone into its production. Further, such resultant goods should be specified in the Central Excise Tariff as excisable goods besides being marketable i.e. they can be taken to the market and sold (even if they are not actually sold). The goods should not be immovable.

(ii) Where processing of inputs results in a new product with a distinct commercial name, identity and use (prior to such product being assimilated in a structure which would render them as a part of immovable property), excise duty would be chargeable on such goods immediately upon their change of identity and prior to their assimilation in the structure or other immovable property.

(iii) Where change of identity takes place in the course of construction or erection of a structure which is an immovable property, then there would be no manufacture of "goods" involved and no levy of excise duty.

7. We find that the reliance placed on by the authorities on the above Circular is misplaced since the Circular is about classification of goods that are embedded to earth and not on denial of cenvat credit. The definition of 'Capital Goods' categorically specifies that *used in the factory of the manufacturer of the final products.....* There is no dispute that the plant and machinery is used in the manufacture of dutiable goods, therefore, the question of denying the cenvat credit on the ground that the plant and machinery are embedded to earth cannot be justified.

8. The Hon'ble Supreme Court in the case of **Bharti Airtel Ltd. Versus Commissioner of Central Excise, Pune: (2024) 24 Centax 266 (S.C.)** dated 20-11-2024 held as follows:

"11.8. In view of the above decisions, we are of the opinion that merely because certain articles are attached to the earth, it does not *ipso facto* render these immovable properties. If such attachment to earth is not intended to be permanent but for providing support to the goods concerned and make their functioning more effective, and if such items can still be dismantled without any damage or without bringing any change in the nature of the goods and can be moved to market and sold, such goods cannot be considered immovable.

11.8.1 We may summarise some of the principles applied by the Courts in the decisions referred to above to determine the nature of the property as follows:

1. Nature of annexation: This test ascertains how firmly a property is attached to the earth. If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is immovable.
2. Object of annexation: If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.
3. Intendment of the parties: The intention behind the attachment, whether express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.
4. Functionality Test: If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such the property is movable.
5. Permanency Test: If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable.
6. Marketability Test: If the property, even if attached to the earth or to an immovable property, can be removed and sold in the market, it can be said to be movable.

In view of the above, unless these tests have been proved, the question of denial of cenvat credit does not arise, hence, we do not find any justifiable reasons to deny the cenvat credit on 'Capital Goods'; accordingly, the demand confirmed against denial of cenvat credit on 'Capital Goods' stands set aside.

9. The second issue is with regard to denial of cenvat credit on 'input services' for setting up of factory on the ground that the Cenvat Credit Rules, 2004 were amended w.e.f. 01.04.2011 were in the word 'setting up' and 'activities relating to business' were omitted. In a similar set of facts, the Tribunal in the case of **Mangalam Cement Ltd. Versus Commissioner, Central Goods, Excise & Service Tax, Udaipur (2024) 24 Centax 38 (Tri.-Del)** dated 10-4-2023 observed as follows:

"11. It needs to be noted that in *Kellogs India Pvt. Ltd v. Commissioner of Central Tax, Tirupathi*, the Tribunal observed:-

.....

15. The learned Counsel for the appellant in the written submissions have submitted a chart giving details of the services on which they had availed the cenvat credit and justified the same relying on the decisions mentioned therein. We have gone through these decisions with reference to the respective services and find merit as to the eligibility of the cenvat credit. The said chart is given below:-

Consulting Engineer Services for preparation of detailed project report, engineering, designing and project management consultancy services in relation to work of erection and commissioning of equipment in MGU (Credit Rs. 4,97,609)	<ul style="list-style-type: none"> • Pepsico India Holdings Pvt. Ltd. v. Commissioner of Central Tax, Tirupati, 2022 (56) G.S.T.L. 22 (Tri-Hyd.) • Dy. General Manager, Tata Motors Ltd. v. CCE, 2015 (40) S.T.R. 269 (Tri.-Mumbai) • Hindalco Industries Ltd. v. CCGST, Jabalpur, 2019 (5) TMI 1620 - CESTAT NEW DELHI • Unique Chemicals v. CCE & ST, Vadodra-II, 2019(8) TMI 200-CESTAT Ahmedabad
Erection, Commissioning and installation services for installation of plant and machinery. (Credit Rs. 83,56,361)	<ul style="list-style-type: none"> • Orient Cement Ltd. v. CCE, Hyderabad, 2017 (51) S.T.R. 459 (Tri.-Hyd.) • CCE, Kolkata v. Texmaco UGL Rail, 2019 (7) TMI 1651 - CESTAT KOLKATA • Hindalco Industries Ltd. (Supra) • Unique Chemicals (supra)Mukund Ltd. v. Commissioner of Central Tax and Central Excise, Belgaum, 2019(3) TMI 1422-CESTAT Bangalore
Manpower Supply Agencies services for deploying manpower for erection and installation work of equipments etc.) (Credit Rs. 2,90,793)	<ul style="list-style-type: none"> • Pepsico India Holdings Pvt. Ltd. (supra)Jaypee Rewa Plant v. CCE: 2018 (9) TMI 633 - CESTAT NEW DELHI) • Unique Chemicals (supra)

Security Agency Services for securing movable/immovable property at MGU) (Credit-Rs. 2,40,877)	<ul style="list-style-type: none"> • <i>Triveni Engineering & Industries Ltd. v. C.C.E. and S.T., Meerut-II</i>, 2017 (3) G.S.T.L. 140 (Tri. - All.)
Works Contract Services in the nature of Erection, Commissioning and Installation Service for augmentation of existing track capacity at railway siding of MGU for inward transport of inputs and outward clearance of goods.) (Credit-Rs. 20,02,604)	<ul style="list-style-type: none"> • <i>Jaypee Rewa Plant v. CCE</i>, 2018 (9) TMI 633 - CESTAT NEW DELHI • <i>Orient Cement Ltd. v. CCE</i>, Hyderabad, 2017 (51) S.T.R. 459 (Tri.-Hyd.)
Services for Supply of Tangible Goods for hiring of crane and earth moving machinery to shift machinery/equipment at MGU (Credit- Rs. 4,28,453)	<ul style="list-style-type: none"> • <i>Saravana Global Energy Ltd. v. Commissioner of C. Ex., Puducherry</i>, 2017 (52) S.T.R. 179 (Tri. - Chennai) • <i>Larsen and Toubro Ltd. v. CCE</i>, Mumbai-II, 2018 (15) G.S.T.L. 66 (Tri.-Mumbai)
Hiring of JCB and Heavy Earth Moving machinery service for Erection, Commissioning and Installation of railway track, plant and machinery) (Credit -Rs. 3,97,003)	
Maintenance or repair services for electrification and power supply work at MGU essentially used in relation to manufacture of final product. (Credit-Rs. 24,151)	<i>Orient Cement Ltd. (supra)</i>
Chartered Accountant Services for accounting, regulation compliances, Project audit necessary for completion of expansion/modernization of MGU (Credit-Rs. 10,382)	<i>Manchanda and Manchanda v. Commissioner of C. Ex., Delhi-IV</i> , 2019 (21) G.S.T.L. 529 (Tri. - Del.)
Banking & Other financial Services for foreign exchange conversion charges paid to DBS Bank for financing of MGU (Credit-Rs. 1,885)	<i>Hindalco Industries Ltd. (supra)</i> <i>Sundaram Clayton Ltd. v. CCE</i> , 2016 (42) S.T.R. 741 (Tri.-Chennai)
GTA services for inward transportation of input and capital goods like cables, electric motors, grinding rollers, packers etc. in the MGU. (Credit -Rs.1,41,465)	Specified in the inclusive part of Rule 2(l)

16. The Learned Authorised Representative for the revenue has vehemently opposed the appeal and supported the impugned orders. There cannot be any quarrel with the principle that in *Orient Cement Ltd., v. CC, CEx.& ST, Hyd.-2017* (51) S.T.R. 459 (Tri.-Hyd), it has been laid down that the changes brought out by the amendment in Rule 2(l) w.e.f. 01.04.2011 is prospective in nature. So far as the decision in *Vikram Cement v. CCEX., Indore -2009* (242) E.L.T. 545 (Tri.-Del), is concerned, the Bombay High Court was dealing with the issue whether welding electrodes can be called as inputs' in terms of Rule 2(k) of Cenvat Credit Rules, 2004, therefore, no reliance could be placed on the said judgement. Similarly, the other case law *Shriram General Insurance Co. Ltd., v. Commissioner of C. Ex., Jaipur-I - 2021* (44) G.S.T.L. 185 (Tri.-Del), *Herrenknecht India Pvt. Ltd., v. Commissioner of GST & Central Tax, Chennai -2019* (28) G.S.T.L. 243 (Tri.-Mad)(Tri. Chennai), *Empire Industries Ltd., v. Commissioner of C.Ex. Mumbai-III - 2018* (15) G.S.T.L. 274 (Tri.-Bom), *India Cements Ltd., v. Commissioner of C. Ex. & S.T. Guntur - 2016* (45) S.T.R. 557 (Tri.-Hyd) and also in *Toyota Kirloskar Motor Pvt. Ltd., v. Commissioner of Central Tax -2021* (55) G.S.T.L. 129 (S.C.), referred to by the learned Authorised Representative are clearly distinguishable in view of the issue involved therein. We do not agree with the plea of per incuriam raised by him relying on M/s Case *New Holland Construction Equipment (I) Pvt. Ltd., v. CC Ex., Ujjain 02021* (8) TMI 963, to say that in the case of Hindustan Zinc the law laid down has not been considered as the said decision is based on the earlier decisions on the subject. The case law cited by the authorised representative is not applicable in the present controversy and is clearly distinguishable. We chose to take the same view as has been repeatedly and successively taken in the line of decisions by different Benches of this Tribunal and therefore reliance placed on *Parle International Ltd., v. UOI -2021* (375) E.L.T. 633 (Bom.) cannot be pressed. He also informed that the decisions of the Tribunal in the above said cases of Hindustan Zinc, Kellogs India have not been accepted by the department and appeal has been preferred against them before the respective High Courts. However, there is no order of stay by any higher forum and therefore as a matter of judicial

discipline the earlier decisions of this Tribunal on the same issue are binding on this Bench.

17. We respectfully agree with the aforesaid decisions and therefore the demand made by the revenue to deny cenvat credit by the appellant and order its recovery is rejected. Consequently, the question of interest and penalty no longer survives.”

10. In view of the above, denial of cenvat credit on ‘input service’ also cannot be sustained; accordingly, the demand on this count is also set aside.

11. In view of the above, the impugned order is also set aside and Appeal is allowed.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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