CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20705 of 2017

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/BKK/051/16-17 (CX) dated 09.02.2017 passed by the Commissioner of Central Excise and Customs, Belgaum.)

M/s. Kirloskar Ferrous Industries Ltd.
Bevinahalli Village,
Hitnal Post – 583 234,
Koppal District. ....**Appellant(s)**

VERSUS

The Commissioner of Central Excise,
Customs and Service Tax,
No. 71, Club Road,
Belgaum – 590 001. ....**Respondent(s)**

APPEARANCE:

Mr. M. S. Nagaraja, Advocate for the Appellant.
Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

<u>Final Order No. 22266 /2025</u>

Date of Hearing: 09.10.2025
Date of Decision: 09.10.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding denial of CENVAT credit.

2. The brief facts are the Appellant is engaged in the manufacture of Pig iron and un-machined castings. Appellant was working under self-assessment and was also availing CENVAT credit on capital goods, inputs and inputs services. During audit of the records of the Appellant, it is observed that for the period from September 2010 to September

2011, Appellant had availed ineligible credit of Rs. 38,51,507/- for the period from 01.04.2011 to 31.10.2011 on different services which were used for construction of building or civil structure or for support of capital goods or were not used directly or indirectly for manufacture of final products or in provision to any output services. Accordingly, proceedings were initiated and a show cause notice was issued on 05.02.2016 demanding excise duty against ineligible service tax to the tune of Rs. 3,01,20,653/- and proposing penalty under the provisions of Rule 15(2) of the CENVAT Credit Rules, 2004. Thereafter Adjudication Authority as per the impugned order, dropped substantial portion of the demand and disallowed the CENVAT credit of only Rs. 33,17,445/- for the period from April, 2011 to March, 2015 and appropriated the amount paid by the Appellant and an equal amount of penalty was also imposed. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant draws our attention to the impugned order and details of the inputs services on which credit has been disallowed, and their quantification are tabulated below:-

(Amount in Rs.)

Sl. No.	Nature of Service	Apr 2011 to Dec 2012	Jan 2013 to Sep 2014	Oct 2014 to Mar 2015	Total
		Service Tax Credit (Incl. Cesses)			
1	Architect Service [Architectural Design & Detailing, Structural Design, Construction Management for Foundry Expansion Project	127463	0	0	127463
2	Business Auxiliary Service [Labour Charges for making Wooden Pallets]	0	8898	0	8898

3	Commercial or Industrial Construction service [Fabrication, Construction and Erection of 80 ft. height RCC Chimney]	236368	778	0	237146
4	Erection, Commissioning and Installation [For Parts or accessories of conveyors, Ducts, Pipes, etc.]	965662	0	151814	1117476
5	Maintenance and Repair Service [Painting of plant & Machineries]	486762	33104	0	519866
6	Management Consultancy Service [Purchase of Electricity for factory through auction]	0	11792	0	11792
7	Rent a cab service	492175	588904	213725	1294804
Grand Total		2308430	643476	365539	3317445

4. Learned Counsel also draws our attention to the definition of Inputs services under Rule 2(l) of the CCR, 2004 from 01.04.2011 to 30.06.2012 and from 01.07.2012 and submits that except the services which are specially excluded in the definition of inputs services, no other service are evidently excluded from availing credit.

5. As regards architect services, Learned Counsel draws our attention to the invoices related to the services and submits that the Appellant availed credit on the architect service for design and detailing structural design and detailing and construction of management and the foundry establishment project. The services are in relation to plant and machinery, and it is not excluded as per the definition of Inputs services

under Rule 2(l) of the CCR, 2004. Hence, eligible for credit. In this regard, Learned Counsel draw our attention to the following decisions:-

a. ***Maruti Suzuki India Ltd. Vs. CCE Delhi – III - 2017 (47) S.T.R. 273 (Tri. - Chan.)***
b. ***Adani Port & Special Economic Zone Ltd Vs. CST Ahmedabad - 2016 (42) STR 1010 (Tri-Ahmd)***
c. ***Steril Gene Life Sciences Pvt. Ltd Vs. CCE Puducherry - 2016 (42) S.T.R. 355 (Tri. - Chennai)***

6. As regards Business Auxiliary Services, Learned Counsel submits that the Appellant had availed CENVAT Credit of Service Tax paid on the Labour Charges for making Wooden Pallets for in house Fettling Shop in the Foundry and drew our attention to the description of service in the Invoice issued by the fabricator. Further submits that the Palletizing is only packing of commodity on a wooden platform (Pallet), which could be lifted and loaded on to the Goods Carriage, Container or in ship by using forklift, crane, etc. The whole purpose of palletizing is for easy handling of the goods such as loading, unloading, transportation, etc. The labour charges paid for making wooden pallets for use in the factory are not excluded from the definition of input service. Learned Counsel further submits that as per the decision of Hon'ble CESTAT, Chennai vide Final Order No 41004/2025 dated 10.9.2025 in the case of **JSW Steel Ltd, Salem Vs CCE, Salem,** it is has held that the goods used as Dunnage or Pallets which enable heavy machinery and forklifts to easily lift and move steel billets, rounds and similar materials within or out of the factory are used for collecting, transporting and stacking of goods and are necessary for undertaking production in the factory and hence it is in relation to manufacture of final Products and are hence eligible for CENVAT Credit. Thus, duty paid on pellets is eligible for credit, service used for fabricating the pellets for use in the factory ought to be eligible for credit.

7. As regards Construction Services, Learned Counsel also drew our attention to the details of the credit availed and Invoices and submits

that they have availed CENVAT credit on fabrication, construction and erection of 80 meter height RCC chimney. The RCC Chimney is for evacuation of harmful gases released during the process of manufacture in the factory and is part of the manufacturing plant and machinery. The Chimney, being part or accessory of the Pollution Control Equipment, is by itself specifically eligible for CENVAT Credit under the category of "Capital Goods" as defined in Rule 2 (a) (A) (ii) of the CCR, 2004. Therefore, the goods and services used for construction of Pollution Control Equipment, eligible Capital Goods, are eligible for CENVAT Credit. The denial of the credit is contrary to law. The Appellant also relied on the following judgments:-

(i) CCE, Raipur v. Rajasthan Spinning & Weaving Mills Ltd - [2010 (255) E.L.T. 481 (SC)]

[Chimney is an accessory of diesel generating set and therefore the steel plates used for construction of the chimney would qualify as 'capital goods' as contemplated in Rule 57Q for the purpose of MODVAT credit]

(ii) West Coast Paper Mills Ltd Vs. CCE, Mangalore - 2016 (332) ELT 847 (Tri - Bang)

[3. …………….the inputs having been used in the construction of the chimney, which was a part of the pollution control system, the benefit of Cenvat credit cannot be denied to them.]

8. As regards Erection, Commissioning or Installation Services, Learned Counsel submits that the Appellants have received the services of erection of support structures for Conveyors, Fabrication of Bunkers with Rolling Shutters, fabrication and erection of Ducts and Pipelines, Fume Extraction System, ID Fan, Cage & Bags Electrical instrumentation, Arm /pole clamps, Anchoring, Cables etc as per the copies of purchase orders (POs) and Invoices. The services of fabrication, erection, commissioning or installation of plants, machineries, equipment, fabrication and laying of pipes and ducts, laying of cables, etc., in the factory are necessary for manufacture of

final products. These services are not excluded from the definition of "input service". The Bunkers are storage of raw materials or intermediate products and are part of the plant and machinery in the factory. It is well settled law that the support structures for staging and interconnecting various Plants and Machinery, Pipes, Ducts, etc., engaged in continuous processing of goods are Components, Parts or Accessories of such Capital Goods. Such uses of the goods or services for fabrication, erection, commissioning or installation of the Components, Parts or Accessories of Capital Goods are eligible for credit and not excluded. Therefore, the disallowance of CENVAT credit of Rs. 11,17,476/- on the ground that the same pertain to construction service is contrary to law. Learned Counsel also relied on the judgment of the Hon Supreme Court in the case of **Bharti Airtel Ltd Vs. CCE, Pune 2025 (391) ELT 3 (SC)**. The relevant part of the judgment is extracted below:-

> *"11.11.11 There is no dispute to the fact that BTS is a composite system consisting of the transmitter, receiver, antenna and other equipment, and antenna can be said to be an integral part of BTS. As discussed above, and not disputed by the Revenue, tower is needed to keep the antenna at an appropriate height and keep it stable. Without the tower, it is not possible to hoist the antenna at the requisite height and without it being securely fastened to the tower, antenna cannot be kept firm and steady for proper receipt and transmission of radio signals. Thus, there cannot be any doubt that a mobile tower can be treated to be an accessory of antenna and BTS. Accordingly, since in terms of sub-clause (iii) of Rule 2(a)(A), all components, spares and accessories of such capital goods falling under sub-clause (i) would also be treated as capital goods, a mobile tower can also be treated as "capital good".*
>
> *11.11.12. We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus*

since these articles are enhance their efficiency and components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of Cenvat Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of Cenvat Rules. Further, since these are used for providing output service, Le., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessees would be entitled to Cenvat credit on the excise duties paid on these goods"

9. As regards Management, Maintenance or Repair Service, Learned Counsel drew our attention to the details and the copies of Invoices and submits that the Appellant have received the maintenance and repair service of single Enamel Coat and primer coat; Zinc Chromate primer paint & application of synthetic Enamel paint; to internal Walls, Steel Structures, external walls; replacement of damaged Roof Sheet at Pig Iron Plant. The periodic painting of the plant and machineries, replacement of roofing sheets in the Pig Iron Plant are covered under inclusive part of the definition of "input service" by inclusion of terms like, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises. The modernisation, renovation or repair includes all such services used by the manufacturer for modernization of the plant and machinery, maintenance and repairs carried out in the factory. Therefore, CENVAT credit of Rs.5,19,866/- squarely eligible for credit in terms of the provisions of Cenvat Credit Rules, 2004. The Appellants rely on the following judgments:-

(i) Cargill India Pvt Ltd Vs. CCE & ST Bangalore I Pune I - 2015 (38) STR 587 (Tri. Bang)

(ii) Semco Electric Pvt Ltd Vs. CCE, Pune I - 2013 (30) STR 572 (Tri. Mumbai)

(iii) Castrol India Limited Vs. CCE Vapi - 2013 (291) E.L.T. 469 (Tri. - Ahmd.)

(iv) CCE Vadodara II Vs. Siemens Healthcare Diagnostics Ltd 2014 (36) STR 192 (Tri Ahmd)

10. As regards Management, Business Consultancy Services and rent a cab service, Learned Counsel drew our attention to the details of Professional Services received and submits that the Appellants have received consultancy services from M/s. Manikaran Power Limited in relation to Purchase of Electricity from GESCOM through auction and making online payments. The entire electricity produced in the Captive Power Plant and purchased from GESCOM are captively consumed for manufacture of dutiable final products. There is no sale of electricity. The service is directly used in the manufacture of dutiable final products and not excluded from the definition of input service. The professional services received in respect of purchase and consumption of electricity or any other input is not excluded. The Appellant has received Renting of Motor Vehicle service for transportation of employees or staff from Hospet and Koppal to the factory and back. The appellant submit that clause (B) of Rule 2(1) of the definition of "input service" excludes the service of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not capital goods. The condition thus applies to the Person operating the Motor Vehicle the Service Provider. Therefore, it must be seen whether the person providing the "rent-a-cab" service is eligible for CENVAT credit on Motor Vehicles as Capital Goods. Perusal of Rule 2(a) (C) (ii) of the definition of Capital goods shows that the motor vehicle designed to carry passengers and used for providing the output service of renting of such motor vehicle are capital goods to the service provider. The service of Renting of motor vehicles provided to the Appellants is not excluded from the scope of "input service". Further submits that the service of renting of Motor Vehicle for transportation of employees to the factory and back is in relation to the manufacture of goods and hence eligible for credit. The Learned Counsel relied on the following decisions:-

(i) Microsoft India (R & D) Pvt Ltd Vs. Commr. of C.Ex. & ST., Bangalore - 2022 (56) GSTL 29 (Tri-Bang)

"7.2. Further, we find that the appellant has given full justification and established nexus between the input service and the output service, which is given herein below:

……..

(iv) Rent-a-Cab service - Transport/Cab facilities provided are for the employees to commute between their places of residence to the place of work. Such services are not only for the welfare of the employees but are essentially in the company's interest to carry out its business activities effectively. The employees have to reach on time to deliver services and accordingly transport services of vendors are being utilized. Hence, the same is essential for the business operations of the company.)

(ii) Marvel Vinyls Ltd. Vs. CCE Indore - 2017 (49) S.T.R. 424 (Tri. - Del.)

"6. However, I find flaw in the above interpretation of appellate authority. He has rightly observed that the exclusion is only in respect of that motor vehicle which is not a capital goods. However, he has not extended the benefit to the assessee by observing that the same is not a capital goods for the appellant. A person who is receiving the input services of renting of immovable property, can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services. The motor vehicle will always be a capital goods or otherwise for the person who is providing the services. For service provider falling under the category of renting of motor vehicle the motor vehicle would always be a capital goods. As such the expression "which is not a capital goods appearing in the said exclusion clause would require examination vis-à-vis the service provider and not vis-à-vis the service provider and not vis-à-vis the services recipient." As such the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(A) of Cenvat Credit Rules."

(iii) Aban Offshore Ltd. Vs. CCE, Mumbai West – 2020 (43) STR 213 (Tri. – Mum.)

11. Learned Counsel further submits that the amount of service tax paid on services has a direct bearing on the cost of production of final products. The service tax is a Value Added Tax (VAT), and a destination based consumption tax. Once the cost of service is added for determining the cost of production of final products and consequently its sale price, it is recognition that the said service has a connection or nexus with the manufacture of the final product. Therefore, the credit taken is relatable to production or manufacture and clearance of the final products. Learned Counsel relied in the matter of **CCE (LTU), Mumbai Vs. Reliance Industries Ltd - 2015-TIOL-2818-CESTAT-MUM.**

12. As regards the demand confirmed by invoking the extended period of limitation and penalty, Learned Counsel submits that the show cause notice was issued on 05.02.2016 for the period from April, 2011 to March 2015. The eligibility of various services for CENVAT credit is a matter of correct appreciation of facts and interpretation of law. The appellants are of the bonafide belief that they have correctly taken CENVAT credit on input services in terms of the provisions of the Cenvat Credit Rules, 2004. They have been filing ER-1 and ST-3 returns disclosing the fact of taking CENVAT credit on Input Services. The transactions are recorded in the books and CENVAT Credit Register as prescribed. The Officers of the Department have regularly audited the books. When the details of CENVAT Credit availed are recorded in the Books and disclosed to the Department in the Statutory Returns, there cannot be allegation of suppression of facts or intention to evade duty. The Commissioner has dropped the demand of CENVAT Credit of Rs.2,68,03,208 and confirmed demand of a smaller amount largely vindicating that the Audit Observations and the SCN did not make out

cases for non-payment of such large tax amount. In the facts of the case, there is no justification for invoking the larger period of limitation and imposition of penalty under Section 11 AC (1) (c) of the CEA, 1944 read with Rule 15 (2) of the CCR, 2004.

13. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that even the second proposal in the SCN to deny CENVAT Credit on services alleged to be utilized for initial setting up new factory, in the present case, 'a new foundry, has to be decided based on whether the definition covers such services, as the definition does not specifically exclude such services. Thus, Adjudication Authority held that the eligibility to credit or otherwise of service is to be decided based on the fact that 'whether the service is used in or in relation to manufacture and clearance, whether such service is specifically included or specifically excluded and end use of service and the amount confirmed in the impugned order is not by denying the credit solely on the ground that service is used in setting up foundry. Further Adjudication Authority find that the appellant in his reply has sought to categorize the services involved in the invoices covered in the Annexure to Notice including the services said to be used for initial setting up of plant, a new foundry, into particular service category, submitted the particulars from whom these services are procured, the purpose for which these services are availed and submitted that the services are covered under the definition and hence the credit availed is not in order. Thus, the Adjudication Authority dropped substantial demand after considering the issue in detail and impugned order confirming the denial of balance CENVAT credit and demand with penalty is sustainable.

14. Heard both sides and perused the records.

15. We find that the issue is considered by the Tribunal in the matter of **M/s. JSW Steel Ltd. Vs. Commissioner of GST & Central Excise, Salem** and as per the Final Order No. 41004/2025 dated 10.09.2025, it is held that:-

"9. We find that the principle stated in the above judgment will also apply to this case. The dunnage or pallets which enable heavy machinery and forklifts to easily lift and move steel billets, rounds, and similar materials within or out of the factory are used for collecting, transporting and stacking material. They are necessary for undertaking production within the factory and are hence used "in relation to" the manufacture of the final product. Proper transportation and storage of inputs is essential for an efficient manufacturing process, and its absence will affect the manufacturing process.

10. Further the appellant first pays duty on the goods and then avails credit of the duty paid, in a revenue neutral situation. The departments allegation that this is being done to avail excess credit has not been substantiated with facts and figures and are hence mere allegations.

11. Once the credit has been found eligible, the demand for duty and interest does not survive and the impugned order is liable to be set aside along with the penalty imposed.

12. In the light of the discussions above we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief, if any, as per law".

16. Further as regarding construction service for pollution control, we find that issue was considered by the Hon'ble Supreme Court in the matter of **Commr. of C. Ex., Jaipur Vs. M/s. Rajasthan Spinning & Weaving Mills Ltd. - 2010 (255) E.L.T 481 (SC)** where it is held that:-

"13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. it is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel

generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of Serial No. 5 of the goods described in column (2) of the Table below Rule 57Q.

14. We are, therefore, of the opinion that the Tribunal was correct in law in holding that the assessee was entitled to avail of modvat credit in respect of the subject items viz. steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Rules.

15. For the foregoing reasons, we find no substance in the appeal preferred by the Revenue. The same is dismissed accordingly. Parties are left to bear their own costs".

17. In view of the above discussion and considering the facts and the decisions relied by Appellant, we find that the Appellant is eligible for the CENVAT credit which was denied by the Adjudication authority. Hence the impugned order is unsustainable and liable to be set aside.

18. Accordingly impugned order is set aside, and appeal is allowed with consequential relief, if any, in accordance with law.

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

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

hr/Sasi