CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No.20034 of 2025

(Arising out of Order-in-Original Sl. No.BEL-EXCUS-000-GLB-DIV-COMMR-MG-05/2022-23 ST dated 25.04.2023 passed by the Commissioner of Central Goods, Service Tax and Central Excise, Belagavi).

M/s. Vasavadatta Cements,
(Now known as Kesoram Industries Ltd.,)
Cement Division Laxminarayan Nagar,
Sedam Dist. Gulbarga,
Belgavi-585 222.

Appellant(s)

VERSUS

Commissioner of Central Tax,
No.71, Club Road,
Belgavi-590 001.

Respondent(s)

APPEARANCE:

Mr. Ravi Raghavan and Md. Ibrahim, Advocates for the Appellant.

Mr. P.S. Srinivas, Asst. Commissioner (AR) for the Respondent.

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20917 /2026

DATE OF HEARING: 28.07.2026

DATE OF DECISION: 28.07.2026

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Kersoram Industries Ltd. (earlier known as Vasvadatta Cements) against

Order-in-Original Sl. No.BEL-EXCUS-000-GLB-DIV-COMMR-MG-05/2022-23 ST dated 25.04.2023 passed by the Commissioner of Central Goods, Service Tax and Central Excise, Belagavi.

2. Brief facts of the case that the cenvat credit availed by the appellant on steel, cement, welding electrodes and gases has been held to be inadmissible because these materials were primarily used for fabrication of structural items, foundations, sheds, platforms, supports, conveyor structures, galleries, pipelines, chimneys and other civil/structural works connected with the cement plant and power plant and these fabricated structures became permanently embedded to the earth and formed part of an immovable property. Since such structures are not movable or marketable goods, they do not qualify as "excisable goods" and therefore cannot be regarded as capital goods or their components for the purpose of availing CENVAT credit. The learned Commissioner also denied the cenvat credit on the ground that there is no correlation between the inputs and the goods manufactured at site and also there is no Chartered Engineer's certificate or technical evidence to prove that steel, cement, electrodes and gases were actually used in manufacturing eligible capital goods. The learned Commissioner notes that by Notification No. 16/2009-CE (NT) dated 07.07.2009 which specifically excluded cement, angles, channels, TMT/CTD bars and similar items used for construction of factory buildings, sheds, foundations or supporting structures of capital goods from the definition of "input," thereby clarifying the legislative intent and also since the Appellant has also failed to disclose manufacture of such capital goods in ER-1 returns, the Department seeks recovery of the allegedly irregular CENVAT credit along with applicable consequences. Aggrieved by this order, appellant is in appeal before us.

3. Learned counsel for the appellant submits that the issue is no longer *res integra* in as much as it is covered by catena of decisions wherein cenvat credit availed on structural steel items such as Galvanized Steel Towers/Structures, Plates, TMT Bars, TOR Road and electrodes used in fabrication of support structure was allowed based on the usage test since such goods were necessary to support and facilitate the functioning of various capital goods. Reliance placed on the following decisions:

- **Vandana Global Ltd. vs. Commissioner of C. Ex and Cus, Raipur, 2018 (16) G.S.T.L. 462 (Chhattisgarh)**
- **M/s. Prasad Explosive & Chemicals vs. Commissioner of CGST & Central Excise - 2023 (6) TMI 1103 - CESTAT KOLKATA**
- **M/s. Vedanta Limited vs. Commissioner of Central Excise, Customs and Service Tax, Rourkela - 2025 (11) TMI 596 - CESTAT KOLKATA**
- **M/s. Ritesh Tradefin Limited vs. Commr. of Central Excise, Bolpur – 2024 (8) TMI 710 - CESTAT KOLKATA**
- **M/s. Lalwani Ferro Alloys Ltd., vs. Commr. of CGST & Central Excise, Bolpur - 2024 (7) TMI 1705 - CESTAT KOLKATA**
- **Ugar Sugar Works Ltd. vs. CCE, C & ST, Belgaum – 2025 (4) TMI 757 – CESTAT Bangalore**
- **M/s. JSW Cements Ltd. vs. The Commissioner of Central Excise, Belgaum – Final Order No. 21622/2024 dated 25.11.2024 passed by this Hon'ble Tribunal**
- **M/s. UltraTech Cement Ltd. vs. The Commissioner of Central Excise, Belgaum – Final Order No. 21035 -**

21036 /2024 dated 04.10.2024 passed by this Hon'ble Tribunal

3.1 Further, he also submitted that capital goods becoming immovable property is irrelevant and eligibility of credit has to be decided at the stage before becoming part of immovable goods. Reliance is placed on the following decisions:

- **Commissioner of Central Excise vs. ICL Sugar Limited - 2011 (271) ELT 360 (Kar.)**
- **Commissioner of Central Excise, Bangalore-II vs. M/s SLR Steel Limited - 2012 (280) ELT 176 (Kar.)**
- **CCE vs. India Cements Ltd. - 2014 (310) E.L.T. 636 (Mad.)**

3.2 Learned counsel submits that the period covered is from June 2009 to July 2009 and the definition of "inputs" under Section 2(k) of the Cenvat Credit Rules, 2004 was amended only with effect from 07.07.2009. Therefore, the Appellant is duly eligible to avail Cenvat credit on the "inputs" used for laying of foundation or making of structures for support of capital goods for the period prior to 07.07.2009. Therefore, he submits that the credit reversed in view of the decision of the Larger Bench of the Tribunal in Vandana Global is liable to be refunded since the said decision has been overruled by the Hon'ble Chhattisgarh High Court in **Vandana Global Ltd. Versus Commissioner of C. Ex. & Cus., Raipur [2018 (16) G.S.T.L. 462 (Chhattisgarh)]**.

4. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

5. We find the issue involved is whether structural steel items such as Galvanized Steel Towers/Structures, Plates, TMT Bars, TOR Road and electrodes used in fabrication of support structure are eligible for cenvat credit as inputs/capital goods. We find that this issue is no longer *res integra* and this issue has been considered and discussed in detail by this Tribunal in the case of **Ultratech Cement Ltd. vs. CCE, Belgaum: Final Order No.21523/2023 dated 03.08.2023** and observed as follows:

> "8.1. We find that the iron and steel items are used for the purpose of fabrication of structures for installation of certain capital goods and these are affixed to the ground. The Department's contention is that since the items are used in fabrication of structures, which are ultimately fixed to the ground they are immovable goods and hence, not excisable, therefore they are not eligible for credit as capital goods/inputs as they are not directly used in the manufacture of the excisable products. However, we find there are catena of decisions by this Tribunal, Hon'ble High Courts and Hon'ble Supreme Court, wherein it is held that these items are used directly or indirectly in the manufacture of a final product. Hence, are covered in the means/includes definition of inputs. We find that the impugned period in this case is 01.03.2008 to 30.06.2009. The definition of 'capital goods' during the period is as mentioned in Rule 2(a) of the Cenvat Credit Rules, 2004.
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> 8.2. Further we find that this issue is no longer res integra as it has been considered in many decisions of this Tribunal, Hon'ble High Courts and Hon'ble Supreme Court. The principle laid down in the case of Vandana Global by the decision of the Larger Bench of this Tribunal has been rejected by several High Courts. This Tribunal also in the case of J.K. Cements Works vide Final Order No. 20247/2023 dated 15.03.2023 has allowed the appeal following the ratio of Hon'ble High Court of Chhatisgarh in the case of Vandana Global Ltd., wherein it is held that:-

"4. In the light of the contents of the impugned order of the Tribunal and submissions of the assessee and the Revenue following substantial questions of law are formulated for consideration:

(A) Whether the terms 'capital goods' excludes the structures embedded to earth?

(B) Whether the goods like angles, joists, beams, bars, plates, which go into fabrication of such structures are not to be treated as 'input' used in relation to their final products as inputs for capital goods, or none of the above?

(C) Is the amendment brought in CENVAT Credit Rules, 2004 as per Rule 2 of the CENVAT (Amendment) Rules, 2009 retrospective in nature considering is it clarificatory to be applied to all matters which arise before 7-7-2009, the date of commencement of the CENVAT (Amendment) Rules, 2009: hereinafter referred to as 'Amendment Rules'.

5. The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in Mundra Ports & Special Economic Zone Ltd. - 2015 (39) S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows :

> *"We do not find that amendment made in the 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 on particular thing or goods and/or input and as such, the amendment could operate only prospectively."

6. That view has been quoted with approval by the Madras High Court in M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal (CMA 3814/2014 and connections) decided on 10-7-2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. M/s. Thiruarooran Sugars also considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech.

7. Section 37 of the Central Excise Act, 1944; for short, 'the Act', is a rule making power. Section 37(2)(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods. Section 37(2A) of the Act - The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs. Though the power to make rules include the power to give retrospective effect, while doing so the provision under consideration is neither made retrospective nor could it be treated as one. 8. We are in complete agreement with the ratio of Mundra Ports (supra) and M/s. Thiruarooran Sugars (supra) on all fours. 9. Resultantly, we answer the questions formulated in these appeals in favour of the assessees and against the Revenue."

8.3. Considering the above, we find that the appellants are eligible for availment of cenvat credit on the iron and steel items used in the fabrication of structures for installation of capital goods/various equipments used in the manufacture of final products.

6. Following the ratio of the above decision, we hold that the steel, cement, welding electrodes and gases which has been used for fabrication of structural items, foundations, sheds, platforms, supports, conveyor structures, galleries, pipelines, chimneys and other civil/structural works connected with the cement plant and power plant are entitled for availment of cenvat credit prior to the amendment of the cenvat credit rules on 07.07.2009.

7. In view of the above discussion, we set aside the impugned order and allow the appeal to the extent of demand upto 07.07.2009 with consequential relief, if any, as per law.

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

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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