CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. IV

Service Tax Appeal Nos.40977 & 40978 of 2015

(Arising out of Order-in-Appeal Nos. 59 & 60/2015 (STA-II) dated 11.02.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai)

M/s. Enmas Andritz Pvt. Ltd. .... **Appellant**
IV Floor, Guna Building Annexe,
No.443, Anna Salai,
Teynampet, Chennai-600 018.

VERSUS

Commissioner of GST & Central Excise ... **Respondent**
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

APPEARANCE :

Shri Raghav Rajeev, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER No.40864-40865/2025

DATE OF HEARING : 28.08.2025
DATE OF DECISION :29.08.2025

The present appeals have been filed against the Order-in-Appeal Nos.59 & 60/2015 (STA-II) dated 11.02.2015, passed by Ld. Commissioner of Service Tax (Appeals-II), Chennai, wherein CENVAT Credit amounting to Rs.13,80,850/-, Rs.35,93,541/- and Rs.18,25,434/- have been denied.

2. The facts of the case are that the appellant is engaged in designing and supply of recovery boilers for pulp and paper manufacturers in India and enters into composite contracts for

the same. The activity undertaken by the Appellant involves identifying the type of boiler suitable for the particular manufacturer, designing the same, arranging for manufacture and sourcing of various parts and components of the boiler with related equipment and accessories, and supervision of the erection and commissioning of the boilers.

2.1. For providing the aforesaid services, the Appellant has registered themselves with the Service Tax Department under the category of 'Consulting Engineer's Service' and has duly discharged Service tax liability on the same during the period in dispute.

2.2. The Appellant also engages various job workers for manufacturing various components of the recovery boiler on their behalf. This activity is incidental to the overall design and engineering activity undertaken by the Appellant.

2.3. During the period under dispute, the Appellant procured various input services such as banking and other financial services, business support services, courier services, chartered accountant's services, insurance service, manpower recruitment services, telephone/mobile phone service, technical testing service, renting of immovable property service, rent-a-cab service, canteen services, courier services etc., which were used by them for rendering the output service of Consulting engineering. Since the services were used in provision of Appellant's output service, they availed Credit on the said input services and utilised the same for payment of their output service tax liability.

2.4. Show Cause Notices were issued proposing to deny CENVAT Credit availed by the appellant on the allegation that the appellant have not used the said services for providing their output service. It was also alleged that the documents based on which the appellant has availed CENVAT Credit on the input services were only relating to their trading activity which are not taxable services.

2.5. After due process, the said notices were adjudicated which resulted in passing the impugned order, whereby CENVAT Credit availed by the appellant on various input services have been denied.

2.6. Aggrieved by the denial of credit on the input services, the appellant has filed these appeals.

3. The Ld. Counsel appearing on behalf of the appellant submits that the said 'input services' on which they have availed CENVAT Credit have been used for providing 'Consulting Engineering' service. It is his submission that during the relevant period, input service as defined under Rule 2(l) of the CENVAT Credit Rules (CCR), 2004 covered all serviced used in relation to business; the definition of 'input service' is wide enough to cover all the input services on which CENVAT Credit has been availed by them. The appellant submits that all the above said services are directly linked with the output services of consulting engineering service rendered by them. Further, that all the said services are used in the relation to the business activities of the appellant. Hence it is contended that the appellant are eligible for the CENVAT Credit of the same.

3.1. In this regard, the appellant has placed their reliance on the decision in the case of ***Commissioner of Service Tax, Bangalore v. Jubilant Biosys Limited, 2016 (42) S.T.R. 729 (Tri. - Bang.)*** wherein the Tribunal has held that any service which is commercially required for the purpose of carrying on the business of the service provider, will be covered by the expression 'activity relating to business' contained in Rule 2(l) of the CENVAT Credit Rules, 2004.

3.2. The appellant further placed their reliance on the following decisions to substantiate their claim that the Credit is eligible on the said input services availed by them:

S. No.	**Service**	**Case laws**
1.	Chartered accountancy service	HCL Technologies Limited v. CST, Noida, 2015 (40) STR 1124 (Tri-Del.)
2.	Courier Agency service	Indo Shell Mould Ltd. v CCE, Coimbatore, 2016 (43) STR 307 (Tri-Chennai)
3.	Staff deputation service/manpower supply service	Sundaram Fasteners Limited v. CCE, Chennai [Final Order No. 40540/2016 dated 30.03.2016]
4.	Telecom services	Montage Enterprises Private Limited v. CCE Indore, 2015 (38) STR 219 (Tri-Del.)
5.	Rent-a-cab service	Reliance Communication Limited v. CST, (2018) 5 TMI 488-CESTAT Mumbai.

3.3. The appellant further submits that it is a settled principal of law that once the department has accepted the payment of Service Tax on the output service rendered by them, the CENVAT Credit cannot be denied on the input services which were used for providing the said output service. In the present case, the department has accepted the payment of service tax on the consulting engineering service render by them. Thus, the appellant submits that CENVAT Credit cannot be denied on the input services which were used for providing the said output service. In support of this claim, the appellant relied upon the judgement of the Hon'ble Bombay High Court in the case of ***Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises, 2013 (294) E.L.T. 203 (Bom.)***

3.4. The appellant also submitted that the CENVAT Credit availed by them has been allowed by this Tribunal in appellant's own case *vide* Final Order No.41906/2016 dated 14.10.2016 ***[2016 (10) TMI 1192-CESTAT Chennai].*** As no appeal has been filed by the department against this order, the said order has attained finality. Accordingly, the appellant prayed for allowing the credit availed by them on the 'input services' used for providing the output service namely, Consulting Engineering Service.

4. The Ld. Authorized Representative (A.R.) of the Revenue reiterated the findings in the impugned order.

4.1. The Ld. A.R. raised a preliminary objection that the appellant has not filed the appeals before the Ld. Commissioner (Appeals) within the stipulated time period. It is his submission in this regard that even though the appellant has filed these appeals within the condonable period, the Ld. Commissioner (Appeals) has not condoned the delay in filing the appeals. Hence, he argued that the present appeals cannot be decided by this Tribunal on merits.

4.2. Further, regarding the merits of the case, the Ld. A.R. of the Revenue has relied upon the Final Order passed by this Tribunal in appellant's own case *vide* Final Order

No.42328/2018 dated 31.08.2018, wherein the input services availed by the appellant were disallowed on the ground that the said input services were used in relation to trading activity under taken by the appellant which is not a taxable service. In the said Final Order, it was held that the appellant was not eligible for the credit availed by them on the input services. Accordingly, the Revenue prays for rejecting the appeals filed by the appellant.

5. Heard both sides and perused the appeal records.

6. I observe that the Ld. Authorized Representative of the Revenue has raised the preliminary objection that the appellant has not filed the appeals before the Ld. Commissioner (Appeals) within the stipulated time period. As the Ld. Commissioner (Appeals) has not condoned the delay in filing the appeals, it is his argument that these appeals cannot be decided on merits. In this regard, I find that the Order-in-Original dated 29.07.2011 was communicated to the appellant on 09.08.2011 and the appellant filed the appeals before the Ld. Commissioner (Appeals) on 12.12.2011. As per Section 85(3) of the Finance Act, 1994, as it stood on 27.05.2012, an appeal to Commissioner (Appeals) has to be filed within three months from the date of communication of the impugned order. In this case, the three months period expired on 09.11.2011. As per proviso to Section 85(3), where sufficient cause was shown, the Commissioner (Appeals) can condone the delay up to the period of three months which expired on 09.02.2012. I find that the appellant has filed these appeals on 12.12.2011, which is well within the condonable period. Although I find that the Ld. Commissioner (Appeals) has not explicitly condoned the delay in filing the appeals, I observe that the Ld. Commissioner (Appeals) has decided the appeals on merits. Accordingly, I hold that the delay in filing the

appeal has been condoned and hence the present appeals can be taken up for decision on merits.

7. Regarding the merits of the case, I find that the appellant is mainly engaged in designing and supply of recovery boilers for pulp and paper manufacturers. The activity undertaken by the appellant involves identifying the type of boiler suitable for the particular manufacturer, designing the same, arranging for manufacture and sourcing of various parts and components of the boiler and all other related equipment and accessories, and supervision of the erection and commissioning of the boilers. Thus, I observe that the activity undertaken by the appellant is appropriately classifiable under the category of 'Consulting Engineer's Service'. I find that the Department has accepted the said classification of the Service by the appellant and accepted the service tax paid by them under the said category. The appellant has taken registration with the Service Tax department under this category and duly discharging their service tax liability on the amounts collected by them as service charges from their clients. It is also a fact that the Department has never questioned the classification of the service and the payment of service tax by the appellant.

7.1. Regarding the eligibility of CENVAT credit on the input services used by the appellant for rendering the Consulting Engineering Service, I find that the appellant has undertaken the following activities while rendering the out out put service:

(i)Feasibility study

(ii) Pre-design services/project report

(iii) Basic design engineering

(iv) Detailed design engineering

(v) Procurement

(vi) Construction supervision and project management

(vii) Supervision of commissioning an initial operation

(viii) Post-operation and management

(ix) Trouble shooting and technical services, including establishing systems and procedures for an existing plant.

7.2. While undertaking these activities, the appellant has availed the following input services and availed CENVAT Credit on the basis of valid duty paid documents:

(i) Banking and other financial services

(ii) Business support services

(iii) Courier services

(iv) Chartered Accountant's services

(v) Insurance

(vi) Manpower recruitment services

(vii) Rent Guest house

(viii) Telephone/Mobile phones

(ix) Renting of Immovable property

(x) Rent a cab services

(xi) Testing and inspection

(xii) Canteen services

7.3. I find that the appellant’s contract is directly with the clients in designing and supply of recovery boilers for pulp and paper manufacturers. The job work undertaken by various job workers is also a part of the contract of rendering 'Consulting Engineering Service'. I find that there is no documentary evidence available on record to indicate that the appellant has rendered service in connection with the trading activity undertaken by them to the job workers. Thus, I find that there is no evidence brought on record to substantiate the allegation that the input service used by the appellant in this case were related to the trading activity. Thus, I find that the credit availed by the appellant cannot be denied on this ground.

7.4. In this regard, I find that there are two contrary decisions cited by the appellant and the Revenue. I find that this Tribunal in appellant's own case *vide* Final Order No.41906/2016 dated 14.10.2016 ***2016 (10) TMI 1192-CESTAT Chennai,*** has allowed the credit on all the input services as mentioned in paragraph 7.2 of this Order (supra). The relevant part of the said decision is reproduced below:

> *4. Contention of the appellant finds supports from the relevant fact coming out from the show cause notice. The appellant may not be a manufacturer but the services provided by the appellant as a consulting engineer was not denied by Revenue. The services so provided were also in relation to installation of the boiler as well as designing thereof to ensure that the boiler is manufactured according to the design to meet to the need of the buyers. In such event, there cannot be any misconception that the inputs were not essential to provide the output service of consulting engineer as stated above. Accordingly, denial of Cenvat credit is inconceivable. Therefore, appeal is allowed setting aside the appellate order.*

7.5. I also find that this Tribunal in appellant’s own case *vide* Final Order No.42328/2018 dated 31.08.2018, has disallowed the CENVAT Credit availed on the said input services on the ground that the said input services were used in relation to trading activity. The relevant part of the said decision is reproduced below:

> *6.3 The ld. counsel has referred to the decision of coordinate Bench of the Tribunal namely L.G. Electronics India Pvt. Ltd. Vs. Commissioner of Central Excise, Noida – 2017 (3) GSTL 249 (Tri. All.) in support of his contention. However, we find that the facts there in are not pari materia and hence the ratio therein will not help the appellant. So also in the Single Member decision of the Tribunal in the appellant"s own case reported in 2017 (40) STR 261 (Tri. Chennai), there is nothing forthcoming from the facts brought out in the order as to whether the input service was used exclusively for trading. There is no discussion in the said order as to disallowance of credit on account of credit availed on trading. On the other hand, the said decision has taken the view that the input services were essential to provide output service of consulting engineer and thus allowed the credit. Hence this case law is also of no help to the appellant.*

7.6. As no appeal has been filed by the Department against both the orders, the said orders have attained finality. However, I find that the judgement of the Hon’ble Bombay High Court in the case of ***Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises, 2013 (294) E.L.T. 203 (Bom.)*** cited by the appellant, has not been discussed in the Final Order No.42328/2018 dated 31.08.2018.

7.7. It is a settled principle of law that once the Department has accepted the payment of service tax on the output service, the credit available in respect of input service used in providing output service cannot be denied. This view is supported by the decision of Hon'ble Bombay High Court ***Commissioner of Central Excise, Pune-III vs Ajinkya Enterprises 2013 (284) ELT 203 (Bom)*** wherein the court has observed as under:

> *10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.LT. 559 (T), S.A.IL. - 2007 (220) E.L.T. 520 (T = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.LT 785 (Guj.) has held that once the duty on final products has been accepted by the department CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.*

7.8. In the present case, I find that there is no dispute that the input service on which the credit availed by the appellant were used in connection with the output service, namely, Consulting Engineering Service. Accordingly, the appellant paid service tax on the said output service which has been accepted by the department. Thus, I hold that the CENVAT Credit availed on the input service which are used for output service by the appellant cannot be denied.

7.9. I find that the same view has been taken by the Tribunal Ahmedabad in the case of ***IFB Industries Ltd. Vs C.S.T.- Service Tax-Ahmebadad.*** The relevant paragraph of the said decision is reproduced below: -

> *4. I have carefully considered the submissions made by both sides and perused the records. I find that even though the appellant service tax registration is on the common PAN based but the appellant have taken separate registration for their Ahmedabad service branch. They are also discharging service tax on the output service of repair and maintenance of equipment and appliances of IFB Industries Limited. Therefore, once the department has accepted the payment of service tax on their output service, the cenvat credit cannot be denied on the input services which are used for providing output service. Accordingly, in my considered view, the appellant is entitled for the cenvat credit amount of Rs. 4,06,163/-.*

7.10. In the present case, I find that there is nothing on record to establish that the input services credit availed by the appellant were used for proving the exempted service of 'trading'. On the other hand, the evidence available on record indicate that all the activities of the appellant are directly related to ultimate clients, used in designing and supply of recovery boilers for pulp and paper manufacturers. Thus, I agree with the submission of the appellant that all the input services were used in relation to the business of the appellant and hence the same falls within the ambit of 'input service' as defined under Rule 2(l) of the CCR, 2004. Thus, by relying on the decisions cited (supra), I hold that the CENVAT credit availed by the appellant which are used for providing the output service, are eligible for credit as 'input services'. Accordingly, I hold that the credit availed by the appellant on the said 'input services' cannot be denied.

7.11. As the credit availed is held to be eligible, the question of demanding interest or imposing penalties does not arise.

8. In view of the above discussions, I hold that the appellant is eligible for the CENVAT Credit availed by them on the said input services. Accordingly, I set aside the impugned order and allow the appeals filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on 29.08.2025)

(K. ANPAZHAKAN)
Member (Technical)

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