IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No. 40218 of 2017

(Arising out of Order in Appeal No. 35/2016 SLM-CEX dated 27.10.2016 passed by the Commissioner of Central Excise (Appeals – I) Coimbatore @ Salem)

M/s. JSW Steel Ltd. **Appellant**
Pottenari, Mecheri
Mettur Taluk
Salem – 636 453.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulk's Compound
Anai Medu, Salem – 636 001.

APPEARANCE:

Shri M.S. Nagaraja, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41004/2025

Date of Hearing : 11.03.2025
Date of Decision: 10.09.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 35/2016 SLM-CEX dated 27.10.2016 passed by the Commissioner of Central Excise (Appeals – I) Coimbatore (impugned order).

2. Brief facts of the case are that the appellant is engaged in the manufacture of steel products falling under Chapter 72 of CETA, 1985 and also availing CENVAT credit facility on various inputs, capital goods and input services. The appellant during the period February 2014 had availed 50% CENVAT credit on the AS cast rounds/ billets as capital goods falling under Chapter 7206 and availed the remaining 50% credit during April 2014. The appellant has issued invoices in their own name

and paid duty on the said goods. There was no physical clearance of goods from the factory and the goods are taken for use inside the factory of production for purpose of stacking. Since the goods are not removed from the factory the question of payment of duty does not arise in this case. It was the allegation of the respondent that said items did not qualify for CENVAT credit under the category of 'capital goods' for the following reasons:-

* The goods are not falling under any of the definitions of capital goods under Rule 2 of CENVAT Credit Rules, 2004
* The goods on which the credit has been taken by the assessee are finished goods of the assessee
* The goods are not removed from the factory and are still in possession of the assessee and there was no requirement of payment of duty
* Since the goods are not removed from the factory, the requirement for payment of duty does not arise and to avail CENVAT credit of such duty not payable is incorrect."

Hence a Show Cause Notice dated 5.1.2015 and a statement of demand dated 26.3.2015 were issued to the appellant to recover the wrongly availed CENVAT capital goods credit and to demand interest and penalty. The Show Cause Notice and the statement of demand were taken up for adjudication by the Ld. Lower Authority and vide Order in Original dated 16.10.2015 the said Authority confirmed and demanded the wrong availed CENVAT credit of Rs.56,78,040/- under Rule 14 of the CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 along with interest and imposed penalty equal to the wrongly availed CENVAT credit under Rule 15(1) of the said Rules. Aggrieved by the said order, the appellant preferred an appeal before the Ld. Commissioner (Appeals) and vide the impugned order, the Ld. Commissioner (Appeals) rejected the appeal and upheld the adjudication order. Hence this appeal.

3. Ld. Counsel Shri M.S. Nagaraja appeared for the appellant and Shri Sanjay Kakkar, Ld. Authorized Representative appeared for the respondent.

3.1 Shri M.S. Nagaraja the Ld. Counsel for the appellant submitted that the said goods were used within the factory as 'dunnage' or 'pallets' for storage of heavy MS billets, rounds, blooms, etc, to facilitate lifting by heavy lift machinery and forklifts for stacking, lifting, loading, unloading, transportation, etc,. Dunnage is a term that refers to any material used to support, protect, or separate items during transportation or storage. The purpose of dunnage is to prevent the items from shifting or moving around, which can cause damage or make the items challenging to handle. It is used to increase the stability of the load, elevate the load, to increase lashing angles etc. A Pallet (also called a skid) is a flat transport structure, which supports goods in a stable fashion while being lifted by a forklift, a pallet jack, a front loader, a jacking device, or an erect crane. The steel pallets are strong and are used for heavy loads, high-stacking loads, long term dry storage, and loads moved by logistic systems. The Ld. Counsel submitted that the dunnage or pallets are used for the convenience and effectiveness of the heavy lifting machineries and heavy Fork Lifts to pass their arms and chains below the heavy Steel Billets, Rounds, etc to facilitate their lifting and movements within the factory or clearance from the factory. These processes are used for inter-division movements of semi-finished goods during the process of manufacture and for the purpose of storage and clearance of finished goods from the factory and are integrally connected with the manufacture and clearance of the final products from the factory. The dunnage or pallets are thus used in or in relation to manufacture and clearance of the final products from the factory and are hence eligible for CENVAT Credit as "accessories" of such Capital Goods as defined in Rule 2 (a) (A) of the CCR, 2004. He hence prayed that their appeal may be allowed.

3.2 Shri Sanjay Kakkar, Ld. AR appearing for revenue submitted that the MS billets and rounds which were used as dunnage material in the factory cannot be considered as "accessories" of the capital goods. It could not be said that without these goods it would be extremely difficult for the material handling machinery or forklifts to function. While Forklifts fall under CETH 8427 1000, MS billets/rounds fall under CETH 7206 and are hence not capital goods. As rightly held by the Ld. Commissioner (Appeals) after referring to the Hon'ble Supreme Court's judgment in **CCE Vs Allied Air-Conditioning Corporation** [2006 (202) ELT) 209 (SC)], the billets and rounds are not joined to forklift nor are they connected to a forklift and cannot be considered as its accessory. He hence prayed that the appeal may be rejected.

4. We have gone through the appeal, the written submissions and have also heard the oral submissions made by the rival parties. We find that the dispute is with regard to the availment of CENVAT credit on the AS cast rounds/ billets falling under Chapter 7206 which revenue holds are not capital goods or accessories of capital goods and hence the credit availed by the appellant needs to be reversed.

5. Rule 2(a)(A) of the CENVAT Credit Rules, 2004 defines "Capital Goods" and is reproduced below for ease of reference;

> "RULE 2. Definitions. In these rules, unless the context otherwise requires, -
>
> (a) capital goods means:-

(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 and wagons of sub-heading 860692]] 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)**;

(emphasis added)

It's the appellants contention that the AS cast rounds/billets used as 'dunnage' or 'pallets' are accessories of heavy lift machinery and forklifts etc. fall which under Chapter 84 and are used for stacking, lifting, loading etc.

6. We find that in **Black's Law Dictionary**, Fifth Edition at p. 13 'accessory' has been defined as;

> "anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment, a thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate".

Further in **M/s. Annapurna Carbon Industries Co. Vs State of Andhra Pradesh,** (1976) 2 SCC 273.], the Apex Court held that an accessory would mean an object or a device that is not essential in itself but that adds to the beauty or convenience or effectiveness of something else or is supplementary or secondary to something of greater or primary importance, which assists in operating or controlling the said good, and thus serves as its accessory. The Hon'ble Karnataka High Court in the case of **Supreme Motors Vs State of Karnataka** [1987 (27) ELT 409 (Kar)] while analyzing the meaning of the word 'accessory' observed that:

> "accessory is the supplementary or secondary to something of greater or primary importance' 'additional', 'any of several mechanical devices that assist in operating or controlling the tone

> resources of an organ'. 'Accessories' are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

7. We find that the dunnage or pallets enable heavy machinery and forklifts to easily lift and move steel billets, rounds, and similar materials within or out of the factory. These tools are essential for transporting semi-finished goods during manufacturing, as well as storing and shipping finished products, making them integral to the overall production and distribution process. They hence satisfy the criteria of accessory as discussed above. They are adjuncts or accompaniment to lifting machines/forklifts etc and add convenience or effectiveness to the said machines. They are thus devices that assist in operating machines. They are not necessarily confined to particular machines for which they may serve as aids and can be an accessory of more than one kind of machine.

8. In **Banco Products (India) Ltd. v. Commissioner of C. Ex., Vadodara – I** [2009 (235) E.L.T. 636 (Tribunal - LB)], a Larger Bench of this Tribunal examined the availment of CENVAT capital goods credit on plastic crates used in the manufacture of finished goods. In that case too it was found that the plastic crates do not fall under any of the specified headings for capital goods and the assessees' claim for CENVAT credit was rejected. After an elaborate discussion the Tribunal held that as per the meaning and scope of the term "accessory", as interpreted by Hon'ble Supreme Court in various decisions and by the Tribunal, plastic crates were eligible capital goods for the purposes of Modvat credit. They further examined the alternative claim of entitlement to credit of duty paid on the plastic crates as inputs. It was held as under;

20. We may examine the appellant's alternative claim of entitlement to credit of duty paid on the plastic crates as inputs. The definition of inputs as contained in Rule 2(g) is as follows :-

> "2(g) "Input" means all goods, except (light diesel oil) high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production."

21. It is their contention that inasmuch as the plastic crates are used "in relation to the manufacture" of their final product and as the said expression is of very wide import, as consistently held by various judicial authorities including Hon'ble Supreme Court, the credit would be available as inputs also. While dealing with identical expression, the Hon'ble Supreme Court in the case of ***Collr. of C.E.*** **v.** ***M/s. Rajasthan State Chemical Works*** - 1991 (55) E.L.T. 444 (S.C.) has observed that - "there is no warrant for limiting the meaning of the expression 'in the manufacture of the goods' to the process of production of the goods only. The expression "in the manufacture of the goods" takes within its encompass all processes which are directly related to the actual production" Accordingly, it was held that use of powers in handling raw material prior to commencement of actual process was held as use for powers in any process in or in relation to manufacture of final product. Accordingly, Hon'ble Supreme Court observed that the process of handling/ lifting/ pumping/ transfer /transportation of the raw material is also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods. By applying the ratio as enacted by Hon'ble Supreme Court to the issue disputed before us, it has to be held that the process of manufacture starts with the process of handling of the raw material and resultant use of plastic crates for movement of such raw material, in which case, the plastic crates would earn their status as inputs.

22. Similarly, in the case of ***Collr.of C.E.*** **v.** ***M/s. Solaris Chemtech Ltd.*** - 2007 (214) E.L.T. 481 (S.C.), it was reiterated that the expression "in or in relation to manufacture" of final product must be given a wide connotation. A reference, at this stage, may also be made to Larger Bench decision of the Tribunal in the case of ***M/s. Union Carbide India Ltd.*** **v.** ***CCE*** - 1996 (86) E.L.T. 613 (Tri.-LB), laying down that the words "in relation to the manufacture" has been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract the goods which do not enter directly or indirectly into the finished product, but are used in any activity concerned with or pertaining to the manufacture of the finished goods.

23. **By various decisions of the Tribunal, in number of cases, it has held that the equipment used for collecting, transporting or dispensing material being necessary for undertaking production, are required to be held as used "in relation to" the manufacture of the final product.** Reference in this regard, is made to Tribunal's decision in the case of ***CCE Bangalore*** **v.** ***M/s. Anglo French Drugs & Indus.***

> ***Ltd.*** - 2008 (225) E.L.T. 76 (Tri.-Bang.), in the case of ***CCE Rajkot*** **v.** ***M/s. Ajanta Transistor Clock Mfg. Co.*** - 2009 (233) E.L.T. 97 (Tri.-Ahmd.). In the later decision, Tribunal took note of the Hon'ble Supreme Court's decision in the case of ***M/s. Tata Engineering and Locomotive Co. Ltd.*** [2003 (158) E.L.T. 130 (S.C.)] holding that the bins, trolleys, etc. are entitled for the benefit of Notification No. 217/86-C.E., which exempts the goods used within the factory of production and observed that as the provisions of notification are similar to Rule 57A, the benefit has to be extended to the plastic crates, as input. The plastic crates were also held to be input in the case of ***M/s. GKN Sinter Metals Ltd.*** **v.** ***CCE Pune-I*** - 2008 (224) E.L.T. 560 (Tri.-Mumbai).
>
> **24.** **We fully agree with the above judgment on the issue. The plastic crates are used for transporting/storing of the goods in the factory of production. Proper storage of inputs is essential for efficient manufacturing process and in absence of proper facilities for storage and transportation; the same will affect the manufacturing process.** Further, the Hon'ble Supreme Court in the case of ***M/s. Rajasthan State Chemical Works*** has observed that the manufacturing process starts with the drawing of water from the reservoir. By applying the same fact, it can be safely concluded that the manufacturing process starts with the issuance of the inputs from the stores and their further transportation to the production platform is only a part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process cannot start. Such delivery of the goods includes transportation of the goods by plastic crates. Similarly, finished products are required to be stored in a bonded store room. The plastic crates are again used for such transportation. As such, we are of the view that the plastic crates would also be eligible for modvat credit as input.
>
> **25.** In view of our foregoing discussion, we answer the referred question as under :
> **Modvat credit is available on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input.**
>
> (emphasis added)

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.

!2. 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.

(Order pronounced in open court on 10.09.2025)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex