IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2

Excise Appeal No.448 of 2011

(Arising out of Order-in-Original No.CCE/BBSR-II/27-33/2011 dated 28.02.2011 passed by Commr.(Appeals) of Central Excise, Bhubaneswar-I.)

M/s. Vedanta Aluminium Limited
(At-Jagannathpur, Post-Lajigarh, Dist.-Kalahandi, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Orissa.)

APPEARANCE

Shri Gopal Mundhra & Shri Rajath Bharadwaj Advocates for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76618/2024

DATE OF HEARING : 11.07.2024
DATE OF DECISION : 11.07.2024

Per : RAJEEV TANDON :

The present appeal has a chequered past. The appellant had filed appeal against the Order-in-Original No.CCE/BBSR-II/27-33/2011 dated 28.02.2011. Vide Stay Order No.SO/71214/2013 dated 11.09.2013 this Tribunal was pleased to grant stay in the matter upon a deposit of Rs.1.00 Crore, to be made by the appellant within the time allowed therein. Subsequently, in May 2018, the Tribunal having failed to take cognizance of the appellant's request for adjournment in the matter, vide Final Order No.75862/2018 dated 01.05.2018 dismissed the

present appeal for non-prosecution with liberty to come again for recalling of the said order, subject to satisfying the reason for default. It is observed that subsequently, the said appeal came to be restored by this Tribunal vide Order No.MO/75696/2018 dated 02.07.2018. It is in this chain of events that the appellant filed Miscellaneous Application on 27.06.2017, in the matter for early hearing of the petition, which was subsequently allowed by the Tribunal and the appeal listed for hearing on July 11, 2024.

2. The short question in the present appeal concerns entitlement to Cenvat Credit on various inputs/capital goods that were procured by the appellant and said to have been utilized in the setting up and construction of their plant.

3. M/s. Vedanta Aluminium Ltd., the appellant herein is engaged in the manufacture of 'Calcined Alumina' and have challenged the common order aforesaid not only denying them the Cenvat credit to the extent of Rs.26,57,69,047/-, availed during the period September 2004 to February 2010, but also seeking interest on the said amount under Rule 14 of the Cenvat Credit Rules, 2004 besides imposing penalty of a like amount under Rule 15 of the Cenvat Credit Rules, 2004.

4. Shri Gopal Mundhra, Ld.Advocate appearing on behalf of the appellant submits that the appellant started setting up the factory in the year 2004-2005 and therefore during the setting up process they used variety of goods like pipes, channels, angles, beams etc. in the manufacture and fabrication and installation of various capital goods which are used in or in relation to manufacture of final products within the factory. He further submits, that the said goods were procured from the manufacturers on payment of appropriate excise duty and so they were entitled to avail the credit of duty paid on these goods. He submits that based on the specific guidelines given by their foreign experts, who were the project consultants the appellants procured various designs, drawings from various engineers and institutions such as M/s. Engineers India Ltd. amongst others. All such agencies were actively involved in advising the appellant in the execution of the

project of setting up the Alumina Refinery of the appellant. The appellant has placed on record the entire project report given by their consultants. It is noted therefrom that for the setting up of the factory, various capital goods and equipments have been procured and credit availed thereon by the appellant. The two sides concede that there is no dispute about the receipt of such capital goods and equipments at their factory premises. In terms of the agreement entered into with various contractors for manufacture and fabrication of various capital goods, erection, commissioning and installation of the various plants and machineries inside the factory and other civil construction as part of the project, the appellant had procured various raw materials like angles, channels, plates, semi-rolled plates, chequered coils and joists, MS beams, MS plates, HR sheets besides procuring cement required for civil construction and setting up of the plant and machinery. These items were issued to the contractors and vendors, who were assigned the job to be so executed within their factory premises, in accordance with the norms and as per the advice and requirements proposed by the technical experts/consultants handling the setting up of the plant.

5. The Ld.Commissioner has confirmed the demand aforesaid on various iron and steel items used in the manufacture and fabrication of a variety of capital goods inside the factory of the appellant and some other ancillary items. It is also observed that Cenvat credit has also been denied on certain input services related to environment impact status, geological investigation, consultancy, civil construction, design and engineering, tower operator, topographical survey, survey and exploration of minerals and construction service for pipelines. Thus the relevant question is with regard to entitlement to credit on the iron and steel items viz. angles, channels, beams, plates, rounds, joists etc. used for fabrication of various capital goods and other inputs or capital goods such as pipes, bellows, SESR conductors etc. amongst others. The appellant has submitted that they are registered with Central Excise authorities and were clearing their final product on payment of appropriate duty of excise, operating under the Cenvat Credit Scheme

and therefore availing Cenvat Credit of the duty paid on the inputs and capital goods which they utilized for payment of duty on the final products.

6. We find from records that the department's case is pivoted around the following:

> *"4.1 ……. In the first stage of the construction of the said plant of the assessee, the latter has erected large sized tanks and material handling system. For this purpose, it had procured steel plates & steel pipes, falling under the CHN 7208.11 & CHN 7306.90, respectively, and concurrently taken the CENVAT credit of the CE duty paid thereon. The said tanks, which are circular in shape, are erected from the very ground level by merely welding plates to each other upto a specified height. Similarly, as for its material handling system, it initially makes pieces of triangular gantries, which hold the said pipes firmly. Thereafter, each piece of the said gantries is joined together to form a base for the conveyer to be installed inside therein, which rests on a support base at a certain height from the earth. As per its statement communicated vide its letter dated 08.08.05 (Annexure-1-3 pages), it had progressed until the gantries stage of its said activities and the same are lying in its factory premises to be used for the said conveyor……"*

Interpreting Rule 2 (g/k) of Cenvat Credit Rules, 2002/2004, the department refers to the term "imput" to mean :

> *"4.1.1. …….. all goods used in or in relation to the manufacture of the given final product. Similarly, the definition of the latter, viz., 'final product' under the Rule 2(e/h) ibid stipulates that excisable goods should be manufactured or produced from out of inputs only……."*

It thereby holds that there has to be a direct nexus between inputs and the finished goods produced, adding that the inputs should constitute a part of the finished goods or should go into its production directly or indirectly, whereas in the present case the department's stance being that the plates, pipes etc. neither got consumed in the

process of manufacture of the finished goods nor were a part thereof. The department further contends that in :

> *"4.1.2…….. the instant case, no capital goods are generated from the use of the said plates and pipes because the said fabricated tanks and material handling system resulting from the utilization of these items get embedded to the ground, and being immovable in nature, they cannot be considered as 'excisable goods' in terms of section 2(d) of the CEA, 1944."*

Likewise, for similar reasons department sought to disallow cenvat credit in respect of handling machinery, gas suspended calciner plant, hydrate seed thickner, ion exchange tanks, lime handling plant, perception tanks, settler tanks, washer tanks etc. whereas that on conveyer system was sought to be denied for reasons as *"is to be used by it beyond its factory premises"*, obviously referring to the captive mines associated with the plant.

7. The appellant have also placed reliance on the Circular No.964/07/2012-CX dated 02.04.2012, to draw support for their stance, canvassed. The said Circular is reproduced below, to be reverted to later during the course of evaluation of evidence, pleas and the arguments made by the two sides :

Circular – Central Excise

Circular No.964/07/2012-CX

F.No.84/1/2011-CX-1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, dated 2nd April, 2012

To

All Chief Commissioners of Central Excise & Customs,

All Chief Commissioners of Central Excise,

All Directors Generals

Sir/Madam,

Subject Clarification regarding classification of structural components of Boiler and admissibility of CENVAT credit on these structural components – reg.

Reference has been received from Trade seeking clarification regarding classification of structural pats/components of Boiler and admissibility of CENVAT credit on these parts/components to the buyers of the Boilers. It has been represented that CENVAT credit is being denied to the supporting structural parts of the Boilers at the buyers' end by classifying the same under Chapter 73 as structural parts and not as a part of Boiler. These are not being covered under the definition of inputs under the CENVAT Credit Rules, 2004, on account of exclusion given in rule 2 (k)(iv)(B)(b). This denial is on the ground that these are used for structures for support of Capital goods, without which the Capital goods can function.

2. The matter has been examined in the Board. The Boilers are a combination of various systems such as Coal Handling System, Coal Feeding System, Draft Air System, Demineralization Plant, Boiler Feed Water System, Boiler Tubes, Boiler Drums, Super Heat System, Flue Gases Treatment and Ash Handling System etc. All these Systems work in tandem to make a modern Boiler. These Systems comprise of many parts including structural components which are essentially the part of Boiler by way of technical specifications. As per Section Note 4 to the Section SVI of the First Schedule to the Central Excise Tariff Act, 1985," Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84, or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

3. Accordingly it is clarified that those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but

the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers.

4. Trade, industry and field formations may be suitably informed.

5. Hindi version will follow.

Yours faithfully,

(Madan Mohan)
Under Secretary (CX1)

8. Under the circumstances it would be necessary to first have one look over how and where are the various items indicated in the notice were made use of and the functions undertaken.

8.1 The following table indicates the various items, claimed to have been manufactured by the appellant, at site, utilizing the inputs as aforestated in all of the seven show cause notices, issued to the appellant for the period Sept. 2004 to Feb. 2010. Stated alongside is also the description and usage of the said finished goods as explained and placed on record.

TABLE-I

Sl. No.	**Particulars**	**Description and Usage**
1	**Storage tanks**	
A	Precipitation tanks	Precipitation tank is of 14.5 meters diameter and 36 meters in height having a storage capacity of 4600 cubic meters of hydrated slurry. After fabrication the tanks are lifted to the place of installation for being firmly bolted to the foundation. In the Precipitation tank, agglomeration of hydrated liquor into crystallized hydrates takes place.

		This process takes place in a series of tanks installed in a line in a gradient and connected to each other through launders. The flow of material one tank to another is facilitated by the gradient maintained in each installation.
B	Settler and Washer tanks	Each Settler and Washer tanks is of 22-meter diameter and 20 meters in height having a storage capacity of 2600 cubic meters of red mud slurry. These tanks are made of steel plates in feature of deep cone thickness equipment. It is used in the process of red mud washing and hydrate thickener process. The settler and washer tanks are used for the basic process to separate impurities from liquor containing dissolved alumina where dissolved impurities settle down by the addition of some chemicals. The process is done through holding it to a series of tanks with continuous agitation by the rack mechanism.
C	Predisilication tanks	Each Predisilication tanks is of 13.4 meters diameters and 23 meters in height having storage capacity of 3200 cubic meters of bauxite slurry. The primary function carried out in Predisilication tanks is to remove silica from bauxite to make it de-silicated product. The process is done through heating and holding in to series of tanks.
D	Mixing tanks & Digestion dilution tanks	It consists of conical tanks fitted with rack machines. The liquid obtained from the previous stage is slowly agitated by rack machines which compels the high density particles and impurities to settle down and lighter alumina particles to move out.
E	Tanks for the process of Evaporation, Security filtration, Seed filtration, Green & float, Test Liquor	Security filtration is the final stage of filtration where the spent liquor is passed through tanks consisting of washers which compel the mud in the liquor to settle down. The liquor so obtained is known as pregnant liquor and is moved to precipitation stage.The spent liquor obtained from cyclone tanks is processed to separate alumina through the process of Evaporation by heating the spent liquor.The evaporated spent liquor is transferred to the condensation tanks wherein the liquid is condensed and re-collected.

F	Tanks used for Calcination and Chimney & Ducting	The alumina as obtained from the spent liquor contains water molecules and therefore is further treated through the process of calcination in the ESP unit. The process of calcination causes the water molecules to evaporate leaving behind pure alumina. To direct gas and dust arising out of calcination plant as well as to transfer the calcined alumina from one process to another, various ducts and chutes have been fabricated and installed inside the calcination plant. Hot primary venture duct is used to carry alumina powder to heating zone. Gas generated in the calcination plant during the process of heating is passed through chimney. The various chutes and ducts are in nature of pipes and tubes used for the aforesaid process.
G	Tanks for ESP unit	The alumina as obtained from the spent liquor contains water molecules and therefore is further treated through the process of calcination in the ESP unit. The process of calcination causes the water molecules to evaporate leaving behind pure alumina
	Others – Inputs, Capital Goods & Services	
1	Bauxite Handling ,Stacker& Reclaimer	Bauxite ore brought inside the factory is carried with the help of Stacker and Reclaimer. A reclaimer is a large machine used in bulk material handling applications. Reclaimer's function is to recover bulk material and stakker function is to stack the material.
2	Alumina Storage, Internal structures inside the silo and Chutes (Alumina Handling)	Alumina storage silo (i.e. storage tank) is used to store the alumina powder transferred through pipe conveyor from calcination unit. There is lot of steel arrangement inside the silo to control and divert the flow of powder in defined position.
3	Ash silo and pipe lines system	The dust collected from ESP Unit is stored in ash silo which are nothing but big storage tanks.

4	Bauxite Grinding Mill	Bauxite grinding mill mainly consist of a) bauxite silo b) ball mill c) feed chutes d) banana screen e) distribution box and f) discharge tanks. a) Bauxite silo (i.e. storage tanks) is used to store bauxite received from crushing units. b) Ball mill are steel body grinding mill in which bauxite is crushed into fine particles through steel balls rotating inside the mill. c) Feed chutes are in the nature of pipes, tubes used to transfer bauxite or bauxite slurry at transfer points. d) Banana screen are made of steel body with actual system which creates off set rotation of shaft. Inside mesh plates are placed in banana shapes to filter the particles to 1 mm size. Oversize particles are again fed to ball mill inlet chutes. The undersize filtered particles go to the product slurry tanks. e) Distribution boxes are made of steel rolled plates which provide for intermediate piping junction vessels which distribute the flow of different pipe lines. Multiple valves are installed to allow different opening for pipe line system. f) Discharge tanks are in the nature of storage tanks used to discharge the processed material to the subsequent stages.
5	Pipe Racks For Internal Plant Pipelines & Cable tray	To manage and safeguard the complex arrangement of pipes and cables, the cable tray and pipe racks have been fabricated.
6	WELDING ELECTRODE	These are used in relation to fabrication and manufacture of various capital goods and parts thereof.
7	Mines Conveyor	The bauxite is brought into the factory from mines with the help of conveyor system which consist mainly of pipe and structures and bucket conveyors. The iron and steel items being used to fabricate these belt conveyors are essential parts and components of the belt conveyors.
8	Electrical Sub Station (Main Receiving substation (8543) & Electrical works	Used for the transmission of electricity inside the plant for manufacturing process ACSR Conductor is used for the transmission of electricity
9	Central Air Conditioning System	Aluminium structures and other items used as part of water cooling system and air conditioning system inside the plant.
10	Cooling Water System	
11	MOL-Milk of Lime	Used in the manufacturing process as a chemical to process bauxite

12	Others	Various parts and components of Capital Goods
13	Raw water pipeline	Raw water pipe lines are used for the purpose of drawing water from the river to the factory. CENVAT Credit has been allowed for the pipelines to the extent they are inside the periphery of factory premises and denied on the pipes used beyond the periphery of the factory.
14	Diaster Filter Cloth	Diaster Filter Cloth is used for filtration of slurry and it allows fine particle to pass through the same and thereby separate red mud cake over its surface. These filter cloths are consumables and replaced over a period of time and process requirement.
15	Bellow flange hose elbow (for controlled and close passage)	Bellows are used in connection with alumina packing in bags or wagons. These are in nature of pipes and used in flexible connectivity with coupling and flanged end portion. Flanges are used to connect piping with walls, nosels, flow meters etc in piping application. The Flanges are in nature of nuts and bolts.
16	Cable tray	To manage and safeguard the complex arrangement of pipes and cables, the cable tray and pipe racks have been fabricated.
17	Other Items (Pipe fitting, Rails..etc)	a. Rails (Rs. 1.32 Cr) - Rail tracks (of iron and steel) were laid down to join factory with the nearby railway station. b. Conveyor belt and components of conveyor (Rs. 0.31 Cr) - Conveyor belt is meant for transportation of raw material from mines to the factory. c. ACSR conductor d. transmission tower, lighting tower, lighting fixtures - (Rs. 0.15 Cr) - ACSR conductor, transmission tower and lightening tower are used for transmission of electricity. e. Fabricated material for precipitation tank – (Rs. 0.8 Cr) f. Other fabricated material - (Rs. 0.16 Cr) - Other material used as valve in various storage tanks to control the flow of material

18	Angles, channels, plates for other purposes	Various materials for Capital Goods
19	Environmental Impact Studies	Services availed for environment impact studies in mine area to foresee the potential environmental problems that would arise out of proposed development.
20	Geological Investigation	The services are in nature of scientific and technical consultancy to carry out a geotechnical investigation in the factory for the construction of red mud pond and fly ash tank. Red mud and fly ash generated out of process of manufacture is a waste having no further use and required to be disposed of in a pollution controlled way.
21	Consultancy Engineering Service	These are availed in relation to construction of road inside the plant and also for design alternatives for the mine approach road.
22	Civil Construction	Civil construction Services were availed in relation to laying down the raw water pipe line.
23	Design Engineering Service	These are used for designing conveyor system and raw water pipe line.
24	Tour Operator Service	Used for construction of helipad for landing of the chartered helicopter for the purpose of transport of employees and scientists from and to Lanjigarh.
25	Topographical Survey	Topographical survey used for topographical mapping in respect of mine area and approach road
26	Survey & Exploration of Material	Used in the mine area for exploration of reserves.

9. For ease of understanding, the following table is made out to indicate the trifurcation of the inputs, capital goods and the imput services on which Cenvat credit was availed by the appellant and the description of the goods or services in which it has been utilized with the amount of credit associated thereon :

TABLE-II

Statement showing amount of Cenvat credit disallowed on inputs, input services and capital goods

Cenvat Credit on	Description	Amount in Rs.	Grand Total
Inputs	**A. Storage tanks**		
	Precipitation tanks	9,29,66,743	
	Settler and Washer tanks	2,18,52,561	
	Predisilication tanks	93,29,886	
	Mixing tanks & Digestion dilution tanks	31,12,132	
	Tanks for the process of Evaporation, Security filtration, Seed filtration, Green & float, Test Liquor	1,50,74,557	
	Tanks used for Calcination and Chimney & Ducting	1,50,48,344	
	Tanks for ESP unit	4,97,297	
	Bauxite Handling ,Stacker & Reclaimer	41,33,149	
	Alumina Storage, Internal structures inside the silo and Chutes (Alumina Handling)	36,43,052	
	Ash silo and pipe lines system	3,90,829	
	Bauxite Grinding Mill	57,07,711	17,17,56,261
	B. Others		
	Pipe Racks For Internal Plant Pipelines & Cable tray	1,35,01,995	
	Welding Electrode	37,899	
	Mines Conveyor	1,03,01,090	
	Electrical Sub Station (Main Receiving substation (8543) & Electrical works	22,53,663	
	Central Air Conditioning System	25,049	
	Cooling Water System	2,433	
	MOL-Milk of Lime	6,950	
	Others	13,52,892	
	E cess wrongly charged	2,186	2,74,84,157
	Sub Total - Inputs		19,92,40,418
Capital Goods	Raw water pipeline	2,05,60,387	
	Diaster Filter Cloth	17,41,294	
	Bellow flange hose elbow	18,06,579	
	Cable tray	57,68,818	
	Other Items (Pipe fitting, Rails..etc)		
	a. Rails **(Rs. 1.32 Cr)**		
	b. Conveyor belt and components of conveyor (Rs. 0.31 Cr)		
	c. ACSR conductor	2,11,01,189	
	d. Transmission tower, lighting tower, lighting fixtures - **(Rs. 0.15 Cr)**		
	e. Fabricated material for precipitation tank – **(Rs. 0.8 Cr)**		
	f. Other fabricated material - **(Rs. 0.16 Cr)**		
	Angles, channels, plates for other purposes	92,35,049	
	Sub Total - Capital Goods		6,02,13,316
Input Services	Environmental Impact Studies	2,55,327	
	Geological Investigation	2,85,356	
	Consultancy Engineering Service	55,113	
	Civil Construction	43,40,410	
	Design Engineering Service	5,10,000	
	Tour Operator Service	7,96,787	
	Topographical Survey	29,352	
	Survey & Exploration of Material	42,963	
	Sub Total - Input Services		63,15,308
	Grand Total		26,57,69,042

10. As can be seen from the foregoing, the inputs have been used in the manufacture of capital goods. It is on record that the appellants have availed the benefit of Notification No.67/95-CE dated 16.03.1995 whereby no duty was payable thereon. These goods so produced are used in or in relation to manufacture of Calcined alumina, as indicated aforesaid in Table I. For the credit on services, the appellant have taken recourse to the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004 to support the case for admissibility of credit thereon. That various items fabricated out of MS Channels/plates/ pipes etc. have been so utilized in the production of large size equipments/machinery/units etc. that need special fabrication to prevent them from falling/disbalance etc, or even to minimize the impact of vibrations while in operation. Thus in this category could be included ash handling machinery, gas suspended calciner, ion exchange unit, thickners, lime exchange plant, washer tanks etc.

11. We note that the Ld.Commissioner has denied Cenvat credit to the appellant on certain items holding that either they were not a constituent of the finished goods or were not utilized in the manufacture thereof. We are afraid we are not in agreement with the said proposition. A three judge Bench of the hon'ble apex court vide its judgement rendered in the case of **JK Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer**[1], while dwelling on the expression *"in the manufacture of goods'* had observed such expression to normally encompass the entire process carried on for converting raw material to finished goods. However, it added that where any particular process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity, manufacture may, even if theoretically possible be commercially inexpedient, goods intended for use in the said process or activity would lie within the expression "in the manufacture of goods." Viewed in the context the various products under examination would but qualify as admissible to

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1 (1965) 1 SCR 900

cenvat credit including those concerned with the carriage of goods viz. cenvat credit on conveyor belt and its components and like, as would also be admissible for credit. Likewise material handling equipment, cane baskets etc. used to carry copper concentrate were held to be used in the manufacture of final product **(Indian Copper Corporation v. Commissioner of Commercial Taxes)**[2]. Tools, lubricants, spare parts were held permissible to credit (refer **Chougule & Co. Pvt.Ltd. v. UOI**[3]**)**. The hon'ble apex court in the case of **Doypack Systems Pvt.Ltd. v. UOI**[4] has held that the expression "in relation to" is a very broad expression that presupposes any subject matter and these imply a very comprehensive meaning. The words "in relation to" have been interpreted by the apex court in the case of **CCE V. Rajasthan State Chemicals Works**[5] as well as in the case of **UOI v. Ahmedabad Electricity Co.Ltd.**[6] to hold that the said expression actually widens and expands the scope, meaning and content of the expression. Thus, all goods integrally connected with the process of manufacture or without which such manufacture would be impossible or commercially inexpedient would undoubtedly be eligible for credit. Admissibility of Cenvat credit on items used in material handling was settled by the apex court in **Jayswal Neco Ltd. v. Commissioner of Central Excise**[7], that of admissibility of credit on welding electrodes was allowed by the Tribunal in case of **CCE Raipur v. Birla Jute and Industries Ltd.**[8] as upheld by the apex Court[9]. Besides the Larger Bench of the Tribunal in **Jawahar Mills Ltd. v. Commissioner of Central Excise**[10], while considering the scope of goods covered as capital goods specifically allowed credit on welding electrodes. This decision was also upheld by the apex court[11].

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2 AIR 1965 SC 891
3 1981 (1) SCC 653
4 1988 (2) SCC 299
5 1991 (4) SCC 473
6 2003 (11) SCC 129
7 2015(319) ELT 247 (SC)
8 2001(135) ELT 280 (T-Delhi)
9 2002 (139) ELT A 93 (SC)
10 1998 (108) ELT 47 (T-LB)
11 2001 (132) ELT 3 (SC)

12. From the aforesaid discussions, it is categoric that the amplitude of the expression "in or in relation to" is so vast, to incorporate within its fold all such tangible or intangible items, that may not necessarily be ingredients or commodities used in the manufacturing process, nor is it the specific mandate in law that the said goods must be directly and actually needed for *"turning out or the creation of finished goods".* Thus in the case of **JK Cotton Spinning & Weaving Mills**[1] the apex court held drawings, photographic materials and even electrical items as to be used in the manufacture of goods. The issue of admissibility of cenvat credit on MS Channels, MS Angles, MS pipes. etc. as were used for fabrication of capital goods, their parts, components, accessories etc. is also no more res integra. The said issue was examined by the Tribunal in the case of **JSW Steel Ltd. v. CCE**[12] and following the ratio of law in the case of **Commissioner of C.Ex., Coimbatore v. Jawahar Mills Ltd.** [13], whereby credit for the DG Set was held admissible, the Tribunal categorically held them as eligible for credit treating them as capital goods. Thus all goods used for the manufacture of any part, component, accessory or a support structure of capital goods would be eligible to credit as capital goods meeting the requirements of the user test, since they become an integral part of the capital goods thereby entitling to credit such inputs as are used in the fabrication of capital goods. A slew of judgements can be indicated in support of this stance, viz.:

(i) CCE v. Mangalam Cement Ltd.[14]

(ii) Mundra Ports & Special Economic Zone Ltd. v. CCE & Cus[15]

(iii) Surya Alloys v. UOI[16]

(iv) Singhal Enterprises Pvt.Ltd. v. CCE, Raipur[17]

(v) CCE Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.[18]

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[12] 2022 (2) TMI 791. CESTAT Chennai
[13] 2001 (7) TMI 118 (SC)
[14] 2017-VIL-927-CESTATDEL
[15] 2015 (39) S.T.R. 726 (Guj.)
[16] 2014 (305) E.L.T. 47 (Cal.)
[17] 2016 (341) E.L.T. 372 (Tri.-Del.)
[18] 2010 (255) ELT 481 (SC)

(vi) CCE, Coimbatore v. Jawahar Mills Ltd.[19]

(vii) Corporate Ispat Alloys Ltd.v.CCE, Bolpur[20]

(viii) Commr. of CE, Cus & ST, Rourkela v. Singhal Enterprises[21]

(ix) Thiru Arooran Sugars & Ors. v. CCE & Ors.[22]

(x) India Cements Ltd. v. CCE[23]

(xi) Saraswati Sugar Mills v. CCE, Delhi[24]

(xii) Lafarge India Pvt.Ltd. v. CCE, Raipur[25]

(xiii) Hindustan Zinc Ltd. v. Commr. of CGST, Excise & Customs[26]

13. The argument of the revenue that capital goods like the variety of tanks, as enumerated earlier in Table I are not goods as they are rendered immobile upon fabrication, being grounded to earth, has been dismissed by courts in a large number of cases. The Hon'ble Karnataka High Court in the case of **Commissioenr of Central Excise, Bangalore-II v. SLR Steels Ltd.[27]** had the following to say in the matter -*"Appellate authority committed a serious error, first in holding storage tank is an immovable property and secondly in the ground that it cannot be bought and sold in the market, the criteria, which is totally unwarranted".* This Tribunal, in the appellants own case **(Vedanta Aluminium Ltd. v. CCE, Bhubaneswar)[28]** had held as :

> *"9. …… any iron and steel items used for fabrication of those tanks are entitled to Cenvat credit as input in terms of Rule 2(K) of the Cenvat Credit Rules, 2004."*

13.1 The premise that inputs used for the manufacture/fabrication of storage tanks (much less a variety of processing tanks as in the present matter) are ineligible to credit as the said tanks are affixed to the ground, has by now been completely debunked by courts. Courts all across the country have permitted the admissibility of Cenvat Credit

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19 2001 (7) TMI 118 - SC
20 2023 (11) TMI 674 – CESTAT Kolkata
21 2018 (1) TMI 620-CESTAT-KOLKATA
22 2017 (7) TMI 524 – Madras High Court
23 2015 (3) TMI 661 – Madras High Court
24 2011 (270) ELT 465 (SC)
25 2016 (10) TMI 615 – CESTAT New Delhi
26 2020 (4) TMI 273 – CESTAT New Delhi
27 2012 (9) TMI 169 – Kar-HC
28 2023 (6) TMI 897 CESTAT KOL

on inputs utilized for construction of storage tanks and other such structures tied to the earth/in repair and maintenance of machinery. To cite by way of reference, the following judgements would suffice :

- **CCE & ST, Trichirapally v. CESTAT, Chennai**[29]
- **CCE, Belgaum v. Hindalco Industries Ltd.**[30]
- **Commr. of C.Ex., Salem v. Madras Aluminium Co.**[31]
- **Tamil Nadu Newsprint & Paper Ltd. Vs Commr. of C.Ex, Trichy**[32]

14. The appellant have vehemently submitted during the course of arguments that said capital goods upon fabrication were actually manufactured goods and were installed on concrete foundation, secured by nuts and bolts to render them wobble free while in operation and afford stability. Thus the decision of the apex court in the case of **Triveni Engineering v. CCE**[33]**,** (to the extent of manufacture of goods) as well as **CCE, Ahmedabad v. Solid & Correct Engineering Works**[34] in fact comes to the aid of the appellant.

15. As for availment of credit availed on certain services by the appellant is concerned, the aspect of it having a nexus with the activity of manufacture of finished goods is required to be seen. The appellant in the process of setting up of their manufacturing unit, during the course of project construction have availed credit (as incorporated in Table-I and Table-II in Paras 8 & 9 respectively) on various services, to subserve the broad purpose and objective stated in earlier paras.

15.1 In view of the objective stated, it is obvious that without procurement of the said service activity, the setting up of the project would in itself be jeopardized. We find the relevance and essentiality of availment of such services for the smooth and organized set up of the unit, and in complying with associated regulations and government requirements. Expenses incurred thereto are recorded towards capital expenses. Being a remote and distantly located unit, amidst hills and

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29 2017 (356) ELT 201 (Mad)
30 2012 (286) ELT 503 (Kar)
31 2010 (259) ELT 738 (Tri)
32 2017 (357) ELT 60 (Mad.)
33 2000 (120) ELT 273 (SC)
34 2010 (252) ELT 481 (SC)

forests, all types of logistical support are required to be considered and provided for and are therefore necessary. Under the circumstances we find no infirmity on availment of cenvat credit on the services as listed therein. We are in complete disagreement with the Ld.Commissioner's finding that the said services "do not on the face of it, appear to be integrally used in or in relation to manufacture of final goods". On the contrary, we are of the view that such services availed, had an important nexus with the ultimate manufacture of the final goods, utilizing the plant and machinery commissioned and availing the said services as part of the process.

16. The appellant have demonstrated from records, that details the quantity, description etc. of goods issued to the contractors, their consumption, the goods in which consumed and as were maintained by way of measurement books etc. keeping accounts for the entire quantity of items received and utilized. These contractors were paid by the appellant periodically on the basis of Running Account Bills furnished by the former on the basis of details of work undertaken and as per mutually agreed rates and terms and conditions. The contractors fabricated the various capital goods with the use of iron and steel items as per the designs and drawings furnished, which included ash handling machinery, gas suspended calciner, hydrate seed thickener, iron exchange tanks, lime handling plant, precipitation tanks, settler and washer tanks. The question thus arises, whether the various items as detailed in para 8.1 above do qualify for credit availment, whether by way of inputs or capital goods. We are afraid that from what is noted above, there is not even an iota of instance for which the question of being used in or in relation to manufacture of finished goods can actually be doubted. We are of the view that whether it is by way of tanks or conveyor machinery or the production of specific units, utilized for production of calcined alumina or by way of development of railway sidings or the surveys like geological, environmental etc. undertaken or other services like consulting engineer service or the design

engineering service etc. were all but an integral and essential part of the process that culminates into the manufacture of finished goods and transportation thereof from the precincts of the manufacturing unit. Under the circumstances we find no basis to question the veracity of availment of cenvat credit on items that have gone into production of various items detailed above.

17. The Board vide its Circular No.964/2007/2012-CX dated 02.04.2012 with regard to admissibility of cenvat credit on structural components in respect of boilers had inter alia stated that boilers were a combination of various systems and that all such system work in tandem and unison to make a modern boiler. It further elaborated that other parts including structural components too were essential part of boiler (even by way of technical specification). The said Circular goes on to state citing reference to Section Note 4 to Section XVI of first schedule to CETA, 1985, that where a machine (including combination of machines) consists of individual components (whether separate or inter-connected by piping/transmission devices, or technical devices etc.) intended to contribute to a clearly defined new system is to be classified in the heading "appropriate to that function" and such structural components that are used essentially as a part of the boiler system would be classifiable as part of boiler as well as admissible to cenvat credit under Rule 2(k)(iii) of the Cenvat Credit Rules, 2004. The rationale of the said Circular is appropriately applicable to various instances of production of various capital items required for the setting up of the project plant, utilized in the manufacture of calcined alumina and we are of the view that the spirit driving the said Circular is equally applicable to instances as herein. The hon'ble apex court in the case of **Kishan Co-operative Sugar Factory Ltd. v. CCE, Meerut-I**[35] had occasion to examine the interpretation of the expression "used in or in relation to manufacture" and it was held in the said case that the said expression is of a very wide import taking in its scope and ambit, items used in the process of manufacture. It elaborated that it was not

35 2023 (12) TMI 1303 (SC)

necessary that such items were to be used directly in the manufacture of the finished goods. It was with this spirit that the Supreme Court therein allowed cenvat credit on items that were used for maintaining, repairing, upkeep or fabrication of the plant and machinery. It thus clearly allowed the credit on various items like welding electrodes that were required for joining of sheets, plates etc, items like paints, varnishes used as for protection of structures, flux, HR sheets and coils, plates, channels, angles, lubricating oil, asbestos joining sheet, and such other steel material were also held as admissible to credit. While examining at length, specific finding for all these items (Para 20 of the apex court's order), is reproduced hereinbelow :

> *"20. In view of the settled legal position, the interpretation of the expression "used in or in relation to manufacture" is of a very wide import and takes within its scope and ambit all items used in the process of manufacture whether directly or indirectly and whether contained in the final product or not. The items used for maintenance of plant and machinery are also items used in the manufacture of finished goods. Hence, credit on the items used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assesses.*
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> *Thus, in view of the above judgments, credit on welding electrodes and other items such as jointing sheets, SS plates etc. used for maintenance, repair, up-keep or fabrication of plant and machinery are admissible to the assessee."*

18. There are plethora of case laws having examined and considered the admissibility to credit of the various items, as encountered in the present appeal for cenvat credit by way of capital goods or input. Reference in this regard can be made to the ratio of the law as propounded in the case of **JSW Steel Ltd. v. Commr., CGST & CX**[12] referred to in para 12**.** This case was propounded by the Tribunal after having examined the Hon'ble Madras High Court's order in the case of **Tihru Arooran Sugars and Others v. CESTAT**[23]**,** and others, wherein the Hon'ble High Court had applied "user test" to arrive at a finding that such MS plates, channels, angles and other structural steel parts were integral part of capital goods and admissible to benefit of cenvat credit as they

fell within the scope and ambit of both rule 2(a)(A) and rule 2(k) of Cenvat Credit Rules, 2004. It may be pointed out that after examining the series of case laws this Tribunal in the case of **Steel Authority of India Ltd. v. Commr, CGST & CX, Bolpur**[36] had arrived at a categorical finding that plates, components parts are essentials of a pollution control equipment/storage tank, coke oven gas and were part of the capital goods, and going by the ratio of the law as referred to above, we have no hesitation in stating that in each of the instances as referred in Table-I supra, the various items have been used either for construction of capital goods in turn used in the manufacture of finished goods and therefore we hold that Cenvat credit on such goods is admissible. It may be pointed out that the Hon'ble Chattistarh High Court in the case of **Vandana Global v. CCE, Raipur**[37] had held that goods used in fabrication of structures embedded to the earth should be treated as inputs for capital goods and cenvat credit cannot be denied. The term 'input' under rule 2(k) of the Cenvat Credit Rules, 2004 again has a very wide coverage and technically includes all goods used in the manufacture of final product. To the said extent, the Hon'ble Rajasthan High Court in the case of **Hindustan Zinc v. UOI**[38] has also inter alia stated that where any particular process is integrally connected with which manufacturing is not viable then the goods used therein will be eligible for availment of credit. Following the aforesaid decisions, it is thus clear that plates etc. are indeed inputs for the capital goods and hence eligible for credit.

19. We also note that the Hon'ble High Court of Karnataka in the case of **CCE, Bangalore-II v. SLR Steel Ltd.**[39] while allowing credit on tanks had held that the appellate authority had committed a serious error firstly in holding that the storage tank is immovable property and secondly on the ground that it can not be bought and sold in the market. It held the adoption of the said criteria as completely

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[36] 2023 (12) TMI 1000-CESTAT-KOL.
[37] 2018 (16) GSTL 462 (Chattisgarh)
[38] 2008 (228) ELT 517 (Raj.)
[39] 2012 (9) TMI 169 (Kar.)

unwarranted. Further the various tanks including storage tanks were also allowed credit, in a separate appeal of the appellant only by this Tribunal vide Final Order NO.75768/2023 dated 16.06.2023.

20. In view of our discussions hereinabove, we set aside the order of the lower authority, as not in accordance with law, hence non-maintainable and allow the appeal filed, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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