IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 70623 of 2013

(Arising out of Order-in-Original No. COMMR/B-I/ST-34-35/2012 dated 30.01.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar-I, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. The Dhamra Port Company Limited **: Appellant**
2nd Floor, Fortune Tower,
Chandrasekharpur, Bhubaneshwar – 751 023

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-I Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007

APPEARANCE:

Shri Rahul Patel, Chartered Accountant for the Appellant

Shri R.K. Agarwal, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75344 / 2025

DATE OF HEARING: 24.01.2025

DATE OF DECISION: 13.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. The Dhamra Port Company Limited, 2nd Floor, Fortune Tower, Chandrasekharpur, Bhubaneshwar – 751 023 (hereinafter referred to as the "Appellant") are registered under the category of "port service", "management or business consultancy service" and "transportation of goods by road service".

1.1. On the basis of scrutiny of the records of the Appellant by the Internal Audit Wing of the Department, the following two Show Cause Notices came to be issued to the Appellant: -

Sl. No.	**SCN No. & Date**	**Issued by**	**Amount demanded (in Rs.)**	**Period of dispute**
1.	IV(4)94/S.Tax-Adjn/B-I/2010/9089A dated 15.04.2011	Commissioner	2,70,26,033/-	2005-06 to 2008-09
2.	IV(4)11/S.Tax-Adjn/B-I/2011/9082A dated 15.04.2011	Additional Commissioner	34,42,039/-	2009-10

1.2. The above Show Cause Notices were adjudicated vide the impugned Order-in-Original No. COMMR/B-I/ST-34-35/2012 dated 30.01.2013 wherein the Ld. Commissioner has disallowed CENVAT Credit amounting to Rs.3,01,71,279/- and also imposed an amount equal to the credit disallowed as penalty under Section 78 of the Finance Act, 1994 read with Rule 15(3) of the CENVAT Credit Rules, 2004.

2. Aggrieved by the disallowance of credit and imposition of penalty, the Appellant has filed this appeal.

3. The Appellant has summarized the credit disallowed on various items as under:

Sl. No.	Name of goods/services received	Category under which credit availed	Amount of CENVAT Credit denied (in Rs.)
1	Electrical Transmission Tower Materials	Capital goods	90,44,256/-
2	132 KVD/CTLNT Towers	Capital goods	3,78,909/-
3	Mild Steel Section for Templates	Capital goods	6,47,769/-
4	Health Insurance of staff and family	Input service	1,00,569/-
5	Port Insurance	Input service	63,42,990/-
6	Consultancy for construction of railway line	Input service	30,47,710/-
7	Supervision charges for construction of Electrical Transmission Towers	Input service	84,05,618/-
8	House Keeping services	Input service	3,20,202/-
9	Advisory Services	Input service	61,800/-
10	Renting of Immovable Property Services	Input service	93,186/-
11	Other services	Input service	7,17,009/-
12	Excess credit availed	-	45,354/-
13	Credit availed on improper documents	-	9,65,903/-
	TOTAL		3,01,71,279/-

Submissions regarding Sl. No(s). 1, 2 and 3:

3.1. Regarding the denial of CENVAT Credit amounting to Rs.90,44,256/- availed on "Electrical Transmission Tower Materials" (as per Sl. No. 1 of the above Table), the Appellant has submitted that the Power Transmission line requires High Tension electric cable and other electric components such as Transformers, Conductor and Circuit Breaker which fall under Chapter 85 of the Central Excise Tariff Act, 1985 and they are eligible to avail the credit of the 'capital goods' vide Rule 2(a)(A)(i) of the CENVAT Credit Rules, 2004. The appellant submits that these Power Transmission lines cannot be erected without transmission towers; the transmission towers, hence, are the necessary component of Power Transmission Line and thus the same are to be treated as the components or accessories of the capital goods falling under clause(i) of the Rule 2(a)(A) of the CENVAT Credit Rules, 2004; as per clause (iii), the components, spares and accessories of the goods specified at clause (i) and (ii) of Rule 2(a)(A) of the Rules are eligible as capital goods. The submission of the appellant is that the goods falling under clause (iii) may be classifiable under any Chapter Tariff Heading and not necessarily under the Chapters mentioned in clause (i) of the above Rule. It is therefore submitted that the transmission towers are eligible capital goods in terms of clause (iii) of Rule 2(a) (A) of the CENVAT Credit Rules, 2004 and the CENVAT Credit of duty of Rs.90,44,256/- has correctly been availed in respect of such goods.

3.2. Regarding the denial of CENVAT Credit amounting to Rs.3,78,909/- on "132 KVD/CTLNT Towers" (Sl. No. 2 of the above Table) and

Rs.6,47,769/- on "Mild Steel Section for Templates" (Sl. No. 3 of the above Table), it is the contention of the Appellant that the same are parts and accessories of capital goods and thus fall within the definition of "capital goods" as defined under Rule 2(a) of the CENVAT Credit Rules, 2004. Thus, it is their submission that the denial of credit on these items is not legally sustainable.

3.3. In support of their contention that the items covered under Sl. Nos. 1 to 3 of the Table reproduced above are eligible for credit being "capital goods", the Appellant have cited the judgement in the case of *M/s. Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune [2024 (11) TMI 1042 – Supreme Court]* wherein the Hon'ble Apex Court has allowed the credit in respect of similar items/goods holding the same as components/accessories of capital goods falling under sub-clause (i) of Rule 2(a)(A) of the CENVAT Credit Rules, 2004. In this regard, they have also relied upon the decision of this Tribunal in the case of *M/s. Vodafone Essar South Ltd. v Commissioner of Service Tax, Kolkata [2024 (1) TMI 936 – CESTAT, Kolkata] (Final Order No. 77210 of 2023 dated 27.09.2023 in Service Tax Appeal No. 70576 of 2013 – CESTAT, Kolkata].*

Submissions regarding Sl. No. 4:

4. Regarding the disallowance of CENVAT Credit to the tune of Rs.1,00,569/- on "Health Insurance of staff and family", the Appellant contends that providing medical facilities within the Port Area is a pre-requisite for obtaining approval for the port under the Major Port Trust Act, 1963 and the Indian Ports Act, 1908. Hence, it is their contention that input

services for setting up such medical facility, either as a Dispensary or a Hospital, in the Port area is an activity of business and such services are to be treated as eligible input services for availing credit of service tax. The Appellant also states that they have an insurance policy to cover the hospitalization expenses of the employees and their family members as per the company's policy of the 'Corporate Social Responsibility'; premium for this policy is paid by the company and the same is not recovered from the salary of employees. It is also submitted by the Appellant that such insurance is equally important as the port package polity and squarely falls under the inclusive definition of "input" used in connection with a business activity. Hence, the credit of service tax in respect of the premium paid for the mediclaim policy / health insurance covering employees and their family members, have correctly been availed.

4.1. Reliance in this regard is placed on the decision of the Tribunal in the case of *M/s. Indian Bank v. Commissioner of Service Tax, Kolkata [2023 (9) TMI 569 – CESTAT, Kolkata] (Final Order No. 76603 of 2023 dated 06.09.2023 in Service Tax Appeal No. 39 of 2010 – CESTAT, Kolkata).*

Submissions regarding Sl. No(s). 5 to 11:

5. Regarding denial of CENVAT Credit of Rs.30,47,710/- on "Consultancy for construction of railway line" (Sl. No. 6 of the above Table), it is their claim that Railway connectivity is an integral part of the port project and the same cannot be perceived in isolation; without rail connectivity, the project is economically and financially unviable. It is stated by the Appellant that Port operations will not be

successful in the absence of rail connectivity and the company shall be recovering material handling charges for transportation of goods to and from port through the rail lines and service tax will be recovered from the customers and shall be paid to the treasury. Hence, the Appellant submits that construction of railway lines has a direct nexus with the output service to be provided by the port, and hence, they are entitled for the CENVAT Credit availed in respect of the input services used in connection with the railway connectivity project.

5.1. With regard to the CENVAT Credit disallowed of Rs. 84,05,618/- on "Supervision charges for construction of Electrical Transmission Towers" (Sl. No. 7 of the above Table), it is their submission that DPCL has entered into long term agreement with M/s. Orissa Power Transmission Corporation Ltd. (OPTCL) vide agreement dated 28.05.2007 for supply of power to the port involving transmission lines of OPTCL; in the process of laying the transmission lines from Bhadrak to Dhamra, OPTCL was to be consulted for re-routing of EHT line crossings at different locations. The Appellant states that this is a part of the construction of 132 KVA line for the purpose of power supply to the port. Hence, it is contended that credit availed in respect of supervision charges for constructing electric lines along the railway siding paid to OPTCL is admissible.

5.2. In respect of the credit denied to the Appellant on "Port Insurance", "House Keeping Service", "Advisory Service", "Renting of Immovable Property Service" and "Other Services" (Sl. No. 5 & Sl. Nos. 8 to 11 of the above Table), it is their plea that all these services were essential for the day-to-day functioning of their company and as such, are an integral part of their business. Therefore, the Appellant contends that the same are eligible for CENVAT Credit, falling under the category of "input service" as defined under Rule 2(l) of the CENVAT Credit Rules, 2004.

5.3. Therefore, the Appellant contends that all these services were necessary for economic and financial viability of the project and the same are considered as business activity; thus, they submit that input services received in respect of such activities as referred to above are eligible input services in terms of Rule 2(l) of the CENVAT Credit Rules, 2004 and the credit of Service Tax thereon has been rightly availed. To support this contention, the Appellant has cited the decision of the Hon'ble Punjab and Haryana High Court in the case of *Commissioner of Central Excise, Delhi-III v. M/s. Maruti Suzuki India Ltd. [2023 (11) TMI 724 – P&H].*

Submissions regarding Sl. No(s). 12 and 13:

6. With regard to the allegation of excess credit availed to the tune of Rs.45,354/- on the ground that original bills are not traceable but the copies of such invoices are available on records, the Appellant submits that the Show Cause Notice has raised the query similar to the Audit Memo without considering the submissions and agreement to reverse the credit of Rs.37,714/-; thus, it is their contention that the above objection has no basis. Towards the balance amount of Rs.7,640/-, they submit that original bills are available which can be produced by the Appellant. In this regard, they have relied upon the judgment of the Hon'ble Punjab & Haryana High Court in the case

of *M/s. Maruti Udyog Ltd. [2009-TIOL-440-HC-P&H-CX].*

6.1. On the allegation of availment of credit of Rs.9,65,903/ on the ground of improper documents/short comings such as non-mention of registration no., service category, jurisdictional Central Excise Range of the service provider, non-issue of bills in the name of DPCL, etc. the appellant submitted that the definition of input service is very wide and does not restrict itself to services given in the definition but also covers services which are related to business activities. On this issue, the Appellant had agreed to reverse Rs.25,544/- on the bills not raised in its name, out of the disputed credit of Rs.9,65,903/- before the ld. adjudicating authority. They submit that the other defects are curable in terms of Rule 9 of the CENVAT Credit Rules and as such the same cannot be a ground for denying the credit. In this regard, the Appellant contends that the provisions of sub-rule (2) of Rule 9 as it existed prior to 01.03.2007, do not require the mentioning of service tax registration number and jurisdictional Central Excise Range of the service provider.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. We find that the ld. adjudicating authority, in the impugned order, has denied CENVAT Credit on various items/services availed during the period from 2005-06 to 2009-10.

10. Regarding the items listed at Sl. No(s). 1, 2 and 3 of the Table given at paragraph 3 of this Order viz. Electrical Transmission Tower Materials", "132 KVD/CTLNT Towers" and "Mild Steel Section for Templates", we find that these items are covered under the definition of "capital goods" as per Rule 2(a) of the CENVAT Credit Rules, 2004. For the sake of ready reference, relevant portion of the said definition is reproduced below: -

> *"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);*
>
> *..."*

10.1. We observe that these items have been used by the Appellant in relation to transmission of electricity through Power Transmission Lines and thus the same are to be treated as components or accessories of capital goods falling in terms of Rule 2(a)(A) of the CENVAT Credit Rules, 2004. These Power Transmission lines cannot be erected without transmission towers; the transmission towers, hence, are the necessary component of Power Transmission Line and thus the same are to be treated as the components or accessories of the capital goods falling under clause (i) of the Rule 2(a)(A) of the CENVAT Credit Rules, 2004; as per clause (iii), the components, spares and accessories of the goods specified at clause (i) and (ii) of Rule 2(a)(A) of the Rules are eligible as capital goods. We agree with the submission of the Appellant that the goods falling under clause (iii) may be classifiable under any Chapter Tariff Heading and not necessarily under the Chapters mentioned in clause (i) of the above Rule. Accordingly, we hold that the transmission towers are eligible capital goods in terms of clause (iii) of Rule 2(a) (A) of the CENVAT Credit Rules, 2004 and the CENVAT Credit of duty of Rs.90,44,256/- has correctly been correctly availed by the Appellant in respect of such goods.

10.2. We also find that this issue is no more *res integra* as an identical issue has already been examined in the case of *M/s. Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune [2024 (11) TMI 1042 – Supreme Court]* wherein the Hon'ble Apex Court has allowed the credit in respect of similar items/goods holding the same as components/accessories of capital goods falling under sub-clause (i) of Rule 2(a)(A) of the CENVAT Credit Rules, 2004. The relevant portion of the said judgement reads as under: -

> *"11.11.5 What comes out from the above dictionary meaning of "accessory" is that any such item which adds to the beauty, convenience or effectiveness of some other items can be said to be accessory of that other thing and it may or may not be essential for functioning of main machinery. Seen from the above*

perspective what is evident is that the tower is a structure fixed to the earth or building on which microwave antenna is fastened to provide the necessary height and stability to the antenna by making it steady and wobble free. The function of antenna as part of the BTS is to receive and transmit radio signal and is used for providing mobile telecom service to the subscribers. The tower itself is not an electrical component of microwave antenna per-se, yet it is necessary and helps in keeping the antenna at proper height and in a stable position so that the antenna can transmit signals for ensuring uninterrupted and seamless services to the subscribers. It is with the aid of the tower that the potential of the antenna is fully realised, making it function optimally. Without tower, antenna cannot effectively function for the purpose it is used. Hence, there can be no doubt that tower is to be considered as an accessory of antenna.

11.11.6 Similarly, the PFB houses other BTS equipment and alternative electricity source in the form of diesel generators and other equipment to provide alternative and uninterrupted power supply to the antenna so that in the event of failure of main power supply, the generator can instantly provide backup electricity supply to the antenna and BTS. The PFBs house electric cables, other equipment related to antenna, BTS and generator. Thus, PFBs enhance the efficacy and functioning of mobile antenna as well as BTS and accordingly, PFBs can also be considered as accessories to the antenna and BTS which are "capital goods" falling under Chapter 85 of the Schedule to the Central Excise Tariff.

…………………….

11.11.11 There is no dispute to the fact that BTS is a composite system consisting of the transmitter, receiver, antenna and other equipment, and antenna can be said to be an integral part of BTS. As discussed above, and not disputed by the Revenue, tower is needed to keep the antenna at an appropriate height and keep it stable. Without the tower, it is not possible to hoist the antenna at the requisite height and without it being securely fastened to the tower, antenna cannot be kept firm and steady for proper receipt and transmission of radio signals. Thus, there cannot be any doubt that a mobile tower can be treated to be an accessory of

> *antenna and BTS. Accordingly, since in terms of subclause (iii) of Rule 2(a)(A), all components, spares and accessories of such capital goods falling under sub-clause (i) would also be treated as capital goods, a mobile tower can also be treated as "capital good".*
>
> *11.11.12 We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessees would be entitled to CENVAT credit on the excise duties paid on these goods."*

10.3. Thus, by relying on the decision of the Hon'ble Apex Court referred to *supra*, we hold that the Appellant is eligible for the credit in respect of "Electrical Transmission Tower Materials", "132 KVD/CTLNT Towers" and "Mild Steel Section for Templates". Accordingly, the denial of CENVAT Credit to the appellant on this count is set aside.

11. Regarding the denial of credit in respect of "Health Insurance of staff and family" (Sl. No. 4 of the Table supra), we observe that provision of medical facilities within the Port Area is a pre-requisite for obtaining approval for the port under the Major Port Trust Act, 1963 and the Indian Ports Act, 1908. It has been stated by the Appellant that they have an insurance policy to cover the hospitalization expenses

of the employees and their family members as per the company's policy of the 'Corporate Social Responsibility'. Therefore, we find that the same are input services for availing credit of Service Tax. We also find that this issue is squarely covered by the decision in the case of *M/s. Indian Bank v. Commissioner of Service Tax, Kolkata [2023 (9) TMI 569 – CESTAT, Kolkata] (Final Order No. 76603 of 2023 dated 06.09.2023 in Service Tax Appeal No. 39 of 2010 – CESTAT, Kolkata),* wherein this Tribunal has observed as under: -

> *"9. We find that it is required to provide medical insurance service in terms of Indian Bank Association for all employees and it is a part and parcel of employee cost for the Bank and these employees are working strength of the Bank for providing output services. In that circumstances, by relying the decision of the Larger Bench of this Tribunal in the case of Reliance Industries Limited (supra), we hold that the appellant is entitled to take the cenvat credit on medical insurance premium made by the appellant in their employees."*

11.1. By relying on the decision cited *supra*, we hold that the denial of credit in respect of "Health Insurance of staff and family" vide the impugned order is not sustainable. Accordingly, we set aside the disallowance of credit in respect of "Health Insurance of staff and family" in the impugned order.

12. We have also examined the contentions of the Appellant with regard to the services listed at Sl. No(s) 5 to 11 of the Table at paragraph 3 (supra), viz.:

a. Port Insurance

b. Consultancy for construction of railway line

c. Supervision charges for construction of Electrical Transmission Towers

d. House Keeping services

e. Advisory Services

f. Renting of Immovable Property Services

g. Other services

12.1. It is the primary contention of the Appellant that the above said services are covered under the definition of "input service" within the meaning of Rule 2(l) of the CENVAT Credit Rules, 2004, which reads as follows: -

> *"input service" means any service,-*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal,*
>
> *and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,* ***activities relating to business****, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*
>
> *(Emphasis supplied)*

12.2. We observe that the term 'business' mentioned in the definition of "input service" mentioned above, is a wider concept and must be construed in widest amplitude to cover entire gamut of activities which an entity is engaged into or dealing with in the course or furtherance of its very existence.

12.3. We find that the said services have been rendered by the Appellant in connection with their business activity. The Department has failed to substantiate the claim of lack of nexus of these services with the provision of output services. We also find it relevant to refer to the decision rendered by the Hon'ble Punjab and Haryana High Court in the case of *Commissioner of Central Excise, Delhi-III v. M/s. Maruti Suzuki India Ltd. [2023 (11) TMI 724 – P&H]*, wherein it has been held as under: -

> *"9. Counsel for the respondent-assessee, on the other hand, submitted that the assessee is one of the biggest car manufacturers in India and in collaboration with its Japanese parent company is engaged in the distribution and sale and supply of the said vehicles. It is having a huge dealer network all over the country and is also exporting vehicles and the services rendered would qualify for the input service being used by the provider of taxable service to submit that the scope of definition of input service has already been examined by the co-ordinate Bench in Commissioner of Central Excise, Delhi vs. Maruti Suzuki India Ltd, 2017 (49) STR 261. It was noticed that a wide and expansive interpretation had to be given to the word "input service and the activities being important for the respondents to promote the sale of vehicles and connected to the business of manufacturing, the entitlement to avail Cenvat credit cannot be denied. Reliance is also rightly placed upon the judgment of the Bombay High Court in Coca Cola's case (supra) and Ultra tech case (supra) wherein the said issue had also been duly considered. Similarly, the judgment in Commissioner of Central Excise vs. Bellsonica Auto Components India P. Ltd., 2015 (40) STR 41 was also stressed upon wherein, it was held that where the service tax paid on the civil work and on lease rentals was admissible once the land which was taken on lease to construct the factory and was being used by the manufacturer even indirectly by the manufacturer of the final products namely metal*

sheets and the benefit could not be denied. The relevant portion reads thus:-

> *"6. The department contended that the said services were not eligible for Cenvat Credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of "input service" is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of "input service" and that a line has to be drawn somewhere to avoid undue extension of the phrases 'directly or indirectly' and 'in or in relation to by adopting a common sense approach. Immovable property is neither service nor goods and, therefore, input credit cannot be taken.*
>
> *Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to service tax. In this regard, the Commissioner referred to a CBEC Circular dated 04.01.2008. The Commissioner also held that the service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. metal-sheet.*
>
> *7. We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat Credit taken of*

the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(1) by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.

8. The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(1) aptly referred to by Mr. Amrinder Singh as the "means part".

9. The respondents' case also falls within the second part of Rule 2(1) i.e. the "inclusive" part. The definition of the words "input service also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(1)(ii) which includes within the ambit of the words 'input service the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civell contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(1)(ii) indicates, the services mentioned

> *therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product."*

Resultantly, the findings of the Tribunal as such denying the benefit had been set aside.

The co-ordinate Bench in Maruti Suzuki's case (supra) also has taken the same view wherein, the service tax was being paid on the Mandap Keeper services and Rent-a-Cab services and resultantly, it was held that it is part of the business expenditure incurred by the assessee to promote the sales and for efficiently running of the business and the appeals of the Revenue were dismissed. The relevant portion reads thus:-

> *"23. In view of the aforesaid wide and expansive interpretation of the term 'input service' we find the Mandap Keeper Services used to organize meetings and events for promotion of their products such as a new vehicle launch, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. which activities being important for the respondent to promote the sale of vehicles are connected to the business of manufacture of the respondent for which they are entitled to avail CENVAT credit, especially when the expense so mentioned is part of cost on which excise duty is paid.*
>
> *24. Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conferences etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the sales and for efficient running of the business for which they are entitled to avail CENVAT credit.*
>
> *25. Further, as argued by the Ld. Counsel for the respondent, as the cost of services of Rent-a-Cab and Mandap Keeper received,*

> *were included in the assessable value of the final product, on which excise duty is paid, which fact has not been disputed by the appellants, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services on the ratio of the decision in Coca Cola India(supra)."*

Resultantly, considering the fact that the co-ordinate Benches have already examined the aspect of the expansive view which has to be taken and the fact that the service is required as it is not only used in relation to manufacturing but also regarding the advertisement, sales promotion and storage, place of removal including recruitment, quality control coaching and training and computer network. The transportation of inputs or capital goods and outward transportation upto the place of removal are, thus, provided under Section 2(1). Section 2(1) reads thus:-

> *2(l) "input service" means any service,-*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and [clearance of final products, upto the place of removal].*

The aspect of removal has also been clarified by the circular dated 28.02.2015 issued by the Ministry of Finance that it is to be given from the Port/ICD/CFS and only when the shipping bill is filed by the manufacturer or exporter or goods are handed over to the shipping line, the exporter would have no control over the goods. The relevant clause 6 reads thus:-

"Clause 6:- In the case of clearance of goods for export by manufacturer, exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/FCS. Needless to say,

> *eligibility to CENVAT Credit shall be determined accordingly."*
>
> *Keeping in view the above, we are of the considered opinion that the Cenvat Credit has been rightly granted to large extent by the Commissioner and the benefit which had been declined has been rightly allowed by the Tribunal by modifying the order of the Commissioner.*
>
> *In such circumstances, we do not find any question of law arising for consideration as projected by counsel for the appellant-revenue and the appeal accordingly stands dismissed."*

12.4. In view of the above discussion and by relying on the decision of the Hon'ble High Court cited *supra*, we hold that the Appellant is eligible for the credit availed in respect of these services, being "input services" in terms of Rule 2(l) of the CENVAT Credit Rules, 2004. The denial of CENVAT Credit to this extent, therefore, is set aside.

13. With regard to the CENVAT Credit denied on the grounds of "Excess credit availed" and "Credit availed on improper documents", we observe that the ld. adjudicating authority has held the same as inadmissible since no evidence was produced before the said authority by the Appellant.

13.1. On the issue of denial of credit to the tune of Rs.45,534/- on the allegation of excess availment of credit, we take note of the following submissions made before the ld. adjudicating authority as recorded at paragraph 2.2 (aa) of the impugned order: -

> *"aa. Excess credit availed for Rs.45,354/- - It has been alleged that excess credit of service tax amounting to Rs.45,354/- since original bills are not traceable but the copies of such invoices are*

available on records based on which credit has been taken. The SCN has raised the query similar to the Audit Memo without considering the submissions and agreement to reverse the credit of Rs.37,714/-. The above objection therefore has no basis and liable to be withdrawn. Towards the balance amount of Rs.7,640/-, original bills are available which can be produced during the personal hearing for verification. However, there is no question of payment of interest in respect of such reversal, since the recording of the credit in the register does not amount to credit taken or credit utilized. In this regard, they have relied upon the judgment of the Punjab & Haryana High Court in the case of Maruti Udyog Ltd. [2009-TOIL-440-HC-P&H-CX]."

13.1.1. From the above, we find that the Appellant had agreed to reverse the credit of Rs.37,714/- out of Rs.45,354/-. Accordingly, the disallowance of credit of Rs.37,714/- is upheld. The appellant is liable to reverse the above credit, if not reversed already, along with interest. With regard to the balance amount of credit of Rs.7,640/-, it has been submitted by the Appellant that they are having the original documents. Consequently, we hold that the Appellant is eligible for the credit of Rs.7,640/- denied by the ld. adjudicating authority.

13.2. Further, we also note of the following submissions made by the Appellant before the ld. adjudicating authority recorded at paragraph 2.2. (ab) therein, as far the ground of credit availed on improper documentation is concerned: -

"ab. Credit availed on improper documents: On the allegation of availment of credit of Rs.9,65,903/ on the ground of improper documents/short comings such as non mention of registration no., service

> *category, jurisdictional Central Excise Range of the service provider, non-issue of bills in the name of DPCL, etc. it has been submitted that the definition of input service is very wide and not restricts to services given in the definition but also covers services which are related to business activities. On this issue, DPCL have agreed to reverse Rs.25,544/- on the bills not raised in its name, out of the disputed credit of Rs.9,65,903/-. The other defects are curable in terms of Rule 9 of the CCR,04 and as such the same can not be a ground for denying the credit. The provisions of sub-rule(2) of Rule 9 as it existed prior to 01.03.2007, do not require the mentioning of service tax registration number and jurisdictional Central Excise Range of the service provider. Therefore, the objections raised on this account relating to the period 2005-06 and 2006-07 are not tenable."*

13.2.1. In this regard, we agree with the submission of the Appellant that discrepancies pointed out by Revenue in the Show Cause Notice such as Telephone bills in name of employee, non-mentioning of Service Tax Registration number in invoices, invoices in name of previous entity viz. Tata Steels, Jurisdictional details not mentioned, etc., are procedural infractions due to which substantive benefit of credit cannot be denied to the Appellant. Accordingly, we allow the CENVAT Credit availed by the Appellant in this regard, as they are covered within the definition of 'input services'. However, we hold that the Appellant is liable to reverse the credit of Rs.25,544/- out of the credit of Rs.9,65,903/-, along with interest, which the Appellant had agreed to reverse before the ld. adjudicating authority. Consequently, we hold that the Appellant is eligible for the credit of Rs.9,40,359/- [Rs.9,65,903/- - Rs.25,544/-] denied by the ld.

adjudicating authority and they are liable to reverse the credit of Rs.25,544/-, along with interest, if not reversed already.

14. On the aspect of invocation of the extended period of limitation, we take note of the fact that the issues involved in the present appeal were subject matters of litigation before various legal fora. Further, the Department has not brought in any evidence to establish the allegation of suppression with intention to evade tax on the part of the Appellant. In these circumstances, we hold that the invocation of extended period of limitation is not sustainable. Therefore, the Appellant succeeds on merits as well as on limitation.

14.1. Further, in the facts and circumstances of the case, we hold that penalties are not imposable on the Appellant. Accordingly, the penalties imposed are set aside.

15. In the result, we pass the following order: -

(i) The denial of CENVAT Credit in respect of the items mentioned at Sl. No(s). 1 to 11 of the Table at paragraph 3 of this Order (supra) is set aside.

(ii) With regard to the denial of CENVAT Credit for the items mentioned at Sl. No(s). 12 and 13 of the said Table i.e., "Excess credit availed" and "Credit availed on improper documents", we hold that the Appellant is liable to reverse the credit of Rs.37,714/- and Rs.25,544/-, along with interest, which they had undertaken to reverse (if the same have not been reversed already). The balance amount of credit of Rs.7,640/- and Rs.9,40,359/- are found to be eligible and thus, the disallowance to this extent is set aside.

(iii) The demand raised by invoking the extended period of limitation is set aside. Accordingly, the Appellant succeeds on merits as well as on limitation.

(iv) No penalty is imposable on the Appellant.

16. The appeal filed by the appellant is disposed of on the above terms.

(Order pronounced in the open court on **13.02.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd