

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

E-HEARING

Excise Appeal No. 75241 of 2020

(Arising out of Order-in-Original No. 01/Commissioner/2020 dated 12.05.2020 passed by Commissioner of CGST & CX, Jamshedpur)

M/s. Jamshedpur Continuous Annealing & Processing Co. Pvt. Ltd.

(Tata Steel Works, Mailing Box No. E-251, Bistupur, Jamshedpur-831001)

Appellant

VERSUS

Commr. of CGST & Central Excise, Jamshedpur

(Outer Circle Road, Bistupur, Jamshedpur-831001)

Respondent

APPEARANCE:

Ms Rinki Arora, Advocate & Mr. Mayur Jain, Advocate for the Appellant
Mr. Mihir Ranjan (Spl. Counsel), Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO.77631/2025

Date of Hearing : 30th October 2025

Date of Decision : 30th October 2025

ORDER [PER R. MURALIDHAR]

The Appellant is engaged in manufacture of continuous annealed steel coil and sheets falling under Chapter 72 of Central Excise Tariff Act, 1985. In course of the business, the Appellant availed various services from vendors who charged service tax on invoices raised for such erection and commissioning services, design and drawings and other services availed by the Appellant. The Appellant availed credit on such invoices that the services are in relation to the manufacture of coils by Appellant. The Appellant had also reported the same in excise returns. Intelligence was gathered and summons was issued.

On basis of information provided Show Cause Notice dated 12 February 2018 was served alleging that Services procured for setting up of a factory by the Appellant are not eligible for cenvat credit as the same are not covered under the definition of 'input service' w.e.f. April 1, 2011. Services under question in the instant case are of the nature of consultancy, erection, commissioning and installation etc. procured and used in 'setting up' of factory i.e, before the commencement of manufacture of final products. After due process, the Adjudicating confirmed demand. Being aggrieved by the impugned order, the appellant is before the Tribunal.

2. The Ld Counsel, representing the appellant makes the following submissions:

2.1 The Appellant submits that by way of the amendment brought forth from 1 April 2011, the words 'setting up' were deleted from the inclusive portion of the definition and an exclusion portion was introduced. For the period of April 2011 to June 2012, the definition of input service excluded certain specified services in so far as they were used for construction of a building or civil structure or part thereof. However, from July 2012, the concept of negative list was introduced. It is nowhere mentioned in the Act or CCR that the services used for erection, commissioning of machinery would be excluded from definition of input services or credit would be barred on such services.

2.2 The definition of input service is wide as has been held in the following cases :

- CCE, NAGPUR VERSUS ULTRATECH CEMENT LTD 2010 (10) TMI 13 - BOMBAY HIGH COURT
- Dell International services India private limited vs CCE Bangalore 2010 (17) STR 540 (Tri Bang)
- ROHIT SURFACTANTS PVT. LTD. versus COMMISSIONER OF C. EX., BHOPAL 2009 (240) E.L.T. 472 (Tri. - Del.)

2.3 The issue is no more *res-integra* and has been decided, reliance in this regard is placed on the following precedents

- Principal Commissioner v. Shell India Pvt. Ltd. - (2025) 27 Centax 444 (Kar.), Principal Commissioner v. Shell India Pvt. Ltd. — (2025) 28 Centax 189 (Kar.), Principal Commissioner of Central Tax vs Shell India Pvt. Ltd (2025) 28 Centax 190 (S.C.)
- M/s. NU Vista Limited vs Commissioner of Service Tax vide FO 75583/2025 dated 05 March 2025 CESTAT Kolkata.(Para 6)
- *M/s Jindal Steel & Power Ltd., vs. Commissioner of Central Tax, Rourkela, 2023 (7) TMI 712-CESTAT Kolkata,(Para 11 and 12)*
- *M/s. Tata Steel Limited vs. Commissioner of CGST & CX, Bhubaneswar, 2023-VIL-861-CESTAT-KOL-CE(Para 5 and 6)*
- M/s. Hindalco Industries Ltd vs Comm CX, Customs, ST Bhubaneswar, vide FO 76186/2025 dated 23 April 2025 CESTAT Kolkata(Para 10 and 11)
- Comm CGST & Central Excise vs M/s Deify Infrastructure Ltd

vide FO 50579/2025 dated 30 April 2025 CESTAT Delhi (Para 9 to 11)

- Mangalam Cement Ltd vs Commissioner, Central Goods, Excise & Service Tax, Udaipur (2024) 24 Centax 38 (Tri.-Del)(Para 11 and 12)
- Pepsico India Holdings (Pvt.) Ltd vs Commr. of Central Tax, GST Commissionerate, Tirupati 2022 (56) G.S.T.L. 22 (Tri. - Hyd.)(Para 15 to 22)

2.4 It is also submitted that the demand is overlapping which is higher demand on account of Duplication demand of INR 5,52,52,703/- It is submitted that another SCN No. 4040 dated 26 April 2018 demanding reversal of credit for the same issue and same period as covered by the impugned SCN. The demand covered by both SCNs is tabulated herein below:

SCN details	Period	Amount
No. 578 dated 12 February 2018	January 2013 to February 2014	34,86,06,691
No. 4040 dated 26 April 2018	2013-2014 to 2014-2015	16,88,52,866

2.5 It is submitted that demand of INR 5,52,52,703 is common is both the show cause notices, ie, the demand is raised on same invoices in both the notices, hence there is a duplication of demand. It is a settled position of law that a SCN cannot be issued on the same amount under two different proceedings. In this context, reliance can be placed on the decision of the Hon’ble Tribunal in the case of **Solitaire Machines**

Tools Limited –vs.- CCE., Vadodara 2008 (222) E.L.T. 404 (Tri. – Ahmd.). Therefore, the duplicate demand is liable to be dropped.

2.6 It is further submitted that the Extended period cannot be invoked for the following reasons :

- The fact on record that the first ER-1 was filed by the Appellant for the month of March 2014 (as recorded in para 3.4(ii) of the impugned SCN), and all the disputed credit availed by the Appellant was disclosed in that return
- It is submitted that impugned SCN is entirely barred by limitation. The SCN dated 12 February 2018 was served on the Appellant on 14 February 2018 for the credit pertaining to period from 1 January 2013 to 28 February 2014. The credit availment was made in the month of March 2014. It is submitted that the impugned SCN is hit by limitation as it is not issued within 2 year from relevant date as per Section 11A of CEA 1944. Reliance in this regard is placed on:
 - Simplex Infrastructures Ltd. vs. CST, Kolkata 2016 (42) STR 634 (Cal.)
 - Savira Industries v. Commissioner of Central Excise, Chennai-II reported in 2015-TIOL-2225-CESTAT-MAD
 - Uniworth Textiles v. CCE, Raipur 2013 (1) TMI 616 - Supreme Court
 - Lanxess ABS Ltd 2010 (259) ELT 551(Tj).

3. In view of the above submissions, the Ld Counsel prays that the appeal may be allowed both on merits as well as on account of limitation.

4. The Ld Special Counsel Sri Mihir Ranjan, appearing for the Revenue supports the detailed and considered findings of the Adjudicating authority. He submits that words 'setting up', have been deleted after the Rule 2 (I) of the CCR 2004 was amended. Therefore, there is no eligibility to the appellant to take the cenvat credit for the services used in the setting up of the factory. He prays that the appeal may be dismissed.

5. We have gone through the Appeal papers, written submissions made, case laws cited and the arguments adduced by both the sides.

6. Firstly, we have taken up the point made by the Ld Counsel about the quantification of the demand. As per the Table given by the appellant, it is seen from the SCN No. 578 dated 12 February 2018 and SCN No. 4040 dated 26 April 2018, and the Invoices produced by the appellant, it is seen that the Service Tax demand of Rs. 5,52,52,703 is on account of same set of invoices. Hence, this has resulted in excess demand by Rs.5,52,52,703 as correctly submitted by the appellant.

7. So far as the main issue about eligibility of Cenvat Credit for the Service Tax paid by the service providers in respect of 'setting up' of the unit, the issue is no more res integra.

8. In the case of **Pepsico India Holdings Pvt. Ltd. v. CCT, Triupati, 2021 (7) TMI 1094-CESTAT Hyderabad**, the Hyderabad Tribunal has analyzed the amendment with effect from 1.4.2011 and has held as under:

16. We find that the definition of 'input service prior to 1.04.2011 had two parts- a main part of the definition and an inclusive part of the definition. This inclusive part specifically included the services availed for 'setting up the factory'. After 1.04.2011, it has three parts- a main part, an inclusive part and an exclusive part. The services used for setting up the factory are neither in the inclusive part of the definition nor the exclusive part of the definition. Therefore, such services were neither specifically included nor were specifically excluded.

17. It takes us to the main part of the definition which must be examined. If it is wide enough to cover the services in question, CENVAT credit will be available, otherwise it will not be available. The main part includes "services used by a manufacturer, whether directly or indirectly, in or in relation to the manufacturer of final products and clearance of final products up to the place of removal." The term manufacture is not defined in the Rules.

18. The definitions as per of CCR 2004 reads as follows

RULE 2 Definitions. –

(1) in these rules, unless the context

otherwise

xxxxxxxxxxx

(2) The words and expressions used in these rules and not defined but defined in the Excise Act shall have the meanings respectively assigned to them in the Excise Act.

19. Since the term 'manufacture' is not defined in the Rules, the definition under the Central Excise Act, 1944 must be considered. Section 2(f) of the Central Excise Act defines 'manufacture' as follows

2(f) "manufacture" includes any process

i) incidental or ancillary to the completion of a manufactured product;

ii) which is specified in relation to any goods in the Section or Chapter notes of the Fourth Schedule as amounting to manufacturer; or

iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to

the consumer; the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

20. Thus, the term ‘manufacture’ itself is very wide and includes anything incidental or ancillary to manufacturer.

21. For a service to qualify as ‘input service’ under CENVAT Credit Rules, 2004 post 2011, the service in question need not be covered even by the very wide definition of manufacturer under section 2(f) of the Central Excise Act. Any service which is used not only in manufacture but also ‘in relation to’ manufacture will also qualify as input service. The scope of input service is further enlarged with the expression whether directly or indirectly used in the definition of input service. Thus, there are:

- a) Actual manufacture;*
- b) Processes incidental or ancillary to manufacture which are also manufacture;*
- c) Activities directly in relation to manufacture (i.e., in relation to ‘a’ and ‘b’ above);*
- d) Activities indirectly in relation to manufacture (i.e., in relation to ‘a’ and ‘b’ above);*

22. All four of the above qualify as input service as per Rule 2(I) (ii) as applicable post 1.4.2011. Although setting up the factory is not manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture. Service used in setting up the factory are, therefore, unambiguously covered as ‘input services’ under Rule 2 (I) (ii) of the CENVAT Credit Rules 2004 as they stood during the relevant period (post 1.4.2011). The mere fact that it is again not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main part of the definition of input service, unless it is specifically excluded under the exclusion part of the definition, the appellant is entitled to CENVAT credit on the input services used. This Bench has already taken this view in Kellogs. Similar views have been taken by the other benches in the other cases mentioned above.

23. In view of the above, the impugned orders denying CENVAT credit and ordering its recovery along with interest and imposing penalties cannot be sustained. The impugned orders are set aside and the appeals are allowed with consequential reliefs, if any.

9. The Kolkata Bench in the case of **Bharat Coking Coal Ltd. v. CCE & ST, Ranchi 2021 (10) TMI 383-CESTAT Kolkata**, following the ratio laid down in the case of *Pepsico India (supra)* held as follows:

“6. The issue before us is whether credit is available on Coal Handling Plant (CHP), which has been set up by the appellant for evacuation of coal from its mining premises. It is relevant to note the preamble to the contract which reads as below:-

From the above, it appears that the purpose of setting up of the CHP is to load the coal into the railway wagons in an automated manner after the coal is crushed into the desired size. It is not in dispute that the services used by the appellant is for modernization of the coal loading process. The definition of input service specifically include services received by a manufacturer for modernization of a factory. We have also perused the decision of the Tribunal in the case of Pepsico India Holdings (P) Ltd (supra) relied upon by the appellant. The Tribunal has observed that without setting up of the factory, there cannot be any manufacture and the mere fact that the words ‘setting up a factory’ has not been retained in the definition of input services post 01.04.2011, the same will not mean that the benefit of credit has been taken away by the legislature.

7. We thus find that services used for setting up of the factory even after 01.04.2011 would be eligible for credit.”

10. We find that the issue is squarely covered by the detailed order of the Hyderabad Tribunal and this Bench. Applying the ratio laid down therein, we set aside the demand and allow the appeal on merits.

11. We find that the appellant has taken the ground that the SCN dated 12th February 2018 was served on them on 18th February 2018, demanding the Service Tax for the period January 2013 to February 2014. Hence, the same is time barred. On two grounds we find the invocation of the extended period to be erroneous. First of all the appellant has taken the Cenvat Credit for the Service Tax paid on various services during the period January 2013 to February 2014, for which they were filing their Returns showing the Cenvat Credit Taken. No scrutiny seems to have been taken up as is mandated under CBEC

manual. Nor any query seems to have been addressed to the appellant seeking their clarification. Thus by filing the Returns the appellants have disclosed the factual details rather than concealing the same as is alleged by the Revenue. Secondly, the issue as to whether the Cenvat is eligible or not has been contentious issue, going upto various Tribunals and High Courts, wherein the interpretation of the assesses has been found to be correct. In such a situation, the issue is that of interpretation, rather than any intentional evasion of Service Tax by the appellant. Therefore, we find that the Revenue has not made out any case whatsoever on account of suppression on the part of the appellant. We set aside the confirmed demand for the extended period on account to time bar.

12. Thus, the appeal stands allowed both on merits and on account of limitation. The appellant would be eligible for consequential relief, if any, as per law.

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

Sd/-
(K. Anpazhakan)
Member (Technical)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja