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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76778 of 2017

(Arising out of Order-in-Original No. 06/CCE/CEX/RKL/2017-18 dated 19.06.2017 passed by the Commissioner, Central Excise, Customs & S. Tax, Rourkela Commissionerate, KK-42, Civil Township – 769 004)

M/s. Vedanta Limited **: Appellant**
Expansion Site Office, VIII: Bhurkhamunda,
Brundamal, Kurebaga,
Jharsuguda, Odisha

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Rourkela Commissionerate, KK-42, Civil Township – 769 004,
Odisha

AND

Excise Appeal No. 76798 of 2017

(Arising out of Order-in-Original No. 06/CCE/CEX/RKL/2017-18 dated 19.06.2017 passed by the Commissioner, Central Excise, Customs & S. Tax, Rourkela Commissionerate, KK-42, Civil Township – 769 004)

Commissioner of Central Excise, Customs and Service Tax **: Appellant**
Rourkela Commissionerate, KK-42, Civil Township – 769 004,
Odisha

VERSUS

M/s. Vedanta Aluminium Limited **: Respondent**
Bhurkhamunda,
Jharsuguda, Odisha

APPEARANCE:

Shri Deepro Sen and Shri Vasudev A., both Advocates,
For the Assessee/Company

Shri S.K. Dikshit, Authorized Representative,
For the Revenue

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77652-77653 / 2025

DATE OF HEARING / DECISION: 04.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Vedanta Aluminium Limited, Bhurkamunda, Jharsuguda, Odisha, (hereinafter referred to as the assessee/appellant), holder of Central Excise Registration No. AAHCS6896AXM002 are engaged in manufacture of goods falling under chapter 76 and chapter 38 of the first schedule to Central Excise Tariff Act, 1985. In course of EA 2000 audit of the said unit by the Internal Audit Wing of the Department, it appeared that during the period from June, 2007 to November, 2011 the assessee has wrongly availed and utilised CENVAT Credit of Rs. 11,28,14,251/- on various iron and steel items falling under Chapter 72, 73 and 83 of the Central Excise Tariff Act, 1975, ('impugned goods') for the purpose of setting up the manufacturing division of the appellant-assessee. Such impugned goods were used for the fabrication of capital goods and also its foundation and support structure. The assessee availed CENVAT Credit on these items by treating them as inputs or capital goods for setting up of their plant, as per the provisions of CENVAT Credit Rules, 2004.

1.2 In the course of further investigation by the Department, the assessee submitted a Chartered Engineer's Certificate dated 10.03.2012 showing details of consumption details of impugned goods. On 27.03.2012 and 28.03.2012, a joint verification was carried out at the said factory premises by the Jurisdictional Range Superintendent along with the representative of the Assessee and a physical verification report dated 09.04.2012 containing Annexure-I, Annexure-II & Annexure-III was prepared. It was gathered that various items of steel were consumed in civil construction or making foundations for various Capital goods or components of CHP/FTP/Boiler or making various supporting structures embedded to earth on which various machineries are mounted within the factory premises of the assessee.

1.3. The Department was of the view that the impugned goods as shown in Annexure-I, Annexure-II & Annexure-III were used in fabrication of support structures and could not be said to have been used in or in relation to manufacture of final product nor can also be a component, spare, accessory of any capital goods and as such, no CENVAT Credit is admissible either as "inputs" or "capital goods" as per the provisions of CENVAT Credit Rules, 2004.

1.4. Accordingly a Demand cum Show Cause Notice was issued vide C. No. IV(6)3/CE/CPU/B-II/2012//7099A dated 27.04.2012 to the assessee, proposing recovery of CENVAT Credit of Rs 11,28,14,251/-(Incl. Cess) along with interest under proviso to Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 11A(1)/11A(4) (w.e.f. 08.04.2011) and Section 11AB/11AA (w.e.f. 08.04.2011) of the Central Excise Act, 1944 along with interest and imposition of penalty under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944,

1.5. The said Notice was adjudicated by the Ld. Commissioner, Central Excise, Customs & Service Tax, Rourkela vide Order-in-Original No. 06/CCE/CEX/RKL/2017-18 dated 19.06.2017, wherein the ld. adjudicating authority partly disallowed CENVAT Credit of Rs 1,81,38,155/- along with interest and allowed CENVAT Credit of Rs. 9,46,76,096/-. The ld. adjudicating authority also imposed equal penalty of Rs 1,81,38,155/- under Section 11AC of the Central Excise Act, 1944.

1.6. The assessee-company has filed Excise Appeal No. 76778 of 2017 against disallowance of CENVAT Credit to the extent of Rs 1,81,38,155/-, along with interest and imposition of penalty thereon vide the impugned order. Whereas, the Department has filed Excise Appeal No. 76798 of 2017 against allowing of CENVAT Credit of Rs.9,46,76,096/- therein.

1.7. As both these appeals emanate from the same Order-in-Original, they are taken up together for decision by a common order.

2. During the course of hearing, the Ld. Counsel representing the assessee-appellant have pointed out that the impugned order has confirmed the demand of Rs. 1,81,38,155/- solely on the basis the finding that they have used the goods such as Galvanized Steel Towers/Structures, Plates, TMT Bars, TOR Road, Angles, Flats, Joists, Nuts & Bolts, and electrodes for making the foundation of different plant and machinery, which were allegedly not eligible for availing CENVAT Credit. In this regard, the appellant's contention is that the issue of eligibility of CENVAT Credit on inputs and capital goods used for constructing foundations of capital goods and fabrication of capital goods is no longer *res integra* as various tribunals and courts have allowed such credit. The Ld. Counsel for the assessee-appellant cites the decision of CESTAT, Kolkata in the case of *M/s. Super Smelters Ltd. (Unit-III) v. Commissioner of Central Excise & Service Tax, Bolpur [2025 (9) TMI 478 – CESTAT Kolkata],* wherein, for the period from April 2012 to February 2015, the Tribunal has allowed the CENVAT Credit on HR Coils, MS Plates, Angles,

Channels, Welding Electrodes etc., which were used for the fabrication and erection of capital goods and also observed that 'structural supports' are essential for the functioning of the capital goods and accordingly CENVAT Credit is to be allowed. The appellant-company also relies upon the decision of the Tribunal in the case of *M/s. Rexon Strips Ltd. v. Commissioner of CGST & Central Excise, Bhubaneswar [2024 (2) TMI 1515 – CESTAT Kolkata],* wherein it has been held that CENVAT Credit is eligible on the goods used for constructing support structure / foundation of the capital goods, by relying on the decision of the Hon'ble Madras High Court in the case of *Thiru Arooran Sugars v. CESTAT, Chennai [2017 (355) E.L.T. 373 (Mad.)].* Accordingly, the Ld. Counsel for the appellant-assessee prayed for setting aside the demand confirmed against them in the impugned order and allowing the credit.

2.1. Regarding the Revenue's appeal against allowing the CENVAT Credit to the assessee, the submission advanced by the assessee is that the ld. adjudicating authority has allowed such CENVAT credit on the basis of reasoned findings, which are summarized as under:

(i) Iron & Steel Materials (angles, plates, HR sheets, Coils, Joists, Channels, Flats etc. falling under Chapter 72) are being used by the Appellant for manufacturing various capital goods and their components and accessories.

(ii) Welding Electrodes (falling under Chapter 83) are used by the Appellant for welding of different parts, for joint different segments of machines and their components and for filling gaps wherever required.

(iii) Nuts and Bolts (falling under Chapter 73) are used for fastening together different segments, components and parts to the main machine.

(iv) Transmission and Distribution towers (falling under Chapter 73) are used for erecting electric towers and sub-stations of power distribution system which are essential parts of the power plant without which the whole plant will not be operational.

(v) The assessee has used the impugned goods for manufacture of capital goods and elaborate records have been maintained which shows the usage of the impugned goods.

(vi) The assessee has also produced a certificate from Chartered Engineer which shows that the impugned goods have been used for manufacture of different machine, machinery items and pollution control equipments which are Capital Goods, and as per the 'user test', Cenvat credit is eligible on the same.

2.2. Accordingly, the assessee-appellant has contended that the Revenue's appeal has no merit and prayed for rejection of the same.

3. Regarding the dropping of the demand and allowing the CENVAT Credit to the assessee, the Ld. Authorized Representative of the Revenue has *inter alia* made the following submissions: -

(i) The ld. adjudicating authority has based his findings relying on the statement dated 26.04.2017 (Annexure-1 & 2) submitted to the Superintendent (Adjudication) showing the nature of "use of the Capital Goods" and "description of the Capital goods manufactured using such inputs". But the said statement showing use of the input/capital goods is not backed by a Chartered Engineer's Certificate.

(ii) The ld. adjudicating authority has not mentioned categorically against which use of TMT, the credit is allowed and against which the credit has been disallowed. It appears that the adjudicating authority has allowed credit on TMT used for "joining Pot Shell in Pot room to earth" and "to Hold Silo it Potroom for feeding alumina in pots".

(iii) A perusal of joint verification report dated 26.4.2017 pertaining to Inputs(Annexure-II) use of TMT/TOR rods shows Description of Capital Goods Manufactured using such inputs as "Foundation Pot room" "Foundation CPP" "Foundation-Rodding" "Supporting material for furnace at Cast House" "Supporting Structure Potroom".

(iv) From available records, it appears that while in respect of credit taken on TMT/TOR rods as Capital Goods used as "Equipment foundation for ETP" "Foundation for Furnace at Cast House" has been disallowed by the adjudicating authority, in respect of rest credit has been allowed. Similarly in respect of inputs of TMT used as "Support Material for Furnace at Cast House" "Foundation -Pot room" credit has been disallowed, in respect of the rest CENVAT Credit has been allowed.

(v) The decision of the adjudicating authority allowing CENVAT credit under Capital Goods of TMT/TOR rods used "To join Pot Shell in Pot room to Earth," "To Hold Silo in Pot room for feeding alumina in pots" does not appear to be legal, proper & correct. Similarly allowing CENVAT Credit of Inputs on TMT/TOR bars used for "Foundation CPP" and "Foundation-Rodding" does not appear to be legal & proper on account of the following grounds:

(vi) The logic of denial of CENVAT Credit on TMT bars used for items used for making of foundation is also equally applicable on TMT /TOR used for aforesaid purposes and CENVAT Credit is not admissible in those cases also. The said items are normally used to build the foundation or base on which the capital goods are installed. The foundation or base is attached to earth and hence become part of immovable property. If the foundation is dismantled or tried to be moved from one place to another its engineering precision and structure will be lost and it will only remain as scrap, rubbish or debris. So the items can never be termed as capital goods or input to manufacture capital goods, so as to be eligible for CENVAT Credit.

(vii) CBEC Circular No.966/09/2012-CX dated 18.05.2012 has also clarified that CENVAT Credit is not admissible on structural components used for laying of foundation or making structures for support of capital goods. TMT bars falling under Chapter 72142090 are not covered under the definition of capital goods as neither they fall under specified chapters or description, nor they can be components, spares parts or accessories as per Rule 2(a) of CENVAT Credit Rules, 2004. Supporting structures are items of general use and cannot be clearly distinguishable part of any part of any capital goods. Supporting structure and foundation as they come into existence is embedded to earth. Hence, the TMT/TOR used "To join Pot Shell in Pot room to Earth," "To Hold Silo in Pot room for feeding alumina in pots" and "Foundation CPP" and "Foundation-Rodding" cannot be termed as supporting structure of Capital Goods as it cannot be considered as eligible capital goods /inputs and CENVAT Credit is not admissible on the same.

(viii) The Hon'ble Apex Court in its order passed in the case of *Saraswati Sugar Mills vs-CCE, Delhi - III [2011 (270) ELT 465(SC)]* has held that structures being fixed to the earth cannot be construed as goods much less as excisable goods, hence credit of CENVAT Credit cannot be allowed.

(ix) "Welding Electrode" being classified under chapter 83 is not specified capital goods. Credit has been allowed on Welding Electrode as input to capital goods. In the instant case welding electrodes have been used for fabrication of steel items and also repair and maintenance work. The subject goods i.e. Welding Electrode used for repair & maintenance purpose has no role to play in the manufacture of final products and therefore cannot be eligible for CENVAT Credit.

(x) CBEC vide instruction No.F.No.267/11/2010-CX-8 dated 8.7.2010 at Paragraph 3 has clarified that credit shall also not be admissible on input used for repair and maintenance of Capital Goods.

(xi) The CESTAT in the case of *M/s. SAIL vrs. Commissioner of Central Excise, Ranchi reported in 2008 (222) ELT 233 (Tri-Kolkata.)* has held that *"Welding electrodes, formatic alloys, welding flux, welding wires and gases used for repair and maintenance of machinery not being used co-extensively with process of manufacturer of final product and not eligible for CENVAT Credit - Rule-57A of erstwhile Central Excise Rules, 1944 - Rule 3 of CENVAT Credit Rules, 2004".* The said Tribunal Order has also been upheld by the Hon'ble Supreme court in as much as the appeal filed by M/s. SAIL has been dismissed vide Order dated 18.7.2008, as reported in *2008(229) ELT A127 (SC).*

3.1. In view of the above submissions, the Ld. Authorized Representative of the Revenue prayed for disallowing the CENVAT Credit to the assessee and confirming the demand.

4. Heard both sides and perused the appeal records.

5. Having considered the submissions made by the parties, we observe that the issues involved in the present appeals are as under: -

(I) Whether the assessee is eligible for the CENVAT Credit availed on foundation/ support structure of capital goods or not.

(II) Whether the assessee is eligible to avail CENVAT Credit on the items used for construction/ fabrication of capital goods or not.

5.1. We find that the issue of eligibility of CENVAT credit on the inputs and capital goods used for constructing foundations of capital goods and fabrication of capital goods is no longer *res integra,* as various tribunals and courts have allowed such credit to assessees. In this context, we find the reliance placed by the appellant on the decision of this Tribunal in the case of ***M/s. Super Smelters Ltd. (Unit-III) v. Commissioner of Central Excise & Service Tax, Bolpur [2025 (9) TMI 478 – CESTAT Kolkata****]* to be apt, wherein, for the period from April 2012 to February 2015, the Tribunal allowed the CENVAT Credit on HR Coils, MS Plates, Angles, Channels, Welding Electrodes etc., which were used for the fabrication and erection of capital goods and also observed that 'structural supports' are essential for the functioning of the capital goods and accordingly CENVAT Credit is to be allowed. The relevant portion of the said decision has been reproduced below for ease of reference: –

> *"The appellant is manufacturer of Sponge Iron, MS Billets, SS Billets, Silico Manganese, etc.* ***The appellant had availed Cenvat Credit on HR coils, MS Plates, Angles, Channels, Welding Rods. On the ground that these items do not***

qualify to be called as 'inputs' and welding electrodes are used in welding/jointing of various steel items and for fabrication and erection of various structures for the support of capital goods and machineries *and are also used in the repair and maintenance of various equipment and machineries, a Show Cause cum demand Notice No. 15/COMMR/BOL/15, dated 22.04.2015 was issued towards inadmissible Cenvat Credit to the tune of Rs. 2,94,30,880/- for the period April 2012 to February 2015, Corrigendum/Addendum to Show Cause Notice was issued 06.03.2016 revising the demand to Rs. 3,03,23,553/-. The appellant submitted their detailed reply specifying the places wherein these goods were used in their manufacturing activity and towards fabrication of capital goods within their factory premises. ……*

…..

9. ***In the present case, all the goods in question under various Annexures to the SCN are no doubt, not direct inputs for manufacture of the finished goods, but are required to be used for fabrication of capital goods, which in turn are being used for carrying out the manufacturing activity.From the above definitions prior and post 1.4.2011, it can be seen that in both the cases, the inputs used for fabrication or usage in respect of any capital goods, would also qualify for cenvat credit as 'inputs'.As a matter of fact after 1.4.2011, the situation is much more liberal. As long as the assessee is able to satisfy the condition that the goods in question has been used 'in the factory' of the 'final product', the cenvat credit cannot be denied. This would also include the goods which are used towards maintenance and repairs, since the usage is within the factory premises.*** *In the present case, it is not the Revenue's case that the goods in question were not received by the appellant in their factory premises, or were not accounted for properly. The effect of the amended provisions is discussed by the Tribunal Delhi in the case of Prism Cement Ltd. vs. Commissioner of Central Excise and Service Tax, Jabalpur [2016 (338) E.L.T. 593 (Tri. - Del.)] as under:*

..

14. The appellant has also clearly brought in evidence to the effect that they have not availed any cenvat credit in respect of the goods used towards

> *'structural supports',* ***though we find that the Tribunals and High Courts have been consistently holding that such 'structural supports' are essential for the functioning of the capital goods and accordingly, have been allowing the Cenvat Credit.***
> *15. We also find that the issue of cenvat eligibility for the like goods in question when they are used in the fabrication of the capital goods within the factory premises has been a subject matter of litigation, particularly in view of the Larger Bench's decision in the case of Vandana Global. Subsequently, the LB decision itself was set aside by the Chattisgarh High Court. The other High Courts and Tribunals have been consistently allowing the Cenvat Credit.*
> *...*
> *19. In view of the factual details discussed above, after applying the same with the cited case laws, we hold that the confirmed demand is not sustainable on merits. Hence, we set aside the same and allow the Appeal on merits."*
>
> [Emphasis supplied]

5.2. A similar issue was also examined by this Tribunal in the case of ***M/s. Rexon Strips Ltd. v. Commissioner of CGST & Central Excise, Bhubaneswar [2024 (2) TMI 1515 – CESTAT Kolkata]*** wherein it was held that CENVAT Credit is eligible on the goods used for constructing support structure / foundation of the capital goods. While arriving at the said decision, the Bench has relied on the judgement of the Hon'ble Madras High Court in the case of ***Thiru Arooran Sugars v. CESTAT Chennai [2017 (355) E.L.T. 373 (Mad.)]***. The relevant portion of the decision of the Tribunal reads as under: -

> *"8. We find that there is no dispute on the facts of the case. The appellants have taken credit on various inputs like MS angle, MS channel, MS beam, joist, HR plate, MS plates etc. They have claimed that these goods have been used either in the manufacture of the capital goods or have been used for providing structural support for the capital goods. The Adjudicating Authority at page 15 and 16*

has given a Table as to where these inputs have been used. The Superintendent has visited the factory and has seen the functioning of their capital goods.

…….

9. It can be seen from the Table that the items have been used in the conveyor system, iron ore silo, furnace gratings, induration furnace, furnace duct, product storage hopper etc. There is no dispute that these are all essential capital goods which are required for carrying out the manufacturing process. From paragraph 15 of the Order-in-Original, we find that the appellant has provided a certificate from the Chartered Engineer as to how the inputs have been utilized in fabrication of the capital goods or for making the structures for capital goods. Therefore, the usage of the goods in question is not in dispute……

….

10. The case in point would be the decision of the Madras High Court in the case of Thiru Arooran Sugars v CESTAT Chennai [2017 (355) ELT 373 (Mad.) cited supra. After going through the factual details and the statutory provisions, the Hon'ble High Court has held as under produced:

> *"44. In the facts of this case, <u>we have to conclude that MS structurals, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit</u>, as they fall within the scope and ambit of both Rule 2(a)(A) and 2(k) of the 2004 Rules."*

….

12. We find that the decision of in the case of Thiru Arooran Madras High Court is squarely applicable to the facts of the present case. Accordingly, following the ratio of this case law, we set aside the impugned order and allow the appeal filed by the appellant on merits."

5.3. We find that the ratio of the decisions cited supra are squarely applicable to the facts of the present case. Thus, by relying on the decisions cited supra, we hold that the assessee-appellant is eligible to avail CENVAT Credit on the items used for construction/fabrication of capital goods. Accordingly, we also hold that the assessee-appellant is eligible for the CENVAT Credit availed on foundation/ support structure of capital goods.

5.4. In view of the above, we set aside the disallowance of CENVAT Credit of Rs 1,81,38,155/-, along with interest, confirmed in the impugned order. As the availment of CENVAT Credit has not been found to be irregular, we hold that no penalty shall be imposable on the appellant-assessee. Hence, we set aside the penalty imposed.

6. Regarding the Revenue's Appeal No. 76798 of 2017 against the allowing of CENVAT Credit of Rs. 9,46,76,096/-, from a perusal of the impugned order, we find that the ld. adjudicating authority has allowed the above CENVAT Credit on the basis of reasoned findings which are summarized under paragraph 2.1 of this Order (supra). We fully agree with the findings of the ld. adjudicating authority in allowing the CENVAT Credit and consequently, we find the Revenue's Appeal to be devoid of any merit. Hence, we reject the Appeal filed by the Revenue.

7. In the result, we set aside the impugned order *qua* disallowance of CENVAT Credit to the extent of Rs.1,81,38,155/-, along with interest and penalty thereon, as confirmed in the impugned order. We also uphold the allowing of CENVAT Credit of Rs.9,46,76,096/- in the impugned order.

8. Thus, the appeal filed by the assessee is allowed, with consequential relief, if any, as per law, and the appeal filed by the Revenue is rejected.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd