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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.77868 of 2018

(Arising out of Order-in-Orginal No.65/CCE/CEX/RKL/2017-18 dated 29.03.2018 passed by Commissioner of CGST & Central Excise, Rourkela)

M/s Tata Steel Ltd.
(Joda East Iron Mines, PO-Joda,Dist.-Keonjhar, Odisha-758034)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Rourkela
(KK-42, Civil Township, Rourkela-769004)

Respondent

APPERANCE :
Shri Deepro Sen & Ms.Diya Mal, both Advocates for the Appellant
Ms.Suman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77929/2025

DATE OF HEARING : 10 DECEMBER 2025
DATE OF DECISION : 10 DECEMBER 2025

Per Ashok Jindal :

This is an appeal filed by the appellant against the impugned order wherein demand has been confirmed and penalty has also been imposed on the appellant.

2. The facts of the case are that the appellant is engaged in the manufacture of iron ore concentrates. The iron ore concentrate manufactured at the appellant's Joda East Iron Mines is stock transferred on payment of duty for use at the Jamshedpur Steel Plant of the Appellant for manufacture of steel. Such iron and steel items at the Jamshedpur Steel Plant of the Appellant are, thereafter, cleared on payment of appropriate duty of excise.

2.1 The Appellant had undertaken the expansion of their steel plant at Jamshedpur due to which an increased amount of raw material namely,

iron ore concentrate, was required by the steel plant. To meet such enhanced requirements of the Jamshedpur Steel Plant, the following projects were commissioned as part of the modernisation scheme at Joda East Iron Mines for increased production if iron ore concentrates: -

(i) Dry Circuit Material Handling Plant

(ii) Material Handling System

(iii) Rapid Loading Stations

(iv) Direct Entry Railway Siding

(v) Iron Ore Slime Dam

(vi) Rain Water Harvesting Project

During the process of such modernisation of the Joda East Iron Mine, the Appellant had received various input services from Financial Year 2009-10 onwards. The appellant availed credit on such input services, during the period from 01.04.2011 to 31.03.2014. Availment of such credit has been duly indicated by the appellant in their monthly ER-1 returns.

2.2 During the course of the EA-2000 audit and scrutiny of the appellant's ER-1 Returns, the Department issued letters, requesting the appellant to reverse the credit availed towards input services received in connection to the appellant's modernisation of factory.

2.3 Consequently, the enquiry culminated into issuance of Show Cause Notice dated 08.04.2016, issued by Ld. Commissioner (Audit), GST & Central Excise, Bhubaneswar.

2.4 The said notice proposed recovery of CENVAT Credit of Rs.4,64,18,240/-availed by the appellant during the period from 01.04.2011 to 31.03.2014 under Rule 14 of the CENVAT Credit Rules,

2004 read with Section 73 of the Finance Act, 1994 and Section 11A(5) of the Central Excise Act, 1944, along with imposition of interest under Section 11AA of the Central Excise Act, 1944 for contravention of Rule 2 and Rule 3 of the CENVAT Credit Rules, 2004. Further, equivalent penalty under Rule 15 of CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 and Section 11AC of the Central Excise Act, 1944 has been imposed.

2.5 The said Show-Cause Notice was issued on the ground that credit relating to 'setting up' of a factory, is not covered under the definition of input services under Rule 2(l) of the Centvat Credit Rules, 2004 with effect from 01.04.2011.

2.6 The Ld.Commissioner of Central Tax, GST & CX Commissionerate, Rourkela vide impugned order dated 29.03.2018 partially dropped the demand to the extent of Rs.1,38,93,673/- on the ground that the same pertained to input services availed for the period prior to April 2011. Further, the Ld.Commissioner also dropped the demand proposed to the extent of Rs.75,10,116/- which was wrongly duplicated in the calculation sheet to the underlying show-cause notice. However, the balance demand amounting to Rs.2,50,14,451/- has been confirmed vide impugned order dated 29.03.2018 along with interest and equivalent penalty on the basis that 'setting up' has been removed from the definition of 'input service' with effect from 01.04.2011.

2.7 Aggrieved by the said impugned order, the appellant is in appeal before us.

3. The ld.Counsel for the appellant submits that the input services used by the appellant in connection with modernization of their plant

qualify as eligible input services. He further submits that the impugned order has erroneously held that the appellant is not engaged in the modernisation of their factory. To meet the enhanced requirements of the Jamshedpur Steel Plant, a modernization of the Joda East Iron Mines for increased production of iron ore concentrates was undertaken with installation of new and improved machines.

3.1 He further submits such input services on which the disputed credit has been availed, were utilised in connection to such modernization undertaken at the appellant's unit at Joda East Iron Mines. There is no question of setting up a factory as the mines wherein the activity of mining takes place has remained unchanged since 1956. The modernization is of the following :

(i) Dry Circuit Material Handling Plant
(ii) Material Handling System
(iii) Rapid Loading Stations
(iv) Direct Entry Railway Siding
(v) Iron Ore Slime Dam
(vi) Rain Water Harvesting Project

3.2 It is his humble submission that during the underlying period, the definition of input services under Rule 2(l) of the Cenvat Credit Rules, 2004, is covered by inclusive clause of the modernization of the factory.

3.3 To support his contention, he relies on the following case laws :

(i) Adroit Pharmachem Private Limited Versus Commissioner of Central Excise & ST, Vadodara (2022 (1) TMI 59 - CESTAT AHMEDABAD) ;

(ii) Pepsico India Holdings Pvt. Ltd. v. CCT, Tirupati, 2021 (7) TMI 1094 - CESTAT HYDERABAD ;

(iii) M/s. Aditya Aluminium Versus Commissioner of Central Excise, Customs & S. Tax, Bhubaneswar (2023 (9) TMI 55 - CESTAT KOLKATA) ;

(iv) M/s.Jamshedpur Continuous Annealing & Processing Co. Pvt. Ltd. Versus Commr. of CGST & Central Excise, Jamshedpur (2025 (11) TMI 935 - CESTAT KOLKATA) ;

(v) M/s. Hindalco Industries Ltd. Versus Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar (2025 (6) TMI 588 - CESTAT KOLKATA) ;

(vi) M/s. Tata Steel Limited Versus Commissioner of CGST & CX, Bhubaneswar 2023 (8) TMI 1674 - CESTAT KOLKATA.

3.4 Finally, he submits that the cenvat credit on the input services has been correctly availed by the appellant. Accordingly, the impugned order of the ld.Commissioner is not sustainable and the same is required to be set aside.

4. The ld.A.R. for the Revenue reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the said issue has been decided by this Tribunal in the case of Hindalco Industries Ltd. (supra), wherein this Tribunal has observed as under :

> *"10. We find that the sole issue in this case is that whether the appellant is entitled to avail CENVAT Credit of input services used for setting up of its factory post 01.04.2011 when the term "input service" was amended to specifically exclude services in relation to setting up from its ambit? We find that the said issue has been examined by this Tribunal in the case of M/s. Aditya Aluminium vs. Commissioner of Central Excise, Customs & S.Tax,*

Bhubaneswar, 2023 (9) TMI 55-CESTAT, Kolkata wherein this Tribunal observed as under :

"6. We observe that the impugned order has denied the credit availed by the Appellant on the input services availed for 'setting up of a factory as the same has been specifically omitted from the 'includes' part of the definition vide Notification No. 03/2011 dated 01.03.2011, w.e.f. 01.04.2011. Thus it is necessary to look into the definition of input services', w.e.f. 01.04.2011. 7. The relevant portion of Rule 2(I) w.e.f 01.04.2011 is as under-"input service" means any service.-

> *(i)Used by a provider of output service) for providing an output service; or (ii) Used by a 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.*
>
> *(ii)And includes services used in relation to modernization, renovation or repairs of a factory, remises, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal.*
>
> *8.. We observe that the aforesaid definition has three limbs- (1) 'means clause' (2) 'includes clause' (3) excludes clause. It is seen that the credit in dispute, which was availed during the relevant period, were inter alia used for setting up of the plant. These input services are directly linked to the manufacture of the final product in as much as without availing the aforesaid services, the Appellantcould not have set up the factory for manufacture of the goods. Hence, the input services*

utilized for setting up of a factor are covered within the ambit of 'means clause' Le service "used by a manufacturer whether directly or indirectly in or in relation to the manufacture of the final products". Since the subject input services are covered in the 'main clause' of the definition of input service, unless it is specifically excluded under the excludes clause of the definition, the Appellant is entitled to CENVAT Credit on the subject input services used in setting up of the factory. This view has been held by the Tribunal in the case of Pepsico India Holdings Put. Ltd., Vs. CCT, Tirupati, 2021 (7) TMI 1094-CESTAT Hyderabad. The relevant part of the decision is extracted below:

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 Excise Appeal No. 76189 of 2018 5 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

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 requires: (a)

(b)....

(1)

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 201) 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 relabelling of containers including the declaration or alteration of retail sale price on Excise Appeal No. 76189 of 2018 6 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(1) (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 (1)

(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 Excise Appeal No. 76189 of 2018 7 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. In the case of M/s Bharat Coking Coal Ltd., Vs., CCE & ST, Ranchi 2021 (10) TMI 383, the Tribunal Kolkata, allowed CENVAT Credit of the service tax paid towards setting up of plant. The relevant portion of the decision is reproduced below:

"6. The issue before us is whether credit is available on Coal handing 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 service used by the appellant is for modernization of the coal loading process. The definition of input service specifically includes 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 of 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. The relevant portion of the decision is reproduced below.....

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

10. We observe that similar position has also been held in the following decisions:

**Jindal Steel and Power Ltd. Vs. Commissioner of Central Tax, Rourkela vide Final order No. 75613/2023 dated 08.06.2023.*

**Shell India Pvt. Ltd. Vs. Commissioner of Central Tax, Bangalore North 2021-VIL-820-CESTAT-BLR-ST maintained in 2023-VIL-01-KAR-ST *Reliance Corporate IT Park Ltd, Vs. Commissioner of Central Excise Thane-II 2023-VIL-136-CESTATMum-ST*

**Hindustan Zink Ltd., Vs. Commissioner of CGST, Excise & Customs, Udaipur 2021 (8) TMI 872- CESTAT New Delhi.*

**Kellogs India Pvt. Ltd., Vs. CCT, Tirupathi GST, 2020 (7) TMI 414 CESTAT Hyderabad*

**CCE, Kolkata Vs. Texmaco UGL Rail, 2019 (7) TMI 1651-CESTAT Kolkata*

Hindalco Industries Ltd., Vs. CGST, Jabalpur, 2019 TMI 1620-CESTAT New Delhi.

Linde India Pvt. Ltd., Vs. Commissioner of CGST & CX, Rourkela 2023 (5) TMI 718-CESTAT, Kolkata.

**Bharat Coking Coal Ltd., Vs. CCE & ST, Ranchi 2023 (6) TMI 297-CESTAT-Kolkata.*

11. Following the decisions cited above, we observe that the subject input services have a direct nexus with the manufacture of finished goods in the 'means' clause of the definition of input services. Accordingly we hold that even if the word 'setting up of a factory has been specifically excluded from the definition.e.f. 01.04.2011, such services are covered within the ambit of main clause of the definition. Hence, it would still qualify as an input service as per Rule 1(1) of CCR, 2004. In the light of the above discussions, we allow the Cenvat credit availed by the Appellant on the input services used in setting up of the factory Consequently, the impugned order confirming the demand along with interest and imposing penalty is set aside." M/s. Brahmani River Pellets Limited vs. Commissioner of CGST & CX, Rourkela Commissionerate, 2023 (10) TMI 287 Kolkata, CESTAT M/s Jindal Steel & Power Ltd., vs. Commissioner of Central Tax, Rourkela, 2023 (7) TMI 712-CESTAT Kolkata, and M/s. Tata Steel Limited vs. Commissioner of CGST & CX, Bhubaneswar, 2023-VIL-861-CESTAT-KOL-CE"

11. As issue has already been settled that the input services have direct nexus with the manufacturing goods in the „means" clause of definition of input services. Therefore, we hold that post 01.04.2011 also the services in question was covered within the ambit of main clause of the definition. Hence appellant do qualify to avail Cenvat Credit of input services used for setting up of its factory plant post 01.04.2011. In view of this we do not find any merit in the impugned order. Therefore impugned order is set aside.

12. Appeal is allowed with consequential relief, if any."

7. We hold that the appellant is entitled to take the cenvat credit on the items in dispute, which has been used by them for setting of its factory post on 01.04.2011.

8. In these terms, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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