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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76627 of 2016

(Arising out of Order-in-Original No.01-03/COMMR/DGP/DGP-II/16-17 dated 31.05.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Durgapur)

M/s Steel Authority of India Limited, **: Appellant**
Durgapur Steel Plant, Durgapur-713203, West Bengal

VERSUS

Commissioner of Customs, Central Excise & Service Tax, **: Respondent**
Durgapur Commissionerate, Durgapur-713216.

<u>APPEARANCE</u>:

Shri Abhijit Biswas, Advocate for the Appellant

Shri P.Das, Authorized Representative for the Respondent

<u>CORAM</u>:

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

FINAL ORDER NO. 75389/ 2026

DATE OF HEARING :09.03.2026

DATE OF DECISION:09.03.2026

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order.

2. The facts of the case are as under:

2.1. The appellant is a Government of India Undertaking having integrated steel plants at different places in the country. One such steel plant of the appellant, Durgapur Steel Plant ("**DSP**", in short) is situated in Durgapur in the district of Burdwan in the State of West Bengal. The present appeal relates to the said Durgapur Steel Plant of the appellant.

2.2. DSP manufactures various iron & steel and other byproducts falling under various Chapter Headings of the First Schedule to the Central Excise Tariff Act, 1985, including Chapters 72, 73, 84, 86, 27, 28 and 29. DSP is duly registered under the provisions of the Central Excise Act, 1944 (hereinafter referred to as "**the Act**") for carrying out manufacturing activity in the said steel plant.

2.3. During the modernization and expansion programme of DSP, Mecon Limited, a Government of India Undertaking (hereinafter referred to as "**Mecon**"), provided consultancy services to DSP on which service tax was payable and paid in accordance with the provisions of the Finance Act, 1994. On the strength of the bills raised by Mecon, DSP availed cenvat credit of the amount paid as service tax as reflected in the respective bills raised by Mecon in accordance with the provisions of the Cenvat Credit Rules, 2004 (hereinafter referred to as the "**Cenvat Credit Rules**"). The credit was availed by DSP as tax paid on input service as defined in Rule 2(l) of the said Rules.

2.5. On December 15, 2010, March 16, 2011 and February 14, 2012 three (3) show cause notices were issued by the Commissioner of Central Excise & Service Tax, Bolpur, in all of which it was alleged that DSP had contravened the provisions of Rules 3 and 4 read with Rule 9(6) of the Cenvat Credit Rules, in as much as it had allegedly irregularly availed and utilised cenvat credit to the tune of Rs. 4,03,17,412/- of tax paid on consultancy services provided by Mecon in relation to preparation of feasibility reports on various projects such as New

Medium Structural Mill, installation of new slag yard for SMS, modernization of billet caster and reconstruction of blast furnace during 2006-07 and in relation to ongoing project of expansion plan of DSP during the period 2007-08, 2008-09 and 2009-10 and from April 2010 to December 2011. The show cause notices, on the said premises, called upon DSP to show cause as to why the respective cenvat credit amounts alleged therein should not be disallowed and recovered from DSP under Rule 14 of the said Rules read with the Proviso to Section 11A(1) of the Act, along with appropriate interest under the provisions of Rule 14 of the Cenvat Credit Rules read with Section 11AB of the Act and as to why penalty should not be imposed upon DSP in proceedings under each of the three show cause notices as per provisions of Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Act.

2.6. The relevant details in all the three show cause notices are as under:

Sl. No.	SCN No. & Date	Period	Service Tax (In Rs.)	Edu. Cess (In Rs.)	S&HE Cess (In Rs.)	Total (In Rs.)
1	64/Commr/ Bol/ 10, dated 15.12.2010	2006-07, 2007-08, 2008-09 & 2009-10	2,85,32,096/-	5,70,644/-	2,50,308/-	2,93,53,048/-
2	37/ADC/Bol/ 11, dated 16.03.2011	April 2010 to January 2011	22,12,882/-	4,42,560/-	22,128/-	22,79,266/-

3	05/Commr/ Bol/ 12, dated 14.02.2012	February 2011 to December 2011	84,32,134/-	1,68,643/-	84,321/-	86,85,098/-

Total:

4,03,17,412/-

2.7. By a letter dated May 9, 2016 DSP submitted a common reply to the said show cause notices, denying the misconceived allegations contained therein and drawing the attention of the Commissioner of Customs, Central Excise & Service Tax, Durgapur Commissionerate, Durgapur (hereinafter referred to as "**the Commissioner**") to the correct facts and law on the issue involved which clearly established that cenvat credit availed by DSP in the instant case was legal, valid and proper.

2.8. Thereafter a personal hearing held by the Commissioner jointly in connection with proceedings under the said show cause notices on May 9, 2016 at which the appellants representative duly appeared and made further submissions in support of its contentions as contained in the reply to the said show cause notices. An order in original dated May 31, 2016 passed by the Commissioner (hereinafter referred to as the "**said order**") whereby the Commissioner, while dropping the demand of Rs.3,16,32,314/- (out of the total demands of Rs.4,03,17,412/-), purported to confirm the balance demand of Rs.86,85,098/- availed during April 2011 along with interest thereon and imposed a penalty of Rs.15,00,000/- upon DSP.

2.9. Being aggrieved by the said order, to the extent the same has confirmed demand of Rs.86,85,098/-, along with interest and has imposed penalty upon DSP, the appellant is preferring the instant appeal.

3. The Ld. Counsel for the appellant submitted that appellant is entitled to avail Cenvat Credit on input services used for setting up plant and factory after 01.04.2011. The said issue is settled in the case of Brahmani River Pellets Limited Versus Commissioner of CGST & CX, Rourkela Commissionerate, 2023 (10) TMI 287. He also relied on the following decisions:

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

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

iii. 2025 (12) TMI 1192 - CESTAT KOLKATA M/s Tata Steel Ltd. Versus Commissioner of CGST & Central Excise, Rourkela

iv. 2026 (2) TMI 5 - CESTAT KOLKATA M/s Jindal Steel & Power Ltd. Versus Commissioner of CGST & CX, Ranchi

v. 2021 (10) TMI 383 - CESTAT KOLKATA M/s Bharat Coking Coal Ltd. Versus Commr. of Central Excise & S. Tax, Ranchi

vi. 2021 (7) TMI 1094 - CESTAT HYDERABAD PEPSICO INDIA HOLDINGS (PVT.) LTD. Versus Commissioner of Central Tax, Tirupati

vii. 2021 (11) TMI 1127 - CESTAT BANGALORE M/s. Shell India Pvt Ltd. Versus Commissioner of Central Tax, Bangalore North

viii. 2023 (1) TMI 147 - KARNATAKA HIGH COURT Principal Commissioner of Central Tax Bangalore Versus Shell India Pvt. Ltd

ix. 2024 (2) TMI 1597 - KARNATAKA HIGH COURT PRINCIPAL COMMISSIONER OF CENTRAL TAX BANGALORE Versus SHELL INDIA PVT. LTD.

x. 2025 (1) TMI 1618 - SC Order (LB) PRINCIPAL COMMISSIONER OF CENTRAL TAX Versus SHELL INDIA PVT. LTD

4. On the other hand Ld. Authorized Representative reiterated the findings of the impugned order.

5. Heard the parties. Considered the submissions.

6. We find that the short issue involved in this matter is that whether the appellant is entitled to avail Cenvat Credit on input services used to setting up a plant and factory after 01.04.2011 or not. The said issue had been decided by this Tribunal in the case of M/s Brahmani River Pallets Private Limited (Supra) wherein this Tribunal relied on the decision of Aditya Aluminium v. Commissioner of Central Excise, Customs &Service Tax, Bhubaneswar [2023 (9) TMI 55 –CESTAT KOLKATA] and Jindal Steel and Power Ltd. v. Commissioner of Central Tax, Rourkela [2023 (7) TMI 712-CESTAT KOLKATA] wherein this Tribunal observed as under:

" 7. The said issue has been dealt by this Tribunal in the case of Aditya Aluminium (supra), wherein this Tribunal has 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 Excise Appeal No. 76293 of 2017 4 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(l) 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. And includes services used in relation to 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, 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 Appellant could 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 re 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 Pvt. 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 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 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 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 (ie., 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."*

7. As the issue has already been settled in various decisions decided by this Tribunal as discussed herein above we hold that issue is no more res integra. Therefore, we hold that appellant is entitled to avail Cenvat Credit on input services used for setting up of a plant and factory after 01.04.2011 also. Therefore, no demand is sustainable against the appellant .

8. In view of this we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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