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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77212 of 2019

(Arising out of Order-in-Original No. 07/Commr./2019 dated 12.09.2013 passed by the Commissioner of CGST & CX, Jamshedpur Outer Circle Road, Bistupur, Jamshedpur-831001)

M/s. Ramkrishna Forgings Ltd., Planct V, **: Appellant**
Baliguma, Kolabira, Saraikela
Jharkhand-833220

VERSUS

The Commissioner of CGST & CX, Jamshedpur Commissionerate **: Respondent**
Outer Circle Road, Bistupur, Jamshedpur-831001

APPEARANCE:

Shri Rahul Tangri, Advocate,
Smt. Sreeja Chakraborty, Advocate, for the Appellant

Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75885/ 2026

DATE OF HEARING: 15.07.2026
DATE OF PRONOUNCEMENT: 17.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Ramkrishna Forging Limited (hereinafter referred to as the "Appellant") is *inter alia* engaged in the manufacture of parts of Railway or Tramway locomotives or Rolling Stock and other parts of Tramway Locomotives and Running Stock, parts and accessories of vehicles other than railways and tramways and other articles of iron and steel. The Appellant was registered with the Central Excise

Department bearing registration number AABCR3285NEM006.

1.1. The Appellant was in the process of setting up Plant V at Baliguma, Saraikela, and, for the said purpose, procured various inputs, capital goods and input services from FY 2012-13 onwards. Being duly eligible, the Appellant, inter alia, availed Cenvat credit in respect of input services used for setting up of the said plant from January 2013. However, no Cenvat credit of works contract services related to construction of building or civil structure was availed by it. The Appellant thereafter commenced commercial production at the factory on 21.07.2014 and continued to avail credit of tax paid on input services directly related to the manufacture of final dutiable goods.

1.2. An audit was conducted on the premises of the Appellant on 18.07.2015, 20.07.2015 and 29.07.2015 for the period November 2012 to March 2015. During audit, the Department observed that the Appellant had availed Cenvat credit on services which were procured towards setting up of the factory. It was alleged that such services do not fall within the definition of 'input services' under Rule 2(l) of the Rules and consequently, the credit had been wrongly availed by them. Two audit memos were issued to the Appellant for the period January 2013 to March 2015, alleging that they had irregularly availed and utilised Cenvat credit of input services that they had procured for setting up of their factory. Consequently, the Appellant was directed to reverse such credit. Subsequently, audit was conducted by the Department during September 2016 for the period April 2015 to March 2016, wherein the Appellant was issued audit memo dated

19.09.2016 with similar observations regarding irregular availment.

1.3. The Appellant replied to the audit memo arguing that the scope of 'input service' under Rule 2(1) of the Rules was wide enough to include all those services which have a direct or indirect nexus with the manufacture of final products. Such services cannot be barred from availment of credit unless they are expressly excluded from the definition of 'input services'.

1.4. Pursuant to the audit, Show Cause Notice bearing C. No. IV(9)05/Adjn/DSCN/JSR/Ramkrishna/Commr./Rnc(H)Audit/2017/2535 dated 04.01.2018 was issued by the Commissioner, CGST & Central Excise, Audit Commissionerate, Ranchi, proposing to deny Cenvat credit amounting to Rs. 6,72,72,667/- comprising input service tax credit of Rs. 6,61,73,049/-, Education Cess of Rs. 7,33,080/-, and Secondary and Higher Education Cess of Rs. 3,66,538/- for the period January 2013 to March 2016, on the basis of the allegation that post the deletion of the term 'setting up' from the inclusive portion of the definition of input services w.e.f. 01.04.2011, no credit of any service used for setting up of factory would be available to the assessees. The Appellant submitted a detailed reply dated 31.03.2018 in response to the underlying SCN, denying and disputing the allegations contained therein. The Appellant further contended that during the period FY. 2012-13 to FY 2015-16 they had availed credit of Rs. 6,65,65,200/- however, the underlying SCN proposed to deny Cenvat Credit to the tune of Rs.6,72,73,179/-. Therefore, the underlying SCN has proposed to deny excess credit of Rs. 7,07,467/-.

Further, the Appellant also iterated that they had reversed Cenvat credit availed on receipt of rent-a-cab services amounting to Rs. 2,67,683/-.

1.5. On adjudication, the Ld. Commissioner CGST & Cx. Jamshedpur proceeded to pass the Order in Original No. 07/Commr./2019 dated 15.07.2019 confirming the demand of disallowance of Cenvat credit amounting to Rs. 6,65,65,200/- availed on input services received by the Appellant. However, demand to the tune of Rs. 7,07,979/- being in excess was dropped. The impugned demand was confirmed on the basis of the following finding:

i. When the single one phrase "setting up" has been deleted, the intent of the law maker is very much clear to not allow the availment of input service pertaining to setting up. Therefore, what has been consciously deleted by the legislature deemed to have been disallowed from the effective date.

ii. There is no legal foundation of the Appellant's contention that only services of actual construction are excluded from the definition of input services and other services received in relation to construction such as 'manpower service' and 'commissioning and installation agency services' shall not stand excluded.

iii. In so far as the services received pursuant to commercial production, the Ld. Commissioner observed that the Appellant has been unable to prove without reasonable doubt that the services were received by them in relation to manufacture and not in relation to 'setting up' of their factory.

iv. That setting up of a factory is a long process which may continue after commencement of manufacture also and the Appellant had no evidence to the effect that the activity of setting up was not in operation after the commencement of manufacturing process.

1.6. Being aggrieved by the impugned order, the Appellant filed this present appeal.

2. The Appellant submits that the issue involved is no longer *res integra* as an identical question in respect of eligibility of CENVAT credit of the service tax paid towards setting up of plant came up for consideration before this Tribunal in the case of ***Pepsico India Holdings Pvt. Ltd. v. CCT, Tirupati, 2021 (7) TMI 1094 - CESTAT HYDERABAD,*** wherein the Tribunal has held that the said appellant was eligibile to avail the CENVAT credit of the service tax paid towards setting up of plant, even after the amendment brought in Rule 2(l) of the Cenvat Credit Rules w.e.f. 01.04.2011.

2.1. Further reliance is also placed on the following decisions wherein Cenvat credit on construction / works contract service, for setting up of factory, was held to be admissible post 01.04.2011–

i. Commissioner, CGST & CX, Bolpur Commissionerate Versus M/s. SAIL – Durgapur Steel Plant - 2026 (4) TMI 1656 - CESTAT KOLKATA

ii. M/s. Jamshedpur Continuous Annealing & Processing Co. Pvt. Ltd. Versus Commr. of CGST & Central

Excise, Jamshedpur- 2025 (11) TMI 935 - CESTAT KOLKATA

iii. **Principal Commissioner of Central Tax, Bangalore North v. Shell India Pvt. Ltd. – 2023-VIL-01-KAR-ST** affirmed by the Hon'ble Supreme Court in **2025-VIL-06-SC-ST**.

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

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

2.2. The Appellant submits that since the subject input services have a direct nexus with the manufacture of final goods, therefore, such services are covered in the ambit of 'means' clause of the definition of input service and therefore, even if the word 'setting up' is specifically excluded w.e.f. 01.04.2011 from the 'includes clause' of the definition, it would still qualify as an input service as per Rule 2(l) of CCR, 2004. Accordingly, the Appellant prayed for allowing the Cenvat credit availed by them towards 'setting up' of the plant and set aside the demands confirmed in the impugned order.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We find that the Appellant had availed Cenvat credit on services which were procured towards 'setting up' of the factory. It was alleged that such

services do not fall within the definition of 'input services' under Rule 2(l) of the Rules after the word 'setting up' has been specifically excluded from the definition of 'input services' w.e.f. 01.04.2011. Accordingly, it is alleged that the Appellant has wrongly availed the cenvat credit.

5.1. Thus, it is relevant to examine the definition of 'input service' as defined under Rule 2(l) w.e.f. 01.04.2011, which is reproduced 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;*

5.2. We find that the aforesaid definition has three limbs- **(1)** 'means clause' **(2)** 'includes clause' **(3)** 'excludes clause'. We find that 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 inasmuch without availing the aforesaid services, the Appellant could not have set up the factory for manufacture of the goods. Hence, we are of the considered view that the input services utilised for setting up of a factory are covered within the ambit of means clause i.e. 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, we hold that the Appellant is entitled to CENVAT credit on the subject input services used in setting up of the factory. We further find that none of the exclusionary clauses cover the services on which the Cenvat credit has been availed by the appellant. We find that the appellant has availed the Cenvat credit on the following services, which evidently are required for erection, commissioning, installation or fabrication of plant and machinery, technical consultancy, manpower recruitment, IT services, air travel agent's services, management, maintenance or repair services, inward transportation of inputs and capital goods, security agency services, clearing and forwarding agent services, Business Auxiliary services etc. On a bare look at these services, it is clearly evident that these are not at all in relation to construction of any building or civil structure, but are clearly covered under the means portion or the inclusive portion of the definition of input services. Accordingly, we hold that the Cenvat credit availed by the Appellant for 'setting up' of the plant cannot be denied.

5.3. We find that the issue involved in the present case is no longer res-integra, as an identical question in respect of eligibility of CENVAT credit of the service tax paid towards setting up of plant came up for consideration before this Hon'ble Tribunal in the case of ***Pepsico India Holdings Pvt. Ltd. v. CCT, Tirupati, 2021 (7) TMI 1094 - CESTAT HYDERABAD,*** wherein it has been observed that '*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. Services used in setting up the factory are, therefore, unambiguously covered as 'input services' under Rule 2 (l) (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'.*

5.4. The same view has been taken in the case of ***M/s Steel Authority of India Limited Versus Commissioner of CGST & Central Excise, Durgapur -2026 (3) TMI 741 - CESTAT KOLKATA,*** wherein this Tribunal has held that Rule 2(l) (post 01.04.2011) must be read with its main 'means' clause which covers any service "used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products". Services used in setting up a factory are activities "in relation to" manufacture and, being covered by the main clause and not specifically excluded by the "excludes" part, qualify as input service for cenvat credit.

5.5. We find that the same view has been taken in the following decisions wherein Cenvat credit on construction / works contract service, for setting up of factory, was held to be admissible post 01.04.2011–

(i)Commissioner, CGST & CX, Bolpur Commissionerate Versus M/s. SAIL – Durgapur Steel Plant - 2026 (4) TMI 1656 - CESTAT KOLKATA

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

(iii)Principal Commissioner of Central Tax, Bangalore North v. Shell India Pvt. Ltd. – 2023-VIL-01-KAR-ST *affirmed by the Hon'ble Supreme Court in* ***2025-VIL-06-SC-ST****.*

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

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

5.6. Since the subject input services have a direct nexus with the manufacture of final goods, we hold that such services are covered within the ambit of 'means' clause of the definition of input service and therefore, even if the word 'setting up' is specifically excluded w.e.f. 01.04.2011 from the 'includes clause' of the definition, it would still qualify as an input service as per Rule 2(l) of CCR, 2004. Accordingly, we hold that the Appellant is eligible for the Cenvat credit availed by them towards 'setting up' of the plant and hence we set aside the demands confirmed in the impugned order, along with interest and penalty.

6. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 17.07.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP