CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41094 of 2018

(Arising out of Order-in-Appeal No. 506/2017 (CXA-II) dated 29.12.2017 passed by Commissioner of GST and Central Excise (Appeals-II), Newry Towers, 2054-I, II Avenue, 12th Main Road, Anna Naqgar, Chennai – 600 040)

M/s. Komatsu India (P) Ltd. **...Appellant**
Plot No. A-1, SIPCOT Industrial,
Oragadam, Thenneri (via),
Kanchipuram – 631 604.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 2054-I,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:
For the Appellant : Ms. Sridevi, Advocate
For the Respondent : Ms. G. Krupa, Authorized Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40446 / 2026

DATE OF HEARING : 07.10.2025
DATE OF DECISION : 30.03.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is filed by M/s. Komatsu India Private Limited against Order-in-Appeal No. 506/2017 dated 29.12.2017 passed by the Commissioner of GST & Central Excise (Appeals), Chennai, whereby the lower appellate authority upheld denial of CENVAT credit amounting to ₹84,08,342/- availed on erection, commissioning and

installation services, consulting engineering services and manpower supply services, used in connection with expansion of manufacturing facilities for production of hydraulic excavators during the period October 2014 to June 2015, along with imposition of penalty, while setting aside the demand of interest.

1.2 The facts briefly stated are that the Appellant is engaged in the manufacture of Dump Trucks and is duly registered with the Central Excise Department. With a view to expanding its manufacturing operations, the Appellant set up an additional facility adjacent to its existing plant for manufacture of Hydraulic Excavators. During the period October 2014 to June 2015, the Appellant availed CENVAT credit of Service Tax amounting to ₹84,08,342/- on the aforesaid input services utilised for installation and commissioning of plant and machinery in the expanded facility. A Show Cause Notice dated 02.11.2016 was issued proposing denial and recovery of the credit under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, along with interest and penalty. The demand was confirmed by Order-in-Original dated 18.05.2017, appropriating the amount already reversed under protest and imposing a penalty of ₹5,00,000/-, which

was upheld by the Commissioner (Appeals) *vide* the impugned order, leading to the present appeal.

2. The Ld. Advocate Ms. Sridevi, appeared on behalf of the Appellant and the Ld. Authorized Representative Ms. Krupa, appeared for the Revenue.

3. The Learned Advocate for the Appellant submitted that: -

3.1 The impugned services were used directly and integrally in relation to the manufacture of final products, namely Hydraulic Excavators, and squarely fall within the main limb of the definition of "input service" under Rule 2(l) of the CENVAT Credit Rules, 2004 as it stood during the disputed period.

3.2 It was contended that although the phrase "setting up of a factory" was removed from the inclusive portion of the definition w.e.f. 01.04.2011, the main part of the definition remained unchanged and continues to cover all services used directly or indirectly in or in relation to manufacture of final products, except those specifically excluded.

3.3 The Appellant submitted that the services in dispute do not fall within the exclusion clause, which is limited to construction services, civil structures, foundation work, or works contract services, and that erection and commissioning of machinery is distinct from civil construction.

3.4 Reliance was placed on a catena of judicial pronouncements to contend that the word "includes" enlarges the scope of the definition and omission from the inclusive part cannot curtail the ambit of the main definition.

3.5 On limitation, it was submitted that for the disputed period, the normal period under Section 11A was one year, and the Show Cause Notice issued on 02.11.2016 is barred by limitation, there being no invocation or justification of the extended period.

4.1 *Per contra*, the Authorized Representative reiterated the findings of the lower authorities and submitted that the services were availed prior to commencement of commercial production in the new plant and were used for setting up of the manufacturing facility, which stands excluded from the definition of "input service" post 01.04.2011.

4.2 It was contended that erection, commissioning, consulting engineering and manpower supply services are inseparable from civil construction and foundation work, and therefore fall within the exclusion clause.

5. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, and the case Laws cited.

6. Upon consideration, the following issues arise for determination: -

i. Whether CENVAT credit on erection, commissioning, installation and allied services used for expansion of an existing manufacturing facility is admissible post-01.04.2011, notwithstanding deletion of the phrase 'setting up of a factory' from Rule 2(l) of the CENVAT Credit Rules, 2004?
ii. Whether the demand is barred by limitation; and,
iii. Whether penalty under Rule 15(1) is sustainable.

We proceed to examine them seriatim.

QUESTION No. (i) Whether CENVAT credit on erection, commissioning, installation and allied services used for expansion of an existing manufacturing facility is

admissible post-01.04.2011, notwithstanding deletion of the phrase 'setting up of a factory' from Rule 2(l) of the CENVAT Credit Rules, 2004?

8. We observe that the primary ground for denial of CENVAT credit by the lower authorities is that the expression "setting up of a factory" was deleted from the inclusive portion of Rule 2(l) of the CENVAT Credit Rules, 2004 with effect from 01.04.2011, and therefore credit on services used for expansion of the manufacturing facility is not admissible.

9. We note that the Appellant has specifically contended that the factory was already in existence and engaged in manufacture of dutiable final products and that the disputed services were used only for expansion of the existing manufacturing facility for production of hydraulic excavators. It was submitted that such expansion cannot be equated with "setting up of a factory," and in any event, deletion of the phrase from the inclusive portion does not curtail the width of the main limb of the definition which continues to cover services used directly or indirectly, in or in relation to manufacture of final products. Expansion of capacity in an already functioning factory cannot, in law, be equated with setting up of a new factory.

10. We observe that the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in *Ramala Sahkari Chini Mills Ltd. v. CCE – 2016 (334) ELT 3 (SC)* to contend that the word "includes" in a definition clause enlarges the scope of the main part and does not restrict it. We note that in the said decision, the Hon'ble Supreme Court examined the scope of inclusive definitions and held that the expression "includes" is generally used to enlarge the meaning of words or phrases occurring in the body of the statute. The Appellant argues that therefore omission of the phrase "setting up of a factory" from the inclusive portion cannot be construed as legislative intent to curtail the amplitude of the substantive part of Rule 2(l).

11. We further observe that the Appellant has relied upon a series of Tribunal decisions rendered in the post-01.04.2011 regime, including *Pepsico India Holdings Pvt. Ltd. – 2022 (56) GSTL 22 (Tri.-Hyd.), Supreme Industries Ltd. – 2020 (373) ELT 97 (Tri.-Ahmd.), Gujarat Chemical Port Ltd. – (2023) 5 Centax 190 (Tri.-Ahmd.), Kelloggs India Pvt. Ltd. – 2020 (7) TMI 414 (CESTAT Hyd.), Piramal Glass Ltd. – 2019 (10) TMI 1032 (CESTAT Ahmd.), Shiruguppi Sugar Works Ltd. – 2019 (3) TMI 667 (CESTAT Bangalore) and Hindalco Industries Ltd. – 2019 (5) TMI 1620 (CESTAT New Delhi).* We note that in these decisions it has

consistently been held that services used for installation, modernization, enhancement of capacity and expansion of an existing manufacturing facility continue to qualify as input services under the main limb of Rule 2(l), provided they are not covered by the specific exclusions introduced with effect from 01.04.2011. The Tribunal in the above cases has also reiterated that exclusion clauses must be strictly construed and services not expressly falling within the exclusion cannot be denied by implication.

12. We note from the cumulative ratio of the above decisions relied upon by the Appellant that the consistent judicial view post-01.04.2011 is that the main limb of Rule 2(l) retains wide amplitude; deletion of the expression "setting up" from the inclusive portion does not automatically render expansion-related services ineligible; and services integrally connected with manufacture, which do not fall within the specific exclusion clause relating to construction of building or civil structure or laying of foundation for support of capital goods, remain eligible for credit.

13. We further observe that in the present case the services in dispute are erection, commissioning and installation services, consulting engineering services and manpower supply services used for installation and

operationalisation of plant and machinery in the expanded facility. The show cause notice does not establish that these services are for construction of building or civil structure or laying of foundation for support of capital goods so as to attract the exclusion clause.

14. We therefore find that the Appellant's reliance on the above judicial precedents supports the proposition that services used for expansion of an existing manufacturing facility, which bear direct nexus with manufacture and are not specifically excluded, continue to qualify as "input service" under Rule 2(l) even in the post-01.04.2011 regime. Accordingly, we hold that denial of CENVAT credit solely on the basis of deletion of the phrase "setting up of a factory" from the inclusive portion of Rule 2(l) is not legally sustainable in the facts of the present case. The CENVAT credit is therefore admissible on merits to the appellant.

Question No (ii) Limitation

15. We find that the period of dispute involved in the present case is October 2014 to June 2015 and the show cause notice was issued on 02.11.2016. The Appellant contends that the demand is barred by limitation under the normal period prescribed under Section 11A(1) as it stood during the relevant period, whereas the Department has

taken the stand that the notice is within time. We note that during the relevant period, i.e., prior to 14.05.2016, the normal limitation prescribed under Section 11A(1) was one year from the relevant date. We find that the Show Cause Notice does not invoke the extended period nor allege suppression, fraud or wilful misstatement with intent to evade duty. We further note that the amendment extending the limitation to two years came into force only with effect from 14.05.2016 and is prospective in nature, and therefore cannot revive a demand that was already time-barred.

16. We observe that the credit was availed on the basis of proper invoices, duly recorded in the statutory CENVAT registers and reflected in the ER-1 returns periodically filed with the Department. We further note that the impugned order has proceeded on the footing that the due date for filing of ST-3 returns should be treated as the relevant date for computation of limitation. We find that such an approach is not supported by the statutory scheme. In cases of alleged wrongful availment of CENVAT credit, limitation is required to be computed from the date of availment of credit, which constitutes the relevant date for the purpose of Rule 14 of the CENVAT Credit Rules read with Section 11A of the Central Excise Act, 1944. There is no statutory provision which contemplates adoption of the due

date for filing ST-3 returns as the starting point for reckoning limitation. The reasoning adopted in the impugned order on this aspect is therefore legally unsustainable.

17. We observe that the dispute is purely interpretational relating to scope of Rule 2(l). The Hon'ble Supreme Court in *Cosmic Dye Chemical v. CCE – 1995 (75) ELT 721 (SC)* held that suppression must be wilful and with intent to evade duty. Similarly, in *Padmini Products v. CCE – 1989 (43) ELT 195 (SC),* it was held that mere wrong interpretation of law does not amount to suppression of facts and extended period cannot be invoked in cases involving *bona fide* interpretational disputes.

18. We therefore hold that the demand issued beyond one year from the date of availment is barred by limitation.

19. We observe that since the demand fails both on merits and limitation, the very foundation for penalty under Rule 15(1) read with Section 11AC of the Central Excise Act, 1944 does not survive. We therefore hold that there is no requirement to independently examine the issue of penalty. Consequently, the demand of interest under Section 11AA and imposition of penalty would also not survive.

20. In view of the detailed findings recorded hereinabove, we hold that CENVAT credit amounting to ₹84,08,342/- availed by the Appellant on erection, commissioning and installation services, consulting engineering services and manpower supply services used for expansion of its manufacturing facility during October 2014 to June 2015 is admissible under Rule 2(l) read with Rule 3 of the CENVAT Credit Rules, 2004. We further hold that the demand is barred by limitation under Section 11A and consequently penalty is unsustainable. As such, the impugned Order-in-Appeal No. 506/2017 dated 29.12.2017 is set aside. Ordered accordingly.

21. The appeal filed by M/s. Komatsu India Private Limited is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 30.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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