

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
AHMEDABAD**

**REGIONAL BENCH, COURT NO. 2**

**Service Tax APPEAL NO. 10149 OF 2022**

[Arising out of OIA No. CCESA-SRT-APPEAL-PV-061-2021-22 dated 12.01.2022 passed by Commissioner of CGST & Central Excise Appeals commissionerate, Surat]

**SHREE SAYAN VIBHAG SAHAKARI KHAND  
UDYOG MANDALI LTD**

Sayan, Surat, Gujarat-394130

.....Appellant

Vs.

**COMMISSIONER OF CGST & CENTRAL EXCISE  
CGST & CENTRAL EXCISE -SURAT**

CGST and Excise Commissionerate Surat,  
Central Excise Building Chowk Bazar, Surat, Gujarat-395001

.....Respondent

**Appearance:**

Ms. Ankita S Shah, Advocate for the Appellant

Smt. Sunita Menon, Superintendent (AR) for the Respondent

**CORAM:**

**HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER ( JUDICIAL )**

**FINAL ORDER NO. 10328/2026**

Date of Hearing :07.04.2026

Date of Decision :04.05.2026

**Dr. AJAYA KRISHNA VISHVESHA**

This appeal has been preferred by the appellant feeling aggrieved from the impugned order dated 12<sup>th</sup> January, 2022 passed by the Learned Commissioner (Appeals), CGST and Central Excise, Commissionerate, Surat through which the Learned Commissioner (Appeals) rejected the appeal filed

by the appellant against the Order-In-Original dated 10<sup>th</sup> June, 2021 passed by Joint Commissioner CGST & Central Excise-Surat.

1.1 The facts of the case in brief are that the appellant was engaged in the manufacture of excisable goods falling under Chapter Heading No. 17 and 22 of the First Schedule to the Central Excise Tariff Act, 1985 and they were also availing Cenvat Credit facility as per the provisions of Cenvat Credit Rules, 2004. During the course of audit and scrutiny of financial records for the period from February, 2013 to March, 2015, it was noticed that the appellant had taken Cenvat Credit of service tax paid on Civil Construction Services and Works Contract Services totally to the tune of Rs. 16,67,562/- (Rs.7,71,957/- on Civil Construction and Rs. 8,95,605/- on Works Contract for Civil Construction) as input services. Later on, the appellant reversed the Cenvat Credit of Rs. 7,71,957/- but did not agree to reverse the Cenvat Credit taken on Works Contract Services meant for Lagoon Yard (effluent treatment for water). The department was of the view that the assessee had availed service tax credit in respect of services used for Civil Construction and Works Contract i.e. Construction of Bio-Compost Yard and Storage lagoons in their factory premises but these services are not admissible as input services in terms of Rule 2(1) of Cenvat Credit Rules, 2004. Therefore, a show cause notice dated 17.08.2015 was issued to the appellant for disallowing the Cenvat Credit of Rs. 16,67,562/- and demanding the same along with interest and penalty.

1.2 The said show cause notice was adjudicated by the adjudicating authority vide Order-In-Original dated 22.03.2016, through which the total demand of Rs. 16,67,562/- was confirmed along with interest and penalty. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), CGST & Central Excise, Commissionerate, Surat, who vide Order-In-Appeal dated 20.12.2017 rejected the appeal of the appellant and upheld the Order-In-Original dated 22.03.2016. The appellant preferred appeal

against the said OIA dated 20.12.2017 before the Hon'ble CESTAT, Ahmedabad. CESTAT Ahmedabad vide Final Order No. A/12530/2018 dated 25.09.2018, remanded the matter back to the original Adjudicating Authority for fresh decision with certain specific directions. The relevant part of the order has been reproduced below:

*"I find that the construction service was received in connection with setting of "Effluent Treatment" plant with the existing factory, however, the fact whether it is for Repair, Renovation, Modernization or for setting of the new plant has not been verified, therefore, for this purpose i.e. construction service is of Repair, Renovation, Modernization or new construction needs to be remanded to the adjudicating authority. On verification, if adjudicating authority is agree that the construction service is for Repair or for Renovation or for Modernization of the existing plant; the credit is admissible as per the inclusion clause provided in definition of Input Service even after 01.04.2011. Accordingly, the appeal is allowed by way of remand to the adjudicating authority to pass afresh order".*

1.3 In pursuance of the CESTAT order, the Adjudicating Authority decided the said show cause notice dated 25.03.2004 again vide order dated 10.06.2021, through which, he disallowed the Cenvat Credit of Rs. 16,67,562/- and ordered to recover the same along with interest. He also imposed penalty of Rs. 16,67,562/- upon the appellant. Since, the appellant reversed an amount of Rs. 7,71,957/-, the same was appropriated against the said demand. Feeling aggrieved from the order dated 10.06.2021 passed by the Adjudicating Authority, the appellant preferred appeal against it before the Commissioner (Appeals).

1.4 The Learned Commissioner (Appeals) vide Order-In-Appeal dated 12.01.2022 rejected the appeal preferred by the appellant and upheld the Order-In-Original passed by the Adjudicating Authority and observed that the service portion in the execution of a works contract is specifically excluded from the scope of "input service", thus the claim of the appellant that they are eligible to credit on "works contract services" is not sustainable even though such services are used for construction of Effluent Treatment

Plant. The Rule does not provide any exception for civil construction of Effluent Treatment Plant. Thus in absence of any specific provision, credit availed on "works contract services" would not qualify as "input service" and the same cannot be allowed to the appellant.

1.5 Feeling aggrieved from the impugned Order-In-Appeal dated 12.01.2022, the present appeal has been preferred before this Tribunal.

2. The Learned Counsel for the Appellant submitted that the Appellant is Cooperative Sugar Factory manufacturing dutiable goods. During February 2013 to March, 2015, the Appellant availed Cenvat Credit of Rs. 16,67,562.00/- on "Civil Construction" and "Works Contract Services". The Appellant availed Rs. 7,71,957.00/- on "Civil Construction" and Rs. 8,95,605.00/- on "Works Contract". These services were used for Compost Yard, Bio-compost Yard and Lagoon forming part of Effluent Treatment Plant (ETP). He has also submitted that the above mentioned entire infrastructure was mandatorily required under "Pollution Control Norms" and "Zero Liquid Discharge" requirements without which the factory could not legally operate. He has also submitted that the credit of Rs. 7,71,957/- was reversed earlier without utilization vide Debit Entry No. 127/13- dated 31.07.2014. **Now the Appellant is contesting the entire disputed demand of Rs. 16,67,562/- in the present appeal .**

2.1 The Learned Counsel for the appellant submitted that it is settled law that "Pollution Control" and "Effluent Treatment" are integral to manufacturing activity. The Hon'ble Supreme Court in **Indian Farmers Fertilizers Cooperative Ltd. Vs. Collector of Central Excise reported in 1996 (86) ELT 177 (SC)** held that "effluent treatment" is an essential and integral part of manufacture and apparatus used for such treatment forms part of the manufacturing process. Learned Counsel for the appellant submitted that facts being similar, the ratio of the case **Indian Farmers Fertilizers Cooperative Ltd** shall squarely apply to the present appeal.

2.2 The Learned Counsel for the appellant also submitted that the issue involved in the present appeal is whether Cenvat Credit on work contract construction services availed by the appellant for construction/modernization of effluent treatment infrastructure is admissible under Rule 2(1) of the Cenvat Credit Rules, 2004. He pleaded that the issue is no longer *res integra*. The facts of the case and the issue involved in the appeal is squarely covered by the order of CESTAT Ahmedabad in Excise Appeal No. 10584-10586/2016, **Upl Ltd Vs. C.C.E & S.T-Valsad** Final Order No. 10257-10259/2024 dated 29.01.2024. In this case, the Tribunal has held that the services related to effluent treatment are admissible input services for the purpose of Cenvat Credit and such activities are necessary for uninterrupted manufacturing. Credit cannot be denied on hyper-technical grounds. The relevant part of the order is being reproduced below:

*"4. We have carefully considered the submissions made by both sides and perused the records. We find that the dispute related to admissibility of Cenvat credit on the effluent treatment service in respect of industrial waste generated in the factory of the appellant. The contention of the Revenue is that the effluent treatment of waste is not related to manufacture of final product, therefore, it does not have nexus with the manufacturing activity of the appellant. We do not agree with this contention of the Revenue for the reason that as per the Pollution Control Act, it is mandatory for every industrial unit to treat the effluent waste generated during the manufacture of final product, therefore, the industrial unit cannot carry out the production without compliance of pollution control norms which includes effluent treatment of waste generated during the manufacturing activity. Therefore, the effluent treatment of waste is necessary for overall manufacturing activity of the industrial unit. This issue has been considered in the various judgments which are as follows: -*

- (a) *Indian Farmers Fertilizers Cooperative Ltd.Vs. Collector-1996 (86) ELT 177 (S.C)*
- (b) *Cheminova India Ltd. Vs. CCE & ST, ST, Surat-II-E/11731/2014-Final Order dated 28.06.2023.*
- (c) *Commissioner of Central Excise and Service Tax-Surat Vs. Konoria chemicals & Industries Ltd-2015 (7)TMI 970 (CESTAT Ahmedabad)".*

2.3 Learned Counsel for the appellant prayed that in view of the law laid down in the above cases, the appeal of the appellant may be allowed and the impugned order passed by he learned Commissioner may be set aside.

3. Learned AR for the department reiterated the impugned order passed by the Learned Commissioner and submitted that this Tribunal has directed vide Final Remand Order No. A/12530/2018 dated 25.09.2018 that the construction service was received in connection with setting of "effluent treatment plant" with existing factory, however, the facts whether it is for repair, renovation, modernization or for setting of the new plant has not been verified. To ascertain, whether the construction service is of repair, renovation, modernization or new construction, they remand the matter back to the adjudicating authority. The Tribunal has also made it very clear that on verification, if Adjudicating Authority agrees that the construction service is for repair or for renovation or for modernization of the existing plant, the credit is admissible as per the inclusion clause provided in definition of input service even after 01.04.2011.

3.1 Acting on the directions, the Adjudicating Authority, after going through the purchase order held that there was a plain ground and no construction existed at the premises. In other words, the appellant constructed a new Bio-Compost Yard and as such it does not fall under the category of repair, renovation or modernization of existing plant. Thus, the claim of the Appellant that construction of Bio-Compost Yard was for repair and maintenance of existing construction is not correct.

3.2 The Learned AR has prayed that the impugned order passed by the Learned Commissioner (Appeals) may be upheld and the appeal of the Appellant may be rejected.

4. I have heard the Learned Counsel for the Appellant and the Learned Authorized Representative for the Department and perused the record.

5. The issue to be considered by this Tribunal is whether Cenvat Credit on services used for construction/modernization of effluent treatment infrastructure is admissible under Rule 2(l) of the Cenvat Credit Rules, 2004?

6. I agree with the Learned Counsel for the appellant that the issue is no longer *res integra*. In Excise Appeal No. 11732-11734/2014 and E/10885/2015 **Cheminova India Limited Vs. C.C.E & S.T, Surat, CESTAT Ahmedabad** vide Final Order No. A/11398-11401/2023 dated 28.06.2023 held that as per the provisions of Pollution Control Act, 1981 if the effluent generated in the manufacture is not treated, the appellant shall not be able to run their factory. In this undisputed position, the effluent treatment activity is necessary to carry out the uninterrupted production of the final product in the appellant's factory. Therefore, the conclusion can be conveniently drawn that the effluent treatment activity is a vital part of overall manufacturing of the final product and if this be so then the input services used for "effluent treatment" are admissible as "input service". The relevant part of the order is being reproduced below:-

*"07. We have carefully considered the submissions made by both the sides and perused the records. Since all the appeals are on the same issue though heard on different dates i.e. 20.04.2023 & 29.05.2023, we are deciding all the appeals together. We find that the revenue has denied the cenvat credit on services related to the effluent treatment activity of the waste generated during the course of manufacture of the final product of the appellant. The denial of cenvat credit is on the ground that the effluent treatment activity is post manufacture which has nothing to do with the manufacture of final product of the appellant. We find that even though the effluent treatment is not directly connected with the manufacture of final product of the appellant but as per the Pollution Control Act (supra) the appellant is bound under the law to carry out the effluent treatment of the Industrial waste generated during the course of manufacture of their final product. As per the provision of Pollution Control Act, if the effluent generated in the manufacture is not treated, the appellant shall not be liable to run their factory. In this undisputed position, the effluent treatment activity is necessary to carry out the uninterrupted production of the final product in the appellant's factory therefore, it can be conveniently draw the conclusion that the effluent treatment activity is a vital part of overall manufacturing of the final product if this be so then the input services used for effluent treatment are admissible input service. This issue is no longer res-integra as in the various judgments, the services related to effluent treatment has been held as admissible input service and cenvat credit was allowed. Some of the judgments are cited below:-*

*In case of **M/S KANORIA CHEMICALS & INDUSTRES LTD (supra)** this tribunal dealt with the similar facts and passed the following order:-*

*4. Heard both the sides and perused the case records. The issue involved in the present appeal is whether certain pollution control services availed by the appellant are eligible to CENVAT Credit under CENVAT Credit Rules 2004 or not. Revenue filed this appeal on the ground that the activities in relation to business have been*

deleted from the definition of input services during the relevant period. It is observed from the permissions granted by Gujarat Pollution Control Board under The Water (Prevention And Control of Pollution) Act, 1974, that Appellant was required to maintain certain standards of effluent from Appellants factory as a mandatory and statutory necessity. When the activity is required to be done mandatorily under a statutory obligation, then it cannot be said that the same is not in relation to the manufacture of finished goods in Appellants factory. This principle was settled by Honble Supreme Court in the case of **Indian Farmers Fertilizer Co-op. Ltd Vs CCE Ahmedabad (supra)**, where duty free raw material Naptha used for effluent treatment plant, was held to be eligible for exemption. Para 9 of this case law is relevant and is reproduced below:-

"9. That leaves us to consider whether the raw? naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."

5.1 In view of the above observations made by Apex Court, treatment of effluent from a factory has to be considered as essential and integral part of the process of manufacture. The ratio of this judgment will be applicable to the services availed by the Appellant. Accordingly, appeal filed by the Revenue is rejected and cross objection filed by Respondent is disposed of.

In case of M/S. WIPRO ENTERPRISES (P) LTD., 2018 (12) TMI 1167 – CESTAT CHENNAI this tribunal's Chennai Bench on the issue of credit on water treatment given the following finding:-

9. Coming to Water Treatment Service, I find that the same is utilized by the appellant as per the guidelines or norms of PCB according to which establishment of Effluent Treatment Plant in the factory is a statutory requirement for the treatment of polluted water. With regard to Garden Maintenance Services too, I find that the same is required as per the guidelines of the PCB for the purpose of a better work atmosphere. Further, I find that this issue stands decided by a plethora of decisions including the decision of the Hon'ble Madras High Court in the case of Wipro Ltd. Vs. Commissioner of C.Ex., Pondicherry – 2018 (10) G.S.T.L. 172 (Mad.) wherein the jurisdictional High Court has held that Housekeeping and Landscaping Services were entitled to CENVAT Credit of service tax paid on them. In the light of the discussions made hereinabove, I am of the view that the appellant has rightly availed Credit on Water Treatment Service and Garden Maintenance Service for which reason I set aside the demand raised on this count.

10. To sum up:

- (i) Demand on Rent-a-Cab Service for the period from April 2008 to March 2009 is set aside;
- (ii) Demand on Rent-a-Cab Service for the period from December 2011 to October 2012 is upheld with interest thereon;
- (iii) The demand raised on Water Treatment Service and Garden Maintenance Service for the period January 2015 to December 2015 is set aside;

11. The appeals are partly allowed on the above terms.

Similarly, in the case of ANAR CHEMICALS PVT. LTD. 2011 (24) S.T.R. 32 (TRI. - AHMD.) this bench of the tribunal on the maintenance service of effluent treatment plant allowed the cenvat credit, the relevant order is as under:-

2. The Hon'ble Supreme Court in the case of Indian Farmers Fertilizer Cooperative Ltd. referred supra, has held that pollution control apparatus/device used in plant are to be treated as part and parcel of manufacturing process for production of end product. Further, on going through the ratio of law declared in the above judgment, is to the effect that definition of input services is wide and take into its ambit all the activities relating to the functioning of business. Admittedly, the Pollution Control Board requires the appellant to maintain Effluent Treatment Plant upto a certain standard and all the services used by the assessee for maintenance of such standard has to be held as activities relating to business. In the case of Brakes India Ltd. referred supra, it was held that creation and maintenance of garden within the factory premises by treating industrial and domestic sewage water, is mandatory requirement from Pollution Control Board and the man power services used for garden maintenance are required as infrastructure for manufacture and clearance of final product and the credit is admissible in respect of the same. Similarly, in the case of Coca Cola India Pvt. Ltd. referred supra, it stand held that the expression "business" is an integrated/continuous activity and not confined or restricted to mere manufacture of production. The activities in relation to business covers all activities related to functioning of business. As such, as long as there is a connection between the services and the manufactured goods, the input credit is admissible. In view of the above, I hold that the services availed by the appellant in respect of Effluent Treatment Plant are admissible input services and the CENVAT Credit of Rs. 1,01,797/- (Rupees One Lakh, One Thousand, Seven Hundreds and Ninety Seven Only) is admissible to the appellant.

*In view of the above judgments and other judgments cited by the appellant, it can be seen that the issue is no longer res-integra as the services availed in respect of effluent treatment plant for treatment of industrial waste is in relation to the overall manufacturing activity of the appellant's final product in the appellant's factory therefore, the said services are input service hence, the credit is admissible.*

*08. Accordingly, we set aside the impugned order and allow the appeals with consequential relief".*

7. In **Adroit Pharmachem Private Limited Vs. Commissioner of Central Excise & ST, Vadodara** in Excise Appeal No. 11007 of 2019 vide Final Order No. A/12641/2021 dated 31.21.2021, CESTAT Ahmedabad has held that the amended definition of input service from 01.04.2011 was considered and it was viewed that though the Construction Service/Works Contract Service were excluded but it was interpreted that the said service related to only new construction or setting up of a new factory. But since modernization, renovation or repair and maintenance, even after exclusion category, continue to remain in exclusion clause of definition, credit cannot be denied. The relevant part of this order has been reproduced below:-

*"4. I have carefully considered the submissions made by both sides and perused the record. I find that the appellant has already existing factory and in the said factory, Effluent Treatment Plant was installed for which*

they have availed construction service from the contractor. Any activity of construction in the running existing factory shall be treated as modernization, renovation or repair and maintenance of existing factory. The definition of Input Service under Rule 2(I) is reproduced below:-

**"Rule 2(I) "input service" means any service,-**

(i) used by a provider of taxable service for providing an output service; or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal but excludes.....

From a plain reading of Rule 2(I), it is clear that even though setting up of factory was removed from the exclusion clause however, the service of modernization, renovation or repair and maintenance is still provided in the inclusion clause. Therefore, any activity which related to modernization, renovation or repair and maintenance of factory, the same is eligible for Cenvat credit. There is no dispute on the fact that Effluent Treatment Plant was set up in the existing running factory. Therefore, it is nothing but modernization of the factory.

5. As regards the argument made by learned Authorised Representative that from 01.04.2011, construction services and works contract services were excluded from the definition of input service, I find that though construction service was excluded but since modernization, renovation and repair and maintenance is still continue to be existed in the inclusion clause of definition, credit shall be allowed. This Tribunal has considered the very similar issue and also related to the amended definition of Input Service effective from 01.04.2011 in the case of Ion Exchange (I) Limited - 2018 (12) G.S.T.L. 302 (CESTAT - AHD) wherein the Tribunal has passed the following order :-

"2. The brief facts of the case are that the appellants are engaged in the manufacture of excisable goods falling under Chapter 39 of CETA, 1985 and availed Cenvat credit of Service Tax paid on 'Construction Service' (modernization, renovation and repair service) of the existing plant and machinery in their factory premises, so as to meet USA, FDA guidelines during the period June, 2011 to March, 2012. Alleging that after amendment to definition of 'input service' with effect from 1-4-2011 'construction service', being placed on the exclusion clause, therefore credit availed by the appellant is irregular; consequently, notices were issued to them on 17-9-2012 for recovery of inadmissible credit of Rs. 12,40,205/- with interest and penalty. On adjudication, the demand was reduced to Rs. 9,82,887/- with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who in turn, further reduced the amount to Rs. 8,86,206/- with interest and penalty. Hence the present appeal.

3. The Ld. Advocate, Shri A. Nainavati, for the appellant submits that both the authorities below had misinterpreted/misunderstand definition of 'input service' brought into from 1-4-2011. He submits that even though the words 'setting up' had been deleted from the definition of input service but the words 'modernization, renovation and repair' of the factory continued to be in the said definition even after 1 4-2011. He submits that exclusion clause inserted with effect from 1-4-2011 should be read in the context while interpreting the applicability of exclusion clause. The Ld. Advocate submits that the 'construction service' excluded from the scope of 'input service' be limited to 'new construction' required in 'setting up' of a factory, however, cannot be made applicable to activities relating to 'repair,

renovation and modernization' of the existing factory building, plant and machinery. In support, the Ld. Advocate referred to the clarification at Para 4 of the Circular No. 943/4/2011-CX, dated 29-4-2011 issued by the Board. It is his contention that there is no dispute to the fact that the 'construction service' had been utilized by the appellant in 'renovation and repair' of the factory in compliance with the requirement of USA, FDA guidelines. Therefore, credit is admissible to them.

4. The Ld. AR for the Revenue reiterated the findings of the Ld. Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short issue involved for determination in the present case is : whether the appellants are eligible to credit of Service Tax paid on 'construction service' relating to modernization/renovation of their factory.

7. It is the contention of the Revenue that after amendment to the definition of 'input service' all 'construction service' undertaken within the factory premises fall outside the scope of the said definition, accordingly, Service Tax paid on 'construction service' is not admissible to credit. The appellant, on the other hand, submits that on deletion of words 'setting up' from the scope of said definition, new construction undertaken, would no longer be eligible, however, the construction relating to 'modernization, renovation or repair' of the existing plant and machinery inside the factory premises is definitely continued to fall within the ambit of said definition. Consequently, the Service Tax paid on 'construction service' involving modernization, renovation and repair work within the factory is eligible to credit. Before scrutiny of the rival contentions, the relevant old and amended Rule 2(I) of the Cenvat Credit Rules, 2004 are reproduced as below :

**Prior to 1-4-2011**

(I) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to setting up, 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 up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

**From 1-4-2011**

(I) "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 up to 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 up to 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 up to the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –  
(a) construction or execution of works contract of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or  
(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or  
(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –  
(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or  
(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or  
(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;  
Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

8. A plain reading of the said provisions makes it clear that service utilized in relation to modernization, renovation and repair of the factory are definitely fall within the meaning of 'input service' even though; construction of a building or civil structure or part thereof has been placed under exclusion clause of the said definition of 'input service'. After amendment to the definition of the 'input service', a clarification issued by the Board vide Circular No. 943/4/2011-CX, dated 29-4-2011 whereunder answering to the questions raised on the eligibility of credit of service tax paid on construction service as an 'input service' used in modernization, renovation or repair, it has been clarified that the said services being provided in the inclusive part of definition of 'input service' are definitely eligible to credit. Thus, harmonious reading of the inclusive part of the definition and the exclusion clause mentioned at clause (a) relating to construction service of the definition of 'input service', it is clear that the construction service relating to modernization, renovation and repair of the factory continued to be within the meaning of 'input service' and accordingly, the Service Tax paid on such service is eligible to credit. Undisputedly, the appellant carried out modernization/renovation work to meet USA, FDA guidelines for manufacture of their products therefore, the service tax paid on such construction service is eligible to credit. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law."

6. From the above judgment of this Tribunal it can be seen that the amended definition of 'Input Service' from 01.04.2011 was considered and it was viewed that though the construction service/ works contract service were excluded but it was interpreted that the said service related to only new construction or setting up of a new factory. But since modernization, renovation or repair and maintenance, even after exclusion category, continue to remain in inclusion clause of definition, credit cannot be denied. Moreover, the show cause notice has not made any charge related to exclusion category of 'Input Service', it only deals with main clause and inclusion clause of definition. Therefore, the adjudication order deciding the matter on the basis of exclusion category is beyond the scope of show cause notice. As per the discussion made hereinabove which gets support from the Tribunal judgment in the cited case, the appellant is entitled for

*Cenvat credit. Accordingly, the impugned order is set-aside, appeal is allowed”.*

7.1 In view of the law laid down in above cases by the Tribunal, it is clear that the Service Tax paid to avail the services to fulfill a statutory obligation of controlling environmental pollution is admissible for Cenvat Credit. Therefore, impugned order passed by the Learned Commissioner (Appeals) is not sustainable against the appellant through which he has upheld the order of the adjudicating authority disallowing the Cenvat Credit amounting to Rs. 16,67,562/- and ordered to recover the same from the appellant. The order regarding recovery of interest on this amount from the appellant and imposition of penalty of Rs. 16,67,562/- on the appellant is also not sustainable. The appellant shall also be entitled to the amount of Rs. 7,71,957/- Cenvat Credit taken on Civil Construction but reversed by the appellant. The appellant is also entitled to the interest paid on this amount. With these observations, the impugned order passed by the Learned Commissioner dated 12.01.2022 is liable to be set aside whereas, the appeal deserved to be allowed.

8. Consequently, the appeal is allowed with all consequential benefits.

(Order pronounced in the open Court on 04.05.2026)

**(Dr. AJAYA KRISHNA VISHVESHA)**  
**MEMBER ( JUDICIAL )**