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

REGIONAL BENCH – COURT NO.2

<u>Excise Appeal No. 78923 of 2018</u>

(Arising out of Order-in-Appeal No.204/DGP-IV/CT(AUDIT-II)/2018-19 dated 31.07.2018 passed by Commissioner of CGST & Central Excise, Bolpur)

Maithan Steel & Power Ltd.
Chittaranjan Road, P.O. + P.S. Salanpur, Bardhaman, W.B.

Appellant

VERSUS

Commissioner of CGST & C.Ex., Bolpur
Sian, Nanoor Chandidas Road, Bolpur, Birbhum.

Respondent

<u>APPERANCE :</u>
Shri Vikram Khaitan, C.A. for the Appellant
Shri S.K.Jha, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO…76072/2026..

<u>DATE OF HEARING : 11.08.2026</u>
<u>DATE OF DECISION : 14.08.2026</u>

<u>Per R.Muralidhar :</u>

The appellant is manufacturer of Steel products. The appellant has taken the Cenvat Credit on various items like M S Angles, Channels, Joist, Plates etc. which have been used for manufacturing their capital goods for usage in the factory premises. The Cenvat Credits have been taken during the period August, 2008 to April, 2009. A Show Cause Notice came to be issued on the ground that the appellant is not eligible to take the Cenvat Credit of Rs.34,65,231/- for the structural materials like M S Channels and Angles etc. and they are not eligible to take the Cenvat Credit of Rs.1,68,239/- for welding electrodes and oxygen used by them for repairing and maintenance.

2. The appellant submitted their detailed reply along with copy of the Chartered Engineer's Certificate showing the details of usage of the materials in their factory premises. They also cited several case laws holding that they are eligible for the Cenvat Credit. They also contested

the Show Cause Notice issued on 14.08.2012 taking the ground the same is time barred. After due process the lower authorities have confirmed the demand. Therefore, the appellant is before the Tribunal.

3. The Ld. C.A appeared on behalf of the appellant submits that the Show Cause Notice has been issued relying on the Larger Bench decision of the **Vandana Global Limited Vs. CCE-2010 (253) ELT 440 (Tri-LB)**. He further submits that this Larger Bench decision has been subsequently over-ruled by High Courts and now it is held that the assessees are eligible for a Cenvat Credit on all these items. He relies on the following case laws:

a. **Steel Authorities of India Ltd. vrs. CGST, Bolpur-Final Order No. 77734/2023.**

b. **Uniglobal papers Pvt. Limited vrs. C.C., GST, Haldia, vide Final Order No. 75090/2023**.

4. In view of the above submissions it is prayed that the appellant may be allowed on merits.

5. After this, the Ld. C.A. takes the stand that the Show Cause Notice issued on 14.08.2012 for the Cenvat Credit taken during August, 2008 to April, 2009 is time barred. He submits that the appellant has taken Cenvat Credit and has shown the same in the monthly ER-1 Returns. Further in view of several case laws holding that the appellant would be eligible for Cenvat Credit on these items, the appellant carried the bonafide belief that they are correctly taking the Cenvat Credit. Therefore, he submits that no case of suppression has been meadowed against the appellant.

6. The Ld. Authorized Representative reiterates the findings of the lower authorities. He submits that the Charted Engineer's Certificate

does not cover the entire demanded amount but only covers to the extent of a Rs.24,42,684/-. He submits that only after detailed investigation, the demand has been made by the Revenue authorities. Therefore, he justifies the confirmed demand.

7. The Ld C A in the rejoinder submits that one more Certificate has been issued by the Chartered Engineer. This would meet the requirement of providing proper evidence.

8. Heard both sides.

9. I find that the issue in this case pertains to the Cenvat Credit taken by the appellant for items like MS Channels, MS Angles etc. which have been further used for manufacturing their capital goods which have been used within the factory premises. I have for reference the Certificate issued by the Chartered Engineer which produced below:

Samar Bijoy Saha
B.E. (Mech), MIE(I), FIV(I),FIIISLA
Chartered Engineer, Approved Valuer (P & M)
Surveyor & Los assessor, Investigator
Govt. of India- License No.- SLA-25433
(Valid upto 27.09.2014)
(Fire, marine, Motor, Engineering & Miscellaneous)

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Office & residence :
PARBATI MANSION
S.BGORAI ROAD
HILLVIEW PARK (EAST)
ASANSOL-713304
PHONE : (0341)2283779
MOB:9434033879

Ref. No. SBS/MSPL/INSP/ 01/14-15

Date: 17/04/2014

TO WHOM IT MAY CONCERN

On request of Mr. S. N. Mukherjee, G.M. of M/S. MAITHAN STEEL & POWER LTD (a Rolling Mill Unit situated at P.O & P.S. Salanpur-713357, Dist. Burdwan, Close to Chittaranjan Road & near Dendua More, R.S. Plot No. 1000, 1001, 1006 & etc. in Mouza – Nakrajoria / Salanpur, J.L. No.26), I have visited the Works premises of the said Rolling Mill on 15.01.2014, inspected the following Capital goods (machineries) manufactured out of Steel sections received by the said concern during the period from August, 2008 to April, 2009.

1. **Re-Heating Furnace.**
2. **Cooling Tower & Cooling Bed**
3. **Coal Gasifier,**
4. **Rolling Mill,**
5. **EOT Crane,**
6. **Oil Circulation System,**
7. **Electrical Panels ,**
8. **Flying Shear & Pinch Roll,**
9. **Branding & Rib Cutting Machine,**
10. **Thermax Quenching System,**
11. **Electrical Drives arrangement.**

A statement mentioning the name of machineries (Capital goods) manufactured, quantity of actual use of steel (Inputs), Generation of scrap including cutting losses of steel is prepared in Annexure – A enclosed.

On physical inspection & verification at site, consumption of Steel out of received quantities were found in order.

This report is issued without prejudice.

Enclose: As above

(Samar Bijay Saha)
Chartered Engineer

Annexure- A 115

The Details of capital goods Manufactured/Fabricated, details of inputs and their quantity used for Fabrication / Manufacturing of Capital Goods

Sl. No.	Description of Goods	Description of inputs and their quanity used for fabrication/Manufacturing of capital goods.						
		HR Plate/Coil (M.T.)	MS Channel (M.T)	Angle (M.T.)	Chq.plate/ Coil (M.T)	Beam/ Joist (M.T.)	MS Round (M.T.)	Total (M.T.)
1	Rolling Mill	23.245	31.760	9.330	10.030	-	22.015	96.380
2	Re-Heating Furnace	90.326	7.940	20.450	12.120	7.200	-	139.036
3	Coal Gasifier	40.185	12.480	14.393	26.910	17.570	-	113.338
4	Elect. Panels	9.000	10.000	40.910	19.290	-	15.385	94.585
5	Thermax Quenching Syst.	0.180	-	-	-	-	-	0.180
6	Cooling Tower & Bed	6.400	92.495	-	-	-	-	100.495
7	Electrical Drive Arrangement	6.500	-	-	-	-	-	6.500
8	Branding & Rib cutting Machine	0.150	-	-	-	-	-	0.150
9	Flying Shear & Pinch Roll	0.531	-	-	-	-	-	0.531
10	Work-Shop	-					6.000	6.000
11	Oil Circulation System	13.995	9.940	-	-	0.570	-	24.505
12	EOT Crane	27.270	-	23.240	16.090	-		68.000
	Total	**217.782**	**164.615**	**108.323**	**84.440**	**25.340**	**43.400**	**643.900**

Summary :

Total Quantity of Inputs (Steel) used for Fabrication/Manufacture of capital goods	643.900 M.T.
Add : Quantity of Scrap generated (Approx)	13.000 M.T
Hence, Total Consumption of steel (Inputs)	656.900 M.T

(Samar Bijay Saha)
Chartered Engineer

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Process for manufacturing / Fabrication of Capital Goods.

1. Re-Heating Furnace

HR Coil / Plate Straitening of Plate, then Cut to required sizes, Bending where required , Drilling required diameter for bolting arrangement, Then MS Channel and Angle, Beam / Joist cut to sizing and wherever required welded with the Plate. Chequred Plate used outside of cover of Re-Heating Furnace.

2. Rolling Mill

HR Coil / Plate Straitening of Plate, then Cut to required sizes making, guide boxes Side plate, So many Stand Skirt Wall, Guide Nali for Hot Rod Movement to go for finishing shape. MS Channel, Angel also used after Size cutting, Drilling required sizes and Welding with Plate and MS Rod cutting, grinding threading and make a tie-rod for all Stands and other mill area. Che. Plate also used top cover / side cover of Guide Nali every where in mill area where Hot Bar going to final shape.

3. Coal Gasifier

Maximum quantity of Plates / HR Coil straitening, Cutting as per size required, Grinding then bending and welding as radios required to make top cylo and bottom Cylo. Some quantity used inside of Cylo for Skirt Wall. Channel / Angle / Beam also cut to size and welded with Cylo inside and out side. Cheq. Plate used Cylo top cover and pocking area with other gasifier area.

4. Electrical Panels

Plate / HR Coil Cutting, Grinding, Shaping then welding with Angle and Channel to make So many Pannel, Junction Box etc. MS Round used to make Rack for switches installation. Cheq. Plate used for inside of plate to make straighten of Pannel / Junction Box.

5. Thermax Quenching System

HR Coil / Plate used before and after Quenching system Nali where hot rod and cold rod through for final shape.

6. Cooling Tower and Bed

50% quantity of HR Coil / Plate cutting, grinding and welding with Cooling Tower Guide Plate to make cooling of Hot Water and 50% of HR Coil / Plate cut, grinding and welding with MS channel for making of Cooling Bed where after cooling of Bar store for separation.

7. Electrical Drives Arrangement

HR Coil / Plate cutting, grinding, shaping and welding as per Motor and Drive shape to protect heat from Hot rod.

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8. Branding & Rib Cutting Machine

HR Coil / Plate cutting, grinding, shaping and welding as per sizes required where Branding/Rib Cutting Machine Oil storage and make a panel Box.

9. Flying Shear & Pinch Roll

HR Coil / Plate cutting, grinding, shaping and welding as per physical required sizes to make Nali and fitting before and after Flying Shear and Guide Wall through-out nail to Pinch Roll.

10. Oil Circulation System

HR Coil / Plate cutting required sizes, grinding, shaping and welding with MS Channel and MS Beam / Joist make Pannel and Oil Circulation Machine rest on the Pannel.

11. EOT Crane

HR Coil / Plate cut to size, Shaping and grinding through-out then welded with Angle and Cheq. Plate and make Crane Traveler and Crane Cabin (operate).

12. CONSUMPTION / UTILISATION OF WELDING ROD & OXYGEN

For manufacture of the above capital goods/ machines 231480 Nos., 237 Boxes, 39 Pkts and 80 Kgs.(sizes of Welding Rod used 4mm x 450 and 3.15mm x 450) of Welding Electrodes and 1921 Nos. of Oxygen Gas Cylinders were used / consumed.

(Samar Bijay Saha)
Chartered Engineer

10. From the above Certificate, it is seen that the goods in question including the welding rods and oxygen have been used within the factory premises for manufacturing of capital goods and machines.

11. One similar issue, this Bench in the case of **Steel Authority of India Limited Vs. Commissioner of CGST & Central Excise, Bolpur vide Final Order No. 77734/2023** dated 21.12.2023, has held as under:

> "*12. We observe that the issue to be decided in this appeal is whether the Appellant is eligible to avail CENVAT Credit on 'Plates' falling under Chapter 72 of the Central Excise Tariff Act, 1985 either as inputs or capital goods?. We observe that in the impugned order the Ld. Commissioner has denied the credit on the*

'plates' mainly on the ground that they fall under Chapter 72 of the Central Excise Tariff, which are excluded from the definition of 'Capital goods'. The Appellant submits that that not all plates fall under Chapter 72 and various items on which credit has been denied in the impugned order fall under Chapters 69, 84 and 85 and are directly covered under the definition of 'capital goods' under Rule 2(a) of the CCR, 2004. Plates' classifiable under Chapters 84 and 85 directly fall under sub-clause (i) of clause (A) of the term 'capital goods' as defined under Rule 2(a) of the CCR, 2004. We agree with the submission of the Appellant. In the impugned order credit has been denied on many items which are classifiable under Chapter 84 and 85 also. They fall under the definition of 'capital goods' under Rule 2(a) of the CCR, 2004 and hence they are entitled for the credit as 'Capital goods'

13. As regards the remaining credit availed on goods falling under Chapters 72, 73 and 74, we observe that the Appellant has furnished a certificate from the Chartered Engineer certifying the end use of certain plates. We observe that the impugned order has erroneously held that the 'plates' are used in factory shed, construction of building foundation etc. and dismissed the CE certificate furnished by the Appellant. <u>The CE certificate certifies the end use of such plates by the Appellant viz. plates were used as components, parts or accessories of Kiln, Milling Machine, Coke Oven Gas, Pollution Control Equipment, Storage Tank, Kiln, etc. We observe that the adjudicating authority has not given any valid reason for rejecting the CE certificate.</u> Further, we observe that in this case the plates were not used as building materials for constructing factory shed, etc. They are used in construction of machinery, which are capital goods. Therefore, we hold that the credit on such plates cannot be denied.

14. We observe that *the impugned order has heavily relied upon the decision of the CESTAT, Larger Bench in case of Vandana Global Ltd. v. CCE, Raipur, 2010 (253) E.L.T. 440 (Tri. - LB) to hold that the Cenvat Credit not available on the plates which are used for fabrication of structures for support of capital goods since they become immovable property and thus, such support structures are neither parts nor accessories of capital goods. However, we observe that* ***the said decision has been reversed by the Hon'ble Chhattisgarh High Court in Vandana Global Ltd. v. CCE, Raipur, 2018 (16) G.S.T.L. 462 (Chhattisgarh).*** *In this decision it was held that goods used in fabrication of structures embedded to earth should be treated as 'inputs' for capital goods and Cenvat Credit cannot be denied. The term 'inputs' is defined under Rule 2(k) of the CCR, 2004. The said term has a wide coverage and practically includes all goods used in the manufacture of final products. Reliance is placed on the decision of the Hon'ble High Court in the case of Hindustan Zinc v. UoI, 2008 (228) ELT 517 (Raj.) wherein it has been categorically stated that where any particular process is integrally connected without which manufacturing is not viable, then the goods which are used therein will be eligible for availment of credit. The impugned order has relied upon Notification No. 16/2009-CE (NT) dated 7.7.2009 which amended explanation 2 to Rule 2(k) of the CCR, 2004 to specifically exclude angles, channels, TMT bards used for construction of factory and laying of foundation or making of structures for support of capital goods. In this regard, we find that the plates in question were not used for foundation, construction of factory or support structure. Following the decision of the Hon'ble Chattisgarh High Court, we hold that the 'plates' are inputs for the capital goods and hence they are eligible for the credit availed on the 'plates' as 'inputs'. Accordingly, we hold that the demand confirmed in the impugned order is not sustainable. Since the* *demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise."*

12. The Kolkata Bench in the case of **Uniglobal Papers Private Ltd. Vs. Commissioner of CGST & CX, Haldia Commissionerate vide Final Order No. 75090/2023 dated 14th March, 2023** considered the issue of entitlement of Cenvat Credit of welding electrodes and MS Angles, Channels etc and has held as under:

> "*4. I also find support from the decision of the* ***Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore-II v. SLR Steels Ltd. reported as 2012 (280) E.L.T. 176 (Kar.).*** *The relevant paragraphs are reproduced:-*
>
> > *"7. A perusal of the aforesaid provision makes it very clear though storage tanks may be immovable property and the pollution control equipment are included within the definition of ''capital goods'', input as defined in Rule 2(k) makes it clear that ''input'' includes in goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Therefore, the input is not necessarily to be used in the manufacture of final product. By virtue of explanation 2 - goods used in the manufacturer of capital goods which are further used in the factory of the manufacture also falls within the definition of input. In 2009, this explanation has been amended to the following effect : "but shall not include cement, angles, channels Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods."*

> *8. Therefore, the notification of the Legislature is very clear that it is only the ''inputs'' used in the manufacture or construction of capital goods which is construed as input and cenvat credit is available on the duty paid in purchase of such inputs. If the cement, angles, channels, Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (T.M.T.) and other items are used in the construction of factory shed, building or laying of foundation, the duty paid on such items the assessee would not be entitled to cenvat credit. Similarly, though the assessee is entitled to cenvat credit of cement and steel used in the manufacture of capital goods viz., storage tank, if any structure for support of capital goods is constructed and steel and cement is used for such support, the assessee is not entitled to the benefit of cenvat credit on the duty paid on such cement and steel. Therefore, there is no ambiguity in any of these provisions. <u>When once a storage tank and pollution control equipment constitutes capital goods and any raw material purchased for construction of those goods, the duty paid could be utilized as a cenvat credit by the assessee notwithstanding the fact that the storage tank is an immovable property. Therefore, the appellate authority committed a serious error firstly in holding that the storage tank is an immovable property and secondly, on the ground that it cannot be bought and sold in the market, the criteria which is totally unwarranted under the circumstances</u>. Therefore, the Tribunal was justified in setting-aside the said order and holding that the assessee is entitled to the benefit."*

5. In view of the aforesaid decisions, it is my considered view that the impugned orders cannot be sustained and are therefore set

> *aside. The Appeal filed by the Appellant is allowed with consequential relief, as per law."*

13. We find that to the factual matrix of the present case, the ratio laid down in the above case laws, is applicable. Accordingly, I set aside the confirmed demand on merits and allow the appeal.

14. I also find considerable force in the arguments of the appellant that the Show Cause Notice issued on 14.08.2012 for the Cenvat Credit taken toward August, 2008 to April, 2009, is hit by time bar clause. It is on record that the appellant has taken the credits and have recorded the same in the RG23A Part I and Part-II and also filed their ER 1 Returns. On the same issue, several cases were decided by the Tribunal holding that assessees would be eligible for Cenvat Credit. Therefore, the appellant could have carried bonafide bill that they are eligible to take the Cenvat Credit. I have for reference the case law of **Commissioner of Central Excise, Raipur Vs. Rajaram Maize Products, 2010 (258) ELT 539, (Tri-Delhi)** wherein the Tribunal has held as under:

> ***"8.*** *The grounds of appeal do not disclose any material which can upset the said findings of the Commissioner (Appeals) on the time-bar aspect. Further, it is noticed that during relevant period, the issue of admissibility of Cenvat credit on the impugned items was subject to different interpretations and the belief of the respondents that they were eligible for the credit has to be held as bona fide. There is no suppression involved. There is no justification for invocation of extended period of limitation."*

15. Therefore, I set aside the impugned order even on account of time barred. The impugned order stands set aside and the appeal is allowed.

16. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in open court on _14.08.2026)

(R.Muralidhar)
Member (Judicial)

RG