Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 2

Excise Appeal No. 12756 of 2019- DB

(Arising out of Order in Appeal VAD-EXCUS-002-APP-227-2019-20 dated 31/07/2019 passed by Commissioner (Appeals), CGST & Central Excise, Vadodara)

ATC TIRES PRIVATE LIMITED **........Appellant**

D III, 23 and 23A, Dahej Industrial Estate,
Tal. Vagra, Bharuch-392130, Gujarat

VERSUS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-VADODARA-II **......Respondent**

1st Floor, Room No. 101,
New Central Excise Building,
Vadodara, 390023, Gujarat

With

Excise Appeal No. 10075 of 2019- DB

(Arising out of Order in Appeal VAD-EXCUS-002-APP-352-2018-19 dated 14/09/2018 passed by Commissioner (Appeals), CGST & Central Excise, Vadodara)

ATC TIRES PRIVATE LIMITED **........Appellant**

D III, 23 and 23A, Dahej Industrial Estate,
Tal. Vagra, Bharuch-392130, Gujarat

VERSUS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-VADODARA-II **......Respondent**

1st Floor, Room No. 101,
New Central Excise Building,
Vadodara, 390023, Gujarat

APPEARANCE:

Shri Jigar Shah, Advocate appeared for the Appellant
Shri A R Kanani, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10538-10539/2026

DATE OF HEARING: 20.02.2026
DATE OF DECISION: 19.08.2026

SATENDRA VIKRAM SINGH

M/s. ATC Tires Pvt. Ltd., Tal. Vagra, Dist. Bharuch, Gujarat have filed two appeals bearing no. E/12756/2019 and E/10075/2019 against the orders of the Commissioner (Appeals) wherein, Cenvat Credit of Rs.78.18 Lakhs in total has been disallowed. The appellant is engaged in manufacture of excisable goods of Chapter 40 of the Central Excise Tariff Act, 1985.

1.1 Audit of their financial records for July-2013 to Dec-2015, revealed that the appellant has availed service tax credit in respect of various services viz. Engineering Contract for procurement assistance, erection, commissioning and installation service, laying foundation and making structures, fabrication, Professional and Management Consultancy service, Vastu and Architecture for setting up of new building, new plant etc. As per Revenue, definition of "input service" under rule 2(l) of the Cenvat Credit Rules, 2004, has undergone change w.e.f. 01.04.2011, therefore, credit on input services used for setting up of factory is not admissible.

1.2 Two show cause notices, one dated 16.06.2017 covering the period from July-2013 to December-2015 for disallowing Cenvat Credit of Rs.57.80 Lakhs and the second one (statement of demand) dated 02.04.2018 covering the period from March-2016 to June-2017 involving Cenvat credit of Rs.20.36 Lakhs were issued. In adjudication proceedings, demand of above Cenvat Credit were confirmed under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the CCR, 2004 along with interest under Section 11AA of the Central Excise Act. Equal penalty was also imposed on the appellant under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. Aggrieved with the above order, the appellant filed appeals before the Commissioner (Appeals) who vide impugned order dated 14.09.2018 upheld confirmation of Cenvat Credit demand and interest but reduced the penalty to 50% of the Credit amount. In respect of other appeal, he upheld the order of the lower authority confirming Cenvat Credit and interest demand but reduced the penalty to 10% of the credit amount.

2. Aggrieved with the above orders, appellant filed appeals before the Tribunal taking the following grounds-

- The Appellate Authority has ignored that commercial production in their unit commenced from 12.03.2015 and hence, these services were not towards 'setting up of factory'. They have rightly availed Cenvat Credit on input services which were used only for expanding and maximizing the production capacity of Dahej Unit and to support this, they enclosed sample copies of work orders/ invoices executed for various jobs relating to fabrication and erection of structures. They submitted copy of ER-2 returns filed for March-2016 to June-2017 including a letter dated 12.03.2015 sent to the Development Commissioner to establish beginning of commercial production.

- Services under the category of Fabrication and Erection services include erection & commissioning of fuel handling system, fabrication, erection & commissioning of SS tank, steel structures, laying of armored electric power cables, designing erection and commissioning of Boiler and chimney, erection and commissioning of pipelines etc. Credit on these services is admissible to them as these are covered under main clause of the definition under Rule 2(l) of the CCR, 2004.
- Hon'ble Supreme Court in the case of Collector of Central Excise Vs. Rajasthan State Chemical Works reported at 1991 (55) E.L.T. 444 (S.C.) has held that where any particular process is so integrally connected with the ultimate production of goods that manufacture would be impossible or commercially inexpedient without that process, then the process is construed as one **in relation to** the manufacture. Same proposition was also decided in following cases:-

a) Union Carbide India Ltd. Vs. CCE, Calcutta - 1996 (86) ELT 613 (T-LB)
b) Deepak Fertilizers & Petrochemicals Corpn. Ltd.- 2013 (32) STR 532 (Bom.)
c) CCE Vs. Solaris Chemtech Limited - 2007 (214) ELT 481 (SC)

- In the case of CCE Vs. Bell Sonica Auto Components India Pvt. Ltd. reported at 2015 (40) S.T.R. 41, Hon'ble Punjab and Haryana High Court held that services of constructing a factory would be covered under the main part of definition of input service as per Rule 2(l) of the CCR,2004 because factory would necessary for carrying out manufacturing activity or providing output services, even though construction services were for 'setting up' of the factory.

- Hon'ble Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Company Limited Vs. Sales Tax Officer reported at 1997 (91) ELT 34 (S.C.) has held that the phrase “in the manufacture of goods” should not be restricted to the process of production of goods and must also encompass processes in relation to the manufacturing activity.
- Input services availed by them qualify under the phrase 'includes' appearing in Rule 2(l) as renovation or modernization or repairs of a factory. Therefore, credit availed by them is legally correct. They rely on the decision in the case of Musaddilal Projects Ltd. Vs. CCE & ST reported at 2017 (4) G.S.T.L. 401 (Tri.- Hyd.).
- Para 5.8 of the Impugned OIA has disregarded the Tribunal’s decision in the case of ION Exchange (I) Ltd. vs. CCE & ST reported at 2017 (12) TMI 151 wherein, credit on input services relating to modernization, renovation or repairs of factory has been allowed. When services fall under the main part of the definition and are not specifically excluded from Rule 2(l) of CCR, 2004, there is no basis for denial of Cenvat Credit pertaining to services of fabrication and erection of SS tanks, structures and bridges.
- Cenvat Credit on impugned services is not hit by omission of the phrase “*setting up*” for which they rely on Ministry’s letter No.334/3/2011-TRU dated 28.2.2011. At Annexure-C, it is stated that the definition of 'input service' has been aligned with the definition of 'input' so that those goods which do not qualify as 'input' would not qualify as 'input service' either. Thus, removal of phrase 'setting up' must be construed accordingly, as it was aimed at avoiding conflict with those services specifically excluded in Rule 2(l) of the CCR, 2004.
- Fabrication and Erection Services are not excluded under Rule 2(l) of the CCR,2004. CESTAT Hyderabad in the case of Orient Cement Limited

Vs. CCE & ST, Hyderabad reported at 2017 (51) STR 459 (Tri-Hyd.) has held that erection and installation of machinery and equipment is not excluded from the definition of input service, before or after the amendment to the definition. They also rely on the following decisions, wherein, it was held that only specific service relating to construction or works contract services were excluded when used in or in relation to construction of a building or a civil structure or a part thereof-

a. Hindalco Industries Vs. CCE-2018 (12) TMI 1476 – (Tri-Bang.)
b. Idea Cellular Ltd. Vs. CCE -2016 (3) TMI 1117 – (Tri- Mum)

- In Para 5.3 of the impugned order, learned Appellate Authority has relied on Circular No. 96/7/2007-S.T. dated 23.08.2007 which states that construction services would not be eligible to credit if these resulted in immovable property. In following decisions, it is well settled that immovability is no criterion for testing eligibility to Cenvat Credit:-

i. Vodafone Mobile Services Ltd Vs. CST-2018 (11) TMI 713-(Del)
ii. Aditya Cements Ltd, Vs. Union of India- 2008 (221) ELT 362 (Raj)
iii. CCE, Bangalore Vs SLR Steels Limited-2012 (280) E.L.T. 176 (Kar)
iv. Ispat Industries Limited Vs. CCE-2006 (195) ELT 164 (Tri.-Bom.), { Alos upheld by Mumbai High Court vide Order dated 19.7.2007 in Central Excise Appeal No.187 of 2006}
v. Lloyds Steel Industries Vs CCE-2004 (64) RLT 732 (Tri.-Bom.), {upheld by Mumbai High Court (Nagpur Bench) vide Order Dated 13.06.2007 in Central Excise Appeal No.74 of 2004}
vi. Union of India Vs Associated Cement Company-2011 (267) ELT 55 (Chhattisgarh).
vii. CCE Vs ICL Sugars Limited-2011 (271) ELT 360 (Kar)
viii. Mahalakshmi Glass Works Ltd. Vs CCE, Mumbai-I-1999 (113) ELT 558

- The impugned OIAs cannot travel beyond the scope of notice to level fresh allegations to deny Cenvat Credit. They rely on the decision of Hon'ble Supreme Court in the case of CCE Vs. Champdany Industries reported at 2009 (241) E.L.T. 481 (S.C.) which held that Revenue cannot argue case not made out in the show cause notice.

- Appellate Authority has relied on the decision of Hon'ble Karnataka High Court in the case of Suraj Enterprises reported at 2010 (262) ELT 119 (Kar.) which is distinguishable on facts. The issue therein was whether "Ammonia Anhydrous" and "Ammonia Aqueous Solution" must be treated at par for ascertaining applicable rate of tax under Karnataka VAT and so, the said decision is not relevant in this case.
- Likewise, he has wrongly relied on the Tribunal's decision in the case of M/s. Grindwell Norton Ltd. vide Final Order No. A/10021/2018 wherein, credit was denied on the ground that post 01.04.2011, all input services used in setting up of the factory would be inadmissible. In the said order, arguments were not pressed regarding applicability of "main clause" to the services impugned therein.
- Learned Commissioner (Appeal) also wrongly relied on the decision of CESTAT Mumbai in the case of M/s. JSW Steel Coated Products (Ltd.) Vs. CCE reported at 2018-TIOL-300 where credit on Consulting Engineers Service was denied on the ground that the services in dispute were used for execution of a civil construction which was excluded from the definition of 'Input service'. The said decision is distinguishable on facts and therefore, has no applicability to the present case.
- Hon'ble Supreme Court in the case of CCE Vs. Alnoori Tobacco Products reported at 2004-VIL-4S-SC-CE has held that Courts should not place reliance on decisions without discussing if the factual situation fits in with the factual matrix of the decision on which reliance is placed.
- Since credit is allowable to the appellant, interest and penalty are not imposable on them. They rely on the decision of Hon'ble Gujarat High Court in the case of Asstt. Commr. of CGST-VIII, Vejalpur Vs. Vodafone Essar Gujarat Ltd reported at 2018 (8) G.S.T.L. 105 (Guj.) wherein, it was held that if credit is claimed bona fide and the belief that such credit

was admissible is a reasonable belief, penalty under Rule 15(1) of the CCR,2004 would not be imposed. They also relied on following cases:-

a. Hindustan Steel Ltd. Vs. State of Orissa 1978 (2) E.LT. (J159) (S.C.)
b. CCE Vs. Gujarat Narmada Fertilizers Co. Ltd-2009 (240) E.LT 661 (S.C.)
c. CCE, Allahabad Vs. DEY'S Medical (P) LTD. 2010 (253) E.L.T 648 (Tri.)
d. Vijay Shanthi Builders Ltd. Vs. CCE, CHENNAI - 2009 (240) E.L.T. 319 (Tri.)

In view of the above, they prayed for allowing their appeals and set aside the impugned orders passed by the Appellate Authority.

3. During argument, learned Advocate mentioned that CESTAT Hyderabad in the case of Pepsico India Holdings (Pvt.) Ltd. reported at 2021 (7) TMI 1094 has clearly held that Cenvat Credit on *"input services"* used in setting up of their plant at the Industrial Township called "Sri City" is admissible, even after amendment in the definition of input services under Rule 2(l) of the CCR, 2004 which omitted the phrase "setting up" w.e.f. 01.04.2011. It has been held in the said decision that definition of input service has main clause as well as inclusive clause. Varius services which fall within the inclusive clause will be entitled for the Cenvat Credit even after 01.04.2011.

3.1 Learned Advocate also relied on the decision of CESTAT Bangalore in the case of M/s. Shell India Pvt. Ltd. where Tribunal had allowed Cenvat Credit on various disputed input services after the term "setting up" has been omitted from the definition of input services. The appeal filed by revenue against this order was rejected by Hon'ble Karnataka High Court vide order reported at (2025) 27 CENTAX 444- (KAR) by replying the question of law in favour of the appellant. Relying on the decision of CESTAT Bangalore in the case of Zuari Cement Limited Vs. CCE reported at 2025-VIL-2036 and on the decision in M/s. Mahindra & Mahindra Ltd. reported at 2014 (9) TMI 225-CESTAT, learned Advocate pleaded that revenue has no basis to disallow credit on various input services used by the appellant evenafter, amendment in the definition of input service w.e.f 01.04.2011. He pleads that the first show cause notice in the case was issued as an outcome of audit of their records which is beyond the normal period of limitation. The entire case has been made out by the department on the basis of statutory records and there is no suppression or mis-statement in the case. Extended period of limitation is therefore not invokable. Learned advocate prayed for allowing their appeals by setting aside the impugned orders.

4. Countering the arguments, learned AR mentions that revenue found during audit of their records that Cenvat Credit has been availed by the appellant on various services such as fabrication, manpower, erection, commissioning, architectural service, vastu service etc. which was not admissible post amendment in the definition of "input service" w.e.f 01.04.2011. He reiterates the finding of the Commissioner (Appeals) to justify denial of Cenvat Credit by invoking extended period. Learned AR further relies on the decision of this Tribunal in the case of M/s Grindwell Norton Ltd. (cited supra) wherein, it was held that, *"I do not find any valid reason to hold that Cenvat Credit availed on various services used for setting up of industry other than construction service would be admissible to credit."* In this case, the bench however found that extended period of limitation was not invokable as issue involved interpretation of law and the show cause notice was based on the records maintained by the appellant.

5. We have heard both sides. Two show cause notices are involved having same issue i.e. denial of Cenvat Credit and confirmation of demand by lower authorities on various input services on the ground that the appellant has used these services for setting up of their Dahej plant.

5.1 The contention of learned Advocate is that as per decided cases, their various services are covered within inclusive part of the definition of input service and therefore, appellant has correctly the availed credit, even after the amendment dated 01.04.2011 in the definition. He heavily relies on the decision of CESTAT Bangalore in the case of M/s. Shell India Pvt. Ltd. and in case of Zuari Cement Ltd and the decision of CESTAT Hyderabad in the case of Pepsico India Holding (Pvt.) Ltd. We find that this issue was discussed in detail by CESTAT Hyderabad in M/s. Pepsico India case where assessee entered into a lease agreement for 99 years with M/s. Sri City for lease of land to setting up of a manufacturing plant. M/s. Sri City paid service tax on the consideration amount charged for leasing the land as well as on the amount charged as development services, credit of which was availed by M/s. Pepsico besides credit of service tax paid on consultancy service availed for setting up of the plant. They were issued show cause notice for denial of Cenvat Credit on above services which was allowed by the Tribunal. Relevant paras 16-23 of the said decision are reproduced below:-

> *"16. We find that the definition of 'input service' prior to 1.4.2011 had two parts- a main part of the definition and an inclusive part of the definition. This inclusive part specifically included the services availed for setting up the factory. After 1.4.2011, 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 in 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 manufacture 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 rule 2 of CCR 2004 reads as follows:*
> *RULE 2. Definitions. -(1) In these rules, unless the context otherwise requires,*
> *(a)*
> *(b)….*
> *(l)*
> *(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 manufacture; 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 labelling or re-labelling of containers including the declaration or alteration of retail sale price on 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 manufacture.*

> *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 manufacture 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 (i.e., in relation to 'a' and 'b' above);*
>
> *22. All four of the above qualify as input service as per Rule 2(l) (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. 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. 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 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."*

5.2 Similarly, in the case of M/s. Shell India Pvt. Ltd, (cited supra) Bangalore Tribunal has held that *"the definition of 'input service' was amended with effect from 1.4.2011 by deleting phrase "setting up". Prior to this, phrase 'setting up' was specifically provided in the inclusive part for consideration as input service. The department had entertained a belief that in view of deletion of such phrase in the definition clause, the appellant should not be eligible for the benefit of consideration of the disputed services as input service. On perusal of the definition of 'input service' contained in the CENVAT statute, it transpires that the services used either directly or indirectly, in or in relation to the manufacture of final product should be considered as input service. The appellant had availed CENVAT credit on the disputed services for setting up of new Technology Centre and that by utilising such facility, it had provided the output services defined under the service tax statute. Since the disputed* *services were ultimately meant for accomplishing the objective of providing the output service, it cannot be said that since, the phrase 'setting up' was specifically excluded in the inclusive part of definition of input service, the benefit of CENVAT credit should not be available."* The relevant para 5, 5.1 and 6 reproduced below:-

> *"5. The issue involved in this appeal for consideration by the Tribunal is, whether the appellant is entitled for the CENVAT credit of service tax paid on the disputed services, used for setting up the new project namely, Technology Centre, consequent upon amendment brought into Rule 2(l) ibid vide Notification No.3/2011- C Ex.(NT) dated 1.3.2011, effective from 1.4.2011.*
>
> *5.1 The period of dispute involved in this case is from October 2011 to March 2016. The definition of 'input service' was amended with effect from 1.4.2011. under the un-amended definition, the phrase 'setting up' was specifically provided in the inclusive part for consideration as input service. However, the said phrase was deleted in the amended definition from 1.4.2011. Accordingly, the department had entertained a belief that in view of deletion of such phrase in the definition clause, the appellant should not be eligible for the benefit of consideration of the disputed services as input service. On perusal of the definition of 'input service' contained in the CENVAT statute, it transpires that the services used either directly or indirectly, in or in relation to the manufacture of final product should be considered as input service. In this case, it is an undisputed fact that the appellant had availed CENVAT credit on the disputed services for setting up of new Technology Centre and that by utilising such facility, it had provided the output services defined under the service tax statute. Since the disputed services were ultimately meant for accomplishing the objective of providing the output service, it cannot be said that since, the phrase 'setting up' was specifically excluded in the inclusive part of definition of input service, the benefit of CENVAT credit should not be available. Even though, such phrase was deleted in the inclusive part of the definition of input service with effect from 1.4.2011, but the main part of such definition clause has considered within its ambit such phrase as input service for the purpose of availment of CENVAT credit of service tax paid on the disputed services. Thus, we are of the considered view that denial of CENVAT benefit on the disputed services cannot be sustained. We find that on an identical situation, this Tribunal in the case of Pepsico India Holdings Pvt. Ltd. (supra) has extended the CENVAT facility, holding as under:*
>
>> *"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 manufacture under section 2(f) of the Central Excise Act. Any service which is used not only in manufacture but also 'in relation to' manufacture 11 ST/30122/2018 and E/31153/2018 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 (i.e., in relation to 'a' and 'b' above);*

> *22. All four of the above qualify as input service as per Rule 2(l) (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. 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. 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 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."*

6. In view of the foregoing discussions, we do not find any merits in the impugned order insofar as it has denied the CENVAT benefit and confirmed the adjudged demands on the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant."

5.3 This decision has been upheld by Hon'ble Karnataka High Court vide order dated 01.12.2022 reported at 2023 (1) TMI 147- KAR by which appeal of Revenue was dismissed. During argument, learned Advocate of the respondent had submitted that "*assessee has not claimed any CENVAT credit towards "fresh construction*". Hon'ble Court observed that admittedly, assessee has claimed CENVAT credit on following heads:

- Consulting Engineer Services
- Management Consultancy Service
- Manpower Recruitment and Supply Agency's service
- Real Estate Consultant
- Business Support Service
- Erection, Commissioning and Installation Services
- Technical Testing and Analysis Services
- Business Auxiliary Services
- Commercial Training or Coaching Service
- Maintenance Charges
- Security Agency's services
- Management, Maintenance & Repair services
- Architect Services
- Technical Inspection and Certification Agency Services
- Storage and Warehousing Services
- Customs Agent Service
- Chartered Accountant's Services
- Telecommunication Services
- Photography Service
- Scientific & Technical Consultancy Service
- House Keeping services.

Hon'ble Court answered the question of law raised by Revenue in favour of the assessee. Further, appeal of Revenue against this order has also been dismissed by Hon'ble Apex Court vide 2025-VIL-06-SC and thus, issue has attained finality.

5.4 We further find that CESTAT Chennai in the case of M/s. Nemak Aluminium Casting (I) Pvt Ltd Vs. Commissioner of CGST & Central Excise, Chennai Outer reported at 2025-VIL-1068-CHE-CE has also held on the above lines. In the said order, it held that, "*the definition of 'Input service' comprises a 'means' clause, an 'includes' clause, and an 'excludes' clause. The primary eligibility is determined by the 'means' clause, which defines input service as any service "used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products". The services in question, used for setting up the plant, have a direct and inextricable nexus to the manufacturing activity, as manufacturing cannot commence without them. Therefore, these services are fundamentally covered within the main 'means' clause of the definition The deletion of the phrase 'setting up of a factory' from the subordinate 'includes' clause does not render such services ineligible, as their eligibility is already secured by the main definition - So long as a service is covered by the 'means' part and is not specifically barred by the 'excludes' part of the definition, credit is admissible The services used in setting up a factory are unambiguously covered as 'Input services' as they are activities directly 'in relation to' manufacture - The services used for setting up a factory remain eligible for CENVAT credit even after the amendment effective from 01.04.2011."*

5.5 The issue is therefore no more res-integra as input service as defined under rule 2(l) includes various services which are used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. These may also be used by a provider output service for providing an output service. Therefore, we are of the view that if input service(s) availed by the appellant are not falling under exclusion clause in the definition, omission of phrase "setting up" will not impact allowability of Cenvat credit. Only those services which fall under exclusion clause (A), (B), (BA) & (C), are not eligible for the Cenvat Credit. We further observe that the Adjudicating Authority at para 15 has mentioned that, *"the assessee has not submitted any evidence to prove that the said services have not been used for construction of civil structure or for laying foundation or for making structures for support of capital goods. The manufacturer has failed to adduce evidences to prove admissibility of credit in this case."* We therefore remand the matter to the Adjudicating Authority for a limited purpose to re-examine each service availed by the appellant with reference to documentary evidence adduced by the appellant whether or not the said service is covered by exclusion clause in the definition of "input service" under Rule 2(l). Since, matter is quite old, we direct the appellant to produce required documents before the said authority within a period of four weeks who shall decide the matter by following the principles of natural justice within a further period of four months.

6. Both the appeals are partially allowed by way of remand.

(Pronounced in the open court on 19.08.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi