CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20591 of 2022

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-08/2021-22/CE/Commr dated 25.05.2022 passed by the Commissioner of Central Tax & Central Excise, Kochi.)

M/s. Zuari Cement Limited
24/125, Q-5, Berth Survey No. 2578, Willingdon Island,
Kochi,
Kerala – 682 009. .....**Appellant(s)**

VERSUS

Commissioner of Central Tax & Central Excise,
Central Revenue Building, I.S. Press Road,
Kochi,
Kerala – 682 018. .....**Respondent(s)**

Appearance:

Ms. Meghna Lal and Ms. Vani Dwevedi, Advocates for the Appellant.
Mr. Rajashekhar. B. N. N, Superintendent (AR) for the Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 21925 /2025

Date of Hearing: 08.09.2025
Date of Decision: 03.12.2025

Per: P.A. Augustian

This appeal is filed against Order-in-Original No. COC-EXCUS-000-COM-08/2021-22/CE/Commr dated 25.05.2022 passed by the Commissioner of Central Tax & Central Excise, Kochi.

2. The issue in the present appeal is regarding demand against ineligible CENVAT credit availed by the Appellant.

3. The brief facts are M/s. Zuari Cement Limited the Appellant is a manufacturer of cement and started the activity of packing cement in Cochin in October 2015. Appellant has also obtained Service Tax Registration under various service categories. During multi location Audit by the Additional Director General Audit for the year 2016-2017, it is observed that Appellant has not paid central excise duty correctly for the MRP based clearances and also availed ineligible CENVAT Credit of input services. During the course of audit, Appellant paid the alleged short payment and reversed the amount in the CENVAT account. However, has not paid interest and penalty on the short payment. Further, it is alleged that Appellant has availed ineligible CENVAT credit of input services on the strength of invoices issued by service providers and started utilizing this credit for the payment of central excise duty for the clearance made from October 2015 onwards. Further, out of the total amount of Rs. 6,54,97,114/- of ineligible CENVAT credit, an amount of Rs. 6,18,00,000/- pertains to the service tax paid on the upfront charges for the lease rent of land taken from Cochin Port Trust for setting of a factory in Willingdon Island. Since the said credit is taken while setting up the unit, alleging various omissions, show cause notices were issued and Adjudication authority as per the impugned order confirmed the demand. Aggrieved by said order, present appeal is filed before the Tribunal.

4. When the appeal came up for hearing, as regards the allegation of ineligible CENVAT credit availed by the Appellant on lease premium, the Learned Counsel for the Appellant submits that as per the definition of input services as it stood both prior to and post amendment in 2011, even though the services used for construction of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods, were excluded from the definition of input service w.e.f. 01.04.2011, it is very pertinent to note that the "means" portion of the definition of input service has not undergone any change by virtue of the aforesaid amendment. Thus, the

services procured by the Appellant will qualify as an input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 as it squarely falls within the ambit of the means portion of the said definition, itself.

5. Learned Counsel further submits that the scope of the term "in or in relation to", as mentioned in the definition of "input service is very wide and expansive. The Hon'ble Supreme Court in the case of **Collector of Central Excise Vs. Rajasthan State Chemical Works** reported in **[1991 (55) E.L.T. 444 (S.C.)]** has held that in the process of manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected before the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. The Appellant has taken land on lease for developing or setting up a cement packing plant, which performed manufacturing activity under the Central Excise Act, 1994 and is not possible for the Appellant to undertake manufacturing operations without taking a plot of land for setting up a factory in the first place. Accordingly, it is submitted that the leasing of land has an inextricable nexus with the Appellant's manufacturing operations and the same will qualify as an eligible input service. It is submitted that since there was no amendment whatsoever carried out in the means clause of the definition, the CENVAT credit availed by the Appellant is in order. The issue is settled as per the decision of the Tribunal in the matter of **M/s. Kellogs India Pvt., Ltd. Vs. Commissioner of Central Tax, Tirupathi [2020 (7)-TMI-414 CESTAT Hyderabad]** wherein the Hon'ble Tribunal in similar set of circumstances analysed the Cenvat Credit eligibility of service tax paid on leasing of land taken for setting up of factory post amendment made to the definition of input service. It was held that the services used in relation to setting up of plant are neither specifically included nor specifically excluded post amendment to the definition of input service. The definition of input service is wide enough to cover any services used for setting up a plant especially when the services are used for obtaining

the land on lease. Without such land no factory can be set up nor can any manufacture take place and therefore it was held that the appellant therein is eligible to avail CENVAT credit of the service tax paid on leasing of land service. Similar decision was also rendered in the case of **Pepsico India Holdings (Pvt.) Ltd. Vs. Commr. Of Central Tax, Tirupati, 2021 (7) TMI 1094 - CESTAT HYDERABAD** and **Sri Chamundeshwari Sugars Ltd. Vs.Commr. of Central Tax, Mysuru-Commissionerate-2021(11) TMI-13-CESTAT, BANGALORE".**

6. The Learned Counsel further submits that the issue is also considered by this Tribunal in the matter of **M/s. Shell India Pvt. Ltd. Vs. Commissioner of Central Tax, Bangalore (2021 (11)-TMI-1127 CESTAT, Bangalore**) wherein it is held that:-

> *"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:*
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> > *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);*
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> *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".

7. Aggrieved by said decision, Department filed an appeal before the Hon'ble High Court of Karnataka and Hon'ble High Court as per the judgment dated 01.12.2022 [**2023 (1) TMI-147 - Karnataka HC]** upheld the decision of the Tribunal and aggrieved by said order, an SLP was filed before the Hon'ble Supreme Court and it was also dismissed by the Hon'ble Supreme Court vide order dated 17.01.2025.

8. As regards the demand against alleged ineligible CENVAT credit of Rs.36,97,114/-, Learned Counsel submits that the finding is given against the settled legal position. Law is well settled that the services procured prior to initiation of commercial production of products are eligible input services, so long as said services have nexus with future activity of the manufacture. In Appellant's case, Appellant has availed three services before commencement of the manufacturing.

1. Taking the land to lease
2. Procurement of machinery
3. Setting up of plant.

9. Learned Counsel further submits that without the very same services, Appellant cannot undertake the manufacturing process and therefore the services availed by the Appellant have direct nexus with the manufacturing activities undertaken by the Appellant. Learned Counsel also relied on the decision of the Hon'ble Tribunal in the case of **Tata Motors Ltd Vs. Commr. of C. Ex., Pune-I** reported in **[2015 (40) STR 269 (Tri. Mumbai)]** wherein it was held that the words directly or indirectly' and 'in relation to' used in definition of input service is of wide amplitude having broad and comprehensive meaning

and thus, CENVAT credit would be available in respect of services used in development and manufacture of prototypes of vehicles even though such prototype is only a primary version before commencement of commercial production. Reliance is also placed on the decision of **Shree Cement Ltd. Vs. CCE, Jaipur** reported in **[2015 (10) TMI 2198 - Cestat New Delhi]**, wherein it was held that there is no restriction that if any assessee avails cenvat credit on procurement of inputs (prior to start of manufacture), is not entitled to take cenvat credit. Infact, without procuring inputs, or some inputs service, assessee cannot start manufacturing activity. Therefore, it cannot be said that an assessee who is a manufacturer of excisable goods is to be denied the cenvat credit of duty paid on inputs or input service availed prior to commencement of manufacturing activity.

10. As regards demand against alleged ineligible CENVAT credit of Rs. 1,21,727/- availed by the Appellant on the ISD invoices issued in respect of services availed by the Regional Marketing office viz., Hyderabad, Bangalore and Chennai, the Learned Counsel submits that the payment of service tax and the credit was taken by ISD registration at Bangalore and thereafter said ISD office has distributed CENVAT Credit to the Appellant. The Learned Counsel further submits that the CENVAT credit pertains to the service tax paid by the marketing office of the Appellant in respect of input services used for marketing of final product. The Appellant also submits that the input services are in relation to manufacture of final product and very clearly covered under the definition of input services as provided under Rule 2(l) of CENVAT Credit Rules, 2004. Appellant also relied on the decision of the Hon'ble High Court of Karnataka in the matter of **M/s Tata Motors Ltd Vs. Commissioner of Central Excise** and **CC Vs. M/s. Peacock Industries Ltd [2012 (277) E.L.T 317 (Kar)].** Learned Counsel also draws our attention to the decision in the matter of **M/s Metro Shoes Pvt. Ltd. Vs. C.CEx., Mumbai - [2019 (9) TMI 1532 – CESTAT Mumbai]** wherein it is held that:-

> *"18. The assessee-appellant is statutorily acknowledged as a manufacturer covered by Central Excise Act, 1944 and any*

recovery can be effected only under section 11A of that Act. More so, the duty liability intended to be recovered must have been short-paid or not paid; no such allegation has been made in the notice or held to be so by the lower authorities. The corporate enterprise that has established this manufacturing facility is not acknowledged by Central Excise Act, 1944 and dereliction on their part, if any, cannot be brought within the purview of this Act unless it be in relation to manufacture. Even if such recovery is ordered with reference to rule 14 of CENVAT Credit Rules, 2004, wrongful availment must be established. In the scheme of input service distribution, the assessee-appellant is not required, by the framework Rules. to ascertain eligibility or be cognizant of the source of credit. It is a well-settled principle of natural justice that an assessee must not only be made aware of the reasons for proposed detriment but also be capable of defending its actions. The scheme of CENVAT credit precludes such defence by the appellant-assessee. The appellant-assessee is a recipient of credit that is assigned by the distributor who, undisputedly, has borne the incidence of tax on procured services. It is the distributor who can be charged with awareness of exempted output/output service, if any, and who is empowered by the statute to take the credit. And it is only such availment by the distributor that can be put to notice for ineligibility as espoused in the decisions that fulfill the criteria of precedent".

11. Learned Counsel further submits that the jurisdiction to question and recover the credit availed by the ISD lies with the jurisdictional authority of the ISD and that no dispute regarding eligibility of CENVAT credit can be raised at recipient unit such as the Appellant, who has taken the credit based on the ISD invoice at a later stage. In this regard, reliance in placed on the judgment of **CCE, Ahmedabad Vs. Godfrey Philips India Ltd** reported in **[2009 (239) ELT 323 (Tri-Ahmd.)],** wherein the Hon'ble Tribunal, Ahmedabad held that the denial of Cenvat credit to a recipient on the basis of ISD invoice is incorrect when there was no dispute raised by the tax authorities

regarding admissibility of service tax credit on input services availed by ISD. Reliance is also placed on **Castrol India Lid Vs. Commissioner of Central Excise,** reported in **[2013 (291) ELT 469 (Tri. Ahmd.)],** wherein it was held that demand if any regarding admissibility of input service credit as such, needs to be raised as ISD and not on unit level. Reliance is placed on the decision of the CESTAT, Mumbai in the matter of **Hindustan Coca Cola Beverages Private Limited Vs. Commissioner of CGST & Customs** reported in **[2025 (2) TMI 949-CESTAT, Mumbai]** wherein it was held that the assessee-recipient unit had merely utilized the credit distributed to them under Rule 7 of the CENVAT Credit Rules, 2004. In such a situation, the obligation under Rule 3(1) of the CENVAT Credit Rules, 2004, which provides for the availment of CENVAT Credit, cannot be transferred to the recipient unit under Rule 7 of the CENVAT Credit Rules, 2004 and thus, no recovery can be made from them. Thus, the demand to recover the CENVAT credit distributed through ISD from the appellant being the receiver is illegal and unsustainable.

12. As regards the CENVAT credit in respect of the expenditure incurred for business meeting, the Learned Counsel draws our attention to the finding in the impugned order where the Adjudication authority confirmed recovery of Rs. 90,716/- on the ground that the Appellant is not entitled to avail CENVAT credit in respect of Service Tax paid on function charges/entertainment charges. It is the case of the Department that w.e.f. 01.03.2011, every activity carried out within the precincts of an assessee cannot be considered to be covered under the definition of input service as defined under Rule 2(l) of Cenvat Credit Rules, 2004. In this regard, Learned Counsel submits that the Appellant has availed Cenvat credit of Rs. 90,716/- in respect of Service Tax paid on the invoice issued by M/s. Bigtree Advertising and Media Communications Pvt. Ltd., towards provision of event management services. The expenditure has been incurred for conducting business meeting at the Appellant's plant in Cochin. The said meeting had been organized for discussion of various issues in connection to the manufacturing and sale of Cement business of the Appellant. The

services have been also utilized by the Appellant for arranging various events for marketing and promoting their products. For the purpose of arranging such events, the Appellant procured event management services from various suppliers service providers. Therefore, the event management services received from the vendors is inextricably linked and has direct nexus with the provision of the output activity by the Appellant. Reliance in this regard is placed on **Arris Group India Private Limited Vs. Commissioner of Central Excise & Service Tax, Bangalore** reported in **[2018-VIL-329-CESTAT-BLR-ST],** wherein it was observed that while determining the eligibility of credit, the assessee was eligible to avail the credit of service tax paid on the event management services utilized for organizing various events for prospective clients/employees. Reliance is also placed on **Honda Motorcycle and Scooter India Pvt. Ltd. Vs. Commr. of Central Tax, Bangalore** reported in **[2021 (3) TMI 1116-CESTAT Bangalore],** wherein the credit availed on event management services for the inaugural function of the manufacturing unit was allowed as it involved advertisement and promotion and was attended by the customers, making the same an "input service for the purpose of Rule 2(l) of the CENVAT Credit Rules, 2004.

13. As regarding denial of Rs. 1,34,123/- in respect of services received in the form of repainting work on the ground that the said activity cannot be treated as input service under Rule 2(l) of the CENVAT Credit Rules, 2004, as construction or execution of works contract of a building or civil structure or making of structures for the support of capital goods are excluded from the definition of input service. As per Rule 2(l) of the CENVAT Credit Rules, 2004 it excludes only a specific type of works contract which is in the nature of works contract/construction of civil structure building as well as construction of support structure for capital goods. However, the activities undertaken by the Appellant is works service contract and not for construction of building or civil structure for denial of CENVAT credit.

14. As regards the demand by invoking the extended period of limitation, Learned Counsel submits that an audit was conducted in the

corporate office in July 2012 to September 2014 and alleging some irregularity, objections were made and as per the Order-in-Original dated 31.03.2016, penalty was imposed on the corporate office. But at the relevant time, no objections were raised regarding any other ineligible CENVAT credit as alleged by the Appellant. Further the entire allegation is made based on the document maintained by the Appellant and considering the facts and circumstance of the case, no reason or justification to invoke the extended period of limitation. The Learned Counsel also relied on the decision of the Tribunal in the matter of **Commissioner of CGST & Central Excise, GST Vs. M/s Deify Infrastructure Ltd. [2025 (5) TMI-1010-CESTAT New Delhi)].**

15. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that the activity of taking land on lease cannot be treated as a service used in or in relation to the manufacture of the final product of the assesse. It is clearly a service used for setting up of the factory as alleged in the show cause notice and the activities related to setting up have been specifically excluded from the ambit of definition of input service provided under rule 2(l) of the CENVAT Credit Rules, 2004 w.e.f. 01.04.2011 as per Notification No.03/2011 dated 01.03.2011 and the said ineligible credit taken and utilized by them is liable to be recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944. In the case of the balance credit of Rs.36,97,114/-, though the appellant is claiming that these amounts are attributable to their Cochin Packing Terminal, since the services to which this credit is attributable were received before commencement of production in the factory, same cannot be considered to have been used in or in relation to the manufacture of the final product and do not qualify as input services.

16. Heard both sides and perused the records.

17. As regards the allegation of ineligible CENVAT credit availed by the appellant on lease premium, we find that as held by this Tribunal in the matter of **M/s. Shell India Pvt. Ltd. (supra),** 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 be denied. As regards demand against ineligible CENVAT credit of Rs. 36,97,114/-, we find that without the very same services, Appellant cannot undertake the manufacturing process and therefore the services availed by the Appellant have direct nexus with the manufacturing activities undertaken by the Appellant. As regards CENVAT credit of Rs. 1,21,727/- availed by the Appellant on the ISD invoices issued in respect of services availed by the Regional marketing office viz., Hyderabad, Bangalore and Chennai, we find that the payment of service tax and the credit was taken by ISD office at Bangalore and thereafter said ISD office who, undisputedly, has borne the incidence of tax has distributed CENVAT Credit to the Appellant. Thus, the CENVAT credit pertains to the service tax paid by the marketing office of the Appellant in respect of input services used for marketing of final product and it is in relation to manufacture of final product, and the very same issue is covered by the decision in the matter of **M/s. Metro Shoes Pvt. Ltd. Vs. C.CEx., Mumbai (supra)**. As regards the CENVAT credit in respect of the expenditure incurred for business meeting, in the impugned order where the Adjudication authority confirmed recovery of Rs. 90,716/- on the ground that the Appellant is not entitled to avail CENVAT credit in respect of Service Tax paid on function charges/entertainment charges. Appellant has availed Cenvat credit of Rs. 90,716/- in respect of Service Tax paid on the invoice issued by M/s. Bigtree Advertising and Media Communications Pvt. Ltd., towards expenditure that has been incurred for conducting business meeting at the Appellant's plant in Cochin. As held in the matter of **M/s. Arris Group India Private Limited (supra),** we hold that appellant is eligible to avail the credit of service tax paid on the event management services utilized for organizing various events for prospective clients/employees. As regards denial of credit of Rs. 1,34,123/- in respect of services received in the form of repainting work, we find that CENVAT Credit Rules, 2004 exclude only a

specific type of works contract which is in the nature of works contract/construction of civil structure building as well as construction of support structure for capital goods. However, the activities undertaken by the Appellant is works service contract and not for construction of building or civil structure for denial of CENVAT credit. As regards the demand by invoking the extended period of limitation, we find that since the audit was conducted from July 2102 to September 2014 and when such allegations were not made, demand confirmed by invoking the extended period of limitation and penalty are unsustainable.

18. In view of the above discussion, we find that the impugned order is liable to be set aside.

19. Accordingly, the impugned order is set aside, and the Appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 03.12.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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