

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10886 of 2020

(Arising out of OIO-RAJ-EXCUS-000-COM-01-20-21 dated 24/06/2020 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

RELIANCE INDUSTRIES LTD

.....Appellant

Village Meghpar Padana Lalpur Reliance Greens
Jamnagar
Jamnagar, Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

APPEARANCE:

Shri Vishal Agarwal, Shri Akshit Malhotra and Ms. Dimple Gohil, Advocates
appeared for the Appellant
Shri Ajay Jain, Special Counsel (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10364 /2022

DATE OF HEARING: 11.01.2022
DATE OF DECISION: 13.04.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of petroleum product and petrol chemicals which are cleared on the payment of appropriate duty of excise. In the year 2015 the appellant undertook modernization/ expansion of its manufacturing facilities in their Jamnagar refinery by setting of facilities such as Coke Gasification Island, Air Separation Unit (ASU), CoRecovery Unit, Sulphur Recovery Unit (SRU), Refinery Off-Gas Cracker Plant (ROGC), Low Density Polyethylene Plant (LDPE), Linear Low Density Polyethylene Plant (LLDPE), the Captive Power Plant etc. This project was nomenclated by the appellant as the J3 project. The erection, commission, installation service and works contract service in dispute were rendered under 81 contracts by 41 contractors/ service providers. The Appellant have not availed any credit in respect of services used for laying of foundation or for making of structures for support of capital goods. The only credit on Fabrication of structures that has been availed

by them in respect of pipes supports to the tune of Rs 33,60,790/- as the said pipe supports are themselves regarded as capital goods as per the definition of "Capital Goods" under rule 2(a) of Cenvat Credit Rules, 2004, being pipes or tubes fittings. Likewise, the appellant has also not availed any credit on Construction service or Works contract service in so far as they are used for construction or execution of works contract of building or a civil structure or of a part thereof. The contracts for laying of foundation or making of structures for support of capital goods were separately placed or were separate line items/ deliverables in the contracts, in respect of which credit to the tune of Rs 275,05,12,910/- has not been availed in respect of the J3 Project. The contracts for installation of machinery as also technological/ industrial structures such as handrails, ladders, staircases, platform etc entered into by the appellant were pure service / labour work orders/ contracts wherein all the material required was made available by the appellant to the service provider as free issue. The aforesaid services were provided by the service provider under the head of mainly in respect of ECIS and in few cases under WCS. On these services the appellant had availed the Cenvat credit. Based on audit conducted by the department the appellant was issued a Show cause notice dated 07.06.2019 alleging that the Cenvat credit availed by the appellant in respect of services of ECIS and WCS (relating to installation and commissioning) received by it, for the four categories of work, enumerated below was inadmissible. According to the Notice, the services availed were construction services or service portion in the execution of WCS which were used for construction of a building or civil structure or a part thereof and/or making structure for support to capital goods, and that these services were covered by the exclusion clause in the definition of "input service".

Sr No.	Description of Work	Sr.No Appearing in pictorial presentation submitted on 23.04.2019
1.	AG Piping- install & align all kinds of supports	1C
2.	Pipe Supports	2
3.	Structural fabrication& erection work	5A,5B,5C
4.	Mechanical Structure work	8

1.2 The Adjudicating Authority vide their impugned order disallowed the Cenvat credit in respect of ECIS and WCS on the ground that the services fall under exclusion clause in the definition of input services under Rule 2 (I) of Cenvat Credit Rules, 2004. Being aggrieved by the Order-in-Original dated 24.06.2020 the appellant filed the present appeal.

2. Shri Vishal Agarwal, Learned Counsel along with Shri Akshit Malhotra and Ms. Dimple Gohil, Advocates appearing on behalf of the appellant submits as follows:-

2.1 The Adjudicating Authority in the impugned order in para 21.09 and 21.10 has clearly admitted that there is no dispute of classification at the service providers' end in the instant case .In other words, the Adjudicating authority has admitted and concurred with the appellant that the services provided by the service providers were correctly classified under the head of ECIS. The Adjudicating Authority has however in para 20.12 in the impugned order held that the services availed by the appellant and recorded as ECIS are correctly classifiable as construction

service which has been used by the appellant for making of structure for support of capital goods.

2.2 He submits that these findings of the Adjudicating Authority is not contrary to his own finding in para 21.10 where he admits that service provider has correctly classified services but is also at odd with the law laid down by the Hon'ble Supreme Court in the case of CCE vs MDS Switchgear Ltd reported in 2008 (229) ELT 485 (SC) and Sarvesh Refractories (P) Ltd vs CCE reported in 2007 (218) ELT 488(SC) to the effect that the authority having jurisdiction over the end of recipient cannot question the classification of service.

2.3 He submits that as against the appellant's contention that once the classification of services in the present case under ECIS and WCS was finalized at the service provider end, the same cannot be disturbed at the service recipient end, the revenue's contention is that with effect from 01.07.2012 there is no requirement of classification of service during the period under dispute. The question of classification at the end of the supplier and re-classification at the end of recipient does not arise. He submits that the revenue overlooks the fact that section 70 of the Finance Act 1994 stipulates that every assessee required to furnish a statutory return to Superintendent of Central Excise in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994 stipulates that every assessee shall submit a half yearly return in form ST-3. For the period of the dispute the return in ST-3 form requires the assessee to declare the description of the taxable service for which the tax is paid. He submits that the Annexure to the ST-3 return specified 110 services which were specified in section 65 (105) of the Finance Act, 1994. In the said Annexure, construction service, ECIS and Works Contract Service are listed separately therefore, the contention of the revenue that after

01.07.2012 classification of services has been done away with is clearly untenable.

2.4 He submits that since the services could not have been re-classified at the end of the service recipient the tax discharged thereon under the head of ECIS and WCS (relating to erection ,commission and installation) cannot be re-classified at the end of the recipient. Once such re-classification is rejected the exclusion provided for in the definition of input service would not be attracted as the same applies only to construction services including service listed under clause(b) of Section 66E of Finance Act, 1994 and Works Contract Service. The services availed by the appellant being ECIS it is not covered by the exclusion Clause and credit in respect of same cannot be denied.

2.5 He submits that the Adjudicating Authority interpreting pre & post 01.07.2012 the exclusion clause interpreted that exclusion clause in the Cenvat Credit Rules, 2004 was amended with effect from 01.07.2012 with a view to align the same with the changed concept of Negative List regime of services. Under the amended definition of input service, service portion in execution of works contract and construction services have been incorporated in the exclusion clause. In this regard he submits that according to the revenue the scope and ambit of the exclusion clause in definition of input service prior to and subsequent to 01.07.2012 is the same. He submits that ECIS and WCS (in respect of ECIS) was never excluded from the scope and ambit of the input service both prior to 01.07.2012 and subsequent to 01.07.2012. Accordingly even as per reasoning canvassed by the revenue the exclusion clause in the definition of input service could not have covered ECIS thus the entire basis of the revenue to dispute availment of credit is untenable.

2.6 He referred to the definition of construction service under clause 30 (a) which was first taxed under Finance Act, 1994 with effect from 10.09.2004. He further submits that the legislature sought to also tax construction of residential complex services completely, it is for this reason that in the head of "construction service", a prefix "commercial or industrial" was added to distinguish it from Construction of a residential complex service. He further submits that it is the contention of the revenue that ECIS is an integral part of Construction Service and is thus covered by the exclusion clause. This contention of the revenue overlooks the fact that legislation has chosen to tax the construction service as a distinct and different from ECIS or Site formation, clearance, excavation. There is no legal justification to obliterate the specific mandate under statute and interpret construction service as covering activity which were otherwise separately specified as taxable service under the Finance Act, 1994. He place reliance in the case of Reserve Bank of India vs. Peerless General Finance & Investment Co. Ltd, AIR 1987 (SC)1023 where it was held that the expression present in the statute may be interpreted in text and context of that particular statute.

2.7 In the view of the said judgement the revenue was not justified on relying upon the dictionary meaning of the expression "Construction" without appreciating the text and contexts in which expression 'Construction service' has been used in the service tax enactments and the Cenvat Credit Rules, 2004. He also refers to the CBIC circular No. 151/2/2012-ST dated 10.02.2012 where in it was clarified that construction services are services falling under clauses (zzq) (zzzh) of section 65 (105) of the Finance Act, 1994 which are nothing but commercial and industrial construction service {defined under section 65 (25b)} and construction of complex service {defined under section 66 (30a)}.

2.8 He further submits that the exclusion clause in the definition of the input services under rule 2 (I) of CenvatCredit Rules,2004 consists of two parts i.e. nature of service received by manufacturer or service provider and purpose for which the aforesaid excluded service has been put to. The service in the exclusion clause have to be cumulatively satisfied and input service to be excluded for the purpose of Cenvat Credit. He submits that the various authorities in the Act ,circular , notification and rules the activity of erection commissioning and installation are separately specified to that of construction therefore the legislature has contemplated that services covered under the expression "Construction service" are completely different and distinct from that of services of expression erection commission or installation.He further submits that Hon'ble Supreme court in the case Larsen & Toubro vs. CC reported in 2015 (39) ELT 913 wherein it has been categorically held that ECIS, CICS would apply to pure service contract and if there is transfer of properties of goods involved in the execution of the contract the same would be classifiable under WCS. Therefore the contention of the revenue that WCS covers ECIS and CICS is therefore legally untenable as the services of WCS are completely distinct and different from CICS and ECIS. He submits that the revenue's reliance on the CBIC circular No 80/10/2004-ST dated 17.09.2004 which clarified that erection involves civil work which would otherwise fall under the category of constructions service. However in the case of composite contract of erection commission and installation the erection charges would be termed as ECIS service. The circular does not further the case of the revenue in as much as undisputedly there is no civil work that any of the contractors were required to undertake as part of the ECIS. The activity of civil construction was covered by separate work order and/or separately deliverables or the appellant undertook the same by itself. The services in respect of which the credit has been availed which was classified as ECIS did not have any

element of civil construction in the same. Therefore, the circular has not adversely affected the eligibility of Cenvat credit on ECIS to the appellant.

2.9 He further submits that the activity undertaken should be that of construction of civil structure or making of structure for support of capital goods. Other than these activities no other activity is covered by the exclusion clause. The expression "civil structure" used in the exclusion clause would draw color from the definition of CICS which covers within its ambit construction of building or civil structure or part thereof. It is thus evident that applying the principle of *Ejusdem Generis*, the expression civil structure is a reference to a structure constructed using steel and cement. There being undisputedly no such construction of civil structures being undertaken by the service provider in the instant case the exclusion clause will not apply. He submits that the adjudicating authority contended that the expression civil structure in the absence of any definition has to be understood as non-military structure. There is no basis for arriving at any such conclusion. Further, the reliance placed on Wikipedia by the Adjudicating Authority in support of this contention is also untenable. In view of the law laid down by the Hon'ble Supreme Court in the case of *CC vs Acer India Pvt Ltd* reported in 2007(2018) ELT 17 (SC) wherein it has been held that Wikipedia is not an authentic source of data and is thus unreliable.

2.10 As regard the contention of the Adjudicating Authority that activity of fabrication, erection and installation is a composite activity. He refers to a work order wherein he points out that the structures which were erected and installed are not the same which have been fabricated as also the fact that the erection and installation activity were being undertaken for different site to that of fabrication. It is thus evident that the finding of the Adjudicating Authority that activity of fabrication erection and installation is a composite activity is untenable. The fabrication of a technological or a mechanical or industrial structure cannot be said to be construction of

civil structure as civil structure in the context of the Finance Act 1994 is a reference to a structure constructed using steel, cement, sand etc and to a similar building, road, dam, airport etc.

2.11 He submits that in so far as the other limb of the exclusion clause which covers construction service including service of construction of a residential complex and Works Contract Service used for making of structure for support of capital goods is concerned no Cenvat credit was availed on any activity of fabrication of technological/industrial structures. The only credit with respect of fabrication that has been availed is in respect of pipes supports which are nothing but pipe fittings and are covered in the definition of capital goods under 2(a) of Cenvat credit rules, 2004. The entirety of the Credit availed by the appellant was only for installing and commissioning the said structure which cannot be said to be the activity of making of structures for support of capital goods. Further, as dealt in the later part the structure which were installed and commissioned were parts, component and accessories of capital goods and were therefore themselves capital goods as per the clause (iii) of 2(a) of cenvat credit rules, 2004. Thus, even the contract for fabrication in respect of which credit was not availed, the same was not making of structure for support of capital goods.

2.12 He submits that the Adjudicating Authority has failed to appreciate that activity of fabrication, erection and installation under the work order awarded to the contractor/service provider were separate deliverables for which separate considerations had been held by the service providers. The Adjudicating Authority ought to have appreciated that merely because one contract/ work order embodied several separate deliverables, the same will not and does not render the activities undertaken under such deliverables as a composite activity. In view thereof the entire basis of the

adjudicating Authorities finding to hold that the activity offabrication, erection and installation is a composite activity is untenable.

2.13 He takes us to some work orders and submits that on the basis of the Work Order the Adjudicating Authority contended that the services of Construction or Civil structures were support of capital goods. He pointed out that there are separate deliverables in the work order i.e. for construction of civil structure and fabrication, erection and installation. The appellant have not taken cenvat credit on deliverables such as construction of civil structures and fabrication of structures for support of capital goods. The credit was taken only in respect of erection and installation of technological structures which are other than civil structures or structures for support of any capital goods therefore, the ECIS in the present case does not fall under the exclusion clause. He submits that the Adjudicating Authority's reference to Eiffel Tower to contend that the same being made entirely of metal was nothing but a civil structure is completely untenable. The Adjudicating authority has failed to appreciate that the expression "Civil structure "being a creation of statute has to be interpreted in the context of Finance Act, 1994 and Cenvat Credit Rules, 2004 but the Adjudicating Authority has failed to appreciate that the Finance Act, 1994 and rules made there under and have been framed for a particular object, context of which required to be given utmost importance while interpreting an expression contained therein. It is in the context of the Finance Act, 1994 and the Cenvat credit Rules, 2004 that distinction has been drawn between a civil structure and Mechanical or technological structure.

2.14 As regard the contention of the Learned Special Counsel for the revenue that the appellant had split sample work order in an activity of Fabrication, ECIS is an artificial manner that traverses beyond the scope of the allegations made in the notice. He submits that this allegation does not exist in the SCN therefore, this contention is bereft of any merits. He

submits that the Adjudicating Authority has alleged that the erection, commissioning and installation of technological structures can be said to be making of structure for support of capital goods. It is his submission that none of the said industrial /technological structures have been used for support of any capital goods. The said structure which were being erected and installed are gratings, cable trays, platforms, ladders, staircases, access structures, handrails etc which are nothing but parts, accessories or components of the capital goods and are thus covered by the definition of capital goods. He takes support of the Hon'ble Delhi High Court judgment in the case of Vodafone Mobile Services Ltd vs. CST reported in 2019(27) GSTL 481(Del.). He also placed reliance on the following judgment in support of his submission that the erection, commission and installation services are in respect of capital goods and do not have support for the structure of capital goods.

- Nayara Energy Ltd vs. CCE reported in MANU / CS/ 0003/2020(Tri.Ahd)
- Ultratech Cement Ltd vs. CCE reported in MANU /CE/0679/2016 (Tri. Del)
- Jindal Vijaynagar Steels vs.CCE reported in 2005(191) ELT 459 (Tri. Bang)
- JP Bala Plant vs. CCE reported in MANU/CE/ 0988/2003/ (Tri. Del)

2.15 He also submits that the demand for the extended period is hit by limitation. The only reason assigned for invocation of the extended period of limitation is that the appellant did not provide the information sought for during the audit. It is settled law for invoking the extended period of limitation that it has to be established that there was wilful suppression at the time when the credit was availed by an assessee and not on the basis of what information was furnished or not furnished by the assessee at the time of audit. Secondly, the information sought for during the audit was details of

Cenvat credit on the service availed in relation to manufacture of civil structure and for support of capital goods. The appellant being of the bona fide belief that no credit whatsoever has been availed by it on any construction services let alone the service which has been used for construction of civil structures or for making the structure support for capital goods would not have furnished the information called for. In view thereof the invocation of extended period of limitation in the instant case is untenable.

3. Shri Ajay Jain, Learned Special Counsel appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that there is no concept of classification in Service Tax after the interpretation of Negative List Concept, 2012. Earlier, to this change the classification was in terms of Sub clause (105) of Section 65. Even in the ST-3 return, under Column A1 the "Name of taxable service" was to be mentioned. In column B the sub clause No clause of (105) of section 65 was required to be mentioned.

3.1 After the introduction of the negative list concept in 2012, provisions of section 65 (105) were made inapplicable from 01.07.2012. Provisions of section 65A were also made inapplicable from 01.07.2012 vide section 66B; all services except in Negative List were chargeable to uniform rate. Section 66D provided the list of Negative List. In ST-3 Return, in column A9, the "Taxable Services for which tax is being paid" was mentioned without the need of specifying any classification for the services. In the instructions to file the ST-3 return, it was mentioned –"Though with effect from 01.07.2012 classification of services has been dispensed with, the assessee is required to mention the name of taxable services as per Annexure enclosed with this return.

3.2 As there was no requirement of classification of services during the period under dispute, the question of any classification at the end of the

supplier and reclassification at the end of the recipient does not arise and is not warranted. In view of this position, the argument of traversing beyond the jurisdiction by the Respondents is nullified. As regard the contention of the appellant that Erection, Commissioning and Installation and works contract services received by the appellant are not construction service and reliance placed on the dictionary meaning of the word "Construction" is untenable. It is submitted that after the introduction of the Negative List regime, the word "Construction Service" has a much wider meaning than what was covered under Commercial and Industrial Construction (CIC) service, Construction of Complex (COCS) service and construction relating to public works such as roads, bridges, airports etc. In the absence of any specific definition of "Construction Service" in the statute, the reliance on the dictionary meaning is tenable.

3.3 He submits that the appellant's reliance in definition of Construction Service i.e. CIC, COCS and WCS prevailing prior 2012 should be considered therefore any service other than these services cannot be subsumed in the service of construction. He submits that the argument that these services are mutually exclusive and cannot be part of any other service whether prior to 2012 or after 2012 is erroneous. The definition of Works Contract, prior to 2012 or even afterwards, itself indicates that various individual services such as construction, ECI etc can be part of other separately defined services i.e. works contract.

3.4 He invited our attention to Board Circular No. 80/10/2004-ST dated 17.09.2004 and submitted that the circular deals with the extension of service tax on Installation and Commissioning to Erection Services. It is mentioned therein that erection would refer to the civil works to installation/commissioning of a plant/machinery. Erection involved civil works which would otherwise fall under the category of construction service. From this it is clear that any service can be an independent service in its

own right as well as be a part of any other service depending upon the scope of that other service.

3.5 He submits that the appellant has made the contention that the activity of Fabrication, Erection and Installation of Industrial structures is not a composite activity. In this regard he submits that for the purpose of deciding whether the exclusion clause under section 2(I) is applicable or not it has been seen that whether the service was a construction service or not. The scope of service has to be decided on the basis of the scope of a work in a single works contract. Scope of contract cannot be vivisected to decide artificially as to how much credit can be availed and how much cannot be availed. It appears that the appellant has in case of a single works order by mentioning fabrication and ECI as separate deliverables, split the credit paid at the service provider end in an artificial manner. The appellants claim they have not availed the service tax paid on Fabrication but availed the same on the ECI. In other words they themselves have considered the corresponding credit as not available to them under the exclusion clause of section 2(I) of Cenvat credit Rules, 2004. It is submitted that the fabrication service and ECI service being a part of the same works order, will be covered by construction service, and whole tax paid by the supplier will be ineligible as credit at the appellants end in terms of exclusion clause of 2(a). In other words a service covered by a work order cannot be vivisected for any taxing purpose.

3.6 As regard the contention of the appellant that the Industrial construction erected and installed in the instant case are not civil structures. He submits that the term civil structure has been used in the Finance Act, 1994 from the period even prior to 2012. The same has never been defined in the statute. The appellant has tried to make a distinction between the civil structure and industrial structure. Even the term industrial structure has not been used anywhere in the statute. The appellant has not

distinguished between the two terms and has failed to provide the technical characteristics differentiating both the terms. It is also not the arguments that two are mutually exclusive.

3.7 He further submits that even in the definition of Commercial and Industrial Construction relied upon by the appellant the terminology of building or civil structure has been used and the same is in relation to use in Commerce or Industry. Therefore any structure used in industry can be a civil structure. He submits that as regard the reliance of the appellant on TRU circular 80/10/2004-ST dated 17.09.2004 in as much as the appellant contended that a building or civil structure in the construction where at least cement and steel is used. The same argument has been advanced, based on the common parlance understanding as per which such building or civil structure should be made of cement, mortar, stones etc. This argument is not correct. With the advent of modern technology, there are structures such as Industrial sheds, warehouses etc which are made of steel with hardly any use of cement, mortar etc and the same are accepted as civil structures in common parlance. In this context the Adjudicating Authority has given the example of "Eiffel Tower".

3.8 He submits that the appellant also argued that if an industrial structure is considered as civil structure then the difference between the two terms used in the exclusion clause of section 2(l) i.e. construction of a civil structure and making of a structure for support of capital goods is obliterated. This argument is not correct as the two terms used in the exclusion clause are differentiating the method by which a structure may come into being i.e. either by construction or by making.

3.9 As regard the invocation of extended period of limitation for raising the demand, he submits that in the SCN reference has been made to Rule 9 (6) of the Cenvat Credit Rules which cast onus on the assessee to take eligible credit. It is further mentioned that the appellant had

mentioned in the work order that "Bill of fabrication" and "Bill of erection" are to be separately raised. It is submitted that the same should be seen in the light of artificial division of the work orders and the applicant's awareness about the ineligibility of credit on fabrication. In the finding portion it has been mentioned that the appellant, in their cenvat credit account has mentioned the details of credit taken under the broad head of 'ECI' and "Works Contract ". It is further mentioned that this wilful suppression was found only when they submitted the information on 08.05.2019 during the course of audit. Therefore it is clear that the Adjudicating Authority has not established the suppression of facts on the basis of late submission of the information at the time of audit. It has only been mentioned that the suppression of fact resorted by the appellant came to notice at the time of audit when the required information was submitted after much persuasion by the department. He placed reliance on the following judgments:

- Mahindra Sona Ltd Vs. CCR, Nashik -2016-TIOL-1174-CESTAT-MUM
- Tiken India Ltd Vs. CCE , Jamshedpur - 2019-TIOL-641-CESTAT-KOL
- CCE, Ghaziabad Vs. Rathi Steel & Power Ltd – 2015 (321)ELT 200 (ALL)

4. We have carefully considered the submission made by both the sides and perused the records. In the present case the appellant's cenvat credit was denied in respect of input services viz. ECIS and WCS. Since out of total amount of cenvat credit involved in the present case, the cenvat credit on WCS is only Rs. 29480/- which is meagre, we will deal the issue of ECIS in detail as under and WCS will be dealt separately. The credit on ECIS was denied on the ground that this service is falling under the exclusion clause in the definition of input service under Rule 2 (I) of Cenvat credit rules, 2004 which is reproduced below:

"[(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 manufacturer 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 upto 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 upto 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 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.]”

4.1 The contention of the adjudicating authority is that the services of ECIS were used for construction of building or a civil structure therefore, the services of ECIS falls under the exclusion clause provided under Clause A of Rule 2 (I) of Cenvat Credit Rules, 2004. In this regard it is necessary to first understand the nature of the capital goods/ structure for which service of ECIS was received to arrive at conclusion that whether these services were provided in execution of Works Contract Service or construction of building or civil structure. The appellant has submitted a pictorial presentation, submitted to the department on 23.04.2019 which is scanned below:

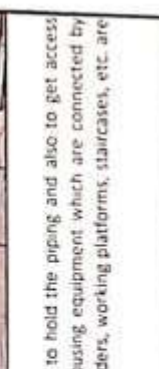
Reliance Industries LimitedDTA Refinery Jamnagar

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
1	Piping Fabrication & Erection	Piping is essentially connecting various process equipment and transporting the process fluid to enable achieve desired products at the end. This includes various metallurgies to containing the desired temperature & fluid pressures as required by process parameters. These process fluids during the processing are in vaporized state / semi & fluid state as well. The piping is also connected to ensure process safety to venting flare and stop draining during upset conditions. Piping is segregated between process piping and utility piping. The utility piping is to enable process functions as desired for each designated plant operation requirements.	
A	Piping Fabrication	Piping Fabrication is one of the initial activity to assemble. Includes Material receipt from CMC to fabrication location, Marking, beveling, cutting, carrying fit up, welding, visual inspection and completing the works as per SOQ, carrying Non-Destructive tests includes Dye Penetration Test / Radiography Test / Ultrasonic Thickness test. Shifting to painting yards for Blasting & painting as per specs / QAPs. Shifting, unloading, tagging (for ease of identification at all times), loading on trailer for shifting to erection site. Complete NDT & check points. For UG piping carryout the hydro test for the cleared spools and external & internal coating as per the specs.	
B	UG Piping	UG Piping includes excavation to the required depth, joining the fabricated spools and complete the hydro test, laying of headers / spools as per the drawing, maintain slope and invert levels and ready for field fit up and welding works, joint coatings, NDT examinations, such as holiday test, peel off test as per QAP and making required quality records, preparing sand beddings, completing levels with alignment and back filling with required compactions.	
C	AG Piping	AG Piping Works Includes receive fabricated spools from laydowns, install, align, join with equipment & carry beveling, fit up & welding of field joints. Install & align all kinds of supports, Complete NDT & check points, offer for MC & NDT clearances and carry hydro-test of the piping loops. Carry out small bore piping at field and prepare as built and Complete all the works as per IFC & QAPs.	
D	IBR piping	The steam contained piping requires statutory clearances by Indian Boiler Regulations (IBR) for which the specifications being complied as per the IBR regulatory recommendation.	
E	Heat stream & strengthening application (HSS)	A Heat-shrink sleeve is a corrosion protective coating for pipelines in the form of a wraparound or tubular sleeve that is field applied. Heat-shrink sleeves have an adhesive that sticks the sleeve to the material and the factory applied maintenance coating, and also acts as a corrosion protective layer	

Reliance Industries Limited DTA Refinery Jamnagar

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
2	Pipe Supports	Pipe Support are for supporting piping as per the drawing designs. Pipe supports are with different designs and types, such as guides, brackets, restrains, rigid anchors, bracings, etc. Fabrication and erection of the same is similar to structure works but installation shall be by piping contractor as per the drawings.	
3	Fabrication of Tank	Fabrication of tank Includes preparing cutting plan, cutting, beveling and carry fit-up, erection of petals / segments by hydraulic methods of all MOCs and install accessories as per the drawings and specs, walk ways, stair case, treads and platforms. Install Fire fighting, foam system, sprinklers as per the specs. Complete all the works as per IFC & QAP.	
4	Erection of tank	Erection of tank Includes install accessories as per the drawings and specs, walk ways, stair case, treads and platforms. Install Fire fighting, foam system, sprinklers as per the specs. Complete all the works as per IFC & QAP.	
5	Structural Fabrication & Erection work	Structure is another essential part of equipment which enables supporting and bridging between various equipment to hold the piping and also to get access platforms for operation & maintenance works. All these are achieved by erecting structures. Some structures are housing equipment which are connected by processes. Some structure are built to enable operational support in reactors, Fin fan coolers. Access platforms, cage ladders, working platforms, staircases, etc. are housed in and around equipment. Bridges that connect technological structures, various pipe racks, etc.	
A	Structure Fabrication	Structure Fabrication includes Material receipt from CMC to fabrication location, Marking, cutting, beveling, carrying fit-up, welding, visual inspection, carrying Non-Destructive tests includes Dye penetration test, Ultrasonic thickness test as required, Shifting to painting yards for Blasting & painting as per specs / QAPs, Shifting, unloading, tagging (for ease of identification at all times), loading on trailer for shifting to erection site.	
B	Structure Erection	Structure Erection Includes Receive fabricated materials from laydowns, pre-assemble as frames / modules and erection as per IFC drawings. Apply Torque/ Tension as per specs/ procedures, Align and release for grouting wherever required. Complete the work as per IFC drawings / QAP. Install / Weld supports & brackets as required to support other discipline works such as cable tray supports, cantilever supports for cabling.	

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
C	Structure Supports	Structures are designed structures for housing equipment, Sheds for housing compressors, steam turbines, Exchangers, etc. and also for access and maintenance purposes.	
6	Internal column erection & installation work	Internals are used to segregate the process fluids from boiling temperature conditions in some equipment using distillation process conditions. Internals are used commonly in columns, reactors and static equipment. These internals are integral part of equipment which will be transported separately to project locations. Internals can not be transported in installed condition along with equipment which may get damaged during transportation resulting abturd process results. These internals are test assembled and installed permanently inside the equipment.	
7	Piping mechanical work	Various piping is connected within the mechanical packages which are meant to achieve the desired process conditions. Some mechanical piping are connected with water consoles, lubrication oil, dozing, etc.	
8	Mechanical structure work	Mechanical structures are designed structures for placing equipment which is also known as base frame structures. Sheds for housing compressors, steam turbines. These structures does have EOT cranes to handle the equipments lifts and drops during installations and maintenance purposes.	
9	Blasting and painting work	Blasting is done to clean the surface of structural or piping section prior to Primer paint. Primer paint is a preliminary layer of coating that is applied on the materials prior to the paint. Primer enhances the durability and life of paint. Paint is the most commonly used material to protect steel	
	a. For structures	Blasting & painting is carried out on structural members for protection against corrosion.	

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
	b. For pipes	Blasting & painting is carried out on spool for protection against corrosion.	
	c. For platform	Blasting & painting is carried out on platform structure for protection against corrosion.	
10	Insulation job (p-ping and others)	Insulation is fundamentally used for heat conservation. Heat is being input cost which shall be optimized in process conditions. Insulation works includes Insulate equipment surfaces & piping component with hot / cold insulation as per the specifications/standards	
11	Instrumentation works	Instrumentation works include o Design & cut to the required length from control / signal & FO cable drums using drum schedules to optimize the wastages, Install all the cable trays in racks / civil trenches for cable laying & terminate the cable at drives, Junction boxes using lugs, Install marshalling racks / panels in buildings, Install supports, bracings, Junctions boxes, Branch cable trays, lighting fixtures & poles as per the layout at fields and carry out testing's of input & output signaling wet & dry loops and Complete the work in all respects as per the specifications, drawings, and as per instructions of Engineer In-charge.	
12	Slag handling system – installation	Slag handling systems are part of mechanical packages.	
13	Electrical works	Electrical Works Includes o Design & cut to the required length from HT/LT & Power cable drums using drum schedules to optimize the wastages, Install all the cable trays in racks / civil trenches for cable laying & terminate the cable at drives, Junction boxes using lugs, Install panels, Bus ducts, bus-bars, transformers in buildings, Install supports, bracings, Junctions boxes, Branch cable trays, lighting fixtures & poles as per the layout at fields (to meet the designed LUX levels) and carry out testing's such as megger, LVF, cable joints and Complete the work in all respects as per the specifications, drawings, and as per instructions of Engineer In charge.	

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
	a. Pre-commissioning electrical	Commissioning is the systematic process by which a piece of equipment, system, or facility is tested to verify that it functions in accordance with the design intent and owner's operational requirements. Electrical Commissioning is required to reduce downtime due to power outages caused by utility loss and/or failures within the electrical system, electrical systems that balance protection with reliability and meet the recent code requirements and standards for critical facilities.	
	b. Construction power network	To operate various equipment during construction phase temporary construction power is required that can be obtained through DG sets.	
	c. Cable lining (33KV)	Cable laying is the activity of laying of cable between various electrical equipment.	
	d. Sub-station & compressor electrical work	Substation electrical works include Erection of Various Panels , Cable tray laying , Cable laying for distribution of electrical power to the plant.	
14	Occasionally controlled bolting / hydraulic torque tightening work	Torque is the application of a Force acting at a radial Distance and tending to cause rotation. Torque is used to create tension in threaded fasteners. When the nut and bolt are tightened the two plates are clamped together. The thread converts the applied Torque into tension in the bolt shank.	
15	Scaffolding work	Scaffolding Work is Temporary platform used to elevate and support workers and materials during the construction, repair, or cleaning of a structure or machine; it consists of one or more planks of convenient size and length, with various methods of support, depending on the form and use.	

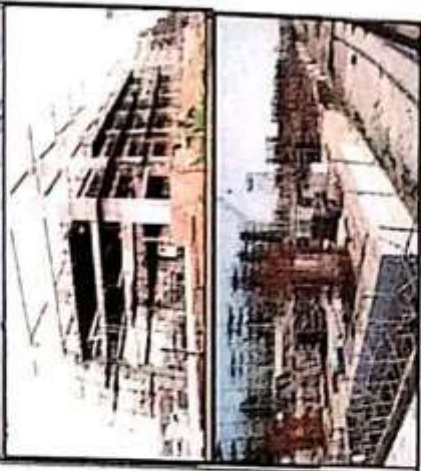
Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

S/ No	Description of Work	Detailed Work Description	Photograph
15	Scaffolding work - Hanging Platform	Dancing platforms in multi-layer have developed all along the pipe racks to ease the piping erections, and other discipline activities till completion of the erections.	
16	Pneumatic handling system	Pneumatic systems are installed in warehouses to load and pack the products with ease.	
17	ICCP and SACP, DCS, HVAC system erection & installation	- ICCP is a technique used to control the corrosion of a metal surface by making it the cathode of an electrochemical cell. - Sacrificial anode Cathodic protection (SACP) is a type of Cathodic protection where a less noble material that acts as a sacrificial anode is connected by metallic conductors to the structure to be protected. - A distributed control system (DCS) is a computerized control system for a process or plant usually with a large number of control loops, in which autonomous controllers are distributed throughout the system, but there is central operator supervisory control. - The HVAC systems are largely in use throughout for fulfilling the needs of heating, ventilation and air conditioning in the buildings. These are highly complex systems that are mandatory to keep a comfortable environment in the buildings.	
18	Fire proofing work	Fireproofing Works includes fire-proof equipment surfaces with vermiculate / pyro create by placing wire mesh from inside and out side as applicable and as per the specifications/standards.	
19	Levelling and alignment of equipment (rotary)	- Equipment Installation & levelling Includes: Receive, unload / stool down near foundations and Place the crane in position as per the approved Rigging plans and position equipment for installation, Erect & align the equipment & release for grouting. Receive, unload, verify with packing list, assemble & install. Complete interconnecting piping such as like Lube-oil console, cooling water console piping. Complete the rotary installation, align & release for grouting. Align the rotating equipment with / Out piping. and Complete all works as per IFC & QAPs.	
20	Installation of crane	Installation of cranes are done at desired place for lifting of various equipment, structures, module, piping items such as spools, valves.	

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
21	Hydro testing work	Hydro test is the method used to test the strength / any leak of joint.	

Broad nature of Work undertaken by various Service Providers under Service Categories - "Erection, Commissioning and Installation" and "Works Contract" are as below:

Sr No	Description of Work	Detailed Work Description	Photograph
1	Civil work for structure and mechanical	Civil Works includes Earth work incl. Excavation, Backfilling, Carting away the surplus earth, Fixing & dismantling of shuttering, staging & scaffolding, Rebar assembly, shuttering / staging, production of RMC per design mix, Pouring of all types of concrete for all sub & super structure foundations works to Complete the concreting at site. Culverts, Bridges, RCC paving, Gravel paving, and complete all the Civil works as per the IFC Drawings. Survey works included.	

4.2 On carefully going through the above pictorial presentation we find that the capital goods/ structure for which ECIS service was received is clearly in respect of the plant and machinery which are itself capital goods. Therefore, it is not coming out from the fact as reproduced above that the ECIS services were received for execution of Works contract and/or construction of building or civil structure. The Adjudicating Authority in his finding has contended that the works contract and /or construction of building does not mean only a building which is made of cement, steel etc but building of any nature falls under the category of construction in general. We do not agree with this contention of Adjudicating Authority for the reason that if this contention is accepted then ECIS used for any purpose will amount to construction which will be very absurd contention. In the present case ECIS is in respect of plant and machinery which does not amount to construction of building and which by any stretch of imagination cannot be amount to construction of a building or a civil structure. Therefore, the ECIS in the facts of the present case do not fall under exclusion category. We agree with the submission of the appellant in as much as the construction of the building or civil structure which is in the nature of building. However, in the present case ECIS was used not for constructing any building or civil structure whereas the ECIS /WCS was used only for plant and machinery which are the capital goods.

4.3 The Adjudicating authority has vehemently viewed that after 01.07.2012 since the classification of service has been done away therefore, the construction which was otherwise defined in the Finance Act, 1994 prior to 2012 is not relevant. This contention is absolutely incorrect for the reason that even though the classification of service has been done away for the purpose of taxability but firstly for accounting of payment of service tax the classification was continued and secondly, in the definition of input service under Rule 2 (I) some specific services are

still continued. If the contention of the Adjudicating Authority taken as correct then the significance of specific service provided under definition of input service will lose meaning. Therefore, the meaning of construction service given in the definition of Finance Act, 1994 even prior to 01.07.2012 will hold good for interpreting the term construction. As per the Finance Act, 1994 the meaning of term construction is as under:

[(25b) "Commercial or Industrial Construction" means -

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is -

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;

[(30a) "Construction of Complex" means-

(a) Construction of a new residential complex or a part thereof or

(b) Completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services or

(c)Repair, alteration , renovation or restoration of or similar services in relation to residential complex]

4.4 From the above meaning of construction it is clear that the construction means commercial or industrial construction of a building or a civil structure or a part there of. However, the exclusion provided in the definition in respect of roads, airports, railway, transport terminal, bridge, tunnel, and dam etc further reinforce the contention of the appellant that only those constructions which is in respect of building and civil structure will fall under construction. However, in the present case the ECIS services were not used for construction of building or a civil structure, it is admittedly used for erection installation of plant and machinery therefore the ECIS were not used for construction of building or civil structure. The revenue relied upon the Board Circular No. 80/10/2004-ST dated 17.09.2004 which clarified that "erection involves civil structure which otherwise fall under the category of construction service. However in the case of composite contract of erection charges would be termed as ECIS service." From this circular we are of the view that in a composite work if along with ECIS the service of civil structure is involved only those can be categorized under construction service. This rather helps the case of the appellant in as much as the ECIS service is independent without involving any work contract. Therefore, the ECIS alone will not fall in the construction service.

4.5 As per the exclusion clause construction of civil structure or making of structure for support of capital goods are excluded. Other than these activities no other activity is covered by the exclusion clause. We agree with the submission of the appellant that in the present case the principle of Ejusdem Generis is applicable whereby the expression civil structure is reference to a structure constructed using steel and cement there being

undisputedly no such construction of civil structures being undertaken by the appellant, therefore, the exclusion clause will not apply. The Revenue's reliance on Wikipedia in support of the contention that ECIS is construction is also not tenable. In view of law laid down by Hon'ble Supreme court in the case of CC vs. Acer India Pvt Ltd reported in 2007(2018) ELT 17 (SC) wherein it has been held that Wikipedia is not an authentic source of data and is thus unreliable. We find that the more authentic authority to understand the term construction is the Finance Act, 1994 itself which will obviously prevail over the information available in the Wikipedia. Therefore we don't give any credential to the information taken by the Adjudicating Authority from Wikipedia. We also do not endorse the contention of the Adjudicating Authority that the activity of fabrication, erection and installation is a composite activity. From the reference of the work order it is clear that the structures which were erected and installed are not the same which have been fabricated as also the fact that the erection and installation activity were being undertaken for different site to that of fabrication. Therefore it is not correct to say that fabrication, erection and installation is a composite activity. There is no dispute that the ECIS service is in respect of technological, mechanical or industrial structure, the fabrication of such structure by any stretch of imagination cannot be construed as construction of civil structure. As per the Finance Act, 1994 reference to civil structure is construction using steel, cement, sand etc and to a similar building, road, dam, airport etc. therefore there is a vast difference between the civil structure, building, etc. and technological structure which in the present case, the appellant have erected and installed by using ECIS. It is not in dispute that the appellant have not availed the Cenvat credit in respect of residential complex and Works Contract Service used for making of structure for support of capital goods and also on any activity of fabrication, technological/industrial structure used for support of capital goods. The appellant have availed credit with respect of fabrication in

respect of pipe supports which are nothing but pipe fittings and are covered under the definition of capital goods under Rule 2(a) of Cenvat Credit Rules, 2004 admittedly the appellant availed the Cenvat Credit only for installing and commissioning of the technological structure which cannot be said to be activity of making structure for support of capital goods.

4.6 It is also the submission of the appellant that in the later part the structure which were installed and commissioned were parts, component and accessories of capital goods and were therefore themselves capital goods as per the clause (iii) of 2(a) of Cenvat Credit Rules, 2004. We find force in this submission that the installation and commission in respect of those goods which are otherwise falling under capital goods. They have availed credit in respect of ECIS therefore; no credit was availed in respect of fabrication of structure for support of capital goods. As per the contract there are clear identified separate deliverables i.e. for construction of civil structure and fabrication, erection and installation provided by the contractors/service providers merely because one contract/ work order embodied several separate deliverables and service providers has paid service tax separately on individual activity cannot be clubbed and treated as composite activity. Therefore, we are of the view that different deliverable i.e. Fabrication, Erection and Installation is an independent activity and the same does not fall under the exclusion clause. The appellant have admittedly not availed Cenvat credit which amounts to Rs.275 Crores in respect of other deliverables such as construction of civil structure and fabrication of structure for support of capital goods. The appellant taken credit only in respect of Erection, Installation of technological structure which are other than civil structure or structure for support of any capital goods. Therefore the ECIS in the present case does not fall under the exclusion clause.

4.7 As regard the reference made of Eiffel Tower by the adjudicating authority that the same being made entirely of metal was nothing but civil

structure, this cannot be accepted for the reason that as discussed above the expression civil structure being a term under statute has to be interpreted in context of Finance Act, 1994 and Cenvat Credit Rules, 2004. The adjudicating authority has alleged that the erection, commissioning & installation of technological structure can be said to be structure of support for the capital goods. Countering the said allegation, the appellant has made submission that none of the said industrial /technological structures have been used for support of any capital goods. The said structure which were being erected and installed are gratings, cable trays, platforms, ladders, staircases, access structures, handrails etc which are nothing but parts, accessories or components of the capital goods and are thus covered by the definition of capital goods. The submission of the appellant is convincing as looking to the nature of the structure, it is clear that these structures are not for support of capital goods but by itself is the capital goods covered by definition of capital goods. The issue of admissibility of cenvat credit on ECIS in identical facts was considered in the following judgments:

- THERMAX LTD VS. CCE -2020(35) GSTL 118 (Tri.- Ahmd)

"4. I have gone through the rival submissions. I find that exclusion clause 'A' of the definition of term 'Input Service' appearing in Rule 2(I) of the Cenvat Credit Rules reads as under :-

"(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) insofar 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;"

Both, the original adjudicating authority as well as the first appellate authority have relied on this exclusion clause for denying the credit on the services used by the appellant. It is not disputed that the services received by the appellant is classified as "Erection, Commissioning and Installation service". I find that

above exclusion clause 'A' in Rule 2(l) of the Cenvat Credit Rules, does not cover the service in the nature of "Erection, Commissioning and Installation service".

5. *In these circumstances, I find no merit in the impugned order and the same is set aside and the appeal is allowed."*

- RASHTRIYA ISPAT NIGAM LTD VS. CCE -2016 (44) STR 1360(Tri.-Hyd)

"6.*The Invoice No. 01/01, dated 9-2-2013 shows the description of service as 'works contract service'. The description of the work mentioned in the invoice is 'underground and over ground pipe works'. The credit availed is Rs. 13,84,799/-. The credit has been denied on the ground that the definition of input service w.e.f. 1-4-2011 excludes the services availed for construction or execution of works contract of a building or a civil structure or a part thereof. The issue that arises for consideration is whether the works of laying of pipes comes within the ambit of works contract which is expressly excluded in the definition of input services. For better appreciation, the definition of input service is noticed as under :-*

"Rule 2(l) : "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 upto the place of removal,

and includes services used in relation to modernisation, 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, 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 upto the place of removal; but excludes services, -

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzp), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), insofar as they are used for -

(a) construction 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;

It is the case of appellant that the exclusion portion of the definition excludes only those services specified in sub-clauses (p), (zn), (zsl), (zzm), (zzp), (zzzh) and (zzzza) of Clause (105) of Section 65 of the Finance Act, insofar as they relate to :-

- (a) construction 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."*

7.*The main argument of the appellant is that the works contract service relating to laying/erection of underground/over ground pipeline is not included in the exclusion portion of the definition of 'input service'. According to him, the services of 'construction of a building or a civil structure or a part thereof' is entirely different and distinct service from 'construction of pipeline or conduit'. For this learned counsel draws reference from the definition of construction service provided in under Section 65(25b) of the Finance Act, 1994, which is as under :-*

"Commercial or Industrial Construction" means -

- (a) construction of a new building or a civil structure or a part thereof; or*
- (b) construction of pipeline or conduit; or*
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or*
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit.*

8.*In the above definition, the two services are given under two different sub-clauses which means that construction of pipeline or conduit cannot be considered to be part of construction of building or civil structure. Similarly, sub-clause (b) of definition of works contract service contained in sub-clause (zzzza) of Section 65(105) of the Finance Act, 1994 is also noteworthy in this regard which is reproduced as under :-*

"(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purpose of commerce or industry."

9.*If one goes through the above provisions, the contention of the appellant that 'construction of a pipeline or conduit' is distinct from the service of 'construction of a building or a civil structure*

or part thereof' is not without merits. Wherever the Legislature wanted to include the construction of a pipeline or conduit, it has been specifically mentioned separately in the definition. This itself would indicate that erection/construction of pipeline or conduit cannot be considered as part of 'construction of building of civil structure or part thereof'.

10.*The Authority of Advance Ruling, New Delhi in GSPL India Transco Ltd. (supra) had occasion to analyse similar issue. The observations in the said decision is reproduced as under :-*

Rule 3(1) of Cenvat Credit Rules, 2004 13. inter alia envisages that a provider of output service shall be allowed to take credit of Service Tax leviable under Section 66B of the Finance Act, 1994, paid on any input service by the provider of output services. There is no doubt that the applicant is provider of output service i.e. transport of gas through pipeline and therefore, eligible to take credit of service tax paid on input service i.e. construction/erection, installation and commissioning by EPC contractors/third party. Further, as per rule 2(l) ibid, "input service" inter alia means any service used by a provider of output service for providing an output service. However, it excludes services portion in the execution of works contract and construction services. It has been correctly pointed out by the applicant that service of laying of pipeline is different from construction of building or a civil structure, as under erstwhile Section 65(25b) of the Finance Act, 1994, "commercial and industrial service" meant (a) construction of a new building or a civil structure or a part thereof, or industrial construction service meant construction of a new building or civil structure or a part thereof; or (b) construction of pipeline or conduit; or it is clear from above that construction of a building or a civil structure are different than construction of laying of pipeline and would not come under the exclusion clause (a) above i.e. construction or execution of works contract of a building or civil structure.

11.*In the said judgment, the credit availed of service tax paid on construction services for laying pipeline was held to be admissible. A plain reading of the definitions noticed above makes it sufficiently clear that laying of pipeline is different from construction of building or civil structure. Undisputedly, in the present case, the service tax was paid on works contract for laying pipe over the ground and under to supply water to the raw material plant. From the above discussions, I am able to hold that appellant is eligible for credit on service tax paid on works contract services relating to erection/construction of underground pipe and over ground pipelines for supply of water to raw material plant as the work of construction of pipeline or conduit do not fall in the exclusion portion of the definition of input services.*

12.*The second issue is whether the appellant is liable to pay interest on the amount of credit of Rs. 10,39,634/- which was reversed by them before utilization. The issue is settled in the cases of Bill Forge (P) Ltd. and Strategic Engineering (P) Ltd. Applying the dictum laid in these judgments, I hold that appellant is not liable to pay interest on the credit which was reversed*

before utilization. Both the issues are found in favour of the appellant.

13.*In the result, the appeal is allowed with consequential reliefs, if any."*

- ORIENT CEMENT LTD VS. CC - 2017 (51) S.T.R. 459 (Tri. - Hyd.)

"Period involved in this appeal is March, 2008 to December, 2012. The dispute in appeal involves three issues.

(i) Credit on Commercial and industrial services amounting to Rs. 9,84,79,907/- involving increase in installed capacity of the appellants plant.

(ii) Credit on erection, commissioning and installation services amounting to Rs. 4,17,51,024/- availed in respect of erection and installation and commissioning of various plants and equipments for the enhanced capacity.

(iii) Credit in respect of services availed outside factory premises related to maintenance of railway siding, etc., amounting to Rs. 36,31,644/-. The appellants have accepted and there is no dispute in respect of demand amounting to Rs. 12,19,544/- and the same was reversed by them. Therefore, only an amount of Rs. 24,12,100/- is disputed in this appeal.

4.*Coming to Issue No. 2, concerning erection, commissioning and installation services, it is seen that these are in no way expressly stated in the definition of input services under Rule 2(I) of Cenvat Credit Rules, 2004, before or after the amendment brought about aforesaid. The Id. Counsel has adverted to the agreement which details that the work order was for erection, installation of machinery and equipment. In the circumstances, the denial of credit on this account amounting to Rs. 4,17,51,024/- is not in order and hence is set aside".*

- ORIENT PAPER MILLS vs. CCE – 2016 (45) STR 178 (Tri. Del)

"5. *The short point for decision is that eligibility of the appellant for service tax credit paid on the services availed with reference to the pipelines for transport of water to their factory. The "input services" as defined under Rule 2(I) of Cenvat Credit Rules, 2004 states that any service used by a manufacturer, whether directly or indirectly in or in relation to the manufacture of final products is eligible for credit. The admitted fact is that the services received by the appellants in the present case are not falling under any exclusion clause. The Revenue disputed that the pipeline related services are not having any nexus with the manufacture of paper by the appellants. In this context, it is*

to be seen that for the appellant, water is one of the main input items used in the manufacture of paper. Admittedly, water is being transported from outside by a pipeline laid and maintained by the appellant. "Input Services" to be eligible for credit is not linked to any location for receipt of such services. The Hon'ble Bombay High Court in case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. - [2013 \(32\) S.T.R. 532](#) (Bom.) examined the scope of "Inputs Services" and held as under :-

"5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(1) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(1) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(1). The first part of Rule

2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

6. *The Tribunal in Welspun Maxsteel Ltd. - [2013 \(31\) S.T.R. 64](#) (Tri.-Mum.) upheld the credit on security services received in connection with the pump house for pumping water from the outside situated factory premises. In case of ZF Steering Gear (India) Ltd. - [2015 \(317\) E.L.T. 580](#) (Tri.-Mum.), the Tribunal upheld the eligibility of credit of "input services" with reference to annual maintenance of wind mill installed outside the factory premises for generation of electricity."*

As per our above discussion, we hold that ECIS service is not a construction of building service or civil structure therefore, the same is not covered under exclusion clause.

4.8 Without prejudice to our above finding, we find that the service provider has classified the services under ECIS and not under Construction Service and paid service tax under the head of ECIS. The ECIS Service independently not covered under the exclusion clause therefore, for this reason also credit cannot be denied. There is a catena of case laws wherein,

it was held that the classification of service cannot be disturbed or challenged at the end of service recipient particularly for denial of cenvat credit. Once the classification is finalized at the service provider end, the same cannot be altered at the service recipient end. This issue has been considered by the following judgments:-

- COMMISSIONER OF CENTRAL EXCISE & CUSTOMS vs. MDS SWITCHGEAR LTD - 2008 (229) E.L.T. 485 (S.C.)

"4. The Revenue issued a show cause notice dated 4-11-1999 to the assessee being of the opinion that they have deliberately entered into practice of raising value of semi-finished goods by adding Modvat element and rounding off the value to higher figure so as to pass on the excess Modvat credit. The said notice was, thus, issued to show cause as to why Modvat credit amounting to Rs. 13,08,701/- should not be disallowed under Rule 57-I of the Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944 and to show cause as to why interest and penalty should not be levied and as to why plant, machinery, building etc. should not be confiscated.

5. By the order-in-original dated 30th October 2000, the Commissioner of Central Excise & Customs, Aurangabad confirmed the demand of Rs. 13,08,701/- under Section 11A of the Act and imposed a penalty equivalent to the amount of duty under Section 11AC of the Act and also a penalty of Rs. 1,00,000/- under Rule 173Q of the Rules. Recovery of interest under Section 11AB of the Act was also ordered.

6. Aggrieved by the above order-in-original, the assessee preferred an appeal before the Tribunal which has been accepted by the impugned order. Revenue, being aggrieved, has filed the present appeal.

7. The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons :

"Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the loading of the assessable value by the Modvat credit on the earlier inputs. That exercise has nowhere been done. If the department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by the department and the payment of duty

was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into 'deposit of duty'. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit [2000 (38) RLT 179]."

8. *Counsel appearing for the Revenue could not assail any of the findings recorded by the Tribunal.*

9. *That being the position, we agree with the view taken by the Tribunal and find no merit in these appeals which are dismissed leaving the parties to bear their own costs."*

SARVESH REFACTORIES (P) LTD vs. CCE – 2007 (218) ELT 485 (SC)

Being aggrieved by the order dated 10th September 2001 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (Now known as Customs, Excise & Service Tax Appellate Tribunal) [for short 'the Tribunal'] in Appeal No. E-294/2001, the assessee-appellant has filed the present appeal.

"2. *The appellant purchased 'Loadall' from M/s. Escorts JCB Ltd. The cost element of the 'Loadall' included excise duty to the tune of Rs. 1,79,328/-. The appellant claimed Modvat credit in respect of the said item under Rule 57Q of the Central Excise Rules, 1944 (for short, 'the Rules').*

3. *Since the said item had been classified by M/s. Escorts JCB Ltd., the manufacturer and supplier, under Heading 84.29 and had paid duty under the said heading, the authority-in-original, viz., Dy. Commissioner disallowed the Modvat credit to the appellant by observing that the said Heading 84.29 has been specifically ousted from the definition of "capital goods" under Rule 57Q of the Rules. The Dy. Commissioner also imposed a penalty of Rs. 50,000/- under Rule 173Q(bb) of the Rules.*

4. *On appeal filed by the appellant, the Commissioner (Appeals) observed that 'Loadall' being an improvised version of material handling equipment would properly fall under Heading 84.27 and not under Heading 84.29. It was further observed that forklift truck or crane or similar material handling equipments have been held to be eligible capital goods. On this finding, the Commissioner (Appeals) held that the appellant would be entitled to claim Modvat credit.*

5. *Revenue, being aggrieved, filed an appeal before the Tribunal which was accepted by setting aside the order of the Commissioner (Appeals) and restoring that of the authority-in-*

original. It was held that the 'Loadall' having been classified by the Central Excise Officer having jurisdiction over the manufacturer's factory as falling under Heading 84.29, the appellant, who is the consumer of those goods, could not get the classification of the manufacturer changed from 84.29 to 84.27.

6. *The finding recorded by the Tribunal is unexceptionable. We agree with the view taken by the Tribunal that the appellant could not get the classification of 'Loadall' changed to Heading 84.27 from 84.29, as declared by the manufacturer. Insofar as the penalty imposed by the authority-in-original is concerned, we are of the view that a case for imposition of penalty is not made out and accordingly the same is set aside and deleted. Rest of the order of the Tribunal restoring the order of the authority-in-original is confirmed.*

7. *Counsel for the appellant has raised an alternate argument on the interpretation of Rule 57Q of the Rules which had not been raised either in reply to the show cause notice or before any of the authorities below. Under the circumstances, we do not permit the appellant to raise this alternate submission.*

8. *The appeal is disposed of accordingly with no order as to costs."*

- BHARAT HOTELS LTD Vs. COMMISSIONER OF SERVICE TAX, DELHI-2017 (50) S.T.R. 165 (Tri. - Del.)

"5. *Admittedly, the appellants availed services in terms of the contract for which mainly specifies about grinding and polishing of the marble floor, etc., in their premises. Admittedly also, the provider of service is registered with the Department and discharging service tax on these activities under the category of 'cleaning services'. The appellant took credit under 'management, maintenance or repair services' in respect of service tax paid on these services. The service provider discharged his service tax under cleaning services which is not one of the services listed under Rule 6(5) of the Cenvat Credit Rules, 2004. The Id. Counsel for the appellant submitted that the classification of service should be guided by the description in the invoice and the terms of contract. If considered in that perspective, it is his submission, that they have taken correctly credit under management, maintenance or repair service.*

6. *We note that the service tax for the input service has been discharged by the provider under the 'cleaning service' which is not the listed service. We also note that the recipient of service is taking credit on such tax paid to the Government and it is not open to the recipient to reclassify the service when the tax has been paid already under a particular category by the provider of service. Neither the appellant nor the officers in the jurisdiction of the appellant have legal sanction to revise classification of service*

received, even if the said classification is thought to be made incorrectly by the provider of service. The correct course will be to get the classification corrected with valid basis at the source and to get the documents to that effect. We note that the invoices issued by the provider of service indicate that service tax registration under 'cleaning service' though the description of service in the body of the invoice is indicated as 'marble maintenance'. As mentioned above, the classification and categorization of service cannot be changed at the end of the recipient. We find no reason to interfere with the impugned order. Accordingly, the appeal is dismissed."

- NEWLIGHT HOTELS & RESORTS LTD Vs.COMMR. OF C. EX. & S.T., VADODARA- 2016 (44) S.T.R. 258 (Tri. - Ahmd.)

"5.*In view of the above interpretation of law made by the Courts, including the Apex Court, no option is left with the Revenue to change the classification/ assessments of the services at the service recipient's end. The service tax paid by M/s. IHCL was at the behest of the department and was not altered during the disputed period. Credit of service tax paid on the invoices cannot be denied or utilisation reduced on the grounds that classification of the services was wrongly done at the service provider's end. Appeal filed by the appellant is thus required to be allowed on this ground alone. We have not considered the other issues raised by the appellant regarding utilisation of accumulated credit after 1-4-2008 or the time barred nature of the demands.*

6.*Appeal filed by the appellant is allowed."*

4.9 In view of the above judgments, the classification of service i.e. ECIS attained finality at the appellant's end and this be so the same does not fall under the exclusion category hence, the credit is admissible. On this independent ground also.

4.10 Without prejudice to our above findings, we further find that the appellant's factory is admittedly huge existing petroleum industry and working for decades. The ECIS service was used for expansion, renovation and modernization of overall existing petroleum plant. As per inclusion clause of the definition the services relating to modernization, renovation is an admissible input service. In our view, even though service of construction of building or civil structure are falling under the exclusion clause but even if similar service is used for renovation and modernization of existing factory,

the credit is admissible. The exclusion applies only in respect of such service as specified therein which are used for initial setting of the factory. It is pertinent to note that when the exclusion was brought in the rules, services relating to setting up of the factory was removed from the inclusion clause of the definition of input service in rule 2(l) of Cenvat Credit Rules, 2004 therefore, there is a direct nexus of the service mentioned in the exclusion clause and setting up of the factory. It is important to note that the legislature consciously continued the services of renovation, modernization, repairs appearing in the inclusion clause of definition of input service. This clearly shows that any service relating to modernization, renovation of the existing factory is admissible as input service which is the direct case of the appellant. This aspect has been considered in various judgments which are reproduced below:-

- BHARAT COKING COAL LTD VS. COMMR. OF CENTRAL EXCISE &S.TAX, RANCHI - MANU/CK/0036/2021

"9. Further, the said CHP has been set up with the view to 'modernise the coal loading process in the mines' also satisfies the definition of input service. Moreover, since the credit has been allowed by the Department on certain invoices raised by the Contractor, the Department has in-principle found the service to be eligible for credit. We also agree with the submission made by the appellant that the mode of valuation adopted by the Contractor to discharge service tax on 40% of the contract value is in accordance with law contained in Service Tax Valuation Rules and cannot be disputed while deciding credit eligibility at the appellant's end. When service tax has been levied only on 40% of the total value, it essentially means that service tax has been paid only on the service portion."

- ION EXCHANGE (I) LTD. Vs. COMMISSIONER OF C. EX., CUS. & S.T., SURAT-II- 2018 (12) G.S.T.L. 302 (Tri. - Ahmd.)

"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(l) of the Cenvat Credit Rules, 2004 are reproduced as below :

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, **Prior to 1-4-2011**

(l) "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

(l) "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 modernisation, renovation or repairs of a factory, premises of provider of output service 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."*

- MUSADDILAL PROJECTS LTD. Vs.COMMR. OF C. EX., CUS. & S.T., HYDERABAD-I -2017 (4) G.S.T.L. 401 (Tri. - Hyd.)

"15. *The department has denied credit alleging that all these services are for setting up of premises of the appellant and therefore not admissible. It is the case of appellant that the input services were not availed for setting up of the premises, but the services were availed only for modernization and renovation of the premises. From the table itself it is clear that the services are not per se for "construction of building" or "setting up of premises" and these are merely renovation/modernization works. The services in the table show that these are construction services for laying the flooring, Erection of Machinery, Electric Installation Works, Single Leaf Door, Installation Boom Barriers, Electrical Consultancy Charges. Since these services would fall within the*

category of modernization, renovation services which come within the inclusive part of the definition of input services, I am of the view, that the services are eligible for credit. The judgment in the case of Infosys Ltd. v. CST, Bangalore (supra) is also applicable to the said issue. In para 5.8 of the said judgment, the Tribunal held that after 1-4-2011 services used in modernization, renovation or repairs alone would be admissible for credit."

- MAHLE ENGINES COMPONENTS INDIA P. LTD Vs. COMMR. OF C. EX.,
INDORE -2018 (363) E.L.T. 1150 (Tri. - Del.)

"6. *With regard to the availment of Cenvat credit of the Service tax on painting of the factory building & machinery, I find that the Authorities below have denied Cenvat credit on the ground the construction of building or civil structure is falling under the Exclusion Clause contained in the definition of "input service" under Rule 2(1) of the Rules. However, on perusal of the sample copies of the invoices issued by the service provider, I find that the services were provided in relation to the painting of the factory building and plant & machinery, which are appropriately classifiable under category of "renovation or repair of the factory" contained in the inclusive part of the definition of the "input service". Thus, I am of the considered view that such service falls under the purview of the "input service" for the purpose of availment of Cenvat credit. Therefore, denial of Cenvat credit and imposition of penalty on the appellant will not be sustainable."*

4.11 In view of the above judgments, it is categorically held that any service of any nature if it is used for modernization and renovation or repair of the existing factory are indeed input services in terms of Rule 2(I) of Cenvat Credit Rules, 2004. On this ground also the appellant are entitled for Cenvat Credit in respect of ECIS which were used in relation to modernization and renovation of the existing factory.

4.12 Without prejudice, We are also of the opinion that the appellant is not a provider of service of construction of a building or a civil structure nor maker of structure for support of capital goods. The appellant is a manufacturer of various excisable goods; the credit taken on ECIS is attributed to the manufacture of excisable goods considering the status of the appellant. In our alternate view the exclusion is applicable to the service provider of construction of a building or a civil structure or maker

of structure for support of capital good. In the facts of the present case the appellant being the manufacturer of excisable goods availed the credit on ECIS. In these circumstances the exclusion clause is not applicable to the appellant. For this reason also the denial of credit on ECIS is not sustainable.

4.13 The appellant strongly raised the issue of demand for the extended period is hit by limitation. As per the submission of the appellant the extended period was invoked only on the ground that the appellant did not provide the information sought for during the course of audit. It is also their submission that for invoking the extended period of limitation it has to be established that there was wilful suppression at the time when the credit was availed by an assessee and not on the basis of what information was furnished or not furnished by the assessee at the time of audit. We find that the information sought for during the audit was details of Cenvat credit on the service availed in relation to construction of civil structure and for support of capital goods. As per the submission of the appellant, it is their bona fide belief that no credit whatsoever has been availed by it on any construction services let alone the service which has been used for construction of civil structures or for making the structure for support of capital goods would not have furnished the information called for. Therefore, it cannot be said that the appellant have suppressed the fact wilfully with intent to take wrong cenvat credit. We further find that the issue involved is of interpretation of exclusion clause given in definition of input service under Rule 2(l) and it is also observed that the said exclusion clause invited a plethora of litigation. In these circumstances, it cannot be said that the appellant have wilfully suppressed the facts with intent to avail wrong credit. Therefore, we are of the view that the demand for the extended period is not sustainable on the ground of limitation also.

4.14 As regard the denial of cenvat credit of Rs. 29480/- in respect of WCS, we find that this credit was taken in respect of two invoices bearing

No. 15 dated 30.05.2015 and RA-18 dated 31.05.2017. This amount of credit is covered under the extended period of limitation. Therefore, the demand of cenvat credit of Rs 29480/- is not sustainable on the ground of time bar itself. Hence we are not going into the merits of this particular service of WCS.

5. As per our above discussions and findings, we are of the clear view that the appellant have correctly availed the cenvat credit in respect of ECIS therefore, the demand of cenvat credit on ECIS service is not sustainable.

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

(Pronounced in the open court on 13.04.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta