(2021) 08 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 50326, 50327, 50328 Of 2019

Hindustan Zinc Limited APPELLANT

Vs

Commissioner Of CGST Excise Customs, Udaipur RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(l), 2(l)(A), 2(l)(a)(A), 2(l)(A)(b), 2(l)(ii), 14
Central Excise Tariff Act, 1985 — Chapter 26
Finance Act, 1994 — Section 65(105)
Valuation Rules, 1975 — Rule 7

Citation : (2021) 08 CESTAT CK 0026

Hon'ble Judges : Delip Gupta, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Shashwat Arya, Sukriti Das, Rakesh Agarwal

Final Decision : Allowed

Judgement

Appeal No.,E/50326/2019,E/50328/2019,E/50327/2019

Order date,25.05.2018,,

Date of Show Cause

Notices",01.10.2013,28.10.2015,31.03.2016

Period of dispute,"October 2012 to March

2013","October 2014 to March

2015","April 2015 to September

2015

Duty Demand,"Rs. 97,08,776","Rs. 4,46,13,883","Rs. 3,11,35,434

Penalty,"Rs. 5,00,000","Rs. 20,00,000","Rs.15,00,000

Period and date of

show cause notice","Allegation in the show
cause notice","Finding in first
adjudication order","Finding in order dated
25.05.2018 after remand
Oct 2012 to March
2013
01.10.2013","Services have been
received outside the
factory premises.
Thus, CENVAT Credit
is inadmissible.","Order dated 10.02.2015
CENVAT Credit of
input services received
in the captive mines is
admissible if these are
otherwise covered in
definition of input
service.
There is no mention
that input service credit
is not available for
services utilized outside
factory.
Services are in relation
to 'setting up' of mines
and service portion of
construction services
has been omitted and
has been put into
exclusion part of the

definition of input
services w.e.f.
01.04.2011. Thus,
credit is not admissible.","â?¢ There is no mention
that input service credit
is not available for
services utilized outside
factory
â?¢ Services are related
to construction,
development and setting
up of Kayad mines. The
activities were for
construction and all such
activities relating to
construction or
execution of a works
contract of a building or
a civil structure have
been excluded from the
definition of input
service w.e.f.
01.04.2011 under Rule
2(l)(a)(A). Thus, credit
is not admissible.
Oct 2014 to March
2015
Â 28.10.2015","Services are in relation
to 'setting up' of mines
which stands omitted

w.e.f. 1.04.2011 from
the â??includesâ??
clause of input service.
Further, the services are
in relation to
'construction' and
â??execution of a works
contract of a building or
a civil structureâ??,
which is excluded under
Rule 2(l)(A)","Order dated 7.03.2017
Services are in relation
to 'setting up' of mines
which stands omitted
w.e.f. 01.04.2011 from
the includes clause of
input service.
Further, the services
are in relation to
'construction' which is
excluded vide Rule 2(l)
(A. Thus, credit is not
admissible.","Order dated 25.05.2018
Work was basically
development of civil
structure of mining area
by way of construction
o f decline/ramp, etc.
and the same merits
classification as

construction service.

These have been clearly

excluded under Rule 2(l)

(A)(a) &(b). Thus,

credit is not admissible.

April 2015 to Sept 2015

31.03.2016",,,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service",,,

or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal,",,,

procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching",,,

and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and",,,

outward transportation upto the place of removal.â??,,,

(emphasis supplied),,,

From 01.04.2011 upto 30.06.2012,,,

â??2(l) ""input service"" means any service,-",,,

(i) used by a provider of taxable 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 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 services,-",,,

A. specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter",,,

referred as specified services), in so far 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; or,,,

xxxxxxxxxâ??,,,

(emphasis supplied),,,

With effect from 01.07.2012,,,

â??2(l) â??input serviceâ?? 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 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; orâ??,,,

(emphasis supplied),,,

14. It would be seen from the aforesaid definition of â??input serviceâ?? in rule 2(l) of the Credit Rules that while the â??meansâ?? part of the,,,

definition has continued to remain the same pre amendment or post amendment, but the â??includesâ?? part and the â??excludesâ?? part of the",,,

definition of â??input serviceâ?? have underdone changes. Though â??services used in relation to setting upâ?? of a factory was included in the,,,

inclusive part of the definition of â??input servicesâ?? prior to 01.04.2011 but it was deleted w.e.f. 01.04.2011. The â??excludesâ?? part in the,,,

definition of â??input serviceâ?? was added w.e.f. 01.04.2011 and it provided that services specified in certain sub-clauses of clause (105) of section,,,

65 of the Finance Act in so far as they were used for construction of a building or a civil structure or a part thereof were excluded w.e.f. 01.04.2011.,,,

It is also seen that the â??excludesâ?? part of the definition of â??input serviceâ?? was further amended w.e.f. 01.07.2012.,,,

15. Learned Counsel for the appellant has placed emphasis on the â??meansâ?? clause of rule 2(l) of the Credit Rules. It continued to remain the,,,

same whether before 01.04.2011 or after 01.04.2011. In this connection, learned Counsel emphasized that â??input serviceâ?? would mean any",,,

service 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.,,,

16. To appreciate whether the impugned order has travelled beyond the directions contained in the two orders passed by the Tribunal, it would be",,,

necessary to examine the orders.,,,

17. The show cause notice dated 01.11.2013 alleged that CENVAT credit was inadmissible as the services were received outside the factory,,,

premises. The first order dated 10.02.2015 passed by the Adjudicating Authority decided this issue in favour of the appellant by holding that CENVAT,,,

credit of input services received in the captive mines is admissible since the definition does not mention that input service credit would not be available,,,

for services utilized outside the factory. However, CENVAT credit has been denied for the reason that theÂ servicesÂ wereÂ inÂ relationÂ toÂ",,,

â??settingÂ upâ??Â ofÂ minesÂ andÂ service portion of construction services has been omitted w.e.f. 01.04.2011 and has been put in the,,, exclusion part of the definition. It is for this reason that the learned Counsel for the appellant contended that the finding recorded in the first impugned,,,

order is also beyond the show cause notice dated 01.10.2013, but this submission would be examined, if considered necessary, at a later stage. When",,,

the matter came before the Tribunal, as noticed above, it was found that services pertained to development work of underground mines and fans",,,

installation in the mines for the purpose of ventilation. The Tribunal, therefore, observed that since services were carried out to obtain sufficient",,,

quantity of raw material outside the factory premises but within the mining area, the services were connected with the manufacture of final product",,,

and prima facie eligible for CENVAT credit. The Tribunal, therefore, set aside the impugned order and remanded the case to the Adjudicating",,,

Authority for a fresh decision to examine the nexus between the services and final product of the appellant after providing a reasonable opportunity to,,,

the appellant and even fresh evidence could be admitted, if law permitted.",,,

18. Learned Counsel for the appellant submitted that it was imperative for the Commissioner to have examined only that issue which was remanded,,,

by the Tribunal, but the Commissioner denied CENVAT credit on different grounds, as would be seen from the order and, therefore, the order went",,,

beyond the remand order.,,,

19. A perusal of the impugned order dated 25.05.2018 passed by the Commissioner indicates that in regard to the first show cause notice CENVAT,,,

credit has been denied even after holding that input service credit would be available for services utilized outside the factory premises for the reason,,,

that the services related to construction, development and setting up of Kayad Mines. These activities related to construction or execution of a works",,,

contract of a building or a civil structure, but such activities had been excluded from the definition of â??input serviceâ?? w.e.f. 01.04.2011 under",,,

Rule 2(l) of the Credit Rules.,,,

20. Whether this was at all required to be examined by the Commissioner after remand by Tribunal is the bone of contention between the appellant,,,

and the respondent.,,,

21. Learned Counsel for the appellant submitted that once the order passed by the Tribunal on 14.08.2017 remanding the case to the Commissioner,,,

had attained finality, the Commissioner could have examined only that particular issue that was remanded. Learned Authorized Representative for the",,,

Department, however, contended that the remand order was a very wide order and when the Adjudicating Authority was directed to examine the",,,

issue fresh by providing a reasonable opportunity to the appellant, it implies that all the issues were left open to be decided by the Commissioner and,",,,

therefore, it cannot be urged that the Commissioner went beyond the directions contained in the remand order.",,,

22. This submission advanced by the learned Authorized Representative for the Department cannot be accepted. The order in its entirety has to be,,,

read and when so read, it clearly transpires that a direction was issued to the Adjudicating Authority to take a â??fresh decisionâ?? after examining",,,

the nexus between the services and final product of the appellant. The Commissioner had, therefore, to restrict his consideration to this issue alone.",,,

The subsequent sentence directing the Adjudicating Authority to examine the issue afresh has to be read in the light of the direction contained in the,,,

previous sentence. The Tribunal, in its order dated 14.08.2017, had recorded a categorical finding that services were connected with the manufacture",,,

of the final product and, therefore, prima facie were eligible for CENVAT credit. The Commissioner could have only examined only this issue, but it",,,

was not examined. The Commissioner, on the other hand, examined whether the services related to construction, development and setting up of",,,

Khayad Mines. This was not only beyond the scope of the remand order dated 14.08.2017, but it can also be urged that it went beyond the scope of",,,

the first show cause notice.,,,

23. In Commissioner of Customs (EP) v/s National Steel & Agro Industries Ltd., 2015 (322) E.L.T. 690 (Bom.), the Bombay High Court observed",,,

that when the remand is for a limited purpose, the Adjudicating Authority cannot travel beyond the purpose stated in the remand order.",,,

24. The Allahabad High Court, in Commissioner of Central Excise, Agra v/s Okay Glass Industries, 2015 (330) E.L.T. 872 (All.), observed that when",,,

the remand order attains finality, it is not open to the Commissioner, on remand, to pass an order ignoring the remand directions and confirming the",,,

demand on the same grounds as contained in the first order, which order had been set aside by the Tribunal.",,,

25. There is, therefore, no manner of doubt that the order passed by the Commissioner adjudicating the first show cause notice is beyond the scope of",,,

the remand order.,,,

26. In regard to the subsequent show cause notices dated 28.10.2015 and 31.03.2016 for the period from October 2014 to September 2015, it is seen",,,

that the show cause notices were issued on a ground different from that contained in the first show cause notice. The show cause notices mention,,,

that the services were in relation to â??setting upâ??, of mines, which service stood omitted w.e.f. 01.04.2011 from the inclusive clause of the",,,

definition of â??input serviceâ?? under rule 2(l) of the Credit Rules. They also mention that the services were in relation to â??construction and,,,

â??executionâ?? of a works contract of a building or a civil structureâ??, which service was excluded under rule 2(l)(A) of the Credit Rules. The",,,

Commissioner, in the first order dated 27.03.2017, confirmed the demand. However, the Tribunal in the order dated 17.11.2017, after making",,,

reference to the order dated 14.08.2017 earlier passed by the Tribunal in Excise Appeal No. 51849 of 2015, issued the same direction to the",,,

Adjudicating Authority to take a fresh decision after examining the nexus between the services and the final product of the appellant. The Department,,,

did not file any appeal against this order dated 17.11.2017 of the Tribunal and so the order passed by the Tribunal attained finality. The Commissioner,,,

was, therefore, required to examine only this limited issue on remand, but as the order would indicate, the Commissioner denied CENVAT credit",,,

observing that the work was basically of development of a civil structure of mining area by way of construction of decline/ramp and the same would,,,

merit classification as â??construction servicesâ??, which services had been excluded under rule 2(l)(A) of the Credit Rules w.e.f. 01.04.2011. The",,,

Commissioner, therefore, in regard to the subsequent two show cause notices also went beyond the remand order.",,,

27. There is, therefore, no hesitation in holding that the order dated 25.05.2018 passed by the Commissioner has travelled beyond the scope of the",,,

remand orders passed by the Tribunal on 14.08.2017 and 17.11.2017 and, therefore, cannot be sustained.",,,

28. Learned Counsel for the appellant also challenged the order dated 25.05.2018 passed by the Commissioner in relation to the first show cause,,,

notice dated 1.10.2013 for the reason that the order went beyond the scope of the show cause notice.,,,

29. This submission deserves to be accepted. The show cause notice proceeded on the footing that the services had been received outside the factory,,,

premises and, therefore, CENVAT credit was not admissible. The impugned order holds that CENVAT credit would be admissible even if services",,,

were utilized outside the factory premises, but still denies CENVAT credit for the reason that the services were in relation to construction,",,,

development and setting up of Khayad mines, but construction related activities had been excluded from the definition of â??input serviceâ?? under",,,

rule 2(l) of the Credit Rules w.e.f. 01.04.2011. The confirmation of the duty demand for this period, therefore, is liable to be set aside on this ground",,,

also.,,,

30. In Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., (2007) 8 (2007) 8 SCC 89, the Supreme Court observed that it is well",,,

settled that a show cause notice is the foundation in the matter of levy, recovery of duty, penalty and interest and if there was no invocation of rule 7",,,

of the Valuation Rules, 1975 in the show causes notice, it would not be open to the Commissioner to invoke the said Rule.",,,

31. In Nestor Pharmaceuticals Ltd. v/s Commissioner of Central Excise, Delhi, 2000 (116) E.L.T. 477 (Tribunal), a Division Bench of the Tribunal",,,

observed that the Commissioner (Appeals) cannot go beyond the scope of the show cause notice and that no matter can be decided on a ground other,,,

than the grounds raised in the show cause notice.,,,

32. In Tata Johnson Controls Automotive v/s Commissioner of Customs, Mumbai, 2004 (167) E.L.T. 93 (Tri. Mum.), a Division Bench of the Tribunal",,,

observed that it was not open to the Commissioner (Appeals) to make out a new case and, therefore, the order passed by the Commissioner",,,

(Appeals) deserved to be set aside on this ground alone.,,,

33. The order passed by the Commissioner adjudicating the first show cause notice dated 01.10.2013 for the period October 2012 to March 2013,",,,

therefore, deserves to be set aside for this reason also.",,,

34. The order passed by the Commissioner denies CENVAT credit for the reason that the services were construction related services which had,,,

been excluded from the definition of â??input serviceâ?? and also for the reason that services in relation to â??setting upâ?? of a mine had been,,,

deleted from the definition of â??input serviceâ?? w.e.f. 01.04.2011.,,,

35. Learned Counsel for the appellant submitted that the appellant would be eligible for CENVAT Credit on the input services in question under the,,,

â??meansâ?? clause of the definition of â??input serviceâ?? that provides â?? used in or in relation to the manufacture of final productsâ?. The,,,

submission is that even post the amendment in the definition of input service w.e.f. 01.04.2011, the â??means clauseâ?? continues to remain the",,,

same. It is also the submission that â??means clauseâ?? of the definition is very widely worded and words such as â??directly or indirectlyâ?? and,,,

â??in or in relation toâ??, further expand the scope of the definition. In this connection, reliance has been placed on the decision of the Tribunal in",,,

Pepsico India Holdings (Pvt.) Ltd. vs. Commissioner of Central Tax, Tirupati, 2021 (7) TMI 1094 â?" CESTAT Hyderabad.",,,

36. Learned Authorized Representative of the Department, however, submitted that the development of mines was done under a works contract.",,,

Learned Authorized Representative also submitted that since mine development is a process of constructing a mining facility, the impugned services",,,

were only for construction and development of the mine.,,,

37. As noticed above, emphasis has been placed by the appellant on the â?? meansâ?? clause of the definition of â??input serviceâ?? under rule 2(l)",,,

of the Credit Rules. The Department however has placed emphasis on the â?? includesâ?? clause of the definition as also the â??excludesâ?? clause,,,

of the definition of â??input serviceâ??. The decision of the Tribunal in Pepsico India Holdings, on which reliance has been placed by the appellant,",,,

also interpreted the â??meansâ?? clause of the definition of â??input serviceâ??. It would, therefore, be appropriate to consider this decision.",,,

38. What came up for decision before the Tribunal in Pepsico India Holdings was whether the appellant was entitled to CENVAT credit on the,,,

â??input servicesâ?? used in the â??setting upâ?? of the plants. In particular, what was considered was whether â??setting upâ?? of the plants",,,

would be a service falling in the â??meansâ?? clause of the definition of â??input serviceâ??, even if â??setting upâ?? was deleted from the",,,

â??includesâ?? clause of the definition of â??input serviceâ?? w.e.f. 01.04.2011. The Tribunal observed that the definition of the â??meansâ?? part,,, of the definition was very wide and services used in â??setting upâ?? of the factory would be covered under the â??input servicesâ??, under rule",,,

2(l) of the Credit Rules in the â??meansâ?? part of the definition of â??input serviceâ?? even if the said service had been deleted from the,,,

â??includesâ?? part of the definition of â??input serviceâ??. The relevant portion of the decision is reproduced below:,,,

â??11. Before 1.4.2011, the term â??input serviceâ?? had number of types of services included in the main part of the definition and then",,,

it had a â??inclusiveâ?? part of the definition which specifically provided for credit of service tax paid on services used in setting up of the,,,

plant. After 1.4.2011, the definition was revised and it had three parts, the main part, an inclusion part and an exclusion part. The cenvat",,,

credit on input services used in setting up of the plant was neither in the inclusive part of the definition nor in the exclusive part of the,,,

definition. However, he would argue that these services were necessary to set up the plant and manufacture the goods. Thus, these services",,,

are directly connected to the manufacture of the goods and hence they are covered in the main part of the definition of the â??input,,,

serviceâ?? after 1.4.2011 and therefore credit is available even though such services were no longer specifically in the inclusive part of the,,,

definition. Such a view was taken in the case of Kellogs by this Bench and in other cases cited above. He, therefore, prays that the appeals",,,

may be allowed and the impugned orders may be set aside.,,,

12. Learned Departmental Representative vehemently opposes these arguments and supports the impugned orders and asserts that since the,,,

services related to setting up of a factory were removed from the inclusive part of the definition, it would mean no CENVAT credit was",,,

available. On a specific query from the bench, he submits that in the case of Kellogs this Bench held that CENVAT credit was available and",,,

the Revenue has appealed against the order which appeal is pending before the High Court of Andhra Pradesh for admission.,,,

xxxxxx,,,

15. The department wants to deny them the benefit of the CENVAT credit on the ground that â??services related to setting up of a,,,

factoryâ?? which were specifically included prior to 1.4.2011 were no longer specifically included post 1.4.2011.,,,

16. We find that the definition of â??input serviceâ?? prior to 1.4.2011 had two parts- a main part of the definition and an inclusive part of,,,

the definition. This inclusive part specifically included the services availed for setting up the factory. After 1.4.2011, it has three parts- a",,,

main part, an inclusive part and an exclusive part. The services used for setting up the factory are neither in the inclusive part of the",,,

definition nor the exclusive part of the definition. Therefore, such services were neither specifically included nor were specifically excluded.",,,

17. It takes us to the main part of the definition which must be examined. If it is wide enough to cover the services in question, CENVAT",,,

credit will be available, otherwise it will not be available. The main part includes â??services used by a manufacturer, whether directly or",,,

indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal.â? The term",,,

manufacture is not defined in the Rules.,,,

xxxxxxxxx,,,

21. ForÂ aÂ serviceÂ toÂ qualifyÂ asÂ â??inputÂ serviceâ??Â under CENVAT Credit Rules, 2004 post 2011, the service in question",,,

need not be covered even by the very wide definition of manufacture under section 2(f) of the Central Excise Act. Any service which is used,,,

not only in manufacture but also â??in relation toâ?? manufacture will also qualify as input service. The scope of input service is further,,,

enlarged with the expression whether directly or indirectly used in the definition of input service. Thus, there are:",,,

a) Actual manufacture;,,,

b) Processes incidental or ancillary to manufacture which are also manufacture;,,,

c) Activities directly in relation to manufacture (i.e., in relation to â??aâ?? and â??bâ?? above);",,,

d) Activities indirectly in relation to manufacture (i.e., in relation to â??aâ?? and â??bâ?? above);",,,

22. All four of the above qualify as input service as per Rule 2(l) (ii) as applicable post 1.4.2011. Although setting up the factory is not,,,

manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture.",,, Services used in setting up the factory are, therefore, unambiguously covered as â??input servicesâ?? under Rule 2 (l) (ii) of the CENVAT",,,

Credit Rules, 2004 as they stood during the relevant period (post 1.4.2011). The mere fact that it is again not mentioned in the inclusive part",,,

of the definition makes no difference. Once it is covered in the main part of the definition of input service, unless it is specifically excluded",,,

under the exclusion part of the definition, the appellant is entitled to CENVAT credit on the input services used. This Bench has already",,,

taken this view in Kellogs. Similar views have been taken by the other Benches in the other cases mentioned above.â??,,,

(emphasis supplied),,,

39. ItÂ needsÂ toÂ beÂ notedÂ thatÂ inÂ KellogsÂ IndiaÂ Pvt.Â Ltd vs. Commissioner of Central Tax, Tirupathi, GST 2020 (7) TMI 414-",,,

CESTAT Hyderabad, the Tribunal observed:-",,,

â??11. Therefore, we find that the services used in relation to setting up of a plant are neither specifically included nor specifically",,,

excluded during the relevant period. That takes us to the main part of the definition which, with respect to manufacturer allows CENVAT",,,

credit of services used in or in relation to manufacture whether directly or indirectly. This definition, in our considered view, is wide enough",,,

to cover in its compass any services used for setting up a Plant especially when the services are used for obtaining the land on lease.,,,

Without such land no factory can be set up nor can any manufacture take place. We find a direct nexus between the manufacture of the,,,

final products and the services used for setting up of plant by leasing the land.â??,,,

40. In this view of the matter, when the services received by the appellant are covered within the â??meansâ?? clause of the definition of â??input",,,

serviceâ??, the appellant was justified in availing CENVAT credit on various services utilized for mine development at Khayad captive mines.",,,

41. Such being the position, emphasis placed by the Department on either the â??includesâ?? part or the â??excludesâ?? part of the definition of",,,

â??input serviceâ?? in rule 2(l) of the Credit Rules is mis-placed.,,,

42. The Commissioner was, therefore, not justified in examining the â?? includesâ?? part or â??excludesâ?? part of the definition of â??input",,,

serviceâ?? when it had been contended on behalf of the appellant that the services utilized for mine development would be â??input serviceâ??,,,

under the â??meansâ?? clause of the definition of â??input serviceâ??.,,,

43. Thus, for all the reasons stated above, the order dated 25.05.2018 passed by the Commissioner deserves to be set aside and is set aside. The",,,

appeal is, accordingly, allowed.",,,

(Order pronounced on 19.08.2021),,,

