CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70210 of 2024

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-248-23-24 dated 06/09/2023 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Velocity Propbuild Pvt. Ltd., **.....Appellant**
(GF-51, SNG Plaza, Opp-Expo Market,
G.B. Nagar, Noida-201308)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(3rd Floor, Wegmans Business Park, Noida)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70563/2025

DATE OF HEARING : 01 May, 2025
DATE OF PRONOUNCEMENT : 12 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against order-in-Appeal No.NOI-EXCUS-002-APP- -23-24 Dated: 06.09.2023 of Commissioner, CGST (Appeals), Noida. By the impugned order following has been held:

"ORDER

12. In view of the above I uphold the confirmation of demand of Rs. 6,65,134/- with interest and imposition of penalty equivalent to the said amount in the impugned order. However, I set aside that part of the order whereby the adjudicating authority has confirmed demand of Rs.

1,45,000/- with interest and imposed equal amount of penalty. The impugned order is modified to this extent. Appeal is disposed of accordingly."

1.2 By Order-in-Original No. 4/AC/ST/DIV.-III/GBN/2022-23 dated 26.12.2022 following has been held:

(a) I confirm the demand of Rs. Service Tax of Rs. 6,65,134/- [Rs. Six Lakhs Sixty-Five Thousand One Hundred Thirty-Four Only) [inclusive of Ed. Cesses, SBC. KKC] towards service taxnot , paid during the F.Y. 2015-16, 2016-17 and 2017-18 (up to June, 2017) and order for its recovery from them under Section 73(1) of the Finance Act, 1994 along with interest payable from the due date of payment till the actual date of payment of such tax in terms of section 75 of the Finance Act, 1994.

(b) I impose a penalty of Rs. 6,65,134/- [Rs. Six Lakhs Sixty-Five Thousand One Hundred Thirty-Four Only] on the party under Section 78 of the Finance Act, 1994 and order for its recovery from them.

(c) I also confirm demand of Rs. 1,45,000/- [Rs. One Lakh Forty-Five Thousand Only] [inclusive of Cess] towards service tax not paid for the F.Y. 2015-16 and order for its recovery from them under Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 along with interest payable on the amount.

(d) I also impose a penalty of Rs. 1,45,000/- [Rs. One Lakh Forty-Five Thousand Only] on the party under Section 78 of the Finance Act, 1994 and order for its recovery from them.

(e) I order that a sum of Rs.12,67,544/- already deposited by the party under SVLDR Scheme be appropriated.

2.1 Appellant at the relevant time was registered a Service tax registrant with Registration No. AADCV1190NSD001 for providing the taxable services viz. "Real Estate Agent Service and Construction of Residential Complex Service". They opted for voluntary disclosure under the SVLDRS (Sabka Vishwas Legal

Dispute Resolution Scheme), 2019 under Section 125(f) of the Finance Act, 2019 and deposited a sum of Rs.12,67,544/- under the said SVLDRS Scheme. SVLDRS-4 was also issued to them.

2.2 On verification and scrutiny of the documents submitted by the appellant revealed that during the Financial Year 2015-16, 2016-17 and 2017-18 (up to June'2017), the appellant received an amount of Rs. 1,38,15,775/- against the taxable services provided by them and the service tax liability comes to Rs.19,32,678/- on the said consideration amount. It was also revealed from the documents that during the F.Y. 2015-16, the appellant had forfeited an amount of Rs.10,00,000/- received as an advance for providing Real Estate Agent service on which service tax amounting to Rs.1,45,000/- (inclusive of Cess) was payable by the appellant.

2.3 A show cause notice dated 28.04.2021 was issued to the appellant asking to show cause as to why: -

(i) *Service Tax amounting to Rs. 19,32,678/- (Rupees Nineteen Lakh Thirty Two Thousand Six Hundred Seventy Eight only) (inclusive of Ed. Cess & SH Ed. Cess, KKC/SBC wherever applicable) should not be demanded and recovered from them under Proviso to Section 73 (1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017. As the party has deposited Rs 12,67,544/- through SVLDR Scheme, the same should not be appropriated against aforementioned demand.*

(ii) *Service Tax amounting to Rs 1,45,000/- (Rupees One Lakh forty Five Thousand Only) (inclusive of Ed. Cess & SH Ed, Cess, KKC/SBC wherever applicable) on account of advance income forfeited should not be demanded and recovered from them under Proviso to Section 73 (1) of the Finance Act, 1994 read with Section 174 of the CGST Act. 2017*

(iii) *Interest should not be recovered from them on the service lax amount mentioned in above (i) and (ii) under*

Section-75 of the Finance Act, 1994 read with Section 174 of CGST Act,2017.

(iv) *Penalty should not be imposed upon them on the service tax amount mentioned in above (i) and (ii) under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*

2.4 The show cause notice was adjudicated as per the order in original referred in para 1.2 above.

2.5 Aggrieved appellant filed appeal before the Commissioner (Appeal) which has been disposed as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Atul Gupta, Advocate for the appellant and Ms Chitra Srivastava, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Appellant has made correct declaration under SVLDR Scheme and has rightly availed the CENVAT Credit before opting for the said scheme.
- On plain reading of Rule 3, 4 and 9 of Cenvat Credit Rules along with Rule 4A of the Service Tax Rules, it is evident that the provider of the output service could have taken CENVAT Credit on the basis of invoices evidencing the payment of service tax on the input services received by him. Appellant had taken CENVAT Credit of Rs 6,65,134/- in his CENVAT register, though not declared in the ST-3 return filed by them. Non mentioning of the CENVAT Credit in the ST-3 return was just a procedural lapse. The substantial benefit could not be denied for such procedural infirmities as has been held in following cases:
  - Origin Learning Solutions Pvt. Ltd. [2021 (7) TMI 898 – CESTAT Chennai];
  - Target Corporation India Pvt. Ltd. [2019 (10) TMI 1148 - CESTAT Bangalore;

    - Voss Exotech Automotive Pvt. Ltd. [2018 (3) TMI 1048 – CESTAT Mumbai.
- Board has by Circular No 1071/4/2019-CX dated 27.08.2019 clarified that "Duty/ tax already paid through input credit shall be adjusted by the designated committee at time of determination of final amount payable under the scheme."
- Reliance is also placed on the decisions in the case of Jagdish Advertising [2020 (8) TMI 788 – Karnataka High Court]
- If the duty is held payable on the final product, then CENVAT Credit is admissible on inputs, input services, etc. Appellant had outstanding tax liability of Rs 19,32,678/- and same was netted of by the available Cenvat Credit, before opting for SVLDRS.
- Impugned order has erroneously concluded that appellant had not made full and complete disclosure under SVLDRS.
- The extended period of limitation cannot be invoked in the present case. The benefit of order dated 27.04.2021 of the Hon'ble Apex court is available only to the litigants as has bee held in case of S Kasi [2020 (6) TMI 727] and Circular No 157/13/2021-GST dated 20.07.2021]. Reliance is also placed on the following decisions:
    - Rungta Mines Ltd. [2023 (8) TMI 786 Jharkhand High Court];
    - N K Impex India and Findoc Impex [2021 (12) TMI 1064 CESTAT Chandigarh]
- Extended period of limitation could not have been invoked for making this demand as necessary ingredients are missing. Reliance is placed on the following decisions:
    - Suryavistacom Pvt Ltd. [2022 (66) GSTL 290 (Cal)]
    - ABB Ltd [Karnataka High Court Central Excise Appeal No 16/2021];
    - Anand Nishkawa Co Ltd [2005-TIOL-118-SC-CX]
    - MTNL [2023-TIOL-407-HC-Del-ST]

- Continental Foundation A Venture [2007 (216) ELT 177 (SC)]
- Padmini Products Limited [1989 (43) ELT 195 (SC)]

➢ No penalty and interest is imposable.

3.3 Authorized representative reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal.

4.2 Impugned order records the findings as follows:

"9. On careful consideration of the facts, circumstances of the case, documents on record and the submissions of the appellant, I find that the issues for determination in this case are:

(i) Whether the Show Cause Notice issued in this case is barred by limitation of one year prescribed under Section 129(2)(c) of the SVLDRS, 2019 thereby rendering the demand proceedings void?

(i) Whether demand of Rs.1,45,000/- confirmed by the adjudicating authority holding the same liable to Service Tax under Section 66E(e) of the Finance Act, 1994 is legal and proper?

(ii) Whether the order of recovery of interest and Imposition of penalty on the appellant as consequence to the confirmation of demand is correct or not?

10.1 I note that the appellant had filed declaration under SVLDRS, 2019 under the category `voluntary disclosure' and paid an amount of Rs. 12,67,544/-. The declaration was accepted by the Designated Committee and SVLDRS-4 was issued on 19.03.2020. Being the case of voluntary disclosure matter post verification was initiated by the department and accordingly requisite documents were sought by the jurisdictional Range officer from the appellant vide letter dated 14.09.2020. The appellant submitted documents vide *letter dated 24.11.2020 and 26.02.2021. On scrutiny of documents submitted by the appellant it was found that the total amount of Service Tax payable by them worked out to Rs. 19,32,678/- as against Rs. 12,67,544/- paid by them. Subsequently Show Cause Notice dated 28.04.2021 was issued proposing demand of Service Tax invoking extended period of limitation, interest and imposition of penalty on the appellant.*

10.2 In the above background I feel it necessary to refer to the provisions of Section 129(2)(c) of the SVLDRS, 2019, relevant portion of which reads as under:

> *"(2) Notwithstanding anything contained in sub-section (1), -*
>
> *(a) ....*
>
> *(b) ....*
>
> *(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under applicable indirect tax enactment shall be instituted."*

10.3.1 I note that the aforesaid provisions stipulated initiation of proceedings under Finance Act, 1994, in the cases of voluntary disclosure where declaration was found to be false, within one year of issue of discharge certificate. In other words this provision enabled the department to initiate demand proceedings as per law by way of issuing of Show Cause Notice, where the declaration was found to be false within one year of discharge certificate. It did not lay down that the demand Show Cause Notice should have been issued within a period of one year. Close reading of the above provision makes it clear that the proceedings so initiated would be governed by the relevant provisions of Finance Act, *1994. Therefore, I hold that the Show Cause Notice in the present case is not barred by limitation of one year prescribed under Section 129(2)(c) of the SVLDRS, 2019 as contended by the appellant since the department had found the declaration of the appellant false within one year of issue of discharge certificate though specific date thereof is not forthcoming.*

10.3.2 Further, I find that the Hon'ble Supreme Court vide Judgement dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SWM (C) No. 3 of 2020 has issued the following directions

> *"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.*
>
> *It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
>
> *We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."*

I also find, that the matter of extension of period of limitation under Section 168A of the CGST Act, 2017 was deliberated in the 43rd Meeting of GST Council. Council, while providing various relaxations in the compliances for taxpayers, also *recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply. In this context the CBIC vide Circular No. 157/13/2021-GST dated 20/07/2021 on the subject matter of limitations of time lines under GST Law, has clarified the following: -*

> *(ii) For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) 3 of 2020 vide order dated 27th April 2021. Thus, as on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc.*

Accordingly, the SCN issued by the department to the appellant on 28.04.2021 is, therefore, considered to be issued within limitation period.

10.4 It is on record that the appellant had a balance of Rs. 6,65,134/- in CENVAT Credit account, which was not permitted to be utilized for payment of any amount payable under SVLDRS, 2019. The appellant has contended that they had paid Rs. 12,67,544/- (net of CENVAT Credit). They never paid any amount through CENVAT Credit account as held by the adjudicating authority. In view of the fact that the appellant has not challenged that the total amount of Rs. 19,32,678/- payable by them under SVLDRS, 2019 whereas admittedly they had paid Rs. 12,67,544/-, thus the fact remains that their declaration under SVLDRS, 2019 was not correct which stipulated 100% payment in case of voluntary disclosure without utilizing any CENVAT Credit. As such I uphold confirmation of demand of Service Tax of Rs. 6,65,134/- with interest and imposition of penalty to that extent. It is not out of place to mention that in the facts and circumstances of the present case I uphold invocation of *extended period of limitation for the purpose of demand of Service Tax."*

4.3 Order in original records the findings as follows:

"6. I observe that the issues for my consideration in the instant matter are (a) Whether or not the party is liable to pay Service Tax amounting to Rs. 19,32,678/-[Rs. Nineteen Lakhs Thirty Two Thousand Six Hundred Seventy-£ight Only] [inclusive of Ed. Cesses, SBC, KKC] for the period 2015-16, 2016-17 and 2017-18 (up to June, 2017) and Rs. 1,45,000/- [inclusive of all Cesses] on forfeited amount along with interest for the F.Y. 2015-16. (b) Whether or not they are liable to penalty under Section 78 of the Act. I proceed to decide the issues sequentially.

7. I find that the party did not file any ST-3 return during the F.¥. 2015-16, 2016-17 and 2017-18 up to June, 2017) and thus, managed to evade payment of service tax on the taxable services valued at Rs. 1,38,15,775/- resulting in non-payment of service tax. Accordingly, I hold that M/s Velocity Propbuild Pvt. Ltd., GF, 51, SNG Plaza, Opp. Expo Mart, Greater Noida, Gautam Buddha Nagar-201308 is liable to pay service tax of Rs. of Rs.19,32,678/-. Based on the figures of the Balance Sheets and Trial Balance, the liability of the party to pay Service Tax for the period in question is as detailed in the table below:

S. No	*Financial Year*	*Taxable Value (Rs.)*	*Service Tax Payable as declared by the party (Incl. Cesses in Rs.)*	*Service Tax deposited under SVLDRS (Rs. In Cash)*
1.	*2015-16*	*88,01,317/-*	*11,73,008/-*	
2.	*2016-17*	*43,26,792/-*	*6,56,520/-**	
3.	*2017-18 (up to June, 2017)*	*6,87,666/-*	*1,03,150/-*	
	TOTAL	*1,38,15,775/-*	*19,32,678/-*	*12,67,544*

**Assessed and declared by the taxpayer himself.*

8. The party had not disclosed correct taxable value and tax liability in SVLDRS papers. They had only shown *payment of Rs. 12,67,544/- in Form No. SVLDRS-4. As per figures of the Balance Sheets for the F.Y 2015-16, 2016-17 and Trial Balance for 2017-18 (up to June, 2017) correct service tax liability on the total taxable services valued at Rs. 1,38,15,775/- comes to Rs.19,32,678/ whereas the party has only deposited Rs. 12,67,544/- in cash and claims to have paid service tax of Rs.6,65,135/- through CENVAT credit from 01.04.2015 to 30.06.2017.* ***However, since the party had not filed any ST-3 return during the F.Y. 2015-16, 2016-17 and 2017-18 (up to June, 2017), their plea of taking input service credit in stipulated time frame and payment of tax through CENVAT credit is not tenable.*** *Moreover, as per Section 130(1)(a) of SVLDR Scheme, 2019, the act of payment of tax through CENVAT credit is violation of the provisions of the scheme. Further, under Section 129(2)(c) of SVLDR Scheme, 2019, in case of voluntary disclosure if any material particular is subsequently found to be false, it shall be presumed that the declaration was never made and proceedings under the applicable indirect tax enactments shall be instituted. Accordingly, I hold that M/s. Velocity Propbuild Pvt. Ltd., GF 51, SNG Plaza, Opp. Expo Mart, Greater Noida, Gautam Buddha Nagar-201308 has contravened the provisions of SVLDR Scheme, 2019 and is liable to pay appropriate service tax for the period in question.”*

4.4 From the perusal of the above orders the undisputed fact of the case is that appellant had not filed any ST-3 Returns as prescribed for the period 2015-16, 2016-17 and 2017-18 (Upto June 2018) in the prescribed manner and within the prescribed date for filing the return. The liability to the service tax of Rs 19,32,878/- is also not in dispute. The appellant has in these proceedings claimed that they have claimed with regards to availability of the CENVAT Credit of Rs 6,65,135/- which as per them was netted of by them by disclosing their liability under SVLDRS.

4.5 As appellant has not filed the ST-3 return during the relevant period they have never made a declaration in respect of CENVAT Credit taken by them against the invoices of input service. The submission made, by the appellant that they were taking the credit in the CENVAT Register is without any basis. There is no document as CENVAT register prescribed by the CENVAT Credit Rules, 2004 or the Service Tax Rules, 1994. The private records of the appellant, which are duly declared by the appellant to the department in terms of Rule 5 of the Service Tax Rues, 1994 are considered acceptable. I do not find at any stage of these proceedings appellant have produced any such declaration of such a CENVAT Register.

4.6 Rule 7 of the Service Tax Rules, 1994 provides as follows:

"7. Returns.

(1) Every assessee shall submit a half yearly return in From 'ST-3', 'ST-3A', [or 'ST-3C'] [Inserted by Notification No. G.S.R. 1057 (E), dated 9.11.2016 (w.e.f. 1.7.1994).] as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.

(2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

Provided that the Form ST-3 required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only

Provided further that the Form ST-3 for the period between the 1st day of July 2012 to the 30th day of September 2012, shall be submitted by the 25th day of March, 2013;]

Provided also that the return for the period from the 1st day of April, 2017, to the 30th day of June, 2017, shall be submitted by the 15th day of

August, 2017, in Form 'ST-3' or 'ST-3C', as the case may be.

(3) Every assessee shall submit the half-yearly return electronically

(3A) ………

(3B) ……..

(4) *The Central Board of Excise and Customs may, by an order extend the period referred to in sub-rule (2) by such period as deemed necessary under circumstances of special nature to be specified in such order."*

4.7 Sub-rule (9) of Rule 9 of the CENVAT Credit Rules, 2004 provides as follows:

"9. Documents and accounts.

(9) The provider of output service availing CENVAT credit shall submit half-yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year."

4.8 The use of word "shall" in the rule 7 of the Service Tax Rules, 1994 and sub rule (9) makes the filing of the ST-3 return declaring the CENVAT Credit taken a mandatory requirement and not a procedural requirement not a procedural requirement. In absence of the claim to credit made on the return revenue authorities would not be position to verify the correctness of claim made to the CENVAT Credit and recover the inadmissible CENVAT Credit along with the penalties imposable as per Rule 14 and Rule 15 of CENVAT Credit Rules, 2004. By not filing the ST-3 return claiming the CENVAT Credit taken, appellant have denied the opportunity to the revenue authorities to verify the correctness of the claim of credit.

4.9 The decision in the case of

a. Origin Learing Solutions Pvt. Ltd., was case of refund under rule 5 of the CENVAT Credit Rules, 2004. The credit in that case was in respect of the paid under the reverse charge mechanism. It was not the case where no ST-3 return was being filed but the case where CENVAT credeit was not declared in the return for a particular period. Party had undertaken to declare the same in the subsequent return. In these circumstances CESTAT held that mere non-mention of certain amounts of Credit taken in a particular period in the ST-3 return for that period was a procedural lapse. This judgement is also distinguishable on the facts as the party therein has categorically declared their claim to credit while making the application for refund.

b. Target Corporation India Pvt Ltd., was also the case of refund under Rule 5 of the CENVAT Credit Rules, 2004. In that case also party had claimed the refund on the basis of various document available with them. In that circumstances again tribunal found that claim to the credit/ refund can be examined on basis of these documents. This judgement is also distinguishable on the facts as the party therein has categorically declared their claim to credit while making the application for refund.

c. Case of Voss Exotech, was in case of taking the credit within the period prescribed and not on the subject matter in dispute and hence distinguishable.

4.10 On the contrary I find that Hon'ble Supreme Court has in case of Mihir Textiles Ltd [1997 (92) ELT 9 (SC)] observed as follows:

> ***"12.*** *In support of that contention, counsel invited our attention to the decision of a Constitution Bench of this Court in State of U.P. v. Manbodhan Lal Srivastava, 1958 SCR 533, wherein their Lordships were considering the implication of non-compliance with the conditions provided in Article 320(3) of the Constitution on an order imposing punishment to a Government servant without reference to*

the Public Service Commission. While considering that question learned Judges made a reference to the Privy Council decision in Montreal Street Railway Company v. Normandin - AIR 1917 PC 142 and the Federal Court decision in Biswanath Khemka v. Emperor - AIR 1945 FC 67. The Constitution Bench held that the provisions of Article 320(3) are not mandatory and non-compliance of those provisions does not afford any cause of action in a court of law. Privy Council in the above quoted decision has observed that the question whether provisions in a statute are directory or imperative depends upon the object of the statute and no general rule can be laid down. "When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory." This is not a case where a certain provision is mandatory or directory. Here the question is whether concessional relief of duty which is made dependent on the satisfaction of certain conditions can be granted without compliance of such conditions. No matter even if the conditions are only directory."

4.11 The same has been echoed by the Hon'ble Supreme Court in case of Dilip Kumar & Co [2018 (361) E.L.T. 577 (S.C.)] holding as follows:

"44. In Hansraj Gordhandas case (supra), the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words, one has to look to the language

alone and the object and purpose for granting exemption is irrelevant and immaterial.

45. In Parle Exports case (supra), a Bench of two-Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows :

"How then should the Courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India, 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also Kailash Nath v. State of U.P., AIR 1957 SC 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations

of the Judicial Committee in Coroline M. Armytage v. Frederick Wilkinson, (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

In the above passage, no doubt this Court observed that "when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document". This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in Wood Papers Ltd. case (supra). In para 6, it was observed as follows :

"... In Collector of Central Excise v. Parle Exports (P) Ltd., (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for

non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."

46. The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of Parle Exports case (supra) deduced as follows :

"Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally".

47. We do not find any strong and compelling reasons to differ, taking a contra view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in Hari Chand case (supra).

48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while *doing so, a notification should be construed against the subject in case of ambiguity.*

49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."

51. In Hari Chand case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) …….

(3) ……..”

4.12 Interestingly the appellant have not even disclosed in respect of the CENVAT Credit while making the declaration under SVLDRS. They are SVLDRS-3 was issued by the designated committee on the basis of declaration made by the appellant of their liability. Subsequently discharge certificate in form SVLDRS-4 was also issued. The fact of netting of the liability against the available CENVAT Credit was never disclosed to the designated committee hence the revenue authorities cannot be questioned for holding that the declaration made by the appellant was substantially false, and proceeding as per the Section 129 (2) (c) of the Finance Act, 2019 could be initiated.

4.13 Appellant has relied upon the Board Circular and decision of Hon'ble Karnataka High Court to argue that they have rightly declared their tax liability after netting of the credit. The decision of learned Single Judge of Karnataka High Court relied upon by the appellant was set aside by the division bench as reported at [2021 (48) G.S.T.L. 227 (Kar.)] Division bench of Hon'ble Karnataka High Court has observed as follows:

> *"21. A Scheme was enacted by the Parliament known as Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 vide Finance (No. 2) Act, 2019 and the object of the Scheme was to provide one time measure for liquidation of past disputes of service tax. The Scheme came into force vide notification dated 21-8-2019 and the respondent/assessee submitted an application in the prescribed format under the Scheme on 28-12-2019 by applying electronically in Form SVLDRS-1.*
>
> *22. The dispute in the present case is that the appellants have disallowed the pre-deposit of Rs. 1,45,87,081/- i.e., amount of CENVAT which is the subject matter of the show cause notice while considering the application preferred in the SVLDR Scheme. The learned Single Judge has allowed the writ petition and has directed the Designated Committee to accept the declaration filed by the petitioner/respondent in the prescribed format as final and issue a modified Form No. SVLDRS-3 giving credit to the sum of Rs. 4,15,14,081/- as deposit and collect the remaining sum as tax dues and on payment of the said dues, issue a discharge certificate under the Scheme. A*

statement has been made on affidavit by the appellants that the learned Single Judge in paragraph 29 of the impugned order has observed that the revenue has never disputed the entitlement of the respondent to avail Cenvat credit of Rs. 4,15,14,081/- and in para 30 the learned Single Judge has observed that one of the subject matter of the show cause notice was, as to whether the petitioner was entitled to Cenvat credit and therefore, the contention of the appellants is that two contradictory observations have been made by the learned Single Judge.

23. The record of the case reveal that there is a total non-compliance of Rule 6 of the Cenvat Credit Rules and the respondent has submitted the invoices pertaining to the year 2013 in the year 2019 which is not during the regime of CENVAT Credit Rules, but during the regime of GST.

24. Rule 6 of the Cenvat Credit Rules, 2017, reads as under;

"Rule 6. Conditions for allowing CENVAT credit. - (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer :

Provided that the manufacturer shall not take Cenvat credit after one year of the date of issue of any of the documents specified in sub-rule (1) of Rule 11."

25. In the considered opinion of this Court, the learned Single Judge has not at all considered the impact of Rule 6 of the Cenvat Credit Rules, 2017 as invoices were of the year 2013-2014 which is much beyond the period of one year and therefore, the claim of the respondent could not have been appropriated in respect of the amount of Rs. 4,15,14,081/-.

26. Another important aspect of the case is that the Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 does not have any authority to modify the SVLDRS-3 at all. When once the appellants have adjusted the claim of respondent as the CENVAT credit of Rs. 4,15,14,081/- availed by the respondent and subsequently, utilized, is an inadmissible CENVAT credit and availment of the same is proposed to be denied in show cause notice. Therefore, in the light of Rule 6(1) of the Cenvat Credit Rules, 2017, by no stretch of imagination the respondent was entitled to claim Cenvat credit.

27. It is pertinent to note that the CENVAT credit is a concession and not a vested right as held in the case of TVS Motor Company Ltd. v. The State of Tamil Nadu and Ors., reported in 2019 (13) SCC 403 = 2018 (18) G.S.T.L. 769 (S.C.). Similarly in the case of Nelco Limited v. The Union of India and Ors., reported in 2020 (36) G.S.T.L. 24 the Division Bench of Bombay High Court, in paragraph 42 has held as under :

"42. The decision of the Supreme Court in the case of Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd., MANU/SC/0467/1999 = 1999 (112) E.L.T. 353 (S.C.) cited by the petitioner refers to MODVAT credit and in deciding a correlation of the raw material and final product. The Apex Court held that it is not as if the credit can be taken only on the final product manufactured out of a particular raw material in which the credit is related. It was held that the credit may be taken on a final product on the every day it has become available. It is in this context, the nature of MODVAT credit was held to be indefeasible. The learned Additional Solicitor General has rightly distinguished this decision by pointing out that this decision does not consider the contingency of time limit on availment of credit, and also not in a transitionary provision. Under the

impugned Rule, the input credit has been denied per se, but a time limit has been placed on its availment."

28. In the considered opinion of this Court, in light of the aforesaid judgments, the CENVAT credit is a concession and not a vested right and it has to be claimed keeping in view the CENVAT Credit Rules 2004 and therefore, the learned Single Judge has erred in law and in facts in allowing the writ petition by directing the Designated Committee to adjust the amount which was the subject matter of CENVAT credit.

29. Learned counsel for the respondent has placed reliance upon a judgment delivered in the case of Thought Blurb v. Union of India and Ors., reported in 2020-TIOL-1813-HC-MUM-ST = 2020 (43) G.S.T.L. 499 (Bom.). Heavy reliance has been placed upon paragraphs 51 and 52.

30. This Court has carefully gone through the aforesaid judgment and it is true that the basic thrust of the Scheme is to unload the baggage of pending litigations centering around service tax and excise duty. But at the same time, the statutory provisions as contained under the CENVAT Credit Rules, 2017 cannot be given a complete go-bye. The claim of CENVAT credit which has become time barred cannot be adjusted in the matter in the manner and method it has been done by the learned Single Judge.

31. Learned counsel for the respondent/assessee has also placed reliance upon the judgment delivered in the case of Vaishali Sharma v. Union of India, reported in 2020 (40) G.S.T.L. 441 (Del.). In the aforesaid case, the matter was remanded back to the Designated Committee to hear the petitioner therein and to pass an order in accordance with law. In the present case, opportunity of hearing has already been afforded and therefore, the question of interference with the order passed by the Designated

Committee in the peculiar facts and circumstances of the case does not arise.

32. Reliance has also been placed upon the judgment in the case of Seventh Plane Networks Pvt. Ltd. v. Union of India, reported in 2020 (41) G.S.T.L. 165 (Del). This Court has carefully gone through the judgment delivered by the Delhi High Court as well as the Circular issued by the Finance Department dated 27-8-2019 and 12-12-2019.

33. The present case is altogether having a distinguishable feature. In the present case, the respondent is not entitled to claim CENVAT credit in the manner and method it has been done. CENVAT Credit cannot be carried forward as input tax credit and there cannot be any adjustment on pre-deposit as the respondent has not filed GST TRAN-1. Therefore, the CENVAT credit cannot be transformed into input tax credit.

34. It is an undisputed fact that the respondent has not filed ST-3 returns till the intervention of the department and the assessee however filed a declaration in the year 2019, after introduction of GST. As the respondent has not filed the GST TRAN-1, he is not eligible on account of Rule 6(1) of the CENVAT Credit Rules, 2017. The Designated Committee was justified in passing the order which was subject matter of challenge in the writ petition and therefore, this Court is of the opinion that the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside."

4.14 The decision of the division bench Karnataka High Court, is squarely applicable to the facts of the case and the claim of the appellant to the credit cannot be allowed and hence the netting of the same from the total tax liability is not possible.

4.15 I find that appellant had by not filing the returns for the relevant period and having not paid the service tax during the relevant period suppressed the facts from the department with the intention to evade payment of service tax due. The decisions referred by the appellant in the submissions were rendered in the facts of those case and are distinguishable. Further it is worth noting that appellant has not disputed the tax liability but have claimed that liability can be netted of against the cenvat credit taken by them in their CENVAT register which was never disclosed by them to the revenue authorities. I have also observed earlier that the fact of netting of the tax liability by the CENVAT Credit was also not disclosed to the designated committee, it as an afterthought was made when the verification of the documents was undertaken. I find that appellant had positively acted to suppress the facts in respect of CENVAT Credit, and its utilization for netting of their tax liability from the revenue authorities. Thus for their positive act of suppression with intention to evade payment of service tax is established beyond iota of doubt and extended period of limitation has been rightly invoked for making this demand.

4.16 As I hold that extended period of limitation has been rightly invoked in the facts and circumstances of the case penalty imposed under Section 78 cannot be faulted with, in view of the decision of Hon’ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]

4.17 In view of the discussions as above, I do not find any merits in this appeal.

4.15 Appeal is dismissed.

(Order pronounced in open court on-12 August, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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