# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

**Central Excise Appeal No. 20796 of 2019**

(Arising out of Order-in-Appeal No. BGM-EXCUS-000-DWD-ADC-APP-HAB-098-2014 dated 30.12.2014 passed by the Commissioner of Central Excise (Appeals), Mysore)

**Swarnaa Techno Construction Pvt Ltd.**
Rs No. 19/1, Karwar Road Chalmatti Village,
Kalghatgi Taluk, Dharwad,
Karnataka – 581204 **....Appellant**

**VERSUS**

**Commissioner of Central Excise, Belgaum**
P B No. 5400, Queens Road,
C. R. Building, Bangalore,
Karnataka – 575003 **.....Respondent**

**Appearance:**

Shri. Raghavendra. B. Hanjer, Advocate for the Appellant
Shri Rajashekar. B. N. N, Authorised Representative (AR) for the Revenue

**Coram:**

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

**Final Order No. 20164 /2026**

Date of Hearing: 25.09.2025
Date of Decision: 23.01.2026

**Per: P. A. Augustian**

This appeal is filed against Order-in-Appeal No. BGM-EXCUS-000-DWD-ADC-APP-HAB-098-2014 dated 30.12.2014 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. The issue in the present appeal is regarding denial of Cenvat credit on FB Tipper used in transportation of sand to the RMC plant for manufacture of Ready Mix Concrete (RMC) and denial of credit on Concrete Mixer used for transportation of Ready Mix Concrete from RMC plant to the place of construction by the service provider.

3. The brief facts are the Appellant is manufacturer of various items including Ready Mix Concrete (RMC) and were availing the benefit of Cenvat credit of the duty paid on inputs, capital goods and input services as per the Cenvat Credit Rules, 2004. Alleging that the Cenvat credit availed on 'transit concrete mixer' and 'FB Tipper' illegally for the period from March and April 2011, proceedings were initiated and show cause notice was issued, thereafter adjudication authority as per the order dated 28.11.2013 confirmed the demand with interest and also imposed penalty. Aggrieved by the said order an appeal was filed before Commissioner (Appeals) who as per the impugned order dated 30.12.2014 partially allowed the appeal setting aside the penalty imposed under Section 11AC of the Central Excise Act, 1944. Aggrieved by said order present appeal is filed.

4. Learned Counsel for the appellant during the hearing submits that the 'transit concrete mixer' and 'FB Tipper' are inputs whereas they actually availed Cenvat credit under the category of capital goods and the two categories are not one and the same but are separate and distinct entities in their own. Learned Counsel submits that Ready Mix Concrete (RMC) manufactured by the appellant cannot be transported in normal trucks and lorries and it has to be transported in a specially designed transit concrete mixer in order to avoid solidification till it reaches the delivery point and to avoid setting in of concrete. Appellant also used FB Tipper for transportation of materials to the bin inside the factory. Learned Counsel further draws our attention to the statement recorded of the administrator of the appellant on 17.08.2011, where these facts were brought to the notice of the investigating officer and it was further submitted that transit concrete mixer is an integral part of machinery in the manufacture of Ready Mix Concrete (RMC) though it is used for transportation of RMC. Further the very basis of denial of Cenvat credit on transit mixer by treating the appellant as manufacturer alone is untenable as appellant is mainly engaged in undertaking 'works contract' activity to South Western Railway and manufacture is only an auxiliary activity to the supply of outward service.

5. Learned Counsel submits that 'Transit Concrete Mixer' and 'FB Tipper' are specially designed vehicles and are not in the nature of machinery for carrying out specified functions within and outside the factory like material handling, storage and keeping the goods in marketable condition till it is used for construction at site and hence, are specifically covered under the ambit of capital goods as defined under Rule 2(a) of the Cenvat Credit Rules, 2004. Learned Counsel further submits that without the use of Transit Concrete Mixer and FB Tipper, it is impossible to manufacture the final products on which duty has been paid. In other words, the Transit Concrete Mixer and FB Tipper play a significant role in the process of manufacture of dutiable final products. Learned Counsel further submits that classification of transit concrete mixer and FB Tipper adopted by the Department under Chapter 87 of the Central Excise Tariff Act for the purpose of denial of credit under the category of capital goods is untenable and contrary to the decision of the Tribunal in the case of **CCE., Vadodara Vs. Dipco Metal Fabricators Pvt., Ltd., reported in-[2006 (196) ELT 23 (Tri.-Mumbai)]** wherein it has been held that unloaders and tippers are classifiable under Chapter Sub-heading 8428.90 of the Central Excise Tariff Act. The subject goods are in the nature of machinery which are specifically covered under Chapter 8428 of the Central Excise Tariff Act, 1985 and hence, are specifically covered under the definition of capital goods as rightly held in the following decisions:-

i. **GNFC Ltd. Vs. CCE., Vadodara - 2012 (278) E.L.T. 273 (Tri. - Ahmd.)**
ii. **National Oxygen Ltd. Vs. CCE., Pondicherry S.T.R. 330 (Tri.- Chennai) 2017 (47)**
iii. **CCE., Tiruchirappalli Vs, India Cements Ltd. - 2012 (285) ELT 341 (Mad.)**
iv. **Globe Ground India Pvt. Ltd. Vs. CCE & ST., Delhi-IV - 2015 (38) STR 510 (Tri-Del.)**
v. **Upheld by the Delhi High Court in CST., New Delhi Vs. Globe Ground India Pvt. Ltd. 2015 (40) STR 417 (Del.)**

vi. **CCE., Coimbatore Vs. Jawahar Mills Ltd. 2001 (132) ELT 3 (SC)**

vii. **CCE., Jaipur Vs. Rajasthan Spinning & Weaving Mills Ltd. - 2010 (255) ELT 481 (SC)**

viii. **Hira Power & Steel Ltd. Vs. CCE., Raipur 2008 (229) ELT 408 (Tri-Del.)**

ix. **Vikram Cement Vs. CCE., Indore - 2006 (194) ELT 3 (SC)**

x. **Vikram Cement Vs. CCE., Indore 2006 (197) ELT 145 (SC)**

xi. **Shripad Concrete Pvt. Ltd. Vs. CCE. & ST., Surat-I - 2025 (26) Centax 286 (Tri-Ahmd.)**

xii. **Gunesh Logistics Vs. CCE & ST., Jaipur-I-2020 (37) GSTL 193 (Tri-Del.)**

xiii. **Gunesh Logistics Vs. CCGST & CEx., Jaipur - (2025) 26 Centax 324 (Tri-Del.)**

6. Learned Counsel further submits that as long as the credit is admissible under any one of the category, the claim should not be denied merely on the ground of claiming of credit under the wrong category as claiming of credit under a particular category is only for the purpose of proving the eligibility. To substantiate the above contention, Learned counsel also relied on the following decisions:-

i. **Manglam Cement vs. Cleveland. CCE., Jaipur-I - 2018 (360) E.L.T. 737 (Tri. - LB)**

ii. **Tata Steel Ltd. VS. Commissioner of Central Excise, Jamshedpur [(2016) 66 Taxmann.com 76 (Kolkata-CESTAT)]**

iii. **Kisan Sahkari Chini Mills Ltd. Vs. CCE., Meerut-II reported**

iv. **in 2010 (261) E.L.T. 308 (Tri. - Del.)**

v. **CCus. & C.E., Rayport vs. C.E. Bhilai Steel Plant 2010 (261) E.L.T. 612 (Tri. - Del.)**

7. Learned Authorised Representative (AR) reiterated the findings in the impugned order wherein *inter alia* it is held that:-

*"I find that whereas in their appeal memorandum they have claimed that the subject goods (Transit Concrete Mixer and FB Tipper) are 'inputs' and have claimed Cenvat credit on them under 'input' category, that however, they have actually availed the Cenvat credit on these goods under the category of 'capital goods'. The two categories are not one and the same - but Separate and distinct entities in their own right. The two terms are not inter-changeable and one term cannot substitute for the other. Each term ('input' and 'capital goods' would operate in its own sphere of influence (applicability), not otherwise. The eligibility of the subject goods for Cenvat credit under 'capital goods' category is now considered. The definition of 'capital goods', as it stood at the relevant time is as under:*

*Rule 2(a) of CCR: "'capital goods' means:*

*(A) the following goods, namely:*

*(i) all goods falling under Chapter 82. Chapter 84, Chapter 85, Chapter 90, heading No. 68.05, grinding wheels and the like, and parts thereof falling under heading 6804 of the first Schedule;*

*(ii) pollution control equipment;*

*(iii) components, spares and accessories of the goods specified at (i) and (ii);*

*(iv) moulds and dies, jigs and fixtures;*

*(v) refractories and refractory materials;*

*(vi) tubes and pipes and fittings thereof; and*

*(vii) storage tank*

*Used-*

*(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in the office; or*

*(2) for providing output service.*

*From the above definition, it could be seen that Transit Concrete Mixer (falling under Chapter heading 87054000) and the FB Tipper (falling under Chapter heading 87042390) are not included in the definition of 'capital goods'. Further, I find that the* *definition of 'capital goods' is not an 'inclusive' definition-to include any goods by interpretative process other than those defined in the definition of 'capital goods' in Rule 2(a) of CCR. In this regard I rely on the judgement of the Hon'ble Supreme Court in the case of Vikram Cements Vs. CCE, Indore [2005 (187) ELT 145 SC], wherein it has been held that "Cenvat credit Rules give specific definition of the term 'capital goods'. It is not an inclusive definition with the remark that any exercise to treat an item as capital goods by adapting any interpretative process will be futile. An item can be treated as capital goods under CCR only if it satisfies that the goods fall under one of the specified chapters or headings of the tariff or if it is a spare part, component or accessory or that it falls under one of the specified item". In the light of the above discussion, I hold that Transit Concrete Mixer and FB Tipper are not eligible for classification under capital goods. Consequently, the eligibility of the Transit Concrete Mixer and FB Tippers for Cenvat credit as "capital goods" is not permissible.*

*The emphasized (underscored) portions of the said definitions, refers. The above definitions very clearly show that the eligibility of the subject goods (Transit Concrete Mixer and FB Tipper) under 'input' category does not exist nor can apply under Rule 2(k) of the CCR. Further, I find that it is an undisputed fact that the subject goods are not used as any kind of raw material or intermediate product, directly or indirectly in the manufacture of their final products. In view of the 'input' definitions as above, I am not inclined to accept their contention that Transit Concrete Mixer (used for keeping the RMC in marketable condition till clearance/ sale to buyers) is covered by the definition of inputs, as also FB Tipper (which are used for movement of raw materials within the factory), though these can be considered as essential and also integrally connected to the manufacture of their finished product, are eligible for credit as inputs in terms of Rule 2(k) of CCR, as rightly held by the Lower Authority.*

*The next issue required for determination at (1)(ii), above, viz. in the matter of Cenvat credit of Rs. 20,55,088/- availed on Transit Concrete Mixer and FB Tipper- whether the penalty of Rs. 3,00,000/- imposed under Rule 15(1) of CCR is tenable, or otherwise, is now taken up. It would lie in a narrow compass of determination in the given circumstances in the light of the determination since made of the issue at (1)(i), above. As discussed above, it is very clear that the Cenvat credit availed on Transit Concrete Mixer and FB Tipper is irregular. Further, I find that the burden of proof regarding admissibility of Cenvat credit shall lie upon the manufacturer, in terms of Rule 9(5) of the CCR. In the instant case, they have failed to prove the admissibility of Cenvat credit on the subject goods. The Cenvat credit was taken in contravention of the provisions of the CCR, as discussed. Hence, I uphold the decision of the Lower Authority in imposing the penalty under Rule 15(1) of CCR. However, considering their bonafides and the material (case law) relied upon by them in support, for claiming such Cenvat credit, wherein they truly believed in, reliance on their record, and as the issue involves interpretation of law, the penalty is reduced to Rupees one lakh only, in such extenuating circumstances."*

8. Heard both sides and perused the records.

9. We find that the issue was considered by the Hon'ble High Court of Kerala in the matter of **M/s. Neptune Ready Mix Concrete Pvt. Ltd., Vs. State of Kerala** order dated 20.06.2016, where it is held that supply of Ready Mix Concrete (RMC) cannot be completed in the absence of the specialized vehicle used for transportation of RMC. Further, we find that as per the Circular No. 943/4/2011-CX dated 29.04.2011, the issue regarding how no relationship whatsoever with the manufacture of a final product to be determined is clarified as:-

*"Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be*

*interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.*

10. Further as regards Cenvat credit on 'Tipper', the issue was considered by the Hon'ble Tribunal in the matter of **Vikas Metallics & Energy Ltd. Vs. CCE, Jaipur – 2017 (3) GSTL 404 (Tri.),** where it is held that;

*"12. Service tax stands paid by the appellant under the output service of "Business Auxiliary Service". However, the Id. Commissioner has noted that they have discharged the Service Tax on the entire value of services including the part which would be classifiable under "Cargo Handling Services". The Id. Counsel has also placed on record copies of work orders placed by the customers on the appellant, which specified both the activities of crushing of iron ores lumps as well as loading/unloading of such lumps from the railway siding to the factory of the appellant as well as transporting the crushed ore to the customers.*

*13. From the above discussion, I am convinced that the service of cargo handling stands provided by the appellant. However, the Service Tax has been paid under BAS by considering the total service rendered by the appellant as a composite service, whose essential character is that of crushing of iron ore, which is an activity under BAS. Since, cargo handling is specified under the definition of capital goods, I am of the view that the appellant will be entitled to the Cenvat credit claimed on tippers.*

*14. In view of the above, the appeal is allowed with consequent benefit."*

11. Though the department filed an appeal challenging the said decision of the Tribunal, it was upheld by the **Hon'ble High Court of Chhattisgarh (reported in 2018 (14) GSTL 23).**

12. As regarding Tipper, we find that issue was considered by this Tribunal in the matter of **India Cements Ltd. Vs. CCE, Hyderabad – 2004 (178) ELT 194 (Tri.-Bang.)**, where it is held that;

> *"14. Regarding Spares to Dumper, it was pleaded Dumper is used for transporting limestone from mines to crusher. They have captive mine adjacent to the plant and the dumper is used in the mine as well as in the factory as it is bring the raw material from mine to crusher in factory. The spares to dumper are covered by explanation 1(b) of Rule 57Q and the Modvat credit is allowable on spares to dumper. This was contested by the Revenue on the ground that the Dumpers are used in the mines and these are not eligible for Modvat credit and therefore, on the spares also credit is not allowable. The Revenue relied on the decision of Larger Bench of the Tribunal in the case of Madras Cement v. CCE, Hyderabad reported in [2003 (158) E.L.T. 293 (T) = 2003 (56) RLT 978]. We have carefully considered the submissions made by both the sides and we find that in case of Malabar Cement Ltd. v. Commissioner of Central Excise, Cochin [2002 (149) E.L.T. 751], this Bench of the Tribunal has categorically held that dumpers used for bringing blasted limestone from the quarry to the crusher of cement plant being integrally connected with the process of manufacture were eligible for Modvat credit under Rule 57Q. The Department's appeal filed against this judgment was dismissed by the Supreme Court after condoning the delay after considering the facts of the case 2003 (153) E.L.T. A94 (S.C.). In view of the decision of the Supreme Court it has reached finality. Accordingly the credit is allowed on the Spares to Dumper."*

13. Following the ratio of the above judgments / decisions and considering the clarification issued as per the Circular No. 943/4/2011-CX dated 29.04.2011, we find that the 'Transit Concrete Mixer' and 'FB Tipper' on which credit availed by the appellant are essential and integrally connected to the manufacture of finished products, the appellant is eligible for the cenvat credit availed during the period from March 2011 to April 2011 on thr said goods. Thus, the demand confirmed, interest and penalty imposed as per the impugned order are unsustainable and the impugned order is liable to be set aside.

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

*(Order was pronounced in open court on 23.01.2026)*

**(P. A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

**(PULLELA NAGESWARA RAO)**
**MEMBER (TECHNICAL)**

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