# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 3

## Service Tax Appeal No. 2003 of 2012

[Arising out of Order-in-Appeal No. 210/2012 dated 12.04.2012 passed by the Commissioner of Central Excise (Appeals) Mangalore]

**M/s. Hasan Haji & Co.**
20/8/678, 'Khadeeja Court', Bunder,
Mangalore – 575 001 .......**Appellant(s)**

**VERSUS**

**Commissioner of Central Excise and Service Tax Mangalore**
7th Floor, Trade Centre. Bunts Hostel Road
Mangalore – 575 003 ........... **Respondent(s)**

**APPEARANCE:**

Mr. Cherian Punnoose, Advocate for the Appellant
Mr. M.A. Jithendra, Asst. Commissioner (AR) for the Respondent

**CORAM:**
**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**<u>Final Order No. 20581 / 2026</u>**

Date of Hearing:24.10.2025
Date of Decision: 23.04.2026

**Per: Pullela Nageswara Rao**

This appeal is filed against the Order-in-Appeal No. 210/2012 dated 12.04.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. The brief facts are the following demands were upheld in the Order-in-Appeal dated 12.04.2012, i) Credit amounting to Rs.91,519/- as 8% of the value of alleged exempted service of export cargo handling of food grains at godown and railway yard for the period 2008-09, and 'Supply of tangible goods' for the period prior to 16.05.2008, and ii) Cenvat credit amounting to Rs 45,470/- availed as

input service credit of service tax paid on repair of cars, residential telephone. Aggrieved by the impugned order, the appellant filed this appeal before the Tribunal.

3. The learned counsel during the hearing submits that; handling of export cargo is excluded from service tax and therefore cannot be treated as exempted service; the Appellants carry out the activity of handling of cargo which is exported from Mangalore port and the Appellants are not paying any service tax on this activity since it is excluded from the definition of 'cargo handling service' and not exempted from service tax

4. The learned counsel in support of the above, placed reliance on the following case laws:-

a. **South India Corporation (Agencies) Ltd Vs. CCE Excise Visakhapatnam-1 [2009] 21 STT 345 (BANG CESTAT)**

b. **CCE Mangalore Vs. Kanara Export Agencies-2007 (6) STR 142 (Tri-Bang)**

c. **Airports Authority of India Vs. CST-2025-TIOL-73-SC-ST**

5. The learned counsel submits that Export service is not to be treated as exempted service; the food grains handled at godown /railway yard are goods that were exported; it is a well settled law that exports are not to be treated as exempt service; reliance is placed on the following decisions:

a. **Punjab Stainless Steel Industries Vs. CCE-2008 (226) ELT 587 CCE. Vs. Punjab Stainless Steel- 2009 (234) ELT 605**
b. **CCE s. Indian Organic Chemicals Ltd-2001 (138) ELT 209**
c. **Lloyds Metal & Engineers Ltd., vs. CCE 2002 (147) ELT 255**
d. **Circular dated 09.05.2008**
e. **Circular No. 56/5/2003-ST dated 25.04.2003**

6. The learned counsel submits that; exempted services as mentioned in clause 2(e) of Cenvat Credit Rules, 2004 would cover only

services which are notified under the Finance Act, 1994 and not services which are outside the purview of service tax; the service of 'supply of tangible goods' was not covered prior to 16.05.2018 and it is not legal to treat a particular service as exempted service by applying definition of exempted services given in Rules, when the statute which empowers the Rule itself does not cover such a service. Further, there was no definition for 'service' under Finance Act, 1994 or under any Rules made thereunder during the period in dispute. Therefore, an activity cannot be called as 'service' without a definition under the Act.

7. The learned counsel placed reliance in this regard on the following decisions

**a. Tata AIA Life Insurance Company Ltd. Vs CST, Mumbai- 2020 (8) TMI 786- CESTAT MUMBAI**

**b. SBI Life Insurance Company Ltd. Vs. CCE Mumbai- 2019 (12) TMI 1127-CESTAT MUMBAI**

c. **Ingersoll-Rand Technologies & Services P. Ltd. Vs. CCE-2022-TIOL-765-CESTAT-ALL**. - Services on which credit was taken by the Appellants are input services credit in respect of landlines installed even at the residence of the partners and mobiles phones are entitled for credit. The issue is already settled by the various decisions of the Hon'ble Tribunal. Reliance in this regard is placed on the following:

**d. Keltech Energies Ltd. Vs. CCE, Mangalore 2008 (10) STR 280 (Tri-Bang.)**

e. **Stock Holding Corpn. Of India Ltd. Vs. CST., Mumbai 2015 (39) STR 664 (Tri.-Mumbai)**-Credit in respect of repair of vehicles owned by the firm which is used for business purposes are eligible as Cenvat credit. Reliance in this regard, placed on following decisions:

**f. CCE., Jaipur Vs. J.K.Cement Works 2012 (277) ELT 194 (Tri.-Del.)**

**g. CCE., Mysore Vs. Chamundi Textiles (Silk Mills) Ltd. 2010 (20) STR 219 (Tri.-Bang.)**

8. The learned counsel submits that the impugned orders have been passed by the Lower Authorities invoking extended period of limitation. In view of the submissions made, supra and the decisions it is evident that the Cenvat Credit availed by the Appellants was in accordance with the provisions of the Cenvat Credit Rules, 2004 and the ratio laid down by various judicial fora. Further, the Appellants were of the bona fide belief that they were entitled for the credit. Therefore, the demand confirmed invoking longer period of limitation is liable to be set aside. Reliance in this regard is placed on the following decisions:

a. **Singh Brothers vs. CCE 2009 (14) STR. 552 (Tri-Del)**
b. **Studioline Interior Systems Pvt. Ltd Vs. CCE 2006 (201) ELT 250 (Tri Bangl**
c. **CCE Vs. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)**
d. **Padmini Products Vs. CCE 1989 (43) ELT 195 (SC)**
e. **Anand Nishikawa Co. Ltd., Vs. CCE 2005 (188) ELT 149 (SC)**

9. The learned counsel submits that penalty under Rule 15(3) of Cenvat Credit Rules, 2004 is not imposable and placed reliance on the decision in the case of **M/s. Flyingman Air Courier Pvt Ltd. Vs. CCE, Jaipur reported in (2004) 170 EL.T. 417.**

10. The learned counsel submits that penalty under section 78 read with Rule 15(4) is not imposable and placed reliance on the decisions in the following cases;

a. **Tamil Nadu Housing Board Vs. CCE-1994 (74) ELT 9 (SC**
b. **Padmini Products Vs. CCE-1989 (43) E.LT. 195.**
c. **M/s. Hindustan Steel Ltd. Vs. The State of Orissa-1978 (2) ELT 159.**
d. **Kellner Pharmaceuticals Ltd. Vs. CCE-1985 (20) ELT 80.**

11. The learned counsel submits that the demand of interest on the Cenvat credit is also not sustainable in as much as the demand of Cenvat credit itself is not sustainable.

12. The learned Authorized Representative (AR) for the Revenue reiterated the submissions of the Commissioner (Appeals) in the impugned order.

13. Heard both sides and perused the records.

14. The respondent has confirmed the demand recovery of the cenvat credit availed on the services of export of cargo, I find that the service is not exempted service and therefore the computation of 8% amount considering the export service as exempted service is incorrect and unsustainable. As regards service tax credit availed on the 'supply of tangible goods for use' service it is not tenable, since 'supply of tangible goods' service was introduced on 16.05.2008 And the dispute in this appeal is for the period prior to the introduction of this service, hence the demand is unsustainable. As regards the demand of service tax credit availed on 'Repair of cars' and the 'telephone' I find that the Revenue has not adduced any evidence to the effect that these services were used for the personal use of the appellant's employees. Further I find that landline telephone services were considered as eligible for cenvat credit in catena of cases as discussed above.

15. In view of the above discussion, I find that the impugned order is liable to be set aside. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, as per law.

*(Order pronounced in Open Court on 23.04.2026)*

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

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