

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No. III

**Excise Appeal No. 40982 of 2016**

(Arising out of Order-in-Original No.02/2016 dated 16.02.2016 passed by Commissioner of Central Excise, Chennai-IV Commissionerate, No.692, M.H.U. Complex, Nandanam, Chennai 600 035)

**M/s.Ashok Leyland Ltd.**

**.... Appellant**

(earlier known as Hinduja Foundries Ltd.)  
Plot No.K-2, SIDCO Industrial Part, Phase-II,  
Araneri Village,  
Sriperumbudur 602 105.

*VERSUS*

**The Commissioner of GST &  
Central Excise,**

**... Respondent**

Chennai Outer Commissionerate,  
Newry Towers, No.2054, I Block, II Avenue,  
12<sup>th</sup> Main Road, Anna Nagar,  
Chennai 600 040.

**APPEARANCE :**

Shri M. Kannan, Advocate for the Appellant  
Shri M. Selvakumar, Authorized Representative  
for the Respondent

**CORAM :**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)  
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.41345/2025****DATE OF HEARING : 20.06.2025**  
**DATE OF DECISION : 24.11.2025****Per: Shri P. Dinesha**

The facts in brief that are undisputed, are that the Appellant is engaged in the manufacture of casting items falling under Chapter 72 & & 73 of CETA 1985 and are availing CENVAT credit on inputs, capital goods and input service credit. On verification of records of the Appellant/Assessee, the Revenue appears to have noticed that the Appellant had taken the input service credit on "Outward Freight Service" and "Construction Services" in their CENVAT credit account during the period from January 2010 to March 2014. Accordingly, a SCN No.63/2014 dated 16.09.2014 came to be issued on the ground that 'construction service' and 'outward transportation service' being ineligible 'input services', the Appellant had wrongly availed credit for the period in dispute and consequently, it was proposed to recover the same under Rule 14 of CCR read with Section 11A (5) of Central Excise Act, 1944 apart from imposition of penalty under Rule

15 (2) of CCR 2004 read with Section 11AC *ibid*. The Appellant appears to have filed a detailed reply, but not satisfied with the reply, the Original Authority passed the Order-in-Original No.2/2016 dated 16.02.2016 by confirming the demand as proposed, along with interest and equal penalty. Aggrieved by the order of Original Authority, the Appellant has filed the present Appeal before this forum.

2. Heard Shri M. Kannan, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Assistant Commissioner for the Respondent.

3.1 It is the case of the Id. Advocate, insofar as the input service credit availed on 'Construction Service' is concerned, that definition of Rule 2 (I) of CCR 2004 came to be amended w.e.f. 01.04.2011 omitting the word "setting up" used in the said Rule which stood upto 01.04.2011. The construction activity carried out by the Appellant was explained in response to the SCN related to modernization, renovation or repair of the factory which continued to be part of the said Rule and hence, credit is available for the services even if such work has been carried out after 01.04.2011.

3.2 He would place reliance on the following decisions in support:

- (i) **Barmalt (India) Pvt. Ltd. Vs CCE Delhi** – 2015 (38) STR 882 (Tri.-Del.)
- (ii) **CCE Delhi Vs Bellsonica Autocomponents India P. Ltd.** – 2015 (40) STR 41 (P&H)
- (iii) **Maruti Suzuki India Ltd. Vs CCE Delhi** – 2017 (47) STR 273 (Tri.-Chan.)
- (iv) **Rico Auto Industries Vs CCE Delhi** – (2023) 7 Centax 197 (Tri.-Chan)
- (v) **General Motors India Pvt. Ltd. Vs CCE & ST Vadodara** – (2024) 15 Centax 124 (Tri.-Ahmd)

3.3 Insofar as 'GTA services' are concerned, Ld. Counsel submitted that Rule 2(l) of CCR allows credit up to place of removal, here in this case, the sale having taken place at customer's place as the contract of sale was on FOR Destination basis and hence, they are eligible to avail credit. In this regard, the Ld. Advocate placed reliance on CBE&C Circular No.1065/4/2018-CX dated 08.06.2018. The Ld. Advocate submitted that this issue is no longer *res integra* as it stands decided by the Larger Bench in the case of **The Ramco Cements Vs. CCE Pondicherry** - 2023 (12) TMI 1332-CESTAT CHENNAI-LB. He would also contend that the Larger Bench decision (*supra*) has been followed in Appellant's own case by this Bench vide Final Order

No.41259/2024 dated 01.10.2024 as reported in 2024 (10)  
TMI 49 -CESTAT CHENNAI.

3.4 Ld. Advocate also submitted that the Revenue has invoked the extended period of limitation without there being suppression which would apply mutatis-mutandis for issue of imposition of equal penalty, and that whether credit availed is eligible or ineligible is a matter of interpretation and hence, availing wrong credit or ineligible credit *per-se* would not attract provisions of Section 11A (4) of the Central Excise Act, 1944.

4. *Per contra*, Shri M. Selvakumar Ld. Assistant Commissioner submitted that the Show Cause Notice alleges a violation of Central Excise Act, 1944 and the CENVAT Credit Rules, 2004 made thereunder; the Adjudicating Authority after due process of law has decided the issue. In the impugned order the definition and eligibility to avail the Credit of the impugned input service (while operating under Self-assessment procedure) during the relevant period under question has been discussed and the Ld. Commissioner has evaluated the admissibility of input service credit on construction service prior to 01.04.2011. The services availed by the Appellant as discussed in para 7.3 do not

have any relation to the manufacturing activity and hence, it is established that the ineligibility of input service credit availed with reference to setting up of a factory is in order. Further, the Commissioner finds that the Appellant had not put forth any reasons for admissibility of credit but merely averred that they are eligible for input service prior to 01.04.2011.

5. With regard to limitation and invocation of extended period, mandatory penalty Ld. A.R relied on para 11 of the Order-in-Original.

6. After the rival contentions from both sides, we find that the issue to be decided in this Appeal is whether, "the Appellant is eligible for the input services credit availed in respect of service tax paid on 'Construction Services' for the period from January 2010 to December 2011 and 'Outward Transportation Services' during the period June 2011 to March 2014 ?"

7. We have perused the documents placed on record, particularly the Appellant's reply to SCN and '**Annexure I**' thereto; it is in this annexure that the Appellant has given clear break-up in the form of 'Tables', of the nature of construction work services carried out during the period

under dispute. For convenience, the said annexure is extracted herein below:

### Annexure-I

Details of Cenvat Credit taken on 'Construction Service'-Part A prior to 01.04.2011

Sl. No	Nature of Service	Cr Availed Date	Sum of Sum of Service Tax	Sum of sum of CESS	Sum of Sum of HS CESS
1.	Construction of compound wall	30/01/2010	19181	384	192
2.	Construction of conveyor pits in fettling shop	30/09/2010	53024	1060	530
3.	Construction of general builders works	30/01/2010	35600	712	356
4.	Construction of main foundry & structural	30/01/2010	185265	3705	1853
5.	Construction of roof sheeting works	31/01/2010	67034	1341	670
6.	Construction of security watch tower	30/01/2010	64612	1292	646
7.	Mould shop fume extraction work	30/01/2010	30573	611	306
8.	Fettling shop expansion	30/11/2010	803173	16063	8032
9.	Construction of main foundry shop	30/01/2010	73609	1472	736
10.	Construction of main foundry shop	31/01/2010	21529477	430590	215295
11.	Construction of administrative building within the factory premises	30/01/2010	219600	4392	2196
12.	Construction of administrative building within the factory premises	31/01/2010	7633368	152667	76334
13.	Road work inside the premises	31/01/2010	2650367	53007	26504
14.	Construction of shed for sand storage	30/09/2010	6984	140	70
15.	Construction of new compound wall	30/01/2010	352173	7043	3522
16.	Construction of RCC foundation for robo core line	30/01/2010	63209	1264	632
17.	Works contract services	31/12/2010	28758	575.16	287.58
	<b>Total (A)</b>		<b>33816007</b>	<b>676320</b>	<b>338160</b>
					<b>34830487</b>

Details of Cenvat Credit taken on 'Construction Service'-Part B after 01.04.2011

Sl. No	Nature of Service	Cr Availed Date	Sum of Sum of Service Tax	Sum of sum of CESS	Sum of Sum of HS CESS
18.	Shot blasting M/C foundation	31/12/2011	18938	379	189
19.	Dust collector foundation	31/12/2011	13320	266	133
20.	Construction services	27/07/2011	171596	3432	1716
21.	Construction services	18/07/2011	4149	83	41
22.	Housekeeping cleaning	31/10/2011	1950	39	20
23.	Repair and renovation of a factory	21/12/2011	34523	690	345
24.	Construction of main foundry shop	30/06/2011	364223	7284	3642
25.	Construction of main foundry shop	31/08/2011	14961	299	150

26.	Construction of main foundry shop	22/10/2011	18719	374	187
27.	Construction of main foundry shop	30/11/2011	84224	1684	842
28.	New machine shop construction	31/12/2011	432580	8652	4326
29.	New melting shop construction	31/12/2011	30979	620	310
	<b>Total (B)</b>		<b>1190162</b>	<b>23803</b>	<b>11902</b>
	<b>Total (A+B)</b>		<b>35006169</b>	<b>700123</b>	<b>350062</b>

8. What is referred to in these Tables are clearly 'construction' of many things. We have seen the relevant clause of Rule 2(I) *ibid* as applicable from 01.04.2011. There is specific exclusion clause of the "*service portion in the execution of a works contract and construction services....*". It is not our role to interpret the said provision in any manner that would render the very purpose of the provision otiose and hence, it is clear to us from the plain reading that as long as the construction of a building or a civil structure or a part thereof is involved, the same is hit by the exclusion clause in Rule 2 (I) *ibid*. Hence, to this extent, we do not find any lacuna in the denial of cenvat credit insofar as the construction service is concerned, by the Commissioner. Accordingly, we do not find any merit in the Appeal insofar as the grounds relating to 'construction service' and they are accordingly dismissed.

9. Insofar as the GTA outward transportation service is concerned, we find that the very Chennai Bench in the Appellant's own case for an earlier period has ruled in favour

of the Appellant wherein the judgment of Larger Bench of the Tribunal in the case of **The Ramco Cements Vs. CCE Pondicherry** - 2023 (12) TMI 1332-CESTAT CHENNAI-LB is followed. In view of the above, the impugned order to the extent of denial of credit for service tax on the payment of GTA outward transportation service is held to be bad in law. The same is accordingly set aside and the Appeal of the Appellant to this extent stands allowed.

10. Resultantly, Appeal is partly allowed with consequential benefits if any, as per law and partly dismissed on above terms.

(Order pronounced in open court on 24.11.2025)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

sd/-

**(P. DINESHA)**  
Member (Judicial)