CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41418 of 2017

(Arising out of Order-in-Original No. 05/2017 dated 24.03.2017 passed by Commissioner of Central Excise, 3rd Floor, Periyar Building, Anna Salai, Nandanam, Chennai – 600 035)

And

Excise Appeal Nos. 40320 and 40321 of 2023

(Arising out of Order-in-Appeal Nos. 140&141/2023 dated 22.03.2023 passed by Commissioner of GST and Central Excise (Appeals-II), Newry Towers, 2nd Floor, No. 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Apollo Tyres Limited **...Appellant**
No. 25, SIPCOT Industrial Estate,
Oragadam,
Sriperumbudur – 602 105.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, 2054/1,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. Joseph Kodianthara, Senior Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

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

FINAL ORDER Nos. 40160-40162 / 2026

DATE OF HEARING : 15.09.2025
DATE OF DECISION : 29.01.2026

Per Mr. VASA SESHAGIRI RAO

The present appeals arise out of Order-in-Original and Orders-in-Appeal passed by the jurisdictional adjudicating/appellate authorities, whereby CENVAT credit availed by the appellant, M/s. Apollo Tyres Limited, on service tax paid on outward transportation of finished goods, namely automotive tyres, cleared to Original Equipment Manufacturers (OEMs), was denied, along with confirmation of interest and penalties.

1.2 The appellant is engaged in the manufacture of automotive tyres and is duly registered under the Central Excise law. The appellant availed CENVAT credit of excise duty paid on inputs and capital goods and also of service tax paid on input services, including Goods Transport Agency (GTA) services, under the provisions of the CENVAT Credit Rules, 2004, and utilised such credit for payment of duty on finished goods.

1.3 The appellant cleared tyres through two channels, namely (i) to OEM customers and (ii) to the replacement market through depots and redistribution centres. The present disputes relate exclusively to clearances made to OEMs. According to the appellant, such clearances were effected under purchase orders and long-term supply agreements on FOR destination basis, wherein ownership and risk in the goods remained with the appellant till delivery at the OEMs' premises, which was claimed to be the "place of removal".

1.4 For the period September 2010 to June 2015, departmental audit objected to the availment of CENVAT credit on outward freight beyond the factory gate. Consequently, Show Cause Notice No. 21/2015 dated 24.07.2015 was issued proposing recovery of CENVAT credit amounting to ₹2,37,60,590/-, along with interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, and imposition of penalty under Section 11AC by invoking the extended period of limitation. The demand was confirmed vide Order-in-Original No. 5/2017 dated 24.03.2017, along with interest and equivalent penalty.

1.5 For the subsequent period from July 2015 to June 2017, similar demands were raised and confirmed through Orders-in-Original / Orders-in-Appeal, including Order-in-Appeal Nos. 140 & 141/2023 dated 22.03.2023, confirming aggregate CENVAT credit demand of ₹1,96,20,595/- (approx.), along with interest and penalties.

2. Aggrieved by the confirmation of the demands, interest and penalties, the appellant has filed the present appeals E/41418/17 DB and E/40321/2023. Since the facts and issues involved are common, all appeals were heard together and are disposed of by this common order.

3. The Ld. Senior Advocate Mr. Joseph Kodianthara appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram appeared for the Revenue and defended the Impugned Orders.

4. The Ld. Senior Advocate Mr. Joseph Kodianthara, made the following submissions which are summarized as below: -

4.1 That the entire dispute rests on the determination of the place of removal, and once it is established that the place of removal is the OEMs' premises, the eligibility of CENVAT credit on outward transportation automatically follows.

4.2 That the supplies to OEMs were governed by detailed purchase orders and long-term supply contracts, which clearly stipulated FOR destination delivery. Under these contracts, the appellant was responsible for transportation, insurance and safe delivery of the goods at the OEMs' factory premises. The prices were inclusive of freight, excise duty was paid on the transaction value including such freight, and no separate recovery of freight was made from the OEMs. It is further submitted that ownership and risk in the goods remained with the appellant till delivery and acceptance by the OEMs, and the appellant even retained the right to divert or recall the goods in case of rejection and,

4.3 That these facts clearly satisfy the tests laid down in various judicial pronouncements and Board's circulars for treating the buyer's premises as the place of removal. Reliance was placed on a catena of decisions of High Courts and Tribunals holding that where sale is on FOR basis and property in goods passes at the buyer's premises, outward transportation up to such place qualifies as an eligible input service. The appellant emphasizes that several Chennai Bench decisions have consistently taken this view in identical circumstances involving OEM supplies.

4.4 On limitation, it was submitted that the entire demand is unsustainable as the issue involved is one of interpretation of law, on which there existed divergent views and multiple circulars issued by the Board from time to time. The appellant contends that all relevant facts were duly disclosed in statutory records, returns and during audits, and therefore there was neither suppression nor wilful misstatement. Hence, invocation of the extended period is contrary to settled law.

4.5 It was further submitted that once the demand itself fails on merits or limitation, the levy of interest and imposition of penalty cannot survive. Even otherwise, there was no intent to evade duty, and the appellant's conduct was *bona fide*, supported by judicial precedents and departmental circulars.

5.1 The Ld. Authorized Representative for the Revenue supported the impugned orders and submitted that the factory gate is the place of removal in the present case, irrespective of the FOR nature of the contracts. It was argued that outward transportation beyond the factory gate is a post-removal activity and does not qualify as an input service under Rule 2(l) of the CENVAT Credit Rules, 2004, especially after the amendment restricting credit to services used up to the place of removal.

5.2 The Revenue submitted that mere inclusion of freight in the assessable value or bearing of insurance and transportation charges by the seller does not determine the place of removal.

5.3 It was also contended that the Board Circular dated 08.06.2018 also does not support the appellant's claim and cannot override the statutory provisions as interpreted by the Apex Court.

5.4 On limitation, the Revenue submitted that the appellant did not specifically declare the availment of credit on outward transportation beyond the factory gate, and the ineligibility came to light only during audit. Therefore, it is argued that there was suppression of material facts justifying invocation of the extended period. Consequently, interest and penalty have been correctly imposed.

6. We have heard the Rival submissions of both the sides. We have also perused the appeal records, show cause notices, impugned Order-in-Original/Order-in-Appeal, written submissions placed on record, the relevant statutory provisions of the Finance Act, 1994 and the CENVAT Credit Rules, 2004, as well as the judicial precedents cited by both sides.

7. Upon such consideration, the following issues arise for our determination as to:

i. Whether in the facts and circumstances of the case, the place of removal for clearances made by the appellant to OEM customers is the factory gate of the appellant or the premises of the OEM customers, when the supplies are made on FOR destination basis.

ii. Whether the appellant is entitled to CENVAT credit of service tax paid on outward transportation (GTA services) beyond the factory gate up to the premises of OEM customers under Rule 2(l) of the CENVAT Credit Rules, 2004.

iii. Whether the demands raised by invoking the extended period of limitation are sustainable in law.

iv. Whether the interest and penalties imposed under the provisions of the Central Excise Act, 1944 read with the CENVAT Credit Rules, 2004 are legally sustainable.

8. We take up the issues in seriatim.

ISSUE No. (i): Determination of the "Place of Removal"

9.1 The appellant submitted that the determination of "place of removal" is not a mechanical or presumptive exercise, but one that must be undertaken with reference to the intention of the parties, contractual terms, and the point at which property in goods passes, as mandated by Section 4(3)(c) of the Central Excise Act, 1944.

9.2 It was contended that the purchase orders executed with OEM customers were FOR destination contracts, under which: -

i. freight and insurance were borne by the appellant;
ii. delivery was required at the OEMs' factory premises;
iii. risk of loss or damage remained with the appellant during transit; and
iv. the OEMs had an explicit contractual right to reject the goods upon delivery.

9.3 It is further argued that excise duty was discharged on the value which is inclusive of freight, thereby evidencing that transportation was an integral part of the sale transaction and not a post-sale activity.

9.4 Whereas the Revenue adverted to that the factory gate is the normal place of removal, as excisable goods come into existence at the factory and are cleared therefrom. It was contended that outward transportation is a post-manufacturing activity, and therefore cannot influence the determination of place of removal. According to the Revenue, contractual terms relating to freight or insurance are commercial arrangements and cannot determine the statutory place of removal.

9.5 We have heard both the sides and find that the concept of "place of removal" under Section 4(3)(c) of the Central Excise Act is intrinsically linked to the place where the sale is effected, i.e., where property in goods passes from the seller to the buyer.

9.6 We find that the determination of the “place of removal” under Section 4(3)(c) of the Central Excise Act, 1944 is not automatic or presumptive. It must be determined with reference to the intention of the parties, the contractual terms, and the point at which property in goods passes, as recognised under Sections 19, 23 and 39 of the Sale of Goods Act, 1930.

9.7 We also find that the Hon’ble Supreme Court in *CCE v. Roofit Industries Ltd., 2015 (319) ELT 221 (SC)* and *CCE v. Emco Ltd., 2015 (322) ELT 394 (SC)* has held that where the seller bears freight and insurance, retains risk during transit, and delivery is complete only upon acceptance at the buyer’s premises and such buyer’s premises would constitute the place of removal.

9.8 At the same time, it is equally settled that the mere description of a contract as “FOR” is not conclusive. The actual contractual obligations and conduct of the parties, as reflected in purchase orders, invoices, freight terms and rejection clauses, must be examined on each contract-wise basis.

9.9 We also take note of CBEC Circular No. 1065/4/2018-CX dated 08.06.2018, which clarifies that the determination of the "place of removal" is a fact-specific exercise and depends upon the terms of the contract, the point of transfer of ownership, and the allocation of risk and freight. The Circular recognizes that where the sale is on FOR destination basis and the seller bears the risk and responsibility till delivery at the buyer's premises, such buyer's premises may constitute the place of removal. The said Circular also emphasizes the necessity of verification of purchase orders, contracts and invoices.

9.10 In the present case, the appellant has asserted that clearances to OEM customers were effected under FOR destination contracts. However, we find that the adjudicating authority has not undertaken a contract-wise examination to verify whether, in each case:

i. freight and insurance were borne by the appellant;
ii. risk remained with the appellant during the transit;
iii. delivery obligations were discharged only at the OEMs' premises; and
iv. the OEMs had contractual rights of rejection upon delivery.

9.11 Since the determination of the place of removal is foundational to the dispute and depends upon verification of primary contractual documents, the matter requires to be remanded for limited factual verification.

9.12 Accordingly, the matter is remanded to the original adjudicating authority only for the limited purpose of verifying, contract-wise and transaction-wise, whether the clearances to OEM customers were effected on FOR destination basis.

9.13 The adjudicating authority shall examine, *inter alia*: -

a. purchase orders / long-term supply agreements
b. invoices raised on OEMs
c. freight and insurance clauses
d. terms relating to transfer of risk and ownership
e. rejection / acceptance clauses
f. evidence of duty payment on value inclusive of freight

9.14 Where, upon such verification, the clearances are found to be on FOR destination basis, the OEMs' premises shall be treated as the place of removal.

9.15 Where any clearance is found to be on ex-factory basis, with transfer of property at the factory gate, such clearances shall be treated accordingly, after recording specific findings.

ISSUE No. (ii): Admissibility of CENVAT Credit on Outward Transportation

10.1 The Appellant submitted that Rule 2(l) of the CENVAT Credit Rules, 2004, during the relevant period, explicitly included services used in relation to clearance of final products up to the place of removal.Since the place of removal is the OEMs' premises, GTA services used for transportation up to such premises are clearly eligible input services.

10.2 The Appellant relied upon the decisions in the case of : *Sanghi Industries Ltd. v. CCE, 2019 (369) ELT 1424 (Tri.-Ahmd),* affirmed by the Hon'ble Gujarat High Court, and followed by this Bench in *Lucas TVS Ltd. v. CCE, 2019-TIOL-2982-CESTAT-MAD, Genau Extrusions Ltd. v. CCE, 2019-TIOL-2560-CESTAT-MAD,* and *GKN Driveline India Pvt. Ltd., 2019-TIOL-2762-CESTAT-MAD.* involving OEM supplies under FOR destination contracts.

10.3 The Revenue on the contrary argued that outward transportation has no nexus with manufacture and hence falls outside the scope of input services.It was contended that allowing such credit would lead to unwarranted expansion of CENVAT benefits.

10.4 Having examined the legal principles governing place of removal, the next question is whether the appellant is entitled to CENVAT credit of service tax paid on outward GTA services utilised for transportation of goods up to such place.

10.5 The eligibility of CENVAT credit on outward GTA services under Rule 2(l) of the CENVAT Credit Rules, 2004 is inseparably linked to the determination of the place of removal.

10.6 It is a settled legal position that where the buyer's premises are held to be the place of removal, outward transportation up to such premises qualifies as an eligible input service, as held in *CCE v. ABB Ltd., 2011 (23) STR 97 (Kar), CCE v. Vasavadatta Cements Ltd., 2011 (24) STR 542 (Kar)* and *Sanghi* I*ndustries Ltd. v. CCE, 2019 (369) ELT 1424 (Tri.-Ahmd).*

10.7 We further find that the appellant has placed reliance on a consistent line of Tribunal decisions dealing with OEM supplies effected on FOR destination basis, wherein outward transportation up to the buyer’s premises was held to be an eligible input service, subject to satisfaction of factual requirements relating to the place of removal. We briefly discuss the ratio of each decision and the inferences that flow therefrom.

Sanghi Industries Ltd. v. CCE, 2019 (369) ELT 1424 (Tri.-Ahmd)

In this case, the Tribunal examined whether CENVAT credit on outward GTA services was admissible where cement was cleared on FOR destination basis. The Tribunal held that where freight and insurance were borne by the assessee, risk remained with the seller during the transit, and delivery was completed at the buyer’s premises, such premises would constitute the place of removal. On facts, it was found that the sale was completed only upon delivery at the buyer’s premises, and therefore credit on outward transportation was admissible.

Significantly, this decision was affirmed by the Hon’ble Gujarat High Court, thereby lending legally authoritative weight to the principle that outward GTA credit is admissible where buyer’s premises qualify as the place of removal. Sanghi Industries establishes that admissibility of credit is not barred per se post-amendment to Rule 2(l), but depends on factual determination of the place of removal.

10.8 We also take note of the Larger Bench decision of this Tribunal in *Ramco Cements Ltd. v. Commissioner of Central Excise, LTU, Chennai 2020 (33) GSTL 1 (Tri. – LB).,* wherein the scope of CENVAT credit on outward transportation was examined in detail in the light of Supreme Court decisions. The Larger Bench held that: -

(i) Credit on outward GTA services is admissible up to the place of removal;

(ii) Determination of place of removal is a question of fact, dependent on contractual terms and transfer of property;

(iii) There is no absolute bar on credit beyond the factory gate if the buyer’s premises qualify as the place of removal.

The Larger Bench harmonised earlier Tribunal decisions with the judgments of the Hon’ble Supreme Court in Roofit Industries Ltd. and Emco Ltd., and clarified that Ultratech Cement Ltd. does not lay down a blanket prohibition but turns on its own facts. Being a Larger Bench decision, the ratio in Ramco Cements is binding on us and requires contract-wise factual verification before allowing or denying the credit on outward transportation.

10.9 We further take note of the judgment of the Hon'ble Karnataka High Court in *Bharat Fritz Werner Ltd. v. CCT, 2022 (66) GSTL 434 (Kar).* The High Court, after analysing the Supreme Court decisions in Roofit Industries Ltd. and Ultratech Cement Ltd., held that where goods are supplied on FOR destination basis and the seller bears freight and risk till delivery at the buyer's premises, such premises would constitute the place of removal and credit on outward transportation cannot be denied.

10.10 From the above decisions, the following legal position clearly emerges:

(a) There is no absolute prohibition on availing CENVAT credit on outward GTA services.

(b) Eligibility hinges entirely on determination of the place of removal.

(c) OEM supplies under FOR destination contracts constitute a recognised category where buyer's premises may qualify as the place of removal.

(d) Contract-wise verification of purchase orders, freight terms, transfer of risk, and rejection clauses is mandatory.

(e) The ratios laid down in Sanghi Industries, Ramco Cements (LB) and Bharat Fritz Werner (Kar HC), read with Roofit Industries Ltd. (SC), are binding on us.

10.11 In view of the binding nature of the above decisions, we are constrained to remand the matter for limited factual verification, rather than record a blanket allowance or denial of credit.

10.12 However, since the place of removal itself is remanded for verification, the admissibility of CENVAT credit on outward GTA services must necessarily follow such verification.

10.13 Accordingly:

i. For FOR destination clearances, CENVAT credit on outward GTA services shall be admissible.
ii. For ex-factory clearances, eligibility shall be examined in accordance with law.

10.14 We therefore refrain from recording a final conclusion on Issue No. (ii) and leave the same to be decided consequentially, within the limited scope of remand.

ISSUE No. (iii): Limitation – Invocation of Extended Period

11.1 The appellant submitted that the extended period of limitation has been invoked mechanically, without any evidence of wilful misstatement, suppression of facts or intent to evade duty. It was contended that the dispute in the present case arises purely out of interpretation of law relating to the determination of the "place of removal" and the consequent eligibility of CENVAT credit on outward transportation.

11.2 The appellant further submitted that the issue is squarely covered by a consistent line of decisions of the Hon'ble Supreme Court, including *Continental Foundation Jt. Venture v. CCE, Chandigarh, 2007 (216) E.L.T. 177 (S.C.), Collector of Central Excise v. Chemphar Drugs & Liniments, 1989 (40) E.L.T. 276 (S.C.), Pushpam Pharmaceuticals Co. v. Collector of Central Excise, 1995 (78) E.L.T. 401 (S.C.),* and *Uniworth Textiles Ltd. v. CCE, Raipur, 2013 (288) E.L.T. 161 (S.C.),* wherein it has been categorically held that mere failure to correctly interpret the law, or a difference of opinion on legal interpretation, does not amount to suppression of facts so as to justify invocation of the extended period.

11.3 The Revenue, on the other hand, reiterated the allegation of suppression; however, no material evidence was produced to establish any wilful misstatement or deliberate withholding of information by the appellant.

11.4 We find that the present dispute is essentially interpretational in nature and revolves around the determination of the place of removal, which itself is dependent on examination of contractual terms. The appellant is a registered manufacturer, regularly filing statutory returns and subjected to departmental audits. The availment of CENVAT credit on outward GTA services was duly reflected in the records maintained by the appellant and was not clandestine in nature.

11.5 In view of the settled law laid down by the Hon'ble Supreme Court in Chemphar Drugs & Liniments (*supra*), Pushpam Pharmaceuticals (*supra*), Continental Foundation (*supra*) and Uniworth Textiles (*supra*), we hold that mere non-acceptance of the appellant's legal interpretation cannot be equated with suppression or wilful misstatement. Consequently, invocation of the extended period of limitation cannot be sustained mechanically and must be preceded by clear and specific findings establishing intent to evade duty.

11.6 Accordingly, we hold that the invocation of the extended period shall be re-examined by the adjudicating authority only in respect of those transactions, if any, which are found to be ex-factory clearances upon remand, and only after recording clear and reasoned findings of suppression or wilful misstatement in accordance with the law laid down by the Hon'ble Supreme Court.

11.7 Penalty under Section 11AC of the Central Excise Act, 1944, if any, shall be examined separately under Issue No. (iv).

11.8 For all clearances which are held to be FOR destination sales, the extended period, interest and penalty shall not survive.

ISSUE No. (iv): Interest and Penalty

12.1 We find that the demands of interest and imposition of penalty in the impugned orders are entirely consequential to the denial of CENVAT credit on outward transportation and are premised on the allegation that the appellant had wrongly availed such credit by treating the OEMs' premises as the place of removal. Once the core issue relating to determination of place of removal is remanded for contract-wise verification, the liability to interest and penalty cannot survive automatically and must necessarily abide by the outcome of such verification.

12.2 We note that interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 is compensatory in nature and becomes payable only when credit is found to be wrongly taken or utilised. Therefore, for those clearances which are verified and held to be on FOR destination basis, and where CENVAT credit on outward GTA services is found admissible, the question of interest does not arise at all.

12.3 As regards penalty, it is well settled that penalty under Section 11AC of the Central Excise Act is not imposable merely because a demand is confirmed. The imposition of penalty requires clear establishment of wilful misstatement, suppression of facts or intent to evade duty, as consistently held by the Hon'ble Supreme Court in *Cosmic Dye Chemical v. CCE, 1995 (75) ELT 721 (SC), Padmini Products v. CCE, 1989 (43) ELT 195 (SC), Uniworth Textiles Ltd. v. CCE, 2013 (288) ELT 161 (SC)* and *Rajasthan Spinning & Weaving Mills, 2009 (238) ELT 3 (SC).* A mere interpretational dispute on the scope of "place of removal" and eligibility of credit, particularly in a regime marked by divergent judicial views and multiple Board circulars, cannot by itself attract penal consequences.

12.4 In the present case, the appellant is a large, registered manufacturer, regularly filing statutory returns and subjected to departmental audits. The availment of CENVAT credit on outward GTA services was reflected in the records maintained by the appellant, and the dispute has arisen only on account of a different interpretation adopted by the Department during audit. In such circumstances, no element of mens rea can be presumed.

12.5 Accordingly, we hold that: -

(a) For those clearances which are verified and found to be on FOR destination basis, no interest or penalty shall be leviable.

(b) For any clearances which are verified and found to be ex-factory, the question of interest shall be examined strictly in accordance with law, and penalty shall not be imposed mechanically, but only after recording a clear and reasoned finding on the existence of wilful suppression or intent to evade duty, in terms of the law laid down by the Hon’ble Supreme Court.

12.6 The adjudicating authority, while passing the order on remand, shall therefore re-examine the issue of interest and penalty only as a consequential exercise, strictly confined to the limited scope of remand and in accordance with the legal principles set out as above.

13. FINAL ORDER

i. The impugned Orders-in-Original and Orders-in-Appeal are set aside.

ii. The matter is remanded to the Original Adjudicating authority for a limited purpose, as set out in Paras 9.11 to 9.15 and 10.13 above.

iii. The adjudicating authority shall pass a fresh speaking order, confined strictly to the scope of remand, after granting reasonable opportunity of hearing.

14. Thus, the appeals are allowed by way of remand.

(Order pronounced in open court on 29.01.2026)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MK