

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

REGIONAL BENCH – COURT No. III

Excise Appeal No. 42169 of 2017

(Arising out of Order-in-Original No. 34/2017 (C)(C.EX.) dated 20.07.2017 passed by Commissioner of GST and Central Excise, No. 1, Goubert Avenue, Puducherry – 605 001)

M/s. NCR Corporation India P. Ltd.

...Appellant

No. 17/5-B1A, 17/3,
Vazhudavur Road,
Kurumbapet,
Puducherry – 605 009.

Versus

Commissioner of GST and Central Excise

...Respondent

Puducherry Commissionerate,
No. 1, Goubert Avenue,
Puducherry – 605 001.

APPEARANCE:

For the Appellant : Mr. Muthu Venkataraman, Advocate
For the Respondent : Ms. G. Krupa, Authorized Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40441 / 2026

DATE OF HEARING : 05.01.2026

DATE OF DECISION : 27.03.2026

Per Mr. VASA SESHAGIRI RAO

This appeal has been filed by M/s. NCR Corporation India Pvt. Ltd. against Order-in-Original No. 34/2017 dated 20.07.2017 passed by the Commissioner of Central Excise, Puducherry, whereby recovery of CENVAT credit amounting to Rs. 4,66,99,006/- along with applicable interest was confirmed and the Adjudicating authority also imposed a penalty of Rs. 2,33,49,503/- under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of

the Central Excise Act, 1944. The appellant is engaged in the manufacture of sub-assemblies of Automated Teller Machines (ATMs) and parts of ATMs classifiable under Chapter 84 of the Central Excise Tariff Act, 1985. The appellant operates as a 100% Export Oriented Unit with a Customs bonded warehouse licence under the Customs Act, 1962 and clears finished goods both to Domestic Tariff Area (DTA) customers and for export.

1.2 The appellant had availed CENVAT credit of service tax paid on input services distributed through Input Service Distributor (ISD) invoices issued by their registered ISD office, which included courier services used for transportation of finished goods to customers' premises through agencies such as Safex Express. During departmental audit, it was alleged that the credit pertained to outward transportation beyond the factory gate, which according to the department constituted the "place of removal", and therefore such services were not eligible input services under Rule 2(I) of the CENVAT Credit Rules, 2004. On this basis, a show cause notice dated 07.02.2017 was issued proposing recovery of CENVAT credit of Rs. 4,66,99,006/- along with interest and penalty under Rule 14 of the CENVAT Credit Rules read with Sections 11A, 11AA and 11AC of the Central Excise Act, 1944 respectively, which

was subsequently confirmed by the Commissioner in the impugned order.

2. Aggrieved by the said order, the appellant has filed the present appeal before this Tribunal.

3. The Ld. Advocate Mr. S. Muthu Venkatraman appeared on behalf of the Appellant and advanced detailed submissions in support of the appeal. The Ld. Authorized Representative Ms. G. Krupa appeared for the Revenue and defended the impugned order.

4. The Ld. Advocate Mr. S. Muthu Venkatraman made the following submissions which are summarised as below: -

4.1 The impugned order is legally unsustainable as the CENVAT credit availed relates to courier services used for transportation of finished goods up to the customers' premises where the sale of goods was completed. It was contended that the supply of ATMs was governed by contractual purchase orders under which the appellant was responsible for delivery, transportation, installation and commissioning of the machines at the customers' sites. According to the contractual terms, the property in the goods passed to the buyer only after delivery, installation and acceptance of the equipment at the customer's premises.

Relying upon Sections 19 and 23 of the Sale of Goods Act, 1930, it was argued that the transfer of property depends upon the intention of the parties and that in the present case the appellant retained control and responsibility over the goods until installation and commissioning at the customer's site. Consequently, the transportation of the equipment up to the customer's premises formed an integral part of the supply transaction and the courier services used for such transportation qualify as input services used in relation to the clearance of final products.

4.2 The Ld. counsel further relied upon judicial precedents including the decision of the Hon'ble Supreme Court in CCE vs. Roofit Industries Ltd. and the judgment of the Hon'ble Karnataka High Court in Madras Cements Ltd., wherein it was held that where the sale of goods is completed only at the buyer's premises, such premises would constitute the "place of removal" and credit of service tax paid on outward transportation up to that point is admissible. On the issue of limitation, it was submitted that the extended period of limitation was wrongly invoked as the appellant had regularly filed statutory returns and disclosed all relevant particulars to the department. Reliance was placed on the judgments of the Hon'ble Supreme Court in Cosmic Dye Chemical vs CCE and Padmini Products vs CCE, wherein it was held that suppression of facts must be

deliberate and accompanied by an intent to evade duty and that the extended period cannot be invoked in cases involving interpretational disputes.

5.1 The Ld. Authorized Representative for the Revenue reiterated the findings recorded in the impugned order and submitted that the place of removal in the present case is the factory gate, since the goods were cleared from the appellant's factory and handed over to courier agencies at that point. It was argued that once the goods were entrusted to the courier agencies at the factory gate, the property in the goods passed to the buyer and therefore the factory gate must be treated as the place of removal for the purposes of the CENVAT Credit Rules.

5.2 It was further contended that Rule 2(I) of the CENVAT Credit Rules permits credit of service tax on outward transportation only up to the place of removal and that any transportation beyond the factory gate would not qualify as an input service. In support of this contention, reliance was placed on the judgments of the Hon'ble Supreme Court in CCE vs Ultra Tech Cement Ltd. and CCE vs Ispat Industries Ltd., wherein it was held that outward transportation beyond the place of removal cannot be treated as an eligible input service. On these grounds, the learned Authorised

Representative prayed that the appeal filed by the appellant be dismissed.

6. Upon hearing both sides and perusing the records, the following questions arise for determination:

- i. Whether CENVAT credit distributed to the appellant through Input Service Distributor (ISD) invoices is legally admissible and whether proceedings could validly be initiated against the appellant instead of the Input Service Distributor.
- ii. Whether the courier services used for transportation of finished goods from the appellant's factory to the customers qualify as "input service" under Rule 2(I) of the CENVAT Credit Rules, 2004.
- iii. What is the "place of removal" in the facts of the present case, particularly in light of the two contracts placed before us and the clause in the invoices stating that the seller is not responsible for any loss or damage to the goods in transit.
- iv. Whether the extended period of limitation has been correctly invoked and whether the demand of interest and imposition of penalties are sustainable under Rule 15(2) of the CENVAT Credit Rules read with Section 11AC of the Central Excise Act, 1944.

**ISSUE NO. (i) Whether CENVAT credit distributed through
ISD invoices can be denied to the appellant**

7.1 We note that the appellant had availed CENVAT credit of service tax paid on certain services which were distributed through Input Service Distributor invoices issued by the registered ISD office of the appellant's organisation. The appellant has contended that once the credit is distributed through ISD invoices, the eligibility of such credit must be examined at the level of the ISD and not at the level of the recipient manufacturing unit.

7.2 In support of this contention, reliance has been placed by the appellant on the decision of the Tribunal in *CST Ahmedabad vs Godfrey Philips India Ltd* – 2008 (12) TMI 90 (CESTAT Ahmedabad). In the said decision the Tribunal held: -

"When we look at the functions of the input service distributor and the documents to be issued by him for passing on the credit, it becomes clear that the document issued by him for passing on the credit does not contain the nature of service and other details of services... Obviously the eligibility or otherwise of the service tax credit has to be examined only at the end of input service distributor."(Para 5)

7.3 The appellant has further relied upon the decision of the Tribunal in *India Cements Ltd vs Commissioner of CGST & Central Excise* – 2025 (2) TMI 622 (CESTAT Chennai) where the Tribunal reiterated the principle that denial of credit taken on the basis of ISD invoices

cannot be sustained without examining the distribution of credit at the level of the ISD.

7.4 However, the Ld. Authorized Representative appearing for the Revenue has strongly disputed the appellant's contention. The Revenue has relied upon the decision of the Tribunal in *SKF India Ltd vs Commissioner of Central Excise, Pune 2016(41) S.T.R. 737(Tri-Mum)*. In that case, it was ruled that where credit has been wrongly availed by a manufacturing unit, recovery can be made from the recipient unit even if the credit originated from an Input Service Distributor.

7.5 The Revenue has also relied upon the decision of the Principal Bench of the Tribunal in *Roca Bathroom Products Pvt Ltd vs CCE – 2017 (51) STR 432 (Tri.-Del)*. In that decision the Tribunal held in Para 4.1 of the order that: -

....."Central Excise authority in charge of the unit, who received the invoices/documents for claiming CENVAT credit from the ISD are competent to verify the admissibility /eligibility of such invoices/documents for claiming CENVAT credit; the assessee cannot plead that they have taken CENVAT credit based on the invoices issued by the ISD and Central Excise authorities other than the jurisdictional in charge of the ISD cannot deny the said CENVAT credit."

7.6 We observe that the decisions relied upon by the Revenue make it clear that the recipient manufacturer

cannot claim absolute immunity from scrutiny merely because the credit was distributed through ISD invoices. At the same time, the jurisprudence emerging from the decisions relied upon by the appellant indicates that the eligibility of the service itself must be examined in the context of the manufacturing activity of the recipient unit.

7.7 We therefore find that while the proceedings against the appellant cannot be held to be invalid merely because the credit was distributed through ISD invoices, the admissibility of the credit must ultimately be examined on merits with reference to the definition of input service and the factual circumstances of the case.

Issue No. (ii) Whether the courier services used for transportation of finished goods to customers qualify as “input service” under Rule 2(I) of the CENVAT Credit Rules, 2004

8.1 We have carefully considered the rival submissions made by the learned counsel appearing for the appellant and the learned Authorised Representative appearing for the Revenue regarding the admissibility of CENVAT credit on courier services used for transportation of Automated Teller Machines (ATMs) from the appellant’s factory to the customers’ premises.

8.2 The case of the department is that the courier services used by the appellant represent outward transportation of goods beyond the factory gate and therefore fall outside the scope of the definition of “input service” under Rule 2(I) of the CENVAT Credit Rules, 2004. According to the Revenue, once the goods are cleared from the factory and handed over to the courier agency, the sale is completed and the factory gate becomes the “place of removal”. Consequently, the department contends that any transportation beyond that point cannot be considered as an input service used in relation to the manufacture or clearance of final products.

8.3 On the other hand, the appellant has contended that the courier services are used for transportation of the ATMs up to the customer’s premises where the equipment is installed and commissioned and that the sale of the goods is completed only upon installation and acceptance of the equipment by the customer. It has been argued that the transportation of the equipment up to the installation site forms an integral part of the contractual obligation of the appellant and therefore such services qualify as “input services” used in relation to the clearance of final products.

8.4 In order to appreciate the rival contentions, it is necessary to refer to the definition of “input service”

contained in Rule 2(I) of the CENVAT Credit Rules, 2004. The definition, as it stood during the relevant period, included services used by the manufacturer directly or indirectly in relation to the manufacture of final products and clearance of final products up to the place of removal. Thus, the admissibility of credit on outward transportation services depends upon the determination of the "place of removal".

8.5 The Ld. Authorized Representative for the Revenue has relied upon the judgment of the Hon'ble Supreme Court in *CCE vs Ultra Tech Cement Ltd. – 2018 (9) GSTL 337 (SC)* wherein the Court held that outward transportation beyond the place of removal cannot be treated as an input service. However, it is important to note that the said judgment was rendered in the context of a situation where the sale of goods was completed at the factory gate and the transportation thereafter was arranged by the buyer.

8.6 Similarly, reliance has been placed by the Revenue on the judgment of the Hon'ble Supreme Court in *CCE vs Ispat Industries Ltd. – 2015 (324) ELT 670 (SC)* wherein the Court explained that the place of removal normally refers to the place from where the goods are sold and ownership is transferred to the buyer. The Court held

that where the sale takes place at the factory gate, the factory gate would constitute the place of removal.

8.7 However, the applicability of the above judgments depend upon the factual determination of the place where the sale is actually completed. If the sale is completed at the factory gate, the transportation beyond that point would indeed fall outside the ambit of input service. On the other hand, where the contractual terms establish that the sale is completed only at the buyer's premises, the place of removal shifts to the buyer's premises and the transportation up to that point would qualify as an input service.

8.8 In this context it is relevant to refer to the judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise vs Roofit Industries Ltd. – 2015 (319) ELT 221 (SC)* wherein the Court held that where the contractual terms indicate that the goods are to be delivered at the buyer's premises and the seller retains ownership and risk during transit, the buyer's premises would constitute the place of removal. The Hon'ble Supreme Court observed that where the ownership of goods remains with the seller until the goods reach the destination and are accepted by the buyer, the sale cannot be said to have taken place at the factory gate.

8.9 The Hon'ble Karnataka High Court in *Madras Cements Ltd. vs Commissioner of Central Excise – 2015 (7) TMI 1001 (Kar.)* has also held that where the sale of goods is finalized only at the buyer's premises and the seller bears the responsibility for delivery of goods up to that point, the credit of service tax paid on outward transportation up to the buyer's premises is admissible.

8.10 We also find that the Central Board of Excise and Customs has issued Circular No. 988/12/2014-CX dated 20.10.2014 clarifying the concept of "place of removal" for the purpose of admissibility of CENVAT credit on outward transportation services. The circular clarifies that the place of removal may extend up to the buyer's premises depending upon the contractual terms governing the transfer of ownership and risk in the goods where such ownership and risk during transit remain with the seller until delivery at the buyer's premises.

8.11 From the above judicial precedents and the clarification issued by the Board, it becomes clear that the admissibility of credit on outward transportation services depends upon the determination of the place of removal where the sale transaction is completed.

8.12 In the present case, the appellant has contended that the supply of ATMs is not merely a supply of goods but includes delivery, installation, commissioning and acceptance of the equipment at the customer's premises. If the contractual terms governing the supply establish that the sale is completed only after installation and acceptance of the equipment at the buyer's premises, the transportation of the equipment up to that point would constitute an integral part of the supply transaction.

8.13 In such circumstances, the courier services used for transportation of the equipment up to the installation site cannot be treated as services used beyond the place of removal. On the contrary, such services would constitute services used for clearance of final products up to the place of removal and would therefore fall within the scope of the definition of "input service" under Rule 2(I) of the CENVAT Credit Rules.

8.14 The question whether the place of removal in the present case is the factory gate or the buyer's premises therefore depends upon the contractual terms governing the supply of ATMs and the stage at which ownership and possession of the equipment passes to the buyer.

8.15 We therefore proceed to examine the contractual terms governing the supply of ATMs in order to determine the place of removal in the present case.

Issue No. (iii) Determination of the place of removal

9.1 We now proceed to determine the “place of removal” in the facts of the present case, which is central to deciding the admissibility of CENVAT credit on courier services used for outward transportation of the goods.

9.2 We note that the appellant has placed before us two contracts governing the supply of Automated Teller Machines (ATMs) to their customers. A careful reading of these contracts reveals that the scope of the transaction is not confined merely to supply of equipment but extends to delivery, installation, commissioning and acceptance of the equipment at the customer’s premises. The contractual documents specifically indicate that the purchase order relates to the supply of ATMs at the point of installation, thereby making installation and commissioning an integral part of the supply transaction.

9.3 We further note from the contractual clauses that the installation and commissioning of the equipment constitute essential obligations of the appellant under the contract. Clause 3.10 of the agreement provides as follows: -

"Commissioning of the CD & other equipments will be deemed as complete only when the same is accepted by the bank in accordance with the terms and conditions of the RFP."

This clause clearly indicates that the contractual obligation of the appellant is not discharged merely upon dispatch or delivery of the goods but only upon commissioning and acceptance of the equipment by the buyer.

9.4 Clause 3.12 of the agreement further reinforces this position and reads as follows: -

"The installation will be deemed as incomplete if any component of the CD and other equipments is not delivered or is delivered but not installed and/or not operational or not acceptable to the bank after acceptance testing/examination. In such an event the supply, installation and commissioning will be termed as incomplete and systems will not be accepted and the warranty period will not commence. The installation will be accepted only after complete commissioning of CD and other equipments."

The above clause unequivocally establishes that the supply itself is treated as incomplete unless the installation and commissioning of the equipment are completed and accepted by the buyer.

9.5 From the above contractual provisions, it becomes evident that the transfer of ownership and completion of the sale transaction occur only after the equipment is installed, commissioned and accepted by the buyer at the installation site. The contracts thus make it clear that the goods attain a deliverable state only after

commissioning and acceptance by the buyer and that the property in the goods passes to the buyer only at that stage.

9.6 We also note from the contractual scheme that the goods are transported to the buyer's premises through courier or transport agencies; however, the appellant retains control over the equipment and undertakes installation and commissioning at the buyer's site before handing over the equipment to the buyer. This clearly demonstrates that the appellant continues to exercise possession and control over the goods even after transportation and until the completion of installation and commissioning.

9.7 The adjudicating authority has relied upon the clause printed in the excise invoices stating that the seller shall not be responsible for any loss or damage to the goods in transit and on that basis concluded that the risk and ownership passed to the buyer at the factory gate. However, we find that the said clause printed in the Excise invoices is merely a general condition relating to transportation and cannot override or supersede the substantive contractual terms in writing governing the transaction between the parties. When the substantive contractual provisions clearly stipulate that installation and commissioning form an integral part of the supply and that acceptance by the buyer occurs only after commissioning, a general clause printed in the

invoice regarding transit risk cannot be interpreted so as to alter the contractual scheme governing transfer of property in the goods.

9.8 In our considered view, the contractual clauses extracted above clearly establish that the sale of the goods is completed only after installation, commissioning and acceptance by the buyer at the installation site. The reliance placed by the adjudicating authority on the invoice clause relating to transit risk is therefore misplaced and cannot override the express terms of the contract. We accordingly overrule the observation of the adjudicating authority that the sale was completed at the factory gate merely on the basis of the printed condition contained in the excise invoice.

9.9 In view of the contractual clauses discussed above, we are satisfied that the goods are delivered, installed and commissioned at the buyer's premises and only thereafter handed over to the buyer upon acceptance. The point at which the buyer accepts the equipment after commissioning is therefore the point at which the sale is completed.

9.10 Accordingly, we hold that the actual "place of removal" in the present case is the buyer's premises, where

the ATMs are installed, commissioned and accepted by the customer.

9.11 However, we also note that the two contracts placed before us appear to be representative contracts and there may also be other contracts governing supplies during the relevant period. Since the determination of the place of removal depends upon the contractual terms governing the particular transaction, it becomes necessary to verify whether the remaining contracts entered into by the appellant during the relevant period contain similar terms regarding installation, commissioning and acceptance at the buyer's premises.

9.12 On merits, we therefore are required to remand the matter to the adjudicating authority for the limited purpose of verifying whether the other contracts governing the supplies during the relevant period contain contractual terms similar to those examined above. If the adjudicating authority finds that the remaining contracts also stipulate delivery, installation, commissioning and acceptance at the buyer's premises, the place of removal shall be treated as the buyer's premises and the demand of CENVAT credit on courier services cannot be sustained.

9.13 However, in respect of any supplies covered by contracts which do not contain such terms and where the sale is completed at the factory gate, the demand may be sustained in accordance with law.

9.14 It is clarified that the adjudicating authority shall restrict the scope of the proceedings strictly to the verification of the contractual terms governing the supplies and shall not travel beyond the limits of the directions issued in this order. The above position is also in line with the Larger Bench decision in the case of *The Ramco Cements Limited Vs. The Commissioner of Central Excise, Puducherry* [Interim Order No. 40020/2023 dated 21.12.2023] which held as below: -

"35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board to determine the admissibility of CENVAT credit on the GTA Service upto the place of removal."

Issue No. (iv): Whether the extended period of limitation has been correctly invoked and whether the demand of interest and imposition of penalty are sustainable

10.1 We now proceed to examine the invocation of the extended period of limitation in the present case. We note that the show cause notice has invoked the extended period under Section 11A of the Central Excise Act on the

allegation that the appellant suppressed the fact of availment of CENVAT credit on courier services used for outward transportation of goods. The department has contended that such services were not eligible input services and that the appellant had wrongly availed credit beyond the place of removal. However, we find from the records that the appellant had been regularly filing statutory returns and maintaining proper records reflecting the availment of credit on the basis of Input Service Distributor invoices. The availment of such credit was therefore recorded in the statutory documents maintained by the appellant and was available for scrutiny by the department.

10.2 In this regard, we find it appropriate to refer to the judgment of the Hon'ble Supreme Court in *Cosmic Dye Chemical vs CCE – 1994 (9) TMI 86 (SC)* wherein the Court clearly held that suppression of facts must be wilful and accompanied by intent to evade payment of duty. The Hon'ble Supreme Court observed as follows: -

"Mis-statement or suppression of facts must be wilful."
(Para 6).

The above principle makes it clear that the extended period of limitation cannot be invoked merely on the ground that the department subsequently forms a different view regarding the admissibility of credit when the relevant facts were already available in the records of the assessee.

10.3 We further note that the Hon'ble Supreme Court in *Padmini Products vs CCE – 1989 (8) TMI 80(SC)* held that where the dispute relates to interpretation of statutory provisions and the assessee entertains a bona fide belief regarding the eligibility of duty or credit, the extended period of limitation cannot be invoked. In the present case the dispute essentially concerns the interpretation of the definition of "input service" under Rule 2(I) of the CENVAT Credit Rules and the determination of the "place of removal" based on contractual terms governing the transaction. Such issues have been the subject matter of considerable judicial interpretation and therefore the appellant could reasonably entertain a bona fide belief regarding the eligibility of credit on the services in question.

10.4 We also note that the period involved in the present case is June 2014 to January 2015, whereas the show cause notice was issued only on 07.02.2017. In the absence of any evidence of fraud, suppression of facts or wilful misstatement with intent to evade duty, the extended period of limitation under Section 11A of the Central Excise Act cannot be invoked. Consequently, the demand raised in the show cause notice is clearly barred by limitation.

10.5 In view of the above discussion, we hold that the extended period of limitation under Section 11A of the Central Excise Act, 1944 is not invocable in the present case. Since the entire demand in the show cause notice pertains to the period June 2014 to January 2015, whereas the show cause notice was issued only on 07.02.2017, the demand is clearly barred by limitation. Consequently, the demand of CENVAT credit along with interest and penalty cannot be sustained on the ground of limitation alone.

11. In view of the foregoing discussion, we find that the contractual terms governing the supply of ATMs clearly establish that delivery, installation, commissioning and acceptance at the buyer's premises form an integral part of the transaction and therefore the buyer's premises would constitute the "place of removal" for the purpose of Rule 2(I) of the CENVAT Credit Rules, 2004. The reliance placed by the adjudicating authority on the printed clause in the excise invoices stating that the seller is not responsible for loss or damage during transit cannot override the substantive contractual terms and is therefore misplaced. Although the two contracts placed before us appear to be representative and verification of other contracts could ordinarily be required to determine whether similar terms exist, we have already held that the extended period of limitation under Section 11A of the Central Excise Act, 1944 is not invocable

and that the show cause notice dated 07.02.2017 covering the period June 2014 to January 2015 is clearly barred by limitation. Consequently, the entire demand of CENVAT credit along with interest and penalty cannot be sustained in law.

12. Accordingly, the impugned Order-in-Original No. 34/2017 dated 20.07.2017 is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 27.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)