

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

Service Tax Appeal No. 41619 of 2016

(Arising out of Order in Original No. LTUC/338/2016 – (C) dated 20.6.2016 passed by the Commissioner, LTU, Chennai)

Alstom T&D India Ltd.

FSSC Building
19/1, GST Road
Pallavaram, Chennai – 600 043.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

Respondent

APPEARANCE:

Shri Joseph Prabhakar, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40620/2026

Date of Hearing: 27.04.2026
Date of Decision: 27.05.2026

This appeal assails Order-in-Original (**OIO**) dated 20.06.2016 passed by the Commissioner, LTU, Chennai, insofar as it disallowed CENVAT credit for the period 2010-11 to 2012-13.

2. The appellant, being registered as an Input Service Distributor (**ISD**), had availed and distributed credit of service tax paid on ten different type of input services used in relation to its manufacturing and business activities. Rule 3(I) of CCR, 2004 allows a manufacturer or producer of final products to take CENVAT credit of service tax paid on input service. However, it appeared to the Department that the services so availed by the appellant cannot be considered as input

service and the appellant is liable to reverse the CENVAT credit so availed. After due process the Ld. Commissioner out of the total demand of Rs.69,77,323/- allowed CENVAT credit of Rs.19,83,852/- on certain services and disallowed the balance CENVAT credit of Rs.49,93,471/-. Hence this appeal.

3. The Ld. Advocate Shri Joseph Prabhakar appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

Submissions on behalf of the Appellant

3.1 Shri Joseph Prabhakar the Ld. Advocate for the appellant submitted as follows:

A. The entire demand is barred by limitation. The Show Cause Notice was dated 28.5.2015. For the relevant period, the normal period of limitation under Section 73(1) of the Finance Act, 1994 was one year for the period from April 2010 to 27.05.2012 and eighteen months for the period from 28.05.2012 to 31.03.2013.

B. The dispute concerns eligibility of credit on multiple categories of services under Rule 2(I) of the CENVAT Credit Rules, 2004, including services spanning the pre- and post-01.04.2011 amendment period.

C. The issue is plainly interpretational, and in such circumstances suppression or wilful misstatement cannot be alleged merely because the Department holds a different legal view. It is settled that the extended period is not invocable in matters involving bona fide interpretation of law.

D. Without prejudice, no interest or penalty survives on the alleged double availment of credit. The appellant had admittedly reversed the

second credit of Rs.7,46,344/- on 30.01.2015 before utilization. Where credit is reversed before utilization, interest and penalty are not sustainable, particularly in the absence of revenue loss or mens rea.

E. Credit on car booking software is admissible. The software was used by employees for official travel and business purposes, and the related expenditure formed part of the business cost structure. Services used in the course of business and having nexus with business operations are covered by the wide expression "input service".

F. Credit on servicing of company-owned cars and chartered aircraft is admissible where the vehicles and aircraft were used for official purposes of the company. The impugned order proceeds on an impractical requirement that the service provider's invoice should itself mention the names and designations of the travelling officials and the precise business purpose. Such a requirement is alien to the credit scheme. Once the service is availed for official business, the nexus stands established. Credit on aircraft/helicopter related services used for business purposes has been recognized in precedent.

G. Credit on civil and interior works for the Pallavaram office is admissible to the extent the services relate to painting, carpentry, electrical work, plumbing, carpet flooring, renovation and allied interior works. Even after 01.04.2011, the exclusion in Rule 2(l) applies to construction of a building or civil structure or laying foundation/support structures for capital goods; it does not wipe out credit on modernization, renovation or repairs of existing premises. The appellant's case is of interior/renovation and fit-out activities, not fresh construction as assumed in the impugned order.

H. Credit on demerger-related professional services is admissible. Services obtained for restructuring of business are squarely activities relating to business. If consultancy for merger or amalgamation is held eligible as business-related input service, there is no legal basis to deny the same merely because the transaction is described as a demerger. The distinction drawn in the impugned order between merger and demerger is artificial and unsustainable. In any event, the adjudicating authority failed to address the appellant's specific objection on quantification, namely that the actual credit relatable to this head was Rs.10,31,609/- and not Rs.17,93,297/- as proposed.

I. Credit on outdoor catering / Sodexo / vending machine services, and on employee insurance and travel/project insurance, is admissible at least to the extent such services were availed prior to 01.04.2011 or were directly related to business requirements. The appellant has already reversed Rs.1,428/- relating to employee health check-up. The balance pertains substantially to official travel insurance and project-specific insurance, which are not personal consumption services but business-related expenditure.

J. Credit on security and housekeeping services has been wrongly disallowed on the assumption that all invoices pertain to guest house services. The appellant specifically explained that the same service providers rendered services both for office premises and guest house, and the quantification in the notice was therefore erroneous. In any case, pre-01.04.2011 credit is clearly sustainable on the broad "activities relating to business" test, and the appellant has already reversed the post-01.04.2011 portion under protest.

K. Credit on services relating to immovable property is admissible where the underlying service is legal consultancy, real estate agency, or rent-fixation connected with disposal, management or occupation of company properties. Rule 2(l) specifically includes legal services. The rule does not carve out any exclusion for legal services merely because the subject-matter concerns immovable property. Denial on that sole basis is therefore contrary to the text of the rule.

L. Credit on club membership, rent-a-cab and marine insurance relating to exports also requires liberal construction where the services are demonstrably linked with business operations, employee movement for official purposes, or export activity. At the very least, in the facts of the present case, these items could not have been disallowed mechanically without a proper nexus-based examination or without segregating the pre- and post-amendment periods.

M. The impugned order is further vitiated by inadequate appreciation of documents and by failure to deal with the appellant's factual explanations on usage, quantification, reversal under protest and period-wise eligibility. The denial therefore cannot be sustained either on facts or in law.

The Ld. Counsel stated that the denial of credit therefore cannot be sustained either on facts or in law and hence the impugned order may be set aside.

Submissions made by the Respondent-Revenue

3.2 Ld. Authorized Representative Shri M. Selvakumar submitted on behalf of the respondent that

A. The credit pertains to input services availed for the period 2010-11 to 2012-13. It hence involves the provisions of Rule 2(I) of Cenvat Credit Rules, 2004, prior to and after amendment made to the said Rule in April 2011.

B. The definition of 'input service' as per Rule 2(I) of CCR, 2004 in its main limb, requires that an input service to be eligible for credit, should be 'used for providing output service'. Hence there must be a nexus between the input service and the output service provided. The 'use' must be directly related to the output service.

C. The definition explicitly excludes certain services and the phrase "activities relating to Business" has been deleted from definition of input service with effect from 01.04.2011.

D. Services which are used primarily for personal use or consumption of any employee has also been disallowed from 01.04.2011.

The Ld. A.R. stated that the submissions made by the appellant do not satisfy the provisions of Rule 2(I) and the appeal may hence be rejected.

Discussion & Analysis

4. I have heard the rival parties and perused the appeals. I find that the dispute pertains to the following input services:

- a. Car booking software
- b. Servicing of company owned car
- c. Chartered aircraft
- d. Civil and interior work for new office building
- e. Demerger of business of the company

- f. Outdoor catering / Sodexo Meal pass / Coffee Vending Machine
- g. Employees insurance and medical expenses
- h. Security and housekeeping for guest house
- i. Services relating to immovable property
- j. Club membership
- k. Rent-a-cab
- l. Marine insurance relating to exports

5. The appellant has made a preliminary plea that the SCN is barred as the issues are only interpretational and no suppression of fact is involved. I find that the SCN was dated 28.5.2015. For the relevant period, the normal period of limitation under Section 73(1) of the Finance Act, 1994 was one year for the period from April 2010 to 27.05.2012 and eighteen months for the period from 28.05.2012 to 31.03.2013. Hence a prima facie case has been made out. However, the word "interpretation" concerns determining the meaning, scope, and effect of statutory language and not on factual disputes based on evidence or records. A dispute does not become interpretational merely because parties differ. To qualify, the issue must involve a genuine, debatable, and unresolved legal controversy, with no binding clarification or precedent. The burden lies on the appellant to establish their stand from their pleadings taken before the lower authorities and the findings of the lower authorities. In the present case, the appeal does not identify any specific statutory provision or issue that is genuinely interpretational. It contains only a bare assertion on limitation, without clearly stating the two reasonably possible legal

views. Hence it would be necessary to examine the matter on merits before rendering a finding on the issue of limitation.

6. Under the Service Tax regime, Cenvat credit was designed to avoid cascading of taxes by enabling a service provider to avail credit of tax paid on input services and utilize it for payment of tax on output services. Rule 2(l) of the Cenvat Credit Rules, 2004 gave "input service" a wide ambit, allowing credit where the service had a real and sufficient nexus with the assessee's output service and the chain of credit remained unbroken. A direct one-to-one correlation was not necessary. In **Commissioner of Central Excise Vs Manikgarh Cement**, 2010 (20) S.T.R. 456 (Bom.), following **Maruti Suzuki Ltd. Vs Commissioner of Central Excise, Delhi**, AIR 2009 SC 534, the Hon'ble Bombay High Court held that unless a nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit was not allowable. Further the expression 'relating to business' in Rule 2(l) of CCR, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee. Post 01.04.2011 the definition of 'input service' was amended, primarily removing the phrase 'activities relating to business' and excluding certain specific services including services used primarily for personal use or consumption of any employee, from its definition.

7. The Principal Bench of this Tribunal at New Delhi had an occasion to examine the issue, post the amendment of the definition of 'input service' in the case of **Godawari Power & Ispat Limited Vs**

Commissioner, Customs, Central Excise, FINAL ORDER NO.

51519/2023, Dated: 08.11.2023. It held:

"14. It would be seen from the aforesaid definition of "input service" in rule 2(l) of the Rules that **while the "means" part of the definition has continued to remain the same pre amendment or post amendment, but the "includes" part and the "excludes" part of the definition of "input service" have undergone changes.**

Though "services used in relation to setting up" of a factory was included in the inclusive part of the definition of "input services" prior to 01.04.2011 but it was deleted w.e.f. 01.04.2011. The "excludes" part in the definition of "input service" was added w.e.f. 01.04.2011 and it provided that services specified in certain sub-clauses of clause (105) of section 65 of the Finance Act in so far as they were used for construction of a building or a civil structure or a part thereof would be excluded w.e.f. 01.04.2011. It is also seen that the "excludes" part of the definition of "input service" was further amended w.e.f. 01.07.2012."

(emphasis added)

Hence though the phrase 'relating to business' in Rule 2(l) of CCR, 2004 was deleted from the definition of 'input services', an assessee could avail of Cenvat credit if the input service satisfied the "means" part of the definition by having a real and sufficient nexus with the assessee's output service, without being for the personal use or consumption of any of its employee.

8. I find that the eligibility of input services depends on the facts of each individual case, satisfying the above criteria. However as stated by the Hon'ble Supreme Court, in **SOUNDS N. IMAGES Vs COLLECTOR OF CUSTOMS** [2000 (117) E.L.T. 538 (S.C.)], the **burden** of proof is on the department authorities to establish by methods known to law and in a satisfactory manner that the allegation made by them are proved. The law of evidence in the course of proving an allegation, however, involves the shifting of the **onus** of proof during a proceeding from one party to the other. I find that the

appellant in his submissions has discharged the onus of proof showing that the credit of input services utilized by it had real and sufficient nexus with the assessee's output service and was not utilized for the personal use or consumption of any of its employee. Further the credit of input credit of those services that did not meet the criteria had been reversed by them. Revenue has hence failed to discharge its burden and the impugned order merits to be set aside.

Conclusion

9. Accordingly, the impugned order is set aside and the appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 27.05.2026)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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