CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40443 of 2015

(Arising out of Order-in-Original No. 04/CE/COMMR/2014 dated 05.12.2014 passed by Commissioner of Central Excise, Central Revenue Building, NGO-'A' Colony, Tirunelveli – 627 007)

M/s. The India Cements Ltd. **...Appellant**
Sankarnagar,
Tirunelveli – 627 357.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tirunelveli Commissionerate,
Central Revenue Building,
Tractor Road, NGO "A" Colony,
Tirunelveli – 627 007.

APPEARANCE:

For the Appellant : Mr. R. Anish Kumar, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41010 / 2026

DATE OF HEARING : 15.06.2026
DATE OF DECISION : 08.09.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. India Cements Ltd. (hereinafter referred to as "the appellant") assailing Order-in-Original No. 04/CE/COMMR/2014 dated 05.12.2014 passed by the Commissioner of Central Excise, Tirunelveli (hereinafter referred to as "the impugned order") whereby CENVAT credit amounting to Rs. 8,13,91,044/-

availed by the appellant was disallowed and ordered to be recovered along with applicable interest and Equal penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11A and Section 11AC of the Central Excise Act, 1944.

2. The appellant, engaged in manufacture of cement falling under Chapter 25 of the Central Excise Tariff Act, 1985, avails CENVAT credit under the CENVAT Credit Rules, 2004. The present dispute concerns CENVAT credit availed on the Countervailing Duty (CVD) paid on capital goods imported during 2004, 2005 and 2012 for setting up a captive power plant at Valantharavai Village, Ramanathapuram District. The imports were made by M/s Coromandel Electric Company Ltd. (CECL), a separately incorporated Special Purpose Vehicle established for generation of electricity for captive use by the appellant, in which the appellant initially held 25% shareholding, later increased beyond 51%. The appellant availed credit of the CVD paid by CECL on the ground that the electricity generated was exclusively used in manufacture of its dutiable final products. The Department, however, took the view that since CECL was an independent legal entity distinct

from the appellant, credit of duty paid on goods imported by CECL could not be availed by the appellant and accordingly issued Show Cause Notice Nos.14/2013 dated 04.11.2013 and 11/2014 dated 05.05.2014 proposing recovery of Rs.8,13,91,044/- together with interest and penalty, which came to be confirmed by the Commissioner under the impugned order, giving rise to the present appeal.

3.1 The Ld. Advocate Shri R. Anish Kumar appearing for the appellant submitted that the impugned order proceeds on an unduly technical interpretation of the CENVAT Credit Rules while ignoring the substantive economic and functional realities governing the transaction. It was argued that CECL was incorporated exclusively as a Special Purpose Vehicle for establishment of a captive power generation plant solely intended to supply electricity for manufacture of cement by the appellant. Learned Counsel submitted that the appellant progressively increased its shareholding in CECL beyond 51%, thereby establishing complete control over the subsidiary, and the electricity generated by CECL was used exclusively in the appellant's manufacturing operations. According to the appellant, once the imported capital goods were integrally connected with manufacture of dutiable final products, denial of credit defeats the very object of the CENVAT scheme which is intended to avoid cascading of taxes.

3.2 The Ld. Counsel further contended that the entire exercise is revenue neutral since customs authorities had earlier demanded customs duty from CECL in separate proceedings and the CVD component, once paid, would necessarily become available as credit within the manufacturing chain. It was argued that the substantive benefit of credit cannot be denied merely on account of corporate structuring where the captive power plant was created exclusively for the appellant's manufacturing activities. Reliance was placed upon *Vikram Cement v Commissioner of Central Excise* reported in *2006 (197) E.L.T. 145 (S.C.), Birla Corporation Ltd. v Commissioner of Central Excise* reported in *2005 (186) E.L.T. 266 (S.C.), Bigen Industries Ltd. v Commissioner of Central Excise* reported in *2006 (197) E.L.T. 305 (S.C.), Novapan Industries Ltd. v Commissioner of Central Excise* reported in *2007 (209) E.L.T. 161 (S.C.)* and *Boving Fouress Ltd. v Commissioner of Central Excise* reported in *2006 (202) E.L.T. 389 (S.C.)* in support of the proposition that credit provisions must receive liberal interpretation where goods are used in or in relation to manufacture of final products.

4.1 The Ld. Authorized Representative Ms. O.M. Reena, appearing for the Revenue supported the impugned order and submitted that the dispute does not concern functional nexus of capital goods with manufacture but concerns a far more fundamental legal issue, namely whether one company can legally avail CENVAT credit of duty paid on capital goods imported by another independent company. It was argued that CECL and the appellant are separate juristic entities under company law and cannot be treated as one and the same merely because of shareholding patterns or commercial arrangements. Revenue submitted that the Bills of Entry clearly stood in the name of CECL and customs duty including CVD had been discharged by CECL as importer on record. Under the statutory scheme of the CENVAT Credit Rules, 2004, credit can be availed only by the manufacturer or eligible person satisfying the prescribed statutory conditions and not by another legally distinct entity.

4.2 The Ld. Authorized Representative further submitted that the appellant seeks to selectively disregard the separate corporate existence of CECL solely for availing tax benefits while otherwise treating CECL as an independent company for all legal and commercial purposes. Revenue pointed out that earlier customs proceedings concerning exemption claimed by CECL under Notification No. 21/2002-Cus had already recognized CECL as an independent importing entity and separate proceedings had culminated in adverse orders against CECL. According to Revenue, the statutory conditions governing availment of CENVAT credit cannot be overridden merely on grounds of economic integration or revenue neutrality. It was therefore submitted that the Commissioner has rightly disallowed the irregularly availed credit together with interest and penalty under the impugned order.

5. We have carefully considered the rival submissions advanced by the learned Counsel appearing for the appellant and the Ld. Authorized Representative appearing for the Revenue, perused the Show Cause Notice, impugned Order-in-Original, Bills of Entry relating to imported capital goods, corporate documents relating to CECL, relevant provisions of the CENVAT Credit Rules, 2004, statutory provisions under the Central Excise Act, 1944, and the judicial precedents relied upon by both sides. Upon consideration of the entire records, the following questions arise for determination: -

i. Whether the appellant is entitled to avail CENVAT credit of CVD paid on capital goods imported by CECL, a separate legal entity?

ii. Whether the confirmation of demand of Rs. 8,13,91,044/- together with interest and penalty under the impugned order is legally sustainable in law?

6. We now proceed to examine the aforesaid issues sequentially as they arise for consideration.

Issue No. (i): Whether the appellant is entitled to avail CENVAT credit of CVD paid on capital goods imported by CECL, a separate legal entity?

7. The principal controversy in the present proceedings is not whether the imported capital goods were functionally connected with manufacture of dutiable final products by the appellant, but whether the appellant could legally avail CENVAT credit of Countervailing Duty (CVD) admittedly paid on capital goods imported by another incorporated entity, namely CECL.

8. The Ld. Counsel for the appellant has contended that CECL was incorporated exclusively as a Special Purpose Vehicle for captive power generation intended solely to supply electricity to the appellant’s cement manufacturing unit and that the appellant progressively acquired controlling

shareholding exceeding 51%, thereby establishing complete operational and economic control over CECL.

9. It has further been argued that since the electricity generated by CECL was exclusively used in manufacture of dutiable final products, denial of CENVAT credit defeats the object of the credit scheme intended to avoid cascading of taxes. Learned Counsel has also emphasized revenue neutrality and argued that earlier customs proceedings concerning imports made by CECL demonstrate that Revenue itself had treated both entities as economically integrated and therefore cannot now adopt a contradictory position.

10. In support of the above submissions, reliance has been placed upon the ratio of decisions rendered in *Vikram Cement v Commissioner of Central Excise* reported in *2006 (197) E.L.T. 145 (S.C.), Birla Corporation Ltd. v Commissioner of Central Excise* reported in 2005 (186) E.L.T. 266 (S.C.), Bigen Industries Ltd. v Commissioner of Central Excise reported in *2006 (197) E.L.T. 305 (S.C.), Novapan Industries Ltd. v Commissioner of Central Excise* reported in *2007 (209) E.L.T. 161 (S.C.), Boving Fouress Ltd. v Commissioner of Central Excise* reported in *2006 (202)*

E.L.T. 389 (S.C.) and other decisions in support of the proposition that credit provisions should receive liberal interpretation where goods are ultimately used in manufacture of dutiable final products.

11. The Ld. Authorized Representative for Revenue supported the impugned order and submitted that the dispute does not concern with any functional nexus of the capital goods with the manufacture but the fundamental question whether one company can legally avail CENVAT credit of duty paid on capital goods imported by another independent corporate entity.

12. Thus, Revenue has vehemently contended that CECL and the appellant are separate juristic entities under company law, the Bills of Entry stood exclusively in CECL's name and customs duty including CVD was discharged by CECL as importer of these capital goods. Merely because the appellant holds shareholding in CECL or consumes electricity generated by CECL cannot obliterate CECL's independent legal identity.

13. Revenue further relied upon Rule 2(a), Rule 3(1) and Rule 4(3) of the CENVAT Credit Rules, 2004, contending that credit can be availed only in accordance with statutory conditions by the person legally entitled thereto. Reliance

was also placed on TVS Motor Company Ltd. v State of Tamil Nadu, 2019 (13) SCC 403 for the proposition that tax credit is a statutory concession governed strictly by specified legal conditions.

14. We are unable to accept the appellant's principal contention. It is undisputed that the capital goods were imported by CECL under Bills of Entry filed in its own name, customs duty including CVD was discharged by CECL and the imported machinery remained installed in the power plant owned by CECL. The mere fact that CECL was created as a captive power generation company or that the appellant subsequently acquired majority shareholding cannot erase CECL's independent corporate existence recognized under law. Statutory tax benefits must attach to the legal entity recognized by statute and not merely to the economic beneficiary of the transaction.

15. We also find considerable force in Revenue's submission based upon Rule 2(a)(1A), Rule 3(1) and Rule 4(3) of the CENVAT Credit Rules, 2004. Rule 3 permits availment of CENVAT credit only by a manufacturer or provider of taxable service in the manner contemplated under the Rules. Rule 4(3) specifically permits availment of

credit even where capital goods are acquired through lease, hire purchase or loan arrangement through financing companies. The legislative scheme therefore clearly recognizes only specific legally sanctioned modes by which credit entitlement may arise. In the present case, admittedly the appellant neither imported the goods directly nor acquired the goods under any arrangement contemplated under Rule 4(3). The statutory conditions therefore remain unfulfilled.

16. The appellant has strongly relied upon the judgment of the Hon'ble Supreme Court in *Vikram Cement v Commissioner of Central Excise* reported in *2006 (197) E.L.T. 145 (S.C.).* In that case, the Hon'ble Supreme Court held that MODVAT/CENVAT credit could not be denied on capital goods used in captive limestone mines supplying raw material to the cement manufacturing unit since the mines were integrally connected with manufacture of final products. However, the ratio laid down therein arose in an entirely different factual context. The dispute in Vikram Cement concerned with a single assessee claiming credit in respect of goods used within its own integrated manufacturing operations. The Court was not dealing with a situation where one incorporated entity paid duty and another distinct

corporate entity sought to avail the credit. The principle laid down in Vikram Cement, therefore, cannot be mechanically extended to the present dispute.

17. Similar reliance has been placed upon *Birla Corporation Ltd. v Commissioner of Central Excise* reported in *2005 (186) E.L.T. 266 (S.C.),* where the Hon'ble Supreme Court considered admissibility of credit on ropeway systems transporting limestone from captive mines to the manufacturing unit. Here again, the dispute concerned with the use of capital goods within the integrated manufacturing chain of the same assessee. The controversy before us stands on a fundamentally different legal footing because the appellant seeks to avail statutory credit of duty admittedly paid by another separately incorporated legal entity. The ratio of Birla Corporation Ltd. therefore does not advance the appellant's case.

18. The Ld. Counsel has also relied upon *Bigen Industries Ltd. v Commissioner of Central Excise* reported in *2006 (197) E.L.T. 305 (S.C.), Novapan Industries Ltd. v Commissioner of Central Excise* reported in *2007 (209) E.L.T. 161 (S.C.)* and *Boving Fouress Ltd. v Commissioner of Central Excise* reported in *2006 (202) E.L.T. 389 (S.C.)* in

support of the proposition that beneficial credit provisions should receive liberal interpretation and that substantive tax benefits should not be denied on procedural or technical grounds. There can be no dispute regarding the broad legal principles emerging from these decisions. However, none of these decisions lay down any proposition permitting one legal entity to avail statutory credit arising from duty paid by another independent corporate entity. These decisions deal with interpretation of credit provisions within the statutory relationship between the assessee and the tax statute and do not concern with cross-entity transfer of statutory entitlement of the nature involved in the present case.

19. The appellant has strongly relied upon the earlier customs proceedings arising under Notification No. 21/2002-Cus dated 01.03.2002, including the decision of this Tribunal in *Commissioner of Customs, Tuticorin v. Coromandel Electric Co. Ltd., 2010 (255) E.L.T. 406 (Tri.-Chennai),* involving the very same captive power plant established by M/s Coromandel Electric Company Ltd. (CECL). It has been contended that, in those proceedings, the Department treated the power plant as one established exclusively for supplying electricity to the appellant and denied the benefit of concessional customs duty on that basis. According to the

appellant, Revenue having earlier treated CECL and the appellant as economically integrated entities cannot now adopt a contrary stand by treating them as distinct legal entities for denying CENVAT credit. We are unable to accept this submission. The earlier proceedings arose in an entirely different statutory context concerning eligibility to concessional customs duty under a customs notification and the Project Import Regulations, whereas the present dispute concerns with statutory entitlement to avail CENVAT credit under the CENVAT Credit Rules, 2004. The issues involved, the statutory provisions applicable and the nature of the benefit claimed are entirely different. Therefore, the factual position adopted by the Department while examining eligibility to a customs exemption cannot estop it from applying the independent statutory conditions governing availment of CENVAT credit. The said decision, therefore, does not advance the appellant's case.

20. Further, thus the above decision in the case of Coromandel Electric Company Ltd. [*2010 (255) E.L.T. 406 (Tri.-Chennai)]* arose in an entirely different statutory context concerning classification of the project as a captive power plant *vis-à-vis* power generation project for purposes of concessional customs duty under the Project Import

Regulations read with Notification No. 21/2002-Cus. The issue before the Tribunal in that case was whether the imported project qualified for concessional rate of customs duty and whether the power plant was effectively dedicated to captive consumption by India Cements Ltd. The present dispute, however, concerns a fundamentally different question under the CENVAT Credit Rules, 2004, namely whether statutory credit of duty paid on imported capital goods can legally be availed by another separate incorporated entity which neither imported the goods nor discharged the duty liability. Merely because Revenue adopted a particular factual position while interpreting a customs exemption notification cannot alter the independent statutory conditions governing availment of CENVAT credit. We also note that the Civil Appeal preferred against the aforesaid Tribunal decision is stated to be pending before the Hon’ble Supreme Court and therefore the said decision cannot advance the appellant’s case in the present proceedings.

21. We also find no merit in the appellant’s argument that the shareholding pattern between the appellant and CECL should justify treating both the companies as one economic entity. It is well settled that

majority shareholding or even complete ownership of shares does not destroy the separate corporate identity of a subsidiary company. The doctrine of separate juristic personality remains fundamental to company law and cannot be selectively disregarded merely because such disregard would yield tax advantage in a particular case. The appellant seeks to treat CECL as an independent corporate entity for all commercial purposes while simultaneously inviting this Tribunal to disregard CECL's separate existence solely for availing tax credit. Such selective lifting of the corporate veil is legally impermissible.

22. Revenue has rightly relied upon the judgment of the Hon'ble Supreme Court in *TVS Motor Company Ltd. v State of Tamil Nadu and Others* reported in 20*19 (13) SCC 403,* wherein the Court reiterated that tax credit is not an inherent or vested right but a statutory concession governed entirely by the conditions prescribed by legislation. The principle emerging from this judgment directly supports Revenue's contention that the right to avail credit cannot be claimed merely on grounds of equity, economic integration or business convenience where the statutory conditions themselves do not recognize such entitlement.

23. In the final analysis, the appellant's entire case proceeds on the assumption that economic integration and functional nexus are sufficient to create statutory entitlement. In our considered opinion, this assumption is fundamentally erroneous. The CENVAT Credit Rules do not recognize any principle by which credit legally accruing to one incorporated entity may automatically stand transferred to another merely because both entities are commercially interconnected. The imported goods were neither imported by the appellant nor duty paid by the appellant. Consequently, the statutory entitlement to avail credit never legally accrued to the appellant.

24. We therefore hold that M/s. India Cements Ltd. is not legally entitled to avail CENVAT credit of Countervailing Duty paid on capital goods imported by M/s Coromandel Electric Company Ltd. (CECL), notwithstanding the captive power arrangement, economic integration or shareholding relationship existing between the two companies.

25. Accordingly, Question No. (i) is answered against the appellant and in favour of Revenue.

Issue No. (ii): Whether the demand of Rs. 8,13,91,044/- together with interest and penalty confirmed under the impugned order is legally sustainable?

26. The Ld. Counsel for the appellant submitted that the availment of CENVAT credit was based on a bona fide interpretation of the CENVAT Credit Rules, that the entire arrangement involving CECL was fully disclosed to the Department and that the dispute is purely interpretational. It was further contended that the transaction is revenue neutral since customs duty, including the CVD component, had already been discharged by CECL and, therefore, neither the demand nor the consequential interest and penalty are sustainable.

27. The Ld. Authorized Representative, on the other hand, contended that once the credit itself is held to be inadmissible, recovery necessarily follows under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. According to Revenue, the plea of revenue neutrality cannot validate a credit availed contrary to the statutory provisions or defeat recovery of inadmissible credit.

28. We find merit in the submissions of the Revenue. Having already held that the appellant was not legally

entitled to avail the disputed CENVAT credit, recovery of the same under Rule 14 of the CENVAT Credit Rules, 2004 is the inevitable statutory consequence. The plea of revenue neutrality also cannot assist the appellant, as equitable considerations cannot create a substantive right where the statute does not confer one.

29. We are equally unable to accept the appellant's contention that interest and penalty are liable to be set aside merely because the dispute involves interpretation of law. The appellant admittedly availed credit of more than Rs. 8 crores on capital goods imported by another independent corporate entity without any statutory provision permitting such availment. Consequently, recovery of statutory interest, being compensatory in nature, follows automatically. In the facts of the present case, we also find no infirmity in the imposition of equal penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004.

30. We, therefore, uphold the confirmation of inadmissible CENVAT credit amounting to Rs. 8,13,91,044/-, together with applicable interest and equal penalty under

law. Accordingly, Question No. (ii) is answered against the appellant and in favour of Revenue.

31. In view of the foregoing findings, we hold that the appellant was not entitled to avail CENVAT credit of the Countervailing Duty paid on capital goods imported by M/s Coromandel Electric Company Ltd. (CECL), a separate incorporated legal entity. The demand of Rs. 8,13,91,044/-, together with applicable interest and equal penalty confirmed under the impugned Order-in-Original, is therefore legal and sustainable.

32. Accordingly, the appeal filed by M/s. India Cements Ltd. is dismissed and Order-in-Original No. 04/CE/COMMR/2014 dated 05.12.2014 is upheld.

(Order pronounced in open court on 08.09.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

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

MK