CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.4

Service Tax Appeal No.50715 Of 2017

[Arising out of Order-in-Original No. 01/Commr/ST/JBP/2017 dated 05.01.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Jabalpur]

M/s Gajraj Mining Private Limited : **Appellant**
Sahu Building, behind Telephone exchange
Nehru Nagar, Panjreh, Singruli

Vs

Commissioner of Central Goods and Service Tax, Customs and Excise, Jabalpur : **Respondent**
C.R. Building, Mission Chowk, Napier
Town Jabalpur, Madhya Pradesh

APPEARANCE:
Ms.NikitJaju, Advocate for the Appellant
Shri Harshvardhan, Authorized Representative for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50307/2025

Date of Hearing:04.11.2024

Date of Decision:13.02.2025

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Gajraj Minning Private Limited[1] to assail the impugned Order-in-Original No. 01/Commr/ST/JBP/2017 dated 05.01.2017 wherein the Commissioner has confirmed the demand amounting to Rs. 2,17,62,752/- along with interest and levied equal penalty.

2. The brief facts of the case are that the appellant is holding Service tax Registration No. AADCG9684LSD001 for performing the services of Site preparation and clearance and other services defined

1 the appellant

under section 65(105)(zzza) of the Finance Act, 1994 and are also availing the cenvat credit on capital goods and input service under the provisions of Cenvat Credit Rules, 2004. During the course of Audit of records of the appellant for the period up to March 2013, it was noticed that the appellant was availing Cenvat Credit on input, capital goods and input services used in providing such output service. In the financial year 2011-12, the appellant had availed Cenvat Credit of 50% of excise duty paid i.e. Rs.1,08,81,376/- on 41 dumpers as Capital Goods and remaining 50% amount of Cenvat Credit was availed in the month of April, 2012. From 22.6.2010, the Cenvat Credit on dumper or tipper falling under Chapter Heading 87 and its component were available to output service provider providing service of site formation and clearance, excavation, mining service subject to condition that such dumpers or tippers are registered in the name of service provider. On scrutiny of the documents provided by the appellant during audit, it was revealed that the subject dumpers/tippers on which credit was availed by the appellant, were received from M/s SREI Equipment Finance Pvt. Ltd. (SEFPL) under operating lease agreement and reportedly at the relevant period registered in the name of the said company (SEFPL) and not in the name of the appellant who was providing output service. Accordingly, a show cause notice dated 17.10.2016 to the appellant required to show cause:-

(i) Cenvat Credit availed amounting to Rs.2,17,62,752/- (Rupees two crore seventeen lakhs sixty two thousands seven hundred and fifty two only) on Dumpers/tippers which are not registered in their name should not be dis- allowed and recovered along with interest from them under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73 and interest should not be recovered under Section 75 of the Finance Act, 1994.

(ii) The penalty should not be imposed upon them under Rule 15(3) of the Cenvat Credit Rules Rules, 2004 read with Section 78 of the Finance Act, 1994.

On adjudication, the Commissioner confirmed the demand for the recovery of the Cenvat credit amounting to Rs. 2,17,62,752/- along with interest and equal penalty. Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that in term of the definition of 'capital goods' as given in Rule 2(a) of the Cenvat Credit Rules, 2004, the capital goods are those goods which are specified in this Rule and which (except for office equipment or appliance) are used in the factory of the manufacturer of the final products or for providing of output service. Thus any item which is covered by the list of the items mentioned in Rule 2(a) of the Cenvat Credit Rules, except for office equipment or office appliances, and is used in any manner in the factory of the manufacturer of the final products, would be covered by the definition of the capital goods and accordingly would be eligible for Cenvat credit. There is absolutely no requirement that the capital goods at the time of receipt must be owned by the manufacturer.

3.1 Learned counsel further submitted that in terms of Notification No. 25/2010 dated 22.06.2010, definition of capital goods was inserted in Rule 2 of Cenvat Credit Rules, 2004. The said definition, laid down that dumpers and tippers on which such credit is taken shall be registered in the name of the service provider. Thereafter, vide Notification No. 28/2012 dated 20.06.2012, effective from 01.07.2012, cenvat credit became available to all providers of output service. Thus, it was not the intention of the legislature that the registration of dumpers/tippers be in the name of the service provider only during the relevant period. What the law requires is use of capital goods for the purpose of manufacture. The same has not been disputed by Revenue and mandate of the statute is that capital goods should be installed in a factory or in the premises of the provider of output service, for allowance of Cenvat credit on the capital goods. Such essential condition was satisfied. Therefore, denial of Cenvat credit on the capital goods to appellant is uncalled for.Ld. counsel further submitted that since dumpers/tippers fall under the category of "Capital Goods" after the amendment in 2010, the issue that "capital goods are eligible for cenvat credit" has been dealt in favour of appellant by following decisions:-

- **Vikram Cement vs. Commissioner of Central Excise, Indore**[2]
- **Madras Cements Ltd. vs. Commissioner of Central Excise, Chennai**[3]
- **Commissioner of Central Excise, Bhopal Vs. Hindustan Copper Ltd**[4]

It is the case of the appellants that ownership of goods is not a criterion for denial of credit on capital goods and even if it is leased for a particular period, the assesse/appellant is eligible to take Cenvat credit. In support of her submission, ld. Counsel relied upon the following decisions:-

- **Commissioner of Central Excise, Ludhiana vs. Pepsi Foods Limited**[5]
- **His Automotives Limited vs. Commissioner of Central Excise, Chennai**[6]

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2 2006 (197) E.L.T. 145 (S.C.)
3 2010 (257) E.L.T. 321 (S.C.)
4 2016 (342) E.L.T. 282 (Tri. Del.)
5 2010 (254) ELT 284 (P & H)

- **Commissioner of Central Excise, Chennai-IV vs. ILGIN Automotive (P) Limited**[7]
- **JSW Steel Limited vs. Commissioner of Central Excise, Salem**[8]
- **Sharda Motors Industries Limited vs. Commissioner of Central Excise-Chennai-II**[9]
- **Gaurav Contract Co vs. CCE & ST-Rajkot**[10]

3.2 On the issue of extended period, the ld. counsel submitted that as per section 73 of the Act, in a normal case a show cause notice can be issued at any time within one year from the relevant date. Proviso to section 73(1) of the Act provides that show cause notice can be issued at any time within 5 years from the relevant date, if tax was not paid or levied by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules with intent to evade payment of such tax. Thus, the extended period of limitation is applicable only if any of the ingredients specified above exists. In the present case, the appellant has been filing their ST-3 returns since their registration, had been maintaining regular books of accounts and were also filing the returns regularly. It was the department that did not take timely steps to scrutinize or assess the ST-3 returns. Thus, the department cannot invoke the extended period of limitation by alleging suppression of facts. In support of her submission, she relied upon the decision of the Tribunal in the case of **M/s Gaurav Contract Co (supra).**

3.3 Learned counsel also contended that the impugned order has not recorded any proper reasoning for invoking extended period of

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6 2004 (163) ELT 116 (Tri.-Chennai)
7 2014 (299) ELT 129 (Mad.)
8 2014 (307) ELT 929 (Tri.-Chennai)
9 2002 (150) ELT 759 (Tri.-Del.)
10 Final Order No. A/11276/2020

limitation and has proceeded irrationally to invoke penal provisions against the Appellant. In additional submission, ld counsel submitted that the impugned order holds that the appellant was not conferred with the ownership of the capital goods and, therefore, even if Rule 4(3) of the CCR, 2004, allows for CENVAT Credit on capital goods taken on lease, rent or hire purchase, the appellant cannot be granted benefit of the same as Rule 2(a) of the CCR, 2004, specifically contends that the registration of the dumper/tippers (which fall into the category of capital goods) should be in the name of the output service provider. The ld. Counsel contended that liberal interpretation should be accorded where there are two inconsistent statutory Rules. Also more accord should be given to the colour of the content and the context of the statute rather than with its literal meaning.The amendment in the definition of capital goods w.e.f. 22.06.2010 resulted in confusion regarding the eligibility of CENVAT Credit on capital goods not registered in the name of the output service provider whereas Rule 4(3) of CCR, 2004, clearly stated that *"The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company."*It is pertinent to mention herein that the appellant had acquired the capital goods, vis-à-vis, dumpers/tippers, on lease from a financing company and as always it was their bonafide belief that they were eligible for CENVAT credit during the relevant period too and as such did not take registration of the capital goods in their name and have not suppressed any material fact with the intention to evade payment of service tax.

3.6 Ld. Counsel further submitted that the necessary ingredients for invoking the larger period of limitation contemplated under the proviso to section 73 (1) of the Finance Act, namely wilful suppression of facts with an intent to evade payment of service tax do not exist and, therefore, the extended period of limitation could not have been invoked. In support of her submission, ld. Counsel relied upon the following case laws:-

- **Phushpam Pharmaceutical Company vs. Collector of Central Excise, Bombay**[11]
- **Bharat Hotels Limited vs. Commissioner of Central Excise (Adjudication)**[12]
- **M/s Mount Everest Breweries Limited vs. Commissioner of CGST & Central Excise, Indore**[13]

In view of above submission, ld. Counsel prayed that the impugned order cannot be sustained and should be set-aside with consequential relief to the appellant.

4. Learned Authorized Representative for the Revenue while reiterating the findings of the impugned order, submitted thatin the definition of Capital Goods, provided in Rule 2(B) of Cenvat Credit Rules, 2004, credit of motor vehicles are restricted for the service providers classifiable under sub- clauses (f), (n), (o). (zr). (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act, 1994. Therefore, the Cenvat Credit on the motor vehicle used for providing Commercial or Industrial Construction Service, taxable under Section 65(105) (zzq) taxable with effect from 10.09.2004, Site preparation service, taxable with effect from 16.05.2005 under section 65(105),

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11 1995 (3) SCC 462
12 2018 (12) GSTL 368 (Del.)
13 Final Order No. 50802 of 2023

(zzza) and Mining service, taxable with effect from 01.06.2007 under section 65(105) (zzzy) of the Finance Act, 1994, was not available to the assessee. Therefore, the definition of 'input' as provided in Rule 2(k) of Cenvat Credit Rules, 2004 also does not include the motor vehicles used for providing any output service.However, with effect from 22.06.2010 the said credit is available to the appellant on Dumper and Tipper as provided in notification No. 25/2010 dated 22.06.2010. In terms of the said Notification, the definition of capital goods in clause (C) was inserted. In the CENVAT Credit Rules, 2004, in rule 2, in clause (a), after sub-clause (B), the following sub-clause was inserted, namely:-

"(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) and (zzzv) of clause (105) of section 65 of the said Finance Act.

Further vide Notification No. 3/2011-Central Excise (N.T.) dated 01.03.2011, effective from 01.04.2011 Rule 2(k) was substituted as under which does not allow credit of any motor vehicle as input.

5. Ld. AR further submitted that the decisions cited by the appellant are not relevant to the present case in as much as the said decisions were with reference to erstwhile provisions of Cenvat Credit Rules, 2004 i.e. prior to 22.06.2010 and the impugned show cause notice is issued in respect of cenvat credit availed w.e.f 22.06.2010 by the appellant on Dumpers and Tippers as provided in notification No. 25/2010 dated 22.06.2010. In terms of the said Notification, the definition of capital goods in clause (C) was inserted which specifically mentioned that cenvat credit can be availed on dumpers/tippers

provided such dumpers/tippers should be registered in the name of service providers. When such dumpers/tippers was not registered in the name of the appellant in the RTO the cenvat credit availed would be inadmissible. He further that aforesaid decisions were pertaining to period prior to 22.06.2010 of the Cenvat Credit Rules, 2004 and hence of no relevance to the case on hand. The other contention of the appellant is that Rule 4(3) of Cenvat Credit Rules, 2004 provides that cenvat credit in respect of the capital goods shall be allowed to a provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from the financing company. The said plea cannot be accepted as the definition of Capital goods in term of the Notification No.25/2010-CE (NT) dated 22.06.2010 was amended and a clause (C) was inserted in the Rule 2 (a) of Cenvat Credit Rules, 2004 which specifically mentioned that the dumpers or dippers falling under Chapter 87 should be registered in the name of the output service provider for availing cenvat credit. The said provisions remained till 30.06.2012 and therefore the contention of the appellant in this regard cannot be acceded.

6. Ld. AR further submitted that as regards the appellant contention that the extended period cannot be invoked on the ground that their unit ought to be audited every year. The said contention of the appellant does not merit consideration on the ground that the definition of capital goods in terms of Rule 2(a) (C) of Cenvat Credit Rules, specifically says that in order to avail the credit the dumpers and tippers the same should be registered in the name of the service provider. The appellant should be aware of the said Rules and should not have availed the cenvat credit and thus had suppressed the

material facts. The availment of cenvat credit itself shows and proves that they had taken cenvat credit had been taken malafidely with a intent to evade payment of service tax. Even if the audit has been conducted during 2011-12, the suppression would have been applied and the extended period would have been invokable.

7. We have heard the Ld Counsel for the appellant and the Ld authorised Representative for the Department, and perused the records.

8. We note that the issue relating to availment of Cenvat Credit on Dumpers/Tippers prior to 22.06.2010 is no more res integra. The Ld Counsel has relied on the decision of Commissioner of Central Excise, Bhopal vs Hindustan Copper Ltd [2016 (342) ELT 282(Tr. Del)] in the regard. We also note that this Tribunal in the case of Comissioner, C.Ex & CGST, Delhi-III vs Brahmaputra Infrastructure Ltd., in Service Tax Final Order No. 52459/2018 dated 06/07/2018has held as follows:-

> "7. The limited point in appeal is regarding the eligibility of Cenvat credit for tippers/dumpers. Though the Department issued show cause notice proposing to deny such credit, the Adjudicating Authority has allowed the benefit of Cenvat credit both on merits as input under Rule 2 (k) as also on limitation.
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> 8. We note that the issue of eligibility of Cenvat credit on tippers and dumpers already stand decided on merit in favour of the respondent by this Tribunal in the case of Soumya Mining Ltd. (supra), in which the Tribunal has observed that :-
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> "6. There is no dispute about the fact that earth moving equipments such as dumpers are being used by the appellant to

provide output service. We are of the view that dumpers even if classifiable under Chapter 87, can be considered within the definition of inputs, as per Rule 2(k) of the Cenvat Credit Rules, 2004. The definition of inputs as applicable for service provider is given in Rule 2(k)(ii).

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Consequently, the appellant would be eligible for Cenvat credit 6 ST/53655 of 2015 on dumpers / tippers as inputs which are used for providing the output service. However, the controversy stand resolved with effect from 22/06/2010 with issue of notification No. 25/2010-CE which has amended the Cenvat Credit Rules to allow Cenvat credit for dumpers / tippers registered in the name of service provider for providing taxable service for providing site formation etc."

9. However, with the introduction of the Notification 25/2010 dt 22.06.2010, the statutory position changed. The said Notification is reproduced hereinafter for ease of reference:-

"Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 22 nd June, 2010.

Notification No. 25 / 2010 - Central Excise (N.T.)

G.S.R. (E). – In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:- 1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2010. (2) They shall come into force on the date of their publication in the Official Gazette. 2. In the CENVAT Credit Rules, 2004, in rule 2, in clause (a), after sub-clause (B), the following sub-clause shall be inserted, namely:- "(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) and (zzzy) of clause (105) of section 65 of the said Finance Act;" .

10. With the said amendment in the Cenvat Credit Rules, we note that the definition of capital goods in clause (C) was inserted to provide availment of Cenvat credit on Dumpers/Tippers provided such dumpers and tippers are registered in the name of the service provider. As noted above, when there was ambiguity in the said Rules, the Tribunal and other Appellate forum allowed the credit on such dumpers/tippers following the Apex Court decision in the case of Belani Ores Ltd. Etc. vs. State of Orissa Etc. [1975 AIR 17, 1975 SCR (2) 138]. However, once a specific provision had been inserted in the Cenvat Credit Rules, 2004, it would have to be given a strict interpretation. In the present case, we note that the dumpers/tippers on which Cenvat credit had been availed, was not registered in the name of the appellant, as it was in the name of SREI Equipment Finance Pvt Ltd. As the aforesaid notification clearly laid down that such credit could be availed only if the dumpers/tippers were registered in the name of the service provider, the same was not available to the appellant. We rely on the decision of Hon'ble Supreme Court in the case of Commissioner of Cus (Import), Mumbai vs Dilip Kumar & Company [2018 (361) ELT 577 (SC), wherein the it was held that

statute has to be construed according to the intention of the Legislature. The Court went on to hold that Words in a statute when clear, plain and unambiguous, only one meaning can be inferred. The relevant paras are reproduced hereinafter:-

> "**41.** After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.
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> **42.** In *Govind Saran Ganga Saran* v. *Commissioner of Sales Tax,* 1985 Supp (SCC) 205, this Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See *Mathuram Agrawal* v. *State of Madhya Pradesh,* (1999) 8 SCC 667; *Indian Banks' Association* v. *Devkala Consultancy Service*, (2004) 4 JT 587 = AIR 2004 SC 2615; and *Consumer Online Foundation* v. *Union of India,* (2011) 5 SCC 360.].
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> **43.** There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute

should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

11. We also note that vide Notification no. 3/2011-CE(NT) dated 01.03.2011, Rule 2(k) of the Cenvat Credit Rules was amended to disallow credit on any motor vehicle as input. Therefore, we are in agreement with findings in the impugned order in this regard. As regards interest, we note that Supreme Court in the case of Pratibha Processors & Ors vs Union of India & Ors[AIR 1997 SUPREME COURT 138] has held that "Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and

when it is due and payable." Accordingly, the demand for interest is also upheld.

12. With respect to the extended period of limitation and imposition of penalty equal to the demand of Cenvat credit under Rule 14, we note that prior to the said notification, the issue was settled in the favour of the appellant by several decisions of the Tribunal and other appellate fora. The appellant was under the genuine belief that the Cenvat credit on such dumpers/tippers were available to him, under Rule 4(3) of the said Rules. There is no evidence of their intention to evade duty. Thus, we are of the opinion that the penalty under Rule 14 is not attracted. The demand for the extended period is set-aside.

13. Accordingly, the impugned order upholding the demand of cenvat credit, and the interest thereon for the normal period is upheld. We set-aside the penalty imposed under Section 14 of the Cenvat Credit Rules. In view of the foregoing, we partially modify the impugned order to the extent indicated above. The appeal is allowed to this extent.

(Order pronounced in the open Court on 13.02.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.