

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 54729 of 2023

[Arising out of Order-in-Appeal No. 01(RLM)/CE/JPR/2023 dated 31.01.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Stonex India Pvt. Ltd.

...Appellant

Khasra No. 209, 210, 210/1,
Makrana Road, Village Rahimpura,
Kishangarh, Ajmer, Rajasthan

VERSUS

**Principal Commissioner of CGST
and Central Excise - Jaipur**

...Respondent

NCR Building, Statue Circle,
C-Scheme, Jaipur,
Rajasthan - 302005

APPEARANCE:

Shri Arun Goyal, Advocate for the Appellant

Shri V.J. Saharan, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 08.05.2025

DATE OF DECISION: **04.09.2025**

FINAL ORDER NO. 51277/2025

DR. RACHNA GUPTA

M/s Stonex India (P) Ltd. are engaged in the manufacturing of Marble Slabs & Tiles. Whereas, during the course of AG audit and on scrutiny of record of the appellant, it was observed that the appellant used TMT bar (406.400 MT) and cement (24300 bags) in factory premises and has taken cenvat credit of Rs. 19,92,692/- during the period 09/2016 to 06/2017 despite that those goods are not falling under the definition of the capital goods. Hence, the goods were not eligible for availment of Cenvat Credit. Department formed the opinion that appellant appears to have wrongly availed the CENVAT Credit amounting to Rs. 19,92,693/- (including cesses) on Cement and TMT BAR, treating them as Capital Goods.

1.1 With these observations show cause notice bearing No. 65/2020-21 dated 03.09.2020 was served upon the appellant proposing reversal of Cenvat Credit of Capital Goods amounting Rs. 19,92,693/- availed wrongly during the period 09/2016 to 06/2017 along with interest on the said Cenvat Credit amount and appropriate penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The said proposal was confirmed vide order in original (O-I-O) bearing No. 01/2021-22 dated 08.04.2021. The appeal against the said order is rejected vide order in appeal (O-I-A) bearing No. 01/2023 dated 31.01.2023. Being aggrieved, appellant is before this tribunal.

2. I have heard Shri Arun Goyal, Advocate for the appellant and Shri Vishwajeet Saharan, Authorized Representative for the respondent.

3. Learned counsel for appellant submitted that the goods on which Cenvat credit has been availed have been used in laying of capital goods to be used in the factory of appellant for manufacture of final product i.e. EOT long Travel Rail, EOT Crane machine, Water Sedimentation, Two Block Dressing Machines, Two Gantry Crane machines and Three Gangsaw Machines. Appellant has been clearing the so manufactured goods on payment of duty. That the Chartered Engineer and CA certificate were enclosed to this effect. It is submitted that the Revenue, has not discharged its burden to establish that cement and TMT bars have been used in Civil Construction. The Balance Sheet of appellant also reflects that there was no civil construction during the disputed period. That the adjudicating authorities below had relied upon the decision of **M/s.**

Vandana Global Ltd Vs CCE Raipur of Hon'ble CESTAT Large

Bench, without appreciating that the same is no longer a good law having been set aside by the Hon'ble High Court, Delhi. That the issue in hand is settled position of law in catena of decisions. Learned counsel finally submitted that the show cause notice has wrongly invoked the extended period of limitation. The demand is based on appellant's own documents and the returns were being regularly filed. Hence, the order is liable to be set aside of ground of limitations also. In view thereof, it is prayed that the appeal may be allowed with consequential relief while setting aside the impugned Order-in-Appeal.

4. While rebutting these submissions learned Departmental Representative submitted that after the amendment of definition of 'inputs' vide Notification No. 16/2009 dated 07.07.2009, items like cement, CTD Bars, Tibber, TMT bars are not eligible for availment of CENVAT credit. It is submitted that Notifications become part of statute and have to be given strict interpretation especially where no ambiguity is pointed out. It is further submitted that the appellant has used TMT Bar (406.400 MT) and Cement (24300 bags) during the period under consideration hence the issue is required to be resolved in the light of Rule 2(a) and 2(k) of the CCR, 2004 to check whether the eligibility of the appellant for availment of CENVAT credit of duty paid on the impugned items.

5. Though the appellant have contended that the impugned TMT Bars and cement have been used in laying of spares of Capital goods such as machines EOT Long Travel Rail, EOT Crane Machine, water sedimentation, two block Dressingmachines, two Gantry Crane machines and three gang saw machines. It was also contended, that without usage of these components, capital goods

cannot be installed and cannot be made functional. However, the appellant could not produce any documentary evidence to establish which particular parts or components of machineries (EOT Long Travel Rail, EOT Crane Machine, water sedimentation etc.) making/maintaining them functional have been laid on the construction raised using the impugned items.

6. It was further submitted that merely saying that the impugned items have been used not for construction of factory building or laying foundation or building support structure but for fabricating parts/components of machinery is not sufficient to make out strong case in favour of the appellant. The Board also issued Circular F.No. 267/11/2010 CX-8 dated 08.07.2010 to further clarify the issue based on decisions of various Hon'ble Courts/Tribunals. On the basis of Larger Bench of Hon'ble Tribunal decision in the case of Vandana Global Ltd and on the basis of Hon'ble SC decision in Vikram Cements the matter of admissibility of credit on capital goods and inputs has been put on rest in favour of the Revenue. With these submissions, the appeal is prayed to be dismissed.

7. Having heard both the parties, I observe that the issue to be adjudicated is: -

“Whether Cenvat Credit is rightly denied on Cement TMT Bar, Tibber etc used in the manufacturing unit of the appellant?”

8. The appellant is admittedly, the manufacture of marble slab and tiles and the manufacturing unit requires several machines as mentioned by the appellant like EOT long Travel Rail, EOT Crane

machine, Water Sedimentation, Block Dressing Machines, Gantry Crane machines and Gangsaw Machines. It is the contention of the appellant that the TMT bar and the cement have been used in construction for laying of said machines / capital goods. However, department has invoked explanation 2 of Rule 2 (a) of Cenvat Credit Rules 2004 (CCR) 2004).

9. I have perused the said rules and explanation it read as follows: -

Rule 2 Definitions. In these rules, unless the context otherwise requires: -

(a) "capital goods" means

(A) the following goods namely

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 [heading 6805, grinding wheels and the like, and parts thereof falling under (heading 6804 and wagons of sub-heading 860692)] of the First Schedule to the Excise Tariff Act;

(ii) Pollution control equipment

(iii) Components, spares and accessories of the goods specified at (i) and (ii)

(iv) Moulds and dies, jigs and fixtures

(v) Refractories and refractory materials

(vi) Tubes and pipes and fittings therefore

(vii) Storage tanks

(viii) motor vehicle other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis (but excluding dumpers and tippers)

Used-

(1) In the factory of the manufacturer of the final products

[(1A) outside the factory of the manufacturer of the final products for generation of electricity (or for pumping of water) for captive use within the factory, or

(2) For providing output services.

10. Further, in the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, in clause (k), in Explanation 2 thereof, reads as under-

Explanation 2- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, but shall not include cement, angles channels, Centrally, Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

The perusal makes it clear that the TMT bar and cement etc shall not be input / capital goods in case those are used in construction of factory shed, building or laying of foundation or making of structure for support of capital goods.

11. Appellant has produced the Chartered Accountant certificate wherein it has been certified that the appellant company has availed the cenvat credit of Rs. 19,92,603/- during the period from October 2016 to March 2017 as per the heads shown in the annexure below. The said document is admissible into evidence. I draw my support from the decision in the case of **Akasa Electronics Ltd. Vs. Commissioner of Customs, Mumbai reported as 2016 (343) ELT 362.**

12. The department has not produced any documents to falsify the said certificate. The burden of proof on department remains undischarged. I draw my support from the decision of the Hon'ble Supreme Court in the case of **Parimisetti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad reported as 1966 SCR (1) 8 SC.** However, for the period from 07.07.2009 to April

2011, the definition of 'input' under Rule 2(k), the Explanation 2 has been inserted to the said definition vide Notification No. 16/2009-CE(NT) dated 07.07.2009. Consequently, the items vis., HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS Plates, etc. has been specifically excluded from the scope of the definition of 'inputs'. Thus the issue is no longer *res intergra*, as far as the period prior to 07.07.2009 is concerned. It is covered by the judgment of this Tribunal rendered in the case of **BMM Ispat Ltd. Vs. CCE, Belgaum vide Final Order No. 20270-20271/2024** wherein this Tribunal had elaborately discussed the ratios rendered in the case of **Vandana Global Ltd. (supra) and Thiru Arooran Sugars Vs. CESTAT, Chennai reported as 2017 (355) ELT 373 (Mad.)** and also decision of Larger Bench of this Tribunal in the case of **Mangalam Cement Ltd. Vs. CCE, Jaipur-I reported as 2018 (360) ELT 737 (Tri.-LB)**, wherein it is held that Cenvat credit on various inputs such as MS Angles, MS Channels, MS beams, MS joists, MS plates, etc., used in the fabrication of various machineries, support structure, platforms for machineries and equipment, etc., used in the factory, is admissible. However, for the period 07.07.2009 onwards, Cenvat credit on MS Angles, TMT bars, Cement, HR Sheets etc. used for laying foundation of capital goods is not available. The period in dispute is beyond 07.07.2009.

13. Coming to the plea of demand being barred by limitation, I observe that the amount in question of Cenvat credit availed pertains to the period Sep 2016 to June 2017. However, the reversal thereof was proposed vide show cause notice dated 03.09.2020 i.e. beyond the period of limitation. It is observed that the appellant admittedly was submitting the copy of bills / invoices

for availment of cenvat credit to the department regularly along with the returns also. There is no denial to the facts that the goods for fabrication were manufactured in the factory premises of the appellant and the contractor were paid for which appellant was maintaining proper record which were duly examined by the auditor without any objections ever raised prior the impugned show cause notice. It has already been observed that department has not produced any evidence neither with respect to merits of the case nor about any positive act on part of the appellant to have an intent to evade payment to Revenue. In the light of these apparent facts I hold that it is wrongly alleged that the appellant has concealed or suppressed any facts from the department.

14. The appellant has pleaded that there was a bona fide belief that the cenvat credit was admissible to them and accordingly the same was reflected in the books of account and regular returns which were submitted to the department. Department has failed to produce any evidence of alleged mala fide on party of the appellant. I draw my support from the decision of this Tribunal in the case of **Mega Trends Advertising Ltd. reported as 2020 (38) GSTL 57 (Tri. All.)** wherein it is held that Balance Sheet and Profit and Loss Accounts are public documents. Since the income of assessee is already reflected in those documents, it cannot be said that the assessee has suppressed or misstated any facts. Invocation of extended period is not justified. Resultantly I hold that the proposal of reversing cenvat credit issued beyond the normal period gets hit by the principal of limitation. I draw my support from the decision of Hon'ble Supreme Court in the case of **Union of India Vs. Ashok Kumar reported as 2005 (8) SCC 760**, wherein it

held that it cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. Allegations of *mala fides* are often more easily made than proved and the very seriousness of allegations demand proof of a high order of credibility. Burden of proof of proving malafide conduct under the proviso to Section 73 of the Act lies with the Revenue. That in furtherance of the same, specific averments should find mention in the show cause notice, which is the mandatory requirement for commencement of the action under the said proviso, and displays a willful default on the part of the assessee, extended period of limitation under the said provision could not be invoked against the assessee.

15. Reliance is also placed on another decision in the case of **Tamil Nadu Housing Board v/s Collector of Central Excise, Madras - reported in 1994 (74) ELT 9**, wherein it was held that limitation for extended period is invokable only if existence of both situations (1) suppression, fraud, collusion etc. and (2) intent to evade payment of duty proved. The initial burden rests on Department. Accordingly, I hold that the show cause notice is barred by time.

16. In the light of entire above discussion, it is held that the Cenvat credit on cement and TMT Bars used for laying foundation of the capital goods in the manufacturing unit was available only prior 07.09.2009. However the impugned show cause notice is held to be barred by limitation. Confirmation of demand proposed under such show cause notice is not sustainable. The question framed above stands answered accordingly. Resultantly, the order under

challenge i.e. O-I-A dated 31.01.2023 is hereby set aside.
Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **04.09.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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