

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No. 50429 of 2018

(Arising out of Order-in-Original No. 42/COMMR/CEX/JBP/2017 dated 14.11.2017 passed by the Principal Commissioner, Central GST, Central Excise & Customs, Jabalpur (MP).

M/s Hindalco Industries Limited

Appellant

(Mahan Aluminium), NH-75,
Orgari, Bargawan,
Singrauli, M.P. 486886

Versus

**Commissioner, Central GST, Central Excise
& Customs, Jabalpur.**

Respondent

GST Bhawan, Mission Chowk,
Napkier Town, Jabalpur
Madhya Pradesh.

Appearance

Shri Amit Jain, Advocate

- for the appellant

Shri S.K. Bansal, Kumar, DR
Shri R.K. Mishra, DR

- for the respondent

**Date of Hearing: 13.12.2018
Date of Decision: 29.05.2019**

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 50752/2019

Per **Bijay Kumar** :

The present Appeal is directed against the order passed by the Commissioner, Central Excise, Jabalpur, being No. 41/COMMR/CEX/JBP/2017 dated 14.11.2017 passed against the Appellant, by which demand of Rs. 8,49,16,924/- along with equal

penalty has been confirmed and also recovery of interest thereon. In the impugned order, the Cenvat credit reversed to the extent of Rs. 53,31,776/- was also ordered to be appropriated against the aforesaid demand. Being aggrieved by the said order, the Appellant has filed the present Appeal.

2. The facts of the case are that the Appellant is engaged in the manufacture of Aluminium products falling under Chapter 76 of the First Schedule to Central Excise Tariff Act, 1985. The Appellant has availed the Cenvat credit on various input services received in the course of acquisition of land (for industrial use), wherein the Appellant had to pay appropriate compensation for acquisition of land and also had to resettle the persons who had been displaced by constructing the residential accommodation under the rehabilitation and resettlement policy, for setting up its 'Mahan Aluminium Smelter Plant' at village Bargawan, Distt. Singrauli, M.P. The Appellant acquired a piece of land in a remote village after paying compensation for acquisition of land and after construction of the RR colony for setting up of its Aluminium Smelter Plant as a part of the Corporate Social Responsibility. It was mandatory on the part of the Appellant to construct RR colony failing which the land for setting up of manufacturing plant could not have been procured and hence manufacture of excisable goods would not have been possible.

3. The Appellant has availed the Cenvat credit on the following services, the details of which along with the amount of Cenvat credit taken is tabulated as under:

S.No.	Particulars of services	Amount of Cenvat credit involved (in Rs.)
1.	Architectural and Technical Advisory Consultancy services for RR Colony & Rehabilitation Centre	7,56,020/-
2.	Consulting Engineers' services	3,49,55,055/-
3.	Technical consultancy services	2,20,26,934/-
4.	Erection, Commissioning and Installation Services	4,10,443/-
5.	Technical inspection and Certification agency services	75,592/-
6.	Construction services	3,73,569/-
7.	Works Contract services	7,54,578/-
8.	Liaison services for forest and railway clearance	5,880/-
9.	Loan processing charges charged by Banks	2,55,58,853/-
	Total	Rs.8,48,16,924/-

4. The Appellant has started setting up their plant/factory during the relevant period and also obtained Central Excise registration in June, 2009 and thereafter Cenvat credit on various input services were availed, however, the commercial production of the plant started only in May, 2013. The input services required for setting up of the plant commenced from June, 2009 although excisable goods were not cleared till 2013. However, after taking the registration and availing of the credit in their books of account, the Appellant was regularly filing ER-1 returns in accordance with the Central Excise law with the department. The credit lying in appellant's books of account remained unutilized till the production of finished goods. It was during the audit of appellant's record for the period up to March, 2013 the Department noticed the availment of various inputs services such as construction, work contract, consultancy etc. in relation to setting up of its plant and machinery as well as development of rehabilitation centre. The audit objection was communicated to the Appellant vide letter dated 21.6.2013. The Department thereafter asked the Appellant to provide more

details for the credit availed by them till the period March, 2016. Thereafter, a Show Cause Notice dated 12.4.2017 covering the period of April, 2012 to March, 2016 was issued for an amount of Rs. 8,49,16,924/- indicating various infractions committed while availing the Cenvat credit, as stated above, used in relation to manufacturing activity of the Appellant. The Show Cause Notice was adjudicated vide the impugned order by learned Commissioner confirming demand and also recovering the amount of Cenvat credit availed by the Appellant along with imposition of penalty under Cenvat Credit Rules, 2004.

5. Learned Advocate appearing on behalf of the Appellant submits that the Show Cause Notice is bad for invocation of extended period of limitation on the ground that the Show Cause Notice has been issued for the period April, 2012 to March, 2016 on 12.4.2017 invoking the larger period of limitation. It is also submitted that the Appellant has taken the Central Excise registration in June 2009 and started filing ER-1 return indicating therein the Cenvat credit availed. Therefore, it cannot be said that the Appellant had deliberately suppressed information about availment of Cenvat credit from the Department. In such circumstances, the Department was not justified to invoke the larger period of limitation relying on the decision of Hon'ble MP High Court at Indore in case of **CCE, Indore Vs. Zyg Pharma Pvt. Ltd.**- 2017 (358) ELT 101 (MP). Learned Advocate also states that the identical issue came up for consideration before this Tribunal, in the Appellant's own case and the Tribunal by its Final Order No. 52928/2018 dated 28.8.2018 held that the issue involved pertained

to interpretation of availment of Cenvat credit and, therefore, extended period of limitation was not available. The Tribunal passed this order in appeal against the order-in-original No. 33/COMMR/CEX/JBP/2016 dated 23.12.2016.

6. Apart from contesting the issue on limitation, the learned Advocate has also relied upon the various decisions on issue regarding availment of Cenvat credit for the aforesaid input services which are in their favour and considering the same the impugned order is not sustainable also on merits. These cases are as under :

Sl. No.	Services in question	Supporting Case-laws
1.	Architectural and Technical advisory consultancy services for RR colony & Rehabilitation Centre Rs. 7,56,020/-	Maruti Suzuki India Ltd. Vs. CCE, 2017 (47) STR 273 (Tri.-Chan); Shree Cement Ltd. Vs. CCE, 2016 (45) STR 204 (Tri.-Del.); CCE Vs. ITC Ltd, 2013 (32) STR 288; Ultratech Cement Ltd. Vs. CCE, Final Order No. 57077/2017 dated 18.9.2017
2.	Consulting Engineers' services Rs.3,49,55,055/-	Dy. General Manager, Tata Motors Ltd. Vs. CCE, 2015 (40) STR 269 (Tri.-Mumbai); Cadmach Machinery Co. (P) Ltd. Vs. CCE- 2013 (31) STR 33 (Tri.-Ahmd.); Tata Motors Ltd. Vs. CCE, 2016-TIOL-2733-CESTAT-MUM; Adani Port & Special Economic Zone Ltd. Vs. CST, Ahmedabad, 2016 (42) STR 1010 (Tri.-Ahmd.)
3.	Technical Consultancy Services Rs. 2,20,26,934/-	Maruti Suzuki India Ltd. Vs. CCE, 2017 (47) STR 273 (Tri.-Chan.); Shree Cement Ltd. Vs. CCE,

		2016 (45) STR 204 (Tri.-Del.); Packaging India Pvt. Ltd. Vs. CCE, 2015-TIOL-1564-CESTAT-MAD; Sai Life Sciences Ltd. Vs. CCE, 2017 (51) STR 55 (Tri.-Hyd.); Hindustan Zinc Ltd. Vs. CCE, Final Order No. 55017-55018/2017 dated 11.7.2017
4.	Erection, Commissioning and Installation Services Rs. 4,10,443/-	Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. CCE, 2013 (32) STR 532 (Bom.); Orient Cement Ltd. Vs. CCE & ST, Hyderabad-I, 2017 (51) STR 459 I(Tri.-Hyd.); Adani Port & Special Economic Zone Ltd. Vs. CST, Ahmedabad, 2016 (42) STR 1010 (Tri.-Ahmd.).
5.	Technical inspection and Certification agency services Rs. 75,592/-	Sai Life Sciences Ltd. Vs. CCE, 2017 (51) STR 55 (Tri.-Hyd.); Adani Port & Special Economic Zone Ltd. Vs. CST, Ahmedabad, 2016 (42) STR 1010 (Tri.-Ahmd.); Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. CCE, 2013 (32) STR 532 (Bom.).
6.	Loan processing charges charged by Banks (Banking and Financial services) Rs. 2,55,58,853/-	Sundaram Clayton Ltd. Vs. CCE, 2016 (42) STR 741 (Tri.-Chennai); Aluminium Powder Co. Ltd. Vs. CCE, 2016 (42) STR 776 (Tri.-Chennai); BS & B Safety Systems India Ltd. Vs. CCE, 2017 (52) STR 174 (Tri.-Chennai).
7.	Liaison services for forest and railway clearance Rs. 5,880/-	Sai Life Sciences Ltd. Vs. CCE, 2017 (51) STR 55 (Tri.-Hyd.); Adani Port & Special Economic Zone Ltd. Vs. CST, Ahmedabad, 2016 (42) STR 1010 (Tri.-Ahmd.);

		Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. CCE, 2013 (32) STR 532 (Bom.).
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7. Learned Authorised Representative, on behalf of Revenue, supported the impugned order and also submitted a written reply dated 3.12.2018, wherein it has been stated that with effect from 1.4.2011, the definition of input service under Rule 2(l) of the Cenvat Credit Rules, 2004, has been amended and by which the word '**setting up**' has been deleted by the Government. Due to deletion of word, setting up, the Cenvat credit on input services used for setting up of the factory or the business premises could not have been available to the appellant. It was also submitted that in view of the change of definition of input service in the Cenvat Credit Rules, the credit availed on input prior to commencement of production and clearance from the plant would not be available to the Appellant. Reliance was placed on the decision of Hon'ble Bombay High Court in the case of **CCE Nagpur Vs. Manikgarh Cement** – 2010 (20) STR 456 (Bom.), wherein it is held that there should be nexus between the input and output services for availment of Cenvat credit under the Credit Rules. Regarding invocation of extended period by the adjudicating authority, learned Authorised Representative submitted that although the Appellant has filed ER-1 return after registration but the details of availing credit in input service was not shown separately and it was only after the audit the availment of wrong Cenvat credit came to the notice of Department. In the circumstances, the Department is fully justified in invoking the

extended period for raising demand against the Appellant as the Appellant has deliberately suppressed the relevant information from the Department. Accordingly, it is prayed that order is correct and legal and merits approval in the present appeal.

8. We have considered the rival submissions and perused the Appeal record.

9. This issue is regarding availment of Cenvat credit on the various input services as indicated hereinabove by the Appellant is required for setting up of the Aluminium Smelter plant by the Appellant in the process the Appellant has acquired the land and paid compensation and also constructed rehabilitation and resettlement colony for displaced person. This was required for setting up of the plant which would be required for manufacturing of the final products by the Appellant in their manufacturing plant. Accordingly, the Cenvat credit on the input services have been used in or in relation to setting up of the plant, which is covered under the main clause of definition of input service. The similar issue has been decided by this Tribunal in their own case, [**Hindalco Industries Ltd.** (supra)], where it has been held as under:

"9. Having considered the rival contention we are satisfied that there is no allegation of fraud, suppression, or falsification of records. The issue is simply of interpretation. Under these facts and circumstances and the admitted position, we find that the invocation of the extended period of limitation is bad and the Show Cause Notice is not maintainable on this ground.

10. Accordingly, we allow the appeal on the issue of limitation. The impugned order is set aside. Appellant is entitled to consequential benefit in accordance with law."

Also, we find that the issue has been detected by the audit conducted in the Appellant's factory by the Department. It is admitted fact that the Appellant has taken Central Excise registration in the year 2009 and also started filing ER-1 returns with the Department. In such a circumstances, the extended period for raising demand is not available to the Appellant as held in the case of **Zyg Pharma Pvt. Ltd.** (supra). The relevant portion of the order is reproduced as under :

"5. This Court has carefully gone through the order passed by the Tribunal and in fact, the Tribunal has upheld the contention of the Department so long as CENVAT credit has been claimed in respect of the impugned goods. The only issue which is bothering the Department is imposition of penalty.

6 The Division Bench of Gujarat High Court in the case of *Commissioner v. Dynamic Industries Ltd.*, reported in [2014 \(307\) E.L.T. 15](#) (Guj.) in paragraph 12 has held as under :

Accordingly, the substantial question of law raised in respect of 12. the following three categories of service ie., (i) Customs House Agents Services, (ii) Shipping Agents and Container Services and (iii) Services of Overseas Commission is answered partly in favour of the assessee so far as aforesaid category nos. (i) and (ii) are concerned. Insofar as category No. (iii) ie., services of Overseas Commission, is concerned, the same is answered in favour of the Revenue and against the assessee. So far as present appeal is concerned, after extending the period of limitation under the proviso to Sec. 11 A and 11 AB of the Act, the Show Cause Notice is issued by the Joint commissioner, Central Excise, upon the respondent-assessee on the ground of contravention of provisions of Rule 2(I)(ii) and 9(2) read with Rule 3(1) of the Rules admittedly, the respondent-assessee had shown availment of Cenvat credit in part (iv) and (v) of E.R.-I Returns filed by it. The appellant-Department has sought to justify its action by submitting that during the course of audit by the Office of the Accountant General, when a detailed examination of the material was done, it was realised that the respondent-assessee has availed Cenvat Credit on the services of all the three categories. The respondent-assessee has rightly pointed out that all the service providers charge the service tax on all the three services and such services sincerely were rendered at the port of export, which was the place of removal, the services were in relation to manufacturing activities as far as the first two services are concerned. However, insofar as the third service where this Court has held in favour of the Revenue and against the respondent-assessee, we are of the opinion that the extended period of limitation would not be available to the Revenue in absence of any material to indicate suppression on the part of the respondent-assessee. It is not in dispute that

there was no suppression nor any misrepresentation in respect of Cenvat credit availed by the respondent-assessee in respect of these services.

7 In the aforesaid case also, the availment of credit was discovered during the course of audit when detailed examination of material was done.

8 In the present case, there was no suppression or misrepresentation in respect of availment of CENVAT credit and, therefore, this Court is of the considered opinion that in the light of the judgment delivered by the Division Bench of Gujarat High Court, the Tribunal was justified in remanding the matter back and holding that mandatory equal penalty and extended period of 5 years are not attracted.

The High Court of Karnataka in the case of *Commissioner of Central Excise, Bangalore v. Sanmar Speciality Chemicals Ltd.*, reported in [2016 \(43\) S.T.R. 347](#) (Kar.) in paragraphs 7 and 8 has held as under :

7. It is an admitted fact that the input tax credit was claimed in the return of the assessee from time to time and therefore, it was not a matter for suppression of facts, as sought to be canvassed on behalf of the appellant.

8. Once full facts were disclosed, the normal period of limitation would be one year, whereas the proceedings are initiated after the expiry of a period of one year. Therefore, we do not find that the Tribunal has committed any error in observing that the demand was barred by limitation.

9 In the aforesaid case also, as facts were fully disclosed and there was no suppression, it was held by the Division Bench that extended period of limitation is not invocable.

A similar view has been taken in the following cases : *Cosmic Dye Chemicals v CCE* reported in [1995 \(75\) E.L.T. 721](#) (S.C.); *Simplex Infrastructures Ltd. v CST* reported in [2016 \(42\) S.T.R. 634](#) (Kar.); *Gopal Zarda Udyog v CCE* reported in [2005 \(188\) E.L.T. 251](#) (S.C.); *Apex electricals Pvt. Ltd. v UQI* reported in [1992 \(61\) E.L.T. 413](#) (Guj.); *Unique Resin Industries v CCE* reported in [1995 \(75\) E.L.T. 861](#) (T); *CCE v Chemphar Drugs and Liniments* reported in [1989 \(40\) E.L.T. 276](#) (S.C.); *Padmini Products v CCE* reported in [1989 \(43\) E.L.T. 195](#) (S.C.); *Pushpam Pharmaceuticals Co. v CCE* reported in [1995 \(78\) E.L.T. 401](#) (S.C.); *Anand Nishikawa Co. Ltd.- v. CCE* reported in [2005 \(188\) E.L.T. 149](#) (S.C.); *CCE v Pioneer Scientific Glass Works* reported in [2006 \(197\) E.L.T. 308](#) (S.C.); *Uniworth Textiles Ltd. v CCE* reported in [2013 \(228\) E.L.T. 161](#) (S.C.); *Pahawa Chemicals Pvt. Ltd. v CCE* reported in [2005 \(189\) E.L.T. 257](#) (S.C.); *CCE v. N. R. Agarwal Industries* reported in [2014 \(300\) E.L.T. 213](#) (Guj.); *CCE v Triveni Engineering & Industries Ltd.*, reported in [2005 \(317\) E.L.T. 408](#) (Allh.); *Associated Pigments Ltd. v CCE* reported in [1993 \(68\) E.L.T. 514](#) (Cal.); *CCE v Punjab Laminates Pvt. Ltd.* reported in [2006 \(202\) E.L.T. 578](#) (S.C.); and, *Cadila Pharmaceuticals Ltd. v CCE* order dated 10-11-2016 [[2017 \(349\) E.L.T. 694](#) (Guj.)] passed by the Gujarat High Court, at Ahmedabad and, therefore, this Court is of the considered opinion that the Tribunal was justified in holding that extended period of five years and mandatory equal penalty are not attracted.

10 No substantial question of law arises in the present appeal and, therefore, the admission is declined."

10. In view of above, we find that the demand is barred by limitation and, accordingly, being set aside without going into the merits of the case.

(Pronounced in Court on 29.05.2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

RM