IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 79154 of 2018

(Arising out of Order-in-Appeal No. 469/S.TAX-I/KOL/2018 dated 31.07.2018 passed by the Commissioner of C.G.S.T. & C.X. (Appeal-I), Kolkata, G.S.T. Bhawan, 8th Floor, 180, Shantipally, Kolkata – 700 107)

M/s. ITD Cementation India Limited **: Appellant**
Godrej Water Side, Tower No. 1, 8th Floor,
Plot No. V, Block No. DP, Sector-V, Salt Lake City,
Kolkata – 700 091

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Kolkata North Commissionerate,
G.S.T. Bhawan, 8th Floor, 180, Shantipally,
Kolkata – 700 107

APPEARANCE:

Shri Puneet Bansal, Consultant, for the Appellant

Shri S.K. Dikshit, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76019 / 2025

DATE OF HEARING: 24.04.2025

DATE OF DECISION: 29.04.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. ITD Cementation India Limited, Godrej Water Side, Tower No. 1, 8th Floor, Plot No. V, Block No. DP, Sector-V, Salt Lake City, Kolkata – 700 091(hereinafter referred to as the "appellant") were engaged in the construction of civil engineering during the period from 01.04.2015 to 29.02.2016. The appellant had provided construction services, namely, construction of academic buildings and other buildings of the Indian Institute of Technology (IIT), Ropar, Punjab. These civil structures were meant predominantly for use other than commerce and industry. Initially, the said service was exempted from the purview of Service Tax by virtue of clause 12(c) of Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012.

1.1. However, vide Notification No. 06/2015-S.T. dated 01.03.2015, the benefit of exemption as per clause 12(c) of the Mega Exemption Notification No. 25/2012-S.T. was withdrawn, with effect from 01.04.2015. Accordingly, the construction works provided by the appellant became taxable.

1.2. During the period from April, 2015 to 29th February, 2016, the appellant paid Service Tax amounting to Rs.4,57,28,992/- by debiting CENVAT Credit of Rs.1,92,71,550/- and making cash payment of Rs.2,65,12,410/- vide GAR-7 challans.

1.3. Thereafter, by virtue of Section 102 of the Finance Act, 1994, as inserted vide the Finance Bill, 2016 w.e.f. 14th May, 2016, the services provided by the appellant during the impugned period viz. 01.04.2015 to 29.02.2016, were exempted from payment of Service Tax retrospectively. In view of the above, the said exemption was thereafter restored vide Notification No. 09/2016-S.T. dated 01.03.2016 for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, wherever applicable, had been paid prior to that date. This exemption was restored till 31.03.2020.Accordingly, the appellant filed a refund claim on 09.11.2016, for the amount of Rs.4,57,28,992/- paid by them for the construction services rendered by them during the period 01.04.2015 to 29.02.2016.

2. A Show Cause Notice dated 31.01.2017 was issued proposing to reject the entire claim for refund on the following allegations: -

i. The said claimant had not submitted the copies of agreements (contracts entered with CPWD, Ropar, Punjab) which were required to ascertain whether the said agreements (contract) entered and appropriate stamp duty is paid prior to 01.03.2015 which is a prime condition to consider the instant refund claim.

ii. Section 11B of Central Excise 1944 specifically lays down that the applicant has to furnish documentary evidence to establish beyond doubt that there is not case of unjust enrichment. The onus to proof in this case rests on the said assessee

iii. Further, para 6.1 of FAQ (available in website: www.cbec.gov.in), it has been stated that it is important to note that any amount of Service tax paid in excess of the actual liability is refundable only if it is proved that the claimant of refund had already refunded such amount to the person from whom it was received or had not collected at all.

iv. The said claimant has not submitted any documentary evidence to prove that the amount had not been collected or the amount already collected had been refunded to the service recipient. Further, from the Invoices (RA bills) issued to the Executive Engineer. Ropar Project

Division 1, CPWD, Ropar, Punjab, it is ascertained that amount of service tax has been collected by the same claimant. As such, there is every possibility of unjust enrichment

v. In Form R submitted with the refund claim, the said claimant has stated that the service tax liability of Rs.4,57,28,992/-has been cleared by paying through PLA to the tune of Rs.2,65,12,410/-and by debiting CENVAT Credit Account to the tune of Rs. 1,92,71,550/- But. it is not clear whether the said applicant has availed CENVAT Credit project wise or on consolidated manner for all projects. If the Credit is availed project wise, amount of CENVAT Credit availed for the instant project during the claim and any amount of CENVAT Credit available unutilized after debiting the service tax for the claim period If the CENVAT credit is availed on consolidated manner for all the projects, amount of CENVAT credit availed proportionately for the instant project should be quoted in the said certificate. Further, the said credit is required to be reversed from CENVAT Credit Account as the said claimant is not authorized to take such benefit on exempted services. No documentary evidence with regard to the above has been submitted with the refund claim.

vi. In addition to the above, the following documents had not been submitted:

- Annexure / Statement showing the details of output services viz. the Invoice No. date, name of the service recipient, classification of output service, value of output service, service tax charged, Agreement date, whether taxable / exemption etc. The details in the Annexure should match with the data entered in ST-3 return for the claim period.

- Bank Statement and Certificate from the Chartered Accountant showing that payment to all sub-contractors has been made for invoices on which service tax has been charged and credit on the same has been availed.
- Statement of input invoices on which CENVAT Credit has been availed for the instant project giving the details of Invoice No & date, name of the service provider, Value of service provided, Service Tax liability, Classification of service (like WCS/GTA etc.), Date of payment.

3. Upon adjudication, the ld. adjudicating authority rejected the refund claim vide Order-in-Original No. 23/Refund/ND/ST-1/Kol/17-18 dated 25.05.2017.

3.1. The appellant challenged the above order before the Ld. Commissioner (Appeals) and thereafter, vide the impugned Order-in-Appeal No. 469/S.TAX-I/KOL/2018 dated 31.07.2018, the Ld. Commissioner (Appeals) has upheld the rejection of their refund claim.

4. Aggrieved by the rejection of their refund claim, the appellant has filed this appeal.

5. The Ld. Counsel appearing on behalf of the appellant submits that Section 102 of the Finance Act exempted construction services rendered in respect of educational institutions retrospectively. He submits that the said Section clearly allows refund of Service Tax already paid by filing a refund application within six months from the date of receiving the assent to the Finance Bill by the Hon'ble President of India; the assent to the Finance Bill 2016 was given on 14th May, 2016 and the appellant filed the refund claim on 09th November, 2016, which is within the period of six months as prescribed under the said Section. Accordingly, he submits that the appellant have filed the refund claim within the stipulated time-period.

5.1. The Ld. Counsel for the appellant also produced a letter issued by the CPWD dated 23.01.2018 to the effect that the Service Tax paid has been deducted by them and there will be no unjust enrichment if the said refund amount is sanctioned to the appellant. Accordingly, it is submitted by the appellant that the issue of unjust enrichment is not attracted in this case.

5.2. Regarding the issue of utilization of CENVAT Credit for the purpose of payment of Service Tax during the said period, it is the submission of the appellant that Section 102 of the Finance Act categorically mentions that all such Service Tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times, is to be refunded. It is contended that the Finance Act does not distinguish between payments made through cash and payments made through CENVAT Credit Account. Accordingly, it is the appellant's contention in this regard that they are eligible for refund of the entire amount of Service Tax paid during the impugned period. In support of this claim, the appellant has cited the decision of the Tribunal at Ahmedabad in the case of *Shanti Construction Co. v. Commissioner of C.Ex. and S.T., Rajkot [2021 (54) G.S.T.L. 164 (Tri. – Ahmd.)]*

5.3. In view of the above submissions, the appellant submits that they are eligible for refund of the entire amount of Service Tax amounting to Rs.4,57,28,992/- paid during the period under dispute along with interest.

6. The Ld. Authorized Representative of the Revenue submits that out of the total Service Tax payment of Rs.4,57,28,992/-, the appellant had paid Rs.2,65,12,410/- through PLA and utilized their CENVAT Credit account for payment of the balance amount of Rs.1,92,71,550/-. It is the contention of the Ld. Departmental Representative that as the services rendered by the appellant were exempted during the impugned period, the appellant would not be eligible to avail CENVAT Credit of the input services. Since they were not eligible for the credit, they could not have utilized the said credit towards payment of service tax for the construction services rendered. In view of this, he contends that this amount of Service Tax, paid through CENVAT Credit account, is not liable to be refunded to the appellant.

6.1. The Ld. Authorized Representative of the Revenue also referred to Section 102 of the Finance Act wherein it has been categorically mentioned that the Service Tax "which has been collected, but which would not have been so collected had sub-section (1) been in force at all the material times". This would mean that had this sub-section been available at that point of time, the appellant would not have been eligible to avail CENVAT Credit and hence, this Section clearly indicates that the appellant would not be eligible for the refund of the amount which was paid by utilizing the CENVAT Credit. Hence, as the said CENVAT Credit was not available to the appellant for payment of Service Tax for their output service, he contends that the payment made through CENVAT Credit account cannot be refunded.

6.2. Regarding the unjust enrichment angle, it is the contention of the Revenue that Section 102 of the Finance Act, inserted vide the Finance Bill, 2016, clearly states that the refund is eligible only when the stamp duty as applicable is paid before the first day of March, 2015; that in this case, no stamp duty has been paid by the appellant and therefore, the appellant have failed to fulfil the aforesaid condition. Accordingly, it is submitted that the ld. appellate authority has rightly rejected the refund claim.

6.3. In view of the above, the Ld. Authorized Representative of the Revenue supports the impugned order rejected the entire refund claim filed by the appellant.

7. Heard both sides and perused the appeal records.

8. We observe that the construction service rendered by the appellant in the instant case was towards construction of educational structures of IIT, Ropar in Punjab, which were meant for educational purposes. The said service was initially exempt from the levy of Service Tax vide clause 12(c) of the Mega Exemption Notification No. 25/2012-S.T. dated

20.06.2012. Later, the said exemption was rescinded with effect from 01.04.2015 vide Notification No. 06/2015-S.T. dated 01.03.2015 and hence, the said service rendered by the appellant became liable to be taxed. Accordingly, during the period from April, 2015 to 29th February, 2016, the appellant paid Service Tax to the tune of Rs.4,57,28,992/-. Out of the above payment of Service Tax made by the appellant, the payment of Rs.2,65,12,410/- was made in cash and the payment of Rs.1,92,71,550/- was made by debiting the CENVAT Credit account.

8.1. Subsequently, Section 102 of the Finance Act came to be introduced wherein construction services rendered to educational institutions were specifically exempted, with retrospective effect. Thus, the construction service rendered by the appellant for the period from 1st April, 2015 to 29th February, 2016 was exempted retrospectively. In this regard, we observe that the said Section 102 provided a mechanism for refund of Service Tax already paid by service providers during this period. For the sake of ready reference, Section 102 of the Finance Act is reproduced below: -

> " *Section 102*
>
> *Special provision for exemption in certain cases relating to construction of Government buildings.*
>
> *Finance Act, 1994*
>
> *[Special provision for exemption in certain cases relating to construction of Government buildings.*

102. (1) Notwithstanding anything contained in section 668, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession,

(b) a structure meant predominantly for use as-

(i) an educational establishment,

(ii) a clinical establishment, or

(iii) an art or cultural establishment

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 658 of the said Act.

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not

have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

Notes: -

1. Inserted vide THE FINANCE ACT, 2016 w.e.f. May 14, 2016."

8.2. A perusal of the above Section reveals that the construction service rendered by the appellant towards construction of IIT, Ropar in this case are exempted during the period under dispute. A mechanism has been provided under the above Section for filing an application to claim the refund of Service Tax within a period of six months from the date of assent to the Finance Bill, which was given by the Hon'ble President on 14th May, 2016. The appellant has filed the instant refund claim on 09th November, 2016 which is within the period of six months. Thus, we find that the appellant has filed the refund claim within the stipulated time-period as prescribed in Section 102 of the Finance Act.

9. Regarding the allegation of unjust enrichment, we find that the appellant has obtained a letter from the CPWD dated to the effect that the said amount of Service Tax paid by them has already been deducted by them and hence, the same can be refunded to the appellant. The said letter received from the Central

Public Works Department (C.P.W.D.) dated23.01.2018 is extracted below: -

23/01/18

भारत सरकार
GOVERNMENT OF INDIA
केंद्रीय लोक निर्माण विभाग
CENTRAL PUBLIC WORKS DEPARTMENT

Annexure 14 100

कार्यपालक अभियंता
आई०आई०टी० रोपड़ परियोजना मंडल-1
के लो नि वि, बिरला फार्म, बी. ओ.: फूल खुर्द, उप
कार्यालय: बेला, रोपड़ - 140111
फोन न० : 0172-2749515
ई-मेल: ee.iitrpd1.cpwd@gov.in

Executive Engineer
IIT Ropar Project Division-1
CPWD, Birla Farm, B.O.: Phool Khurd,
Sub Office: Bela, Ropar - 140111
Phone no. : 0172-2749515
E-mail: ee.iitrpd1.cpwd@gov.in

स. 54(1)/ई.ई./आई.आई.टी.-आर.पी.डी./केलोनिवि/ 101

दिनांक: 23/1/18

To

The Deputy Commissioner
Service Tax, North Division,
Service Tax-I; Kolkata.

Sub: Deduction of reimbursed service tax amounting Rs.4,57,28,993/- from contractor (M/s ITDC) bill-reg.

Ref:
1) This office letter no. 54(1)/ EE/ IITRPD/CPWD/832 dated 08.11.2016.
2) Letter issued by Assistant Commissioner Ropar bearing no. ST-20/Refund/STC/RPR/ CPWD/ 04/ 2016/ 1704 dated 30.12.2016.
3) Your Office letter No. C.No. V (18) 83/ Refund (11B)/ ND/ ST-I/ Kol/ 2016-17/1662 dated 16.03.2017.
4) ITDC letter no. ITDC/ 35214EB/ IIT Ropar/ 06/1039 dated 21.06.2017 (Copy enclosed).

Sir,

With reference to letters mentioned above it is for your kind pursuant that this office is executing a work of construction of various buildings for IIT Ropar at Ropar, Punjab. The contractor for this work is M/s ITD Cementation India Ltd. As per the prevailing rules at that time the service tax was being deposited by M/s ITD Cementation India Ltd. to Service Tax-I, Kolkata Commissionerate under North Division, Range-02 and the same was being reimbursed to them on the basis of challans submitted by them as per contract conditions.

As per the Gazette of India notification no. 32 dated 14.05.2016 (Section 102), the services provided to the government were exempted for the contract entered before march 2015 and it stipulated for refund of service tax if already deposited.

Vide letter referred at sr. no. 1, this office submitted the application of refund of service tax to the Assistant Commissioner, Service Tax Division, Ropar as well as Commissionerate service Tax, Kolkata (Copy enclosed as Annexure-I). M/s ITD Cementation India Ltd. also submitted refund application to your office.

Vide letter referred at Sr. no 2 (Copy enclosed at Annexure-II), Assistant Commissioner, Service Tax Division, Ropar forwarded the claim application to Assistant Deputy Commissioner, Service Tax, North Division, Kolkata.

Vide letter referred at sr. no. 3(Copy enclosed at Annexure-III), this office's application was declined to be processed on the ground that refund application of the M/s ITD Cementation India Ltd. is under process. Vide letter referred at sr. no 4 (Copy enclosed at Annexure-IV) the contractor has informed this office that your office vide order no. 23/ Refund/ ND/ST-1/ Kol/17-18 dated 23.05.2017 has rejected their application on the ground that contractor have not refunded amount to the person from whom it is received. As refund application of contractor has been rejected, vide letter even no.685 Dated:01.07.2017. This office again requested to you to considered our application but no communication has been made by you yet. Therefore, this office has deducted, the amount Rs. 4,57,28,992(Rupees Four Crore. Fifty Seven Lakh Twenty Eight Thousand Nine Hundred Ninety Two) reimbursed to contractor, from their bills(Copy Enclosed at Annexure-V) Now, CPWD has no objections if the refund application of ITD Cementation India Ltd. is processed as per service tax rule and appropriate refund amount is directly given to ITD Cementation India Ltd. 161

This is your information and record please.

Encl: As above

कार्यपालक अभियंता,
आई.आई.टी रोपड परियोजना मंडल-1,
कें.लो.नि.वि., रोपड़, (पंजाब).

प्रतिलिपि :

1. The Commissioner (Service Tax), Kolkata, O/o The Principal Commissioner of Service Tax-I, Commissionerate Kolkata, Kendriya Utpad Shulk Bhawan, 2nd floor, 180 Shantipally, Rajdanga, Main Road, Kolkata-700107.
2. Assistant Commissioner, Central Excise & Service Tax Division, Giani Zail Singh Nagar, Ropar, (Punjab)-141001.
3. The Chief Project Manager, IITRPZ, CPWD, Ropar.
4. The Superintending Engineer, IIT Ropar Project Circle, CPWD, Birla Farm, Ropar.
5. The Executive Engineer (Elect.), IITRPED, CPWD, Ropar.
6. The Executive Engineer, IITRPD- 2 & 3, CPWD, Ropar.
7. M/S ITDC, India Limited.

23/11/18
कार्यपालक अभियंता

Thus, we find that the appellant has not passed on the incidence of Service Tax. Accordingly, we hold that the issue of unjust enrichment is not applicable to the present case.

9.1. Regarding the issue of stamp duty payable, the appellant has intimated that stamp duty has been exempted in respect of contracts executed on behalf of the Government. The letter received from the C.P.W.D. to this effect is extracted below: -

भारत सरकार
GOVERNMENT OF INDIA
केंद्रीय लोक निर्माण विभाग
CENTRAL PUBLIC WORKS DEPARTMENT

कार्यपालक अभियंता
आई०आई०टी० रोपड़ परियोजना मंडल-1
के लो नि वि, बिरला फार्म, बी. ओ.: फूल खुर्द, उप कार्यालय: बेला, रोपड़ - 140111
ई-मेल: ee.iitrpd1.cpwd@gov.in

Executive Engineer
IIT Ropar Project Division-1
CPWD, Birla Farm, B.O.: Phool Khurd,
Sub Office: Bela, Ropar - 140111
E-mail: ee.iitrpd1.cpwd@gov.in

स. 54(1)/ई.ई./आई.आई.टी.-आर.पी.डी./केलोनिवि/ 301 दिनांक: 30/3/17

To,

The Deputy Commissioner,
Service Tax, North Division,
Service Tax-1 Kolkata

Name of work:- Construction of different buildings under Phase-I for IIT Ropar at Ropar, Punjab.
SH: Construction of Admin. Block (G+3), Academic Blocks (3 nos. G+3, 1 no G+2, 1 no. S/S), Residential Blocks (T-2/7 nos. G+3, T-4/7 nos. G+3), Hostel Block (Boys-1½ nos. G+3, Girls-1no. G+3, Director Residence (G+1), Dining Block- 1 no. S/S and Utility blocks (3 nos. single / double storey) including water supply, sanitary installations, internal electrical installations, Roads, Drainage and Sewerage.
Agreement no. 02/EE/IITRPD/2014-15.

Ref: 1. Letter issued by Service Tax Department bearing no. C.No. V(18)83/Refund(11B)/ND/ST-I/KOL/2016-17/667 dated 16.03.2017.
2. Service Tax Notification 09 dated 1st March 2016.
3. ITDC letter no. ITDC/35214EB/IIT Ropar/03/851A dated 30.03.2017.

Dear Sir,

This is in connection with the above subject and references. It is intimated to you that as per Section 3 of the Indian Stamp Act (as applicable to the state of Punjab) any instrument executed by the or on behalf of or in favour of government are exempt from payment of stamp duty. CPWD being a Central Government Department and undersigned executes the agreements on behalf of the President of India, is exempted from payment of stamp duty on the agreement as per the above referred provisions of Indian Stamp Act (as applicable to Punjab). Relevant extract of Indian Stamp Act is enclosed herewith.

It is also certified that the subject matter construction work was awarded to ITD Cementation India Ltd ('ITD Cem') on 10.11.2014 and hence the above referred Service Tax Exemption notification is applicable to ITD Cem.

Encl: As above

30/3/17
कार्यपालक अभियंता,
आई.आई.टी रोपड़ परियोजना मंडल-1,
के.लो.नि.वि., रोपड़, (पंजाब).

प्रतिलिपि :
1. परियोजना प्रबंधक, आई.आई.टी. रोपड़ परियोजना, के.लो.नि.वि, रोपड़ सूचनार्थ।
2. कार्यपालक अभियंता, आई.आई.टी. रोपड़ परियोजना मंडल-2, 3, के.लो.नि.वि रोपड़ सूचनार्थ एवं आवश्यक कार्यवाही हेतु ।
3. कार्यपालक अभियंता, आई.आई.टी. रोपड़ परियोजना वैधुत मंडल, के.लो.नि.वि रोपड़ सूचनार्थ एवं आवश्यक कार्यवाही हेतु ।

कार्यपालक अभियंता,

10. From the above, we find that the appellant has fulfilled all the conditions as stipulated in Section 102 of the Finance Act for sanctioning the refund claim. In these circumstances, we hold that the appellant is eligible for the refund of Service Tax paid by them

during the period from 01.04.2015 to 29.02.2016. However, the quantum of the refund eligible to the appellant is to be determined.

11. We also take note of the fact that the appellant has paid Rs.4,57,28,992/-, through PLA as well as CENVAT Credit account. Out of Rs.4,57,28,992/-, an amount of Rs.2,65,12,410/- was paid through PLA and an amount of Rs.1,92,71,550/- was paid through debiting the CENVAT Credit account. Section 102 of the Finance Act clearly states that:

> *"(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times."*

11.1. In this regard, we observe that had this exemption been in operation during the period from 01.04.2015 to 29.02.2016, the appellant would not have availed the CENVAT Credit of the input services used in rendering output services, which are exempted. Thus, a plain reading of the above Section makes it clear that the appellant could not have utilized their CENVAT Credit account for the purpose of payment of Service Tax for their output service had this exemption existed during the relevant period. Since the appellant is not eligible to avail CENVAT Credit, as the output service rendered by them are exempted, we hold that the appellant was not entitled to utilize their CENVAT Credit Account during the said period for payment of Service Tax in respect of their output service. Thus, we find merit in the argument of the Revenue that the Service Tax paid by utilization of CENVAT Credit, which was not otherwise eligible to the appellant during the relevant period, cannot be considered for the purpose of refund of service tax paid.

12. Hence, we hold that the appellant would not be eligible for the refund of Service Tax amounting to Rs.1,92,71,550/- which was paid by the appellant by utilizing their CENVAT Credit account. Since the balance amount of Rs.2,65,12,410/- has been paid by the appellant through PLA, we hold that the appellant is eligible to the refund of this amount of Service Tax, paid through PLA, as they have fulfilled all the conditions stipulated in Section 102 of the Finance Act, 2016.

13. In support of their claim for refund of the entire amount of service tax paid, the appellant has cited the decision of the Tribunal at Ahmedabad in the case of *Shanti Construction Co. v. Commissioner of C.Ex. and S.T., Rajkot [2021 (54) G.S.T.L. 164 (Tri. – Ahmd.)].* We have perused the decision cited by the appellant. In the said decision, the applicability of Rule 6 of the CENVAT credit has been raised and the Ld. Commissioner (Appeals) has given a categorical finding that Rule 6 of CENVAT Credit Rules was not applicable in that case. In the present case, on hand Rule 6 of CENVAT Credit rules is not an issue raised and no finding available regarding applicability of Rule 6 of the CENVAT Credit rules. Thus, we observe that the facts and circumstances of the issue on hand are distinguishable from the case law referred by the appellant. Accordingly, we hold that the decision cited by the appellant is not applicable to this case.

14. Further, we take note of the appellant's submission that as the refund was not paid in time, they would be eligible for sanction of interest for the delayed sanction of refund in this case. We observe that refund is eligible to the appellant after passing of the Finance Bill w.e.f. 14th May, 2016. The appellant has made the refund claim on 09.11.2016. The refund claim was therefore to be sanctioned within a period of three months from the date of filing of this refund claim. For delay in sanctioning the refund claim beyond the period of three months, the appellant would be eligible for interest as provided under section 11BB of the Central Excise Act. Accordingly, we hold that the appellant is eligible for interest as provided under Section 11BB of the Central Excise Act, 1944 from the date of completion of three months from the date of filing of the refund claim in question till the date of sanction of the refund claim.

15. In view of the above discussions, we pass the following order:

(i) The appellant is eligible for sanction of refund of Rs.2,65,12,410/- which was paid by them through PLA.

(ii) The appellant is not eligible for the refund of Rs.1,92,71,550/- which was paid through debiting the CENVAT Credit account, as the appellant was not eligible for availment and utilization of the CENVAT Credit during the said period.

(iii) The appellant is eligible for interest as provided under Section 11BB of the Central Excise Act, 1944 for the refund sanctioned, from the date of completion of three months from the date of filing of the refund claim till the date of sanction of the refund claim.

16. In these terms, the appeal is disposed of.

(Order pronounced in the open court on **29.04.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd