IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75894 of 2017

(Arising out of Order-in-Original No. 127/COMMR/ST-II/KOL/2016-17 dated 24.02.2017 passed by Commissioner of CGST & Central Excise, Kolkata,

M/s BLA Infrastructure Pvt. Ltd.,
(Indicon Viva, 3rd Floor, 53-A, Leela Roy Sarani, Gariahat Road,
Kolkata, West Bengal-700019).

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata,
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

.. ...**Respondent**

APPERANCE :

Mr. Kartik Kurmy, Advocate for the Appellant
Shri A. Mukherjee, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K ANPZHAKAN MEMBER (TECHNICAL)

Final Order No...77701/2025

DATE OF HEARING : 18.09.2025

DATE OF PRONOUNCEMENT : 06.11.2025

PER R. Muralidhar:

The appellant is into providing various services within the Mining areas. A show cause was issued demanding Service Tax of Rs.7,82,18,052 for the services provided by them and demanding reversal of Cenvat Credit amounting to Rs.38,06,751 for irregularly availed cenvat credit. The appellants filed their detailed reply along with documentary evidence. The Adjudicating authority vide the impugned OIO dropped the Service Tax demand of Rs.7,28,82,656 and confirmed the balance demand of Rs.53,35,396. In respect of Cenvat Credit he allowed certain credits and disallowed Cenvat Credit of Rs.23,41,941. Being aggrieved, the appellant has filed the present appeal before the Tribunal.

2. The Ld Counsel, appearing for the appellant makes the following submissions:

Break-up of Demand as per Order-in-Original dated 24-02-2017

Sl. No.	Category of Service/Grounds of demand	Value of Services	Service Tax/Cenvat Demand (Rs.)
1	Mining Services	5,12,93,594/-	53,01,004/-
2	Disallowance of CENVAT Credit		23,41,941/-
3	Works Contract Service	2,43,140/-	30,052/-
4	Difference in reconciliation between P & L A/c and ST-3 returns	35,110/-	4,340/-
TOTAL DEMAND		**5,15,71,844/-**	**76,77,337/-**

3. In respect of the confirmed demand of Rs.53,01,004, he submits the defence of the appellant by way of the following Table :

Details of Work Orders for Transportation of Coal on which Tax demanded

Sl. No	Party Name	Work Order/ Agreement No. & Date	Value of Services	Service Tax Demanded	Nature of Work
1	BLA Projects Pvt. Ltd.- INPIT	BLAPPL/ECL/INPIT/ 0151 Dt. 23.02.2010	3,93,74,693/-	40,55,593.38	"Loading & Transportation of Coal by Tippers from query bed to surface within a lead range of 4-5KM & 5-6 KM at Rajmahal Area"
2	BLA Projects Pvt. Ltd.- INPIT	BLAPPL/ECL/INPIT/ 0151 Dt. 23.02.2010	71,89,717/-	7,40,540.85	"Loading & Transportation of Coal by Tippers from query bed to surface within a lead range of 4-5KM & 5-6 KM at Rajmahal Area"

3	BLA Projects Pvt. Ltd.- PPT	BLAPPL/RJML-PPT/TPT/0067 Dt.11.02.2011	19,98,642/-	2,05,860.13	"Transportation of Crushed Coal from RJML (OCP) to Pirpainti Railway Siding (one way lead 32-33 KM)".
4	Sanjay Kr. Mishra	Verbal	8,13,350/-	83,775/-	"Transportation of work outside the Mines".
5	Mithilesh Kumar	Verbal	22,326/-	2,299.58	"Transportation of work outside the Mines".
6	Shree Om Bhagwati Hitech Engineering	Verbal	80,000/-	8,240/-	"Transportation of work outside the Mines".
7	Vibharaj Construction Pvt. Ltd	Verbal	9,52,533/-	98,111/-	"Transportation of work outside the Mines".
8	Ok Movers & Minerals Pvt. Ltd.	OK/TPT/Jogi/0015 Dated 02.04.2012	8,62,334/-	1,06,584.48	"Transportation of work outside the Mines".
TOTAL			**5,12,93,595/-**	**53,01,004/-**	

4. The Appellant most humbly submits that the services provided by them for Transportation of Coal cannot be classified under the category of "Mining Services" by any process of reasoning.

5. The Appellant most humbly submits that in the Impugned Order the work orders are for "Transportation of Goods by Road" which are arbitrarily classified under the category of "Mining Services" which is contrary to principles of classification under Sec.65A/Sec.66F of the Act.

6. The Appellant most humbly submits that going by the scope of works and applying the principles of classification set out U/s 65A/66F, the said services are most appropriately classifiable under the category of "*Goods Transport Agency Services*" defined U/s 65(50b) read with Sec.65(105)(zzp)/Sec.65B(26) and not "*Mining Services*" defined U/s 65(105)(zzg).

7. The Appellant relies on the following judgment:-

(i) CCE Vs. Singh Transport 2017 (4) GSTL 3 SC;

(ii) ***Calcutta Industrial Supply Corp. Vs. CCE reported in 2024 (9) TMI 926-CESTAT KOLKATA;***

(iii) ***Ambey Mining Pvt. Ltd. Vs. CCE (2024) 23 Centax 430 (Tri-Cal);***

(iv) ***Ambey Mining Pvt. Ltd. Vs. CCE Final Order No.75511/2025 dated 20-02-2025 in Appeal No.ST/75735/2028;***

8. The logistic services (like transportation service) having remote connections with mining activity can not be included in entry (zzzy), merely on the strength of the words *"in relation to"*. The logistics services rendered in mines, like the one in hand, are either "pre-mining" or "post mining" activities and not in relation to mining.

9. The Appellant submits that in respect of Goods Transport Agency Services in terms of Sec.68(2) of the Act read with Rule 2(1)(d)(v) of the Service Tax Rules, 2002 (upto 30-06-2012) and Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994, under the Reverse Charge Mechanism the consignee/service recipient being one of the specified persons, are liable to pay service tax and the Appellant herein is not liable to pay service tax on the said services.

10. It is submitted submits that the CENVAT Credit in the instant case is denied traversing beyond the scope of show cause notice, hence, *ex-facie*, illegal and without authority of law. In the show cause notice allegation was limited to purported disproportionate claim and utilisation of Capital Goods credit whereas in the impugned Order the CENVAT Credit is disallowed on the ground that the invoices on the basis of which the CENVAT Credit is claimed is technically not in accordance with Rule 9(2) of the CENVAT Credit Rules, 2004. It is submitted that in the show cause notice Rule 9(2) of the CCR was never invoked beyond the scope of show cause notice.

11. In the case of ***CCE Vs. Ballarpur Industries Ltd. reported in 2007 (215) ELT 489 (S.C.)*** it is held by the Hon'ble Apex Court that show cause notice is the foundation of the case. If there is no invocation of the Act/Rule in the show cause notice it is not open to the department to invoke the said rule.

12. The Appellant submits strictly in the alternative and without prejudice that in the instant case CENVAT Credit on Capital Goods is denied on hyper technical grounds which are wholly illegal, arbitrary and perverse.

13. The Appellant submits that the CENVAT Credit in the instant case is denied on the technical ground that in the duty paying document the ECC No., particulars of Commissionerate, division and Central Excise duty element, tariff heading/sub-Heading are not mentioned. However, the duty paid character of the impugned Capital Goods, its receipts, its use in the provision of output services and otherwise eligibility of the Appellant to CENVAT Credit is not disputed. Under the circumstances denial of CENVAT Credit is illegal.

14. The Appellant submits that it is fairly well settled that substantive benefit of CENVAT Credit cannot be denied for technical infractions, particularly when duty paid character of the impugned goods, receipt of the impugned goods and its utilization in the provision of output services and otherwise eligibility of CENVAT Credit on the impugned goods/capital goods are not under dispute.

15. The Appellant further submits that there case is directly covered by the following Judgment:-

(i) Anvil Cable Pvt. Ltd. Vs. CCE 2023 (8) TMI 655 CESTAT KOLKATA

(ii) UOI Vs. Bharat Aluminium Co. Ltd reported in 2011 (263) E.L.T 48 (Chhattishgarh)

(iii) CCE Vs. Steelco Gujarat Ltd reported in 2010(255) E.L.T 518(Guj.)

16. The Appellant in the above background of undisputed fact of the instant case most humbly submits that denial of CENVAT Credit is wholly illegal and unreasonable.

17. The Appellant submits that the demand of Service Tax of Rs.30,052/- under the category of "Works Contract Services" for "Road Construction" is illegal, arbitrary and perverse.

18. The Appellant further submits that the service tax demand of Rs.4,340/- without specifying the nature of services, is wholly illegal and arbitrary and without authority of law.

19. The Appellant in the above background of the case submits that in any view of the matter, the entire demand fails on merit

20. The dispute in the instant case relates to the period 2009-10 to 2013-14 whereas the SCN is issued on dated 24-07-2016, hence, the entire demand is barred by normal period of limitation of one year. The instant proceeding is initiated on the basis of Audit of Books of Accounts and scrutiny of Profit & Loss A/c [Schedule XV (Other Income) of the Appellant. No fresh material is brought by department to allege any suppression of facts. Hence, the entire demand is barred by normal period of limitation of one year. In the case of ***CCE Vs. Hindustan Cables Ltd. reported in 2022 (382) ELT 188 (Cal.)*** it is held by the Hon'ble Calcutta High Court that when the entire allegation is framed on the basis of accounts of the assesse and no new material is brought on record by the department, extended period of limitation cannot be invoked. Further the dispute relates to pure interpretation of statute

and the ingredient visualized under proviso to Sec 73(1) is completely absent. In the case of ***International Merchandising Company, LLC, Vs. CST, reported in 2022 (12) TMI 556 – SC,*** the Hon'ble Supreme Court has held that when the dispute relates to pure interpretation of statute neither extended period of limitation can be invoked nor penalty can be imposed.

21. In the case of ***M/s Stemcyte India Therapeutics Pvt. Ltd. Vs. CCE reported in [2025] 8 S.C.R. 70 = (2025) 32 Centax 226 (S.C.),*** it is held by the Hon'ble Supreme Court that for invoking extended of limitation under Section 73 there must be an active and deliberate act on the part of assessee to evade tax. Mere non-payment of tax without any element of intent or suppression is not sufficient to attract the extended period of limitation. The assessee was under bonafide impression that they are not liable to pay service tax. Nothing on record to suggest assessee suppressed material facts. In absence of fraud, willful misstatement, suppression of fact with intent to evade payment of tax, the invocation of extended period of limitation is unwarranted. Mere non-payment, of tax, by itself, does not justify invocation of extended period of limitation.

22. The Ld A R, appearing for Revenue submits that the appellants has not cooperated and appeared when the summons were issued. Hence, based on the available documents the SCN was issued. Therefore, the point about the non-mentioning of all the details on the Invoices for disallowing the cenvat credit is justified. It is on record that the transportation activity was in respect of mining materials within the mining area. Therefore, the Dept was correct in classifying the same as 'mining services' to confirm the demand.

23. Heard both the sides. Perused the appeal papers and other documents placed before us.

24. On going through the Work Contract issued on 10.12.2019 by Eastern Coalfields, it is seen the 'Work Description' is specifically given under various headings. Transportation of coal is given at Sl No.2 and 3 with specific rate. The extract of the Contract is given below :

Transport Misc

ANNEXURE "C" —92—

EASTERN COALFIELDS LIMITED
(A Subsidiary of Coal India Ltd)
Office of the Chief General Manager (CMC)
Contract Management Cell, Sanctoria
Po : Dishergarh , Dist : Burdwan (WB)-Pin-713 333
****

Ref. No : ECL/HQ/CMC/Transport/W.O/RJML/ 1005 Dated : 10/12/09

M/s.Banowarilal Agarwalla Pvt. Ltd.
234/3A AJC Bose Road,
3rd Floor,
Kolkata -700020

'BY REGISTERED POST'

Sub :- Work order for " Loading & transportation of coal By tippers from quarry bed to surface including water Spraying & grading on entire route within lead range of 4-5 KM and 5-6 KM at Rajmhal Area.

Ref.:- (1) Your offer in response to tender Notice No. ECL/HQ/CMC/NIT/ Transport/922 dt. 14/07/09 & your subsequent letter no.Nil dt. 19/09/09.
(2) LOI No. ECL/HQ/CMC/LOI /Transport/ 990 Dated : 12/11/09.

Dear Sirs,

Pursuant to the above referred NIT, Tender was invited for the above-mentioned work and were opened on. 21/08/09 in presence of tenderer or their representatives and you had submitted a tender and also revised price in response to the aforesaid Tender Notice as per the terms and conditions stipulated for submission of such tenders which form part of this Work Order.

The management of Eastern Coalfields Limited has decided to award the work in your favour. The work is awarded to you for a period of **12** (Twelve) months from the date of commencement on the terms and conditions as covered in the bid document as well as stated herein after. The work shall be deemed to have commenced as detailed in LOI dt. 12/11/09 or handing over of site of work by Area.

1. **Work Description**

Description of Work	Quantity	Unit	Rate Rs/Te	Amount Rs
A.Loading of coal into tippers by mechanical means at quarry face & transportation to main /interim CHP including maintaining road using grader & water sprinkler within lead range of 4-5 KM and 5-6 KM as applicable having the following breakup of components.	60.00 Lakh Metric Ton	Metric Ton	Rs.41.19/Te for lead of 4-5 KM & Rs.46.80/Te. for lead of 5-6 KM	

Contd.../2.

10/12

Transport Misc

ANNEX.- "C" Contd. -93-

- 2 -

Description of Work	Quantity	Unit	Rate Rs/Te	Amount Rs
1. Loading of coal at quarry face into tippers	60.00 Lakh Metric Ton	Metric Ton	10.00	6,00,00,000.00
2. Transportation of coal from quarry to main /interim CHP within lead range of 4-5 KM	37.50 Lakh Metric Ton	-do-	29.89	11,20,87,500.00
3. Transportation of coal from quarry to main /interim CHP within lead range of 5-6 KM	22.50 Lakh Metric Ton	-do-	35.50	7,98,75,000.00
4. Water spraying & grading on entire route of coal transportation during the contract period.	60.00 Lakh Metric Ton	-do-	1.30	78,00,000.00
Total =				25,97,62,500.00

Security Deposit

2. Performance Security Deposit, 5% of annaulised value (Rs. 1,29,88,125.00) of contract amount will have to be deposited by you within 28 days of issue of this letter of acceptance in any of the form given below :

- a Bank Guarantee in the form given in the bid document by Scheduled Bank listed with RBI valid for a period of one year or 90 days beyond the period of contract , whichever is more.
- Govt. Securities, FDR or any other form of deposit stipulated by ECL
- Demand Draft drawn in favour of Eastern Coalfields Limited on any Scheduled Bank listed with RBI payable at its Branch at Asansol.

The bid security deposited in the form of Bank Guarantee as Earnest Money shall be discharged after submission of performance security as mentioned above.

Failure to comply with the requirement as above shall constitute sufficient ground for cancellation of award of the work and forfeiture of Bid Security.

3. Retention Money will be deducted at 5% from your running bills. Total of Performance security and Retention Money should not exceed 10% of annualised value of contract amount or lesser sum indicated in the bid document.

4. The refund of Performance Security Deposit and Retention Money will be guided as stipulated in clause 4.5 & 4.6 of General Terms and Conditions of the Tender Document.

Payment of Bills

5. You shall submit interim running account bill / bills supported with receipted challans for the measurement of work/ certified by the official authorised by the company for the purpose. Such payment shall be guided by relevant clause 8 of General Terms and Conditions of Tender Document.

Contd…/ 3.

1/9/12

Sample invoices raised by the appellant are extracted below :

ANNEX.-"D" Contd. -104-

CONSIGNMENT NOTE
BLA INFRASTRUCTURE PVT LTD
Transport Contractor
Lalmatia Colliery, Rajmahal, Godda, Jharkhand

Date: 16-05-2010

Consignor:	Eastern Coalfields Ltd	Consignee:	Eastern Coalfields Ltd
Address:	Rajmahal OCP, Lalmatia, Godda	Address:	Rajmahal OCP, Lalmatia, Godda
Dispatch from:	Rajmahal Query Bed	Delivery at :	Rajmahal Surface

Sl. No.	Description of Goods	Quantity (MT)	Remarks
1	Transportation of Coal at a lead of 5-6 Km	22.390	
	TOTAL	22.390	

Vehicle No.	JH-17C-3747	E. & O. E
		For BLA INFRASTRUCTURE PVT LTD
		Authorised Signatory

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ANNEXURE – "G"

CONSIGNMENT NOTE
BLA INFRASTRUCTURE PVT LTD
Transport Contractor
Lalmatia Colliery, Rajmahal, Godda, Jharkhand

Date: 06-08-2010

Consignor:	Eastern Coalfields Ltd	Consignee:	Eastern Coalfields Ltd
Address:	Rajmahal OCP, Lalmatia, Godda	Address:	Rajmahal OCP, Lalmatia, Godda
Dispatch from:	Rajmahal OCP, Lalmatia	Delivery at:	Pirpainti Railway Siding

Sl. No.	Description of Goods	Quantity (MT)	Remarks
1	Transportation of Coal from Lalmatia Colliery to Pirpainti Railway siding for a distance of 32-33 Km	24.330	
	TOTAL	24.330	

Vehicle No.	JH-17C-3755	E & O. E
		For BLA INFRASTRUCTURE PVT LTD
		Authorised Signatory

25. The documentary evidence clearly shows the consideration being received only towards transportation of coal and cannot be equated with 'Mining Services'.

26. This Tribunal in the case of **Calcutta Industrial Supply Corpn Vs Commissioner of CGST & Excise Kolkata – vide Final Order No.76985-76986/2024 dated 30.8.2024,** has held as under :

> "10. The assessee further submits that the demand has been raised under the catagory of "Mining Service". The activity undertaken by the assessee, is the transportation of coal up to the distance of 7 km, which is incidental loading and the same is taxable under "Transport of Goods by Road Service as held by the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Service Tax, Raipur Vs. Singh Transporters reported in 2017 (4) GSTL 3 (SC), wherein it has been held that the transportation of coal from pit head to railway siding inside the mines is taxable as "Goods Transport Agency Services". In this case, the Hon'ble Supreme Court has held as under:
>
> > "5. Though the leamed Customs, Excise & Service Tax Appellate Tribunal, New Delhi (Tribunal for short) in answering the issue in favour of the respondent leading to the present proceedings has relied upon its earlier judgment in the case of Miu. V.N. Transport v. CCE, Raipur (2016-TIOL-1510-CESTAT-DEL), Arjuna Carriers Pvt. Ltd. Commissioner of Service Tax [2016 (41) S.T.R. 632 (Th-Del)] it is argued that the said decisions may not be relevant to the present case inasmuch as the same pertains to a period prior to 1st June, 2007 and the present case pertains to the post 1st June, 2007 period. The difference in time is relevant in view of the insertion of Section 65(105)(zzzy), extracted above, effective from 1st June, 2007.
> >
> > 6. Be that as it may, even if the ratled upon judgment in the case of Arjune Carriers (supra) is of no consequence to the present case, we are of the view that the activity undertaken by the respondent le transportation of coal from the pit-heads to the railway sidings within the mining areas is more appropriately classifiable under Section 65(105) (zip) of the Act, namely, under

> the head transport of goods by road service" and does not involve any service in relation to "mining of mineral, oil or gas" as provided by Section 65(106)(zzzy) of the Act.
>
> 7. The reliance placed on the definition of the term "minus" under Section 2(1) of the Mines Act, 1952 does not assist the Revenue inasmuch as what would be indicated by the said definition is that a mine is not to be understood necessarily in respect of pit-heads of the mining area or the excavation or drilling underground, as may be, but also to the peripheral area on the surface. The said definition has no apparent nexus with the activity undertaken and the service rendered."
>
> 14. In view of this, we hold that the demand under "Mining Service" of Rs.10,18,98,846/- is not sustainable against the assessee.

27. Following the ratio of the cited case law, we set aside the confirmed demand of Rs.53,01,004 and allow the appeal to this extent on merits.

28. Coming to the availment of Cenvat Credit, we find that in the SCN, the allegation to the effect that appellant's capitalized goods do not tally with the cenvat credit taken under this head. Under the CCR 2004, the credit for capital goods is granted based on the conditions specified under the Rules. There is nothing specified in the Rules to the effect that the capital goods bought by the appellant are required to be capitalized. Based on the accounting practice, the appellant may treat the same as 'Revenue Expenditure' as advised by their Chartered Accountant. The only point to be seen is as to whether, the goods have been properly accounted for in their books of account or not. From the proceedings we do not any allegation to the effect that the capital goods in question were not received in the factory premises of the appellant.

29. The appellant has submitted CA's certificate alongwith the ledger copy of Tata Motors towards the Invoices revised by them and payments made to the us. The same is extended below.

Nand-Kunj
53C, Motilal Nehru Road
Kolkata - 700 029
Ph. : 2419 0025
e-mail : murmuria@gmail.com

Murmuria & Associates
Chartered Accountants

Admn. office :
16, Tara Chand Dutta Street
Kolkata - 700 073

TO WHOM IT MAY CONCERN

We hereby certify that we have examined the books of accounts and other relevant records of BLA Infrastructure Pvt Ltd, having its registered office at 53A Leela Roy Sarani, Kolkata - 700019 for the period 1st February 2010 to 31st March 2011. We hereby confirm that the attached ledger for Tata Motors Limited is true and valid to the best of our knowledge and based on the information provided to us.

For **Murmuria & Associates**
Chartered Accountants
FRN: 316188E

Dated: 19/09/2025
UDIN: 25052943BMIKSL8280

CA Sunil Murmuria
Proprietor
Membership No.: 300-52943

BLA INFRASTRUCTURE PVT.LTD.
UNIT-B1,4TH FLOOR, FMC FORTUNA,
234/3A, A J C BOSE ROAD,
KOLKATA - 700 020

TATA MOTORS LIMITED
Ledger Account

1-Feb-10 to 31-Mar-10

Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
13-Mar-10	To **SREI EQUIPMENT FINANCE (P) LTD** *Ch. No. :385150 ISSUED TO SREI EQUIPMENT FINANCE (P) LTD. FOR DOWN PAYMENT OF 14 TATA HYVA LPK 2518 14 CUM FOR LALMATIA SITE.*	Journal		3,86,351.00	
31-Mar-10	By **(as per details)** TATA HYVA (E.NO. 01C62857822) 16,43,813.31 Dr DEF CENVAT ON MACHINERY 1,53,550.19 Dr DEF EDU CESS ON CENVAT ON MACHINER 3,071.00 Dr DEF S&HS EDU CESS ON CENVAT ON MACHINERY 1,535.50 Dr *INVOICE NO. A/924651356 DT. 31.03.2010 OF TATA MOTORS TOWARDS PURCHASE OF 14 CUM FRT. ENDBOX TIPPER MODEL NO. LPK2518/38 TCBSII, CHESIS NO. MAT448091A3C04684, ENGINE NO. 01C62857822.*	Journal			18,01,970.00
	By **(as per details)** TATA HYVA (E.NO. 01C62859678) 16,52,911.63 Dr DEF CENVAT ON MACHINERY 1,44,718.80 Dr DEF EDU CESS ON CENVAT ON MACHINER 2,894.38 Dr DEF S&HS EDU CESS ON CENVAT ON MACHINERY 1,447.19 Dr *INVOICE NO. A/924651364 DT. 31.03.2010 OF TATA MOTORS TOWARDS PURCHASE OF 14 CUM FRT. ENDBOX TIPPER MODEL NO. LPK2518/38 TCBSII, CHESIS NO. MAT448091A3C05215, ENGINE NO. 01C62859678.*	Journal			18,01,972.00
	By **(as per details)** TATA HYVA (E.NO. 01C62859691) 16,52,911.63 Dr DEF CENVAT ON MACHINERY 1,44,718.80 Dr DEF EDU CESS ON CENVAT ON MACHINER 2,894.38 Dr DEF S&HS EDU CESS ON CENVAT ON MACHINERY 1,447.19 Dr DEF *INVOICE NO. A/924651366 DT 31.03.2010 OF TATA MOTORS TOWARDS PURCHASE OF 14 CUM FRT. ENDBOX TIPPER MODEL NO. LPK2518/38 TCBSII, CHESIS NO. MAT448091A3C05199, ENGINE NO. 01C62859691.*	Journal			18,01,972.00
	By **(as per details)** TATA HYVA (E.NO. 01C62859960) 16,52,911.63 Dr DEF CENVAT ON MACHINERY 1,44,718.80 Dr DEF EDU CESS ON CENVAT ON MACHINER 2,894.38 Dr DEF S&HS EDU CESS ON CENVAT ON MACHINERY 1,447.19 Dr *INVOICE NO. A/924651363 DT. 31.03.2010 OF TATA MOTORS TOWARDS PURCHASE OF 14 CUM FRT. ENDBOX TIPPER MODEL NO. LPK2518/38 TCBSII, CHESIS NO. MAT448091A3C05055, ENGINE NO. 01C62859960.*	Journal			18,01,972.00
	Carried Over			3,86,351.00	72,07,886.00

MURMURIA & ASSOCIATES Chartered Accountants Kolkata

continued ...

30. We do agree that the appellant cannot take the stand that the OIO has traversed beyond the scope of SCN, since as pointed out by the Ld AR, the Adjudicating authority has recorded that the appellants

did not provide the documents when called for. Therefore, he would not have known the shortcomings subsequently discovered in the Invoices. However, the Tribunals / Courts have been consistently holding that Cenvat is granted so as to avoid the cascading effect and so long as the goods in question reach the assessee and enough evidence is brought in towards payment for the invoices of such goods, the Cenvat Credit should not be denied on account of procedural lapses. This Tribunal in the case of **Anvil Cables Pvt Ltd Vs CCE& ST Jamshedpur – vide Final Order No.76303/2023 dated 28.7.2023** [Appeal No.194 /2012], has held as under :

> "2.1. Therefore, a Show-cause notice was issued on 29.12.2010 by invoking extended period of limitation of deny CENVAT Credit availed by them during the period 01.04.2005 to 31.03.2009 alleging that as the invoices are not at the address of appellant and therefore, they are to entitled to avail the CENVAT Credit.
> 7. Further, it is an admitted fact that although the invoices were in the name of their Head Office, but the goods have been received in the factory at Gamharia Unit, which is registered with the Central Excise Department and the same has been used by the appellant for manufacture of their final product, which suffered duty."

31. Following the ratio of the cited case law, we set aside the confirmed demand of Rs.23,41,941 on merits.

32. Regarding the balance demands, we find that in case of confirmed demand of Rs.30052, the same is towards construction road, which is exempted from payment of Service Tax. The other demand of Rs.4,340 has been confirmed without specifying the service attracting this amount. On this factual basis, we set aside these demands on merits.

33. The appellant has also taken the plea that the SCN issued on 24.7.2016 for the transactions taking place during 2009-10 to 2013-14 is time barred. We find that the SCN has been issued with a huge

demand of Rs.7.82 crores. After verification, more than 90 % of the same has been dropped. Similarly even in respect of Cenvat Credit, part of the demand has been dropped. There is no dispute that the appellant has been maintaining proper record for all the receipts and accounting for the same. The data has been taken from the P & L accounts and Balance Sheet for quantifying the demand. Based on the records produced by the appellant, most of the demands have been dropped at the adjudication stage. This shows that no case of suppression has been brought in by the Revenue. Therefore, the confirmed demand for the extended period do not sustain even on account of time-bar. We set aside the same.

34. Thus the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on.06.11.2025….)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.