CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86154 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. .... Appellant
Power Sector, Western Region (Head Quarters),
Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur .... Respondent
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

WITH

Service Tax Appeal No. 86157 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. .... Appellant
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Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur .... Respondent
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

AND

Service Tax Appeal No. 86158 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. .... Appellant
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Versus

Commissioner of CGST & Central Excise, Nagpur .... Respondent
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

AND

Service Tax Appeal No. 86159 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. **.... Appellant**
Power Sector, Western Region (Head Quarters),
Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

AND

Service Tax Appeal No. 86160 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. **.... Appellant**
Power Sector, Western Region (Head Quarters),
Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

AND

Service Tax Appeal No. 86161 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. **.... Appellant**
Power Sector, Western Region (Head Quarters),
Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

AND

Service Tax Appeal No. 86345 of 2019

(Arising out of Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2008 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

M/s Bharat Heavy Electricals Ltd. **.... Appellant**
Power Sector, Western Region (Head Quarters),
Shree Mohini Complex, 345, Kingsway,
Nagpur – 440 001

Versus

Commissioner of CGST & Central Excise, Nagpur .... Respondent
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

APPEARANCE:

Shri Z.U. Alvi, Advocate for the Appellants

Shri C.S. Pavan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85951-85957/2025

Date of Hearing: 16.06.2025

Date of Decision: 16.06.2025

PER: S.K. MOHANTY

During the disputed period, the appellants herein were engaged *inter alia*, in the activities of setting up of the Power Plants/Projects for various customers. The power plants used to be set up based on the contractual norms provided under the contracts entered into between the appellants and their respective customers. For setting up of the power plants, the appellants basically provided the services under the taxable category of 'Commercial and Industrial Construction Services' and 'Erection, Commissioning and Installation Services'. For providing such category of services, the appellants got themselves voluntarily registered with the Service Tax Department. In respect of the taxable services i.e., Commercial and Industrial Construction services, the appellants had availed the benefit of abatement of 67% and paid service tax on the remaining 33% of the value of services in terms of Notification No. 15/2004-S.T. dated 10.09.2004 for the period upto (26.08.2006) and under Notification No. 01/2006-S.T. dated 01.03.2006 (w.e.f. 01.03.2006). Availment of the benefit provided under the said notification was objected to by the Department on the ground that in some of the projects, the appellants had availed the CENVAT Credit of Central Excise duty paid on the inputs/capital goods and service tax paid on the input services. In other words, the Department had contended that taking of CENVAT Credit is 'assessee specific', and that since the appellants had availed the CENVAT Credit on inputs, capital goods and input services, the benefit provided under the Notification (supra) shall not be available. Three numbers of show-cause notices issued in this regard by the Service Tax Department were adjudicated upon by the learned Commissioner of Customs & Central Excise, Nagpur vide Orders-in-Original Nos. 22/2008/C/ST dated 30.12.2008, 08/2009/ST/C dated 29.12.2009 and 12/ST/2010/C dated 29.10.2010, in confirming the proposals made in the SCNs. Feeling aggrieved with the said adjudication orders, the appellants had preferred appeal before the Tribunal, which was disposed of vide Final Order No. A/89-91/2012/CSTB/C-I dated 20.01.2012 in allowing the appeal by way of remand to the original authority. The relevant paragraphs recorded in the said order by the Tribunal, are extracted herein below: -

> *"4.2. A plain reading of the Notifications clearly shows that the condition relating to non-availment of CENVAT credit on inputs/input services applies to "case" where CENVAT credit is taken either on the 'input' or 'input service', then the abatement under the aforesaid Notifications would not be available. In a "case" where the CENVAT credit on input/input service is not taken then the benefit of abatement would available. The Notification uses the expression "in cases where". In other words, the Notification does not stipulate that in all cases, the condition of non-availment of CENVAT credit should be satisfied uniformly without exception. Therefore, in respect of a contract where the assessee has not taken input credit prior to 01/03/2006 and input/input service tax credit on or after 01/03/2006, the assessee would be rightly entitled for the benefit under the replaced Notification No. 15/2004-ST as replaced by Notification No. 1/2006 dated 01/03/2006. In a case where the assessee avails CENVAT credit then in such cases the assessee is not entitled for abatement and the service tax liability will have to be discharged on the full value of the contract. There is nothing in these Notifications which prevents an assessee from not availing CENVAT credit and paying service tax on 100% of the contract value in respect of one particular contract and availing abatement and not availing CENVAT credit in respect of another contract. In other words, there is no stipulation in the Notification that the option to avail/non-avail CENVAT credit has to be exercised uniformly in respect of all the contracts executed by the assessee. It is for the assessee to choose which formulation he wants to follow in a given contract.*
>
> *xxxx xxxx xxxx*
>
> *4.4. The next issue for consideration is in a case/contract where abatement benefit is availed under Notification 15/2004 or 1/2006, without taking CENVAT credit on inputs or capital goods or input service and service tax liability is discharged on the reduced value, whether for the purpose of discharge of service tax liability, accumulated CENVAT credit arising from some other case/contract can be utilised or not. In our view, there is no such bar or restriction/prescribed in the notification. The notification only stipulates that in respect of a case/contract, where abatement is availed, no CENVAT credit on inputs, capital goods or input services shall be taken. So long as this condition is satisfied, abatement is permissible. Discharge of service tax liability on the non-abated portion of value is a totally different matter. Hence there is no bar/restriction in discharging service tax liability thro accumulated CENVAT credit so long as no CENVAT credit is taken on the inputs/capital goods or input services used in the rendering of the service in the given case or contract and we hold accordingly."*

2. Pursuant to the remand directions contained in the order dated 20.01.2012, the original authority took up *de novo* adjudication proceedings and passed the Order-in-Original No. 44-50/ST/2018/C/NGP-II dated 31.12.2018 (for short hereinafter referred to as 'the impugned order'), wherein in respect of seven numbers of SCNs, the demands proposed therein were confirmed. Being dis-satisfied with the impugned order dated 31.12.2018, the appellants have preferred these appeals before the Tribunal.

3. Heard both sides and examined the case records.

4. We find that in the SCNs issued by the Department, the Revenue's stand was that availment of CENVAT Credit of the duties paid on inputs/ capital goods and service tax paid on the inputs services is 'assessee specific', and that since the appellants had availed CENVAT Credit, the benefit provided under the Notifications No. 15/2004-S.T. dated 10.09.2004 and 01/2006-S.T. dated 01.03.2006 shall not be available. However, such stand of the Revenue was negated by the Tribunal vide order dated 20.01.2012, holding that availment of credit should be as 'contract specific' and accordingly, remanded the matter back to the original authority for *de novo* adjudication proceedings. We find that in the impugned order at paragraph 19, the original authority has recorded that the appellants had availed CENVAT Credit on inputs/capital goods or input services used for execution of various contracts/projects and also relied upon the sample copies of invoices, based on which the appellants had availed the CENVAT credit. Further, at paragraph 21, he has also recorded that the appellants had not submitted the complete list of contracts/projects and the amounts received for execution of the work. With such observation, the original authority has confirmed the demands proposed for recovery in the SCNs.

5. The issue as to whether, availment of CENVAT credit on various inputs/ input services/ capital goods by an assessee as a whole; or, it should be 'contract specific', for the purpose of consideration of the benefit provided under the above notification(s), is no more open for any debate in view of the earlier order dated 20.01.2012 (supra) passed by the Tribunal. The remand directions contained in the said order were also considered by the original authority in the impugned order dated 31.12.2018. However, he has failed to appreciate the case of the appellants, owing to the reason that complete set of contracts (project wise) and the consideration received for execution of the assigned work as per the contracts were not submitted by the appellants at the time of *de novo* adjudication proceedings before the

original authority. Since, the issue involved in the present appeals can only be addressed to for a decision with regard to correct availment of the benefit provided under the notification(s) (supra) or otherwise, the same verification tasks, being original in nature, should be carried out by the original authority, who has passed the impugned order. In view of the fact that the original authority has specifically recorded in the impugned order that the appellants did not submit the documentary evidences, in our considered opinion, this is a fit case, where the matter can be remanded back to the original adjudicating authority, once again, for examining various documentary evidences, for a conclusion regarding lawful availment of the benefits provided under the above referred notification(s).

6. In view of the foregoing discussions, the impugned order is set aside and the appeals are allowed by way of remand to the original authority for carrying out the *de novo* adjudication proceedings and for passing of the fresh adjudication order, in line with the observations made herein above. Needless to say, that reasonable opportunity of personal hearing should be granted to the appellants before deciding the case afresh. Since, the original authority in the impugned order has made the specific remark that the appellants did not submit the documentary evidences regarding the issue of correct availment of the benefits provided under the notification(s) (supra), we make it clear that the appellants should adequately cooperate in the *de nova* adjudication proceedings inasmuch as this is the second round of litigation, for which the matter is being remanded back again.

7. Appeals are allowed by way of remand to the original authority.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha