

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI
REGIONAL BENCH
COURT NO.1**

**Service Tax Early Hearing Application No. 86529 of 2025
in
Service Tax Appeal No. 87626 of 2018**

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/288/17-18 dated 23.03.2018 passed by the Commissioner of Central Tax & CX (Appeals)-I, Mumbai)

Bhimrajka Impex Ltd.

184-B, Maker Tower 'E',
18th Floor, World Trade Centre Complex,
Cuffe Parade, Mumbai 400 005.

Appellant

Versus

**Commissioner of CGST & Central Excise,
Mumbai South**

14th Floor, Air India Building,
Nariman Point, Mumbai 400 021.

Respondent

Appearance:

Shri Om Mittal, C.A., for the Appellants

Shri S.K. Yadav, Authorised Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 03.02.2026

Date of Decision: 03.02.2026

FINAL ORDER No. 85272/2026

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Applicant has filed this miscellaneous application, seeking for early hearing of the appeal, on the ground that the issue involved in the present appeal is squarely covered by the order of the Co-ordinate Bench of the Tribunal in the case of *Ruchi Malls Pvt. Ltd. vs. Commissioner of Service Tax, Delhi* [2020 (34) GSTL 426 (Tri.-Del.)]. On a query from the Bench regarding disposal of the appeal today on the ground that the issue is squarely covered by the order of the coordinate Bench of the Tribunal (supra), learned AR conceded that the appeal can be taken up for hearing and disposal. Thus, with the consent

of both sides, after allowing the application for early hearing, the appeal is taken up for hearing and disposal today.

3. Availment of CENVAT credit of central excise duty paid on the inputs and service tax paid on the input services, is the subject matter of the present dispute. The period of dispute involved in the present appeal is prior to 01.04.2011. The appellant had used the CENVAT credit availed on the input services for construction of mall, which was rented out for a consideration. The department had denied the CENVAT credit on the ground that the definition of 'input service' under Rule 2(I) of the CENVAT Credit Rules, 2004 has specifically excluded "construction of a building or a civil structure or parts thereof", from the purview of the input service. On reading of the statutory provisions, it transpires that such amendment, restricting availment of CENVAT credit on certain services was brought into effect in the statute book from 01.04.2011. Since the embargo for use of the input services on construction of a building or a civil structure or parts thereof was not hitherto provided in the un-amended definition provided under Rule 2(I) of the Rules of 2004, we are of the view that the CENVAT credit availed on the input services used for such construction activity, prior to the period 01.04.2011, should be available to the appellant. We find that the Co-ordinate Bench of this Tribunal in the case of *Ruchi Malls Pvt. Ltd.* (supra) has allowed the appeal on the similar set of facts. The relevant paragraphs recorded in the said order are quoted herein below:-

"5. Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a service provider to take Cenvat credit of service tax paid on the input services for providing the output service. The disputed services confirm to the definition of 'input service', prior to amendment of Rule 2(I) of the rules. Thus a service provider is eligible to take credit of service tax on the input services; in terms of Rule 3 of the rules. However, in view of the embargo created in the definition of input service w.e.f. 1-4-2011, Cenvat credit is not permissible on the disputed services, from such effective date. The appellant contended that the Cenvat credit was availed prior to 1-4-2011. In such eventuality, taking of credit is in conformity with the Cenvat statute. Since taking of Cenvat credit is proper and justified, its utilisation after 1-4-2011 cannot be questioned or disputed by the Department, in view of the fact that taking of Cenvat credit decides its utilisation, according to the convenience of the assessee. The said fact is evident from sub-rule (1) read with sub-rule (4) of Rule 3 of the Rules, 2004 wherein, the assessee has been given the option to utilise the credit so availed for payment of Central Excise duty or service tax for providing output service. Since, the appellant has taken the credit prior to 1-4-2011 and the Mall was also

completed before 2011, as confirmed by the appellant, denial of Cenvat benefit, in our considered opinion, cannot be sustained.

6. *We find that this Tribunal in the case of Navratna S.G. Highway Prop. Pvt. Ltd. v. CST, Ahmedabad - [2012 \(28\) S.T.R. 166](#) (Tri. - Ahmd.) has held that the goods and services used for construction of warehouse, which is further used for providing the output service should be available for the Cenvat benefit. The relevant paragraph in the said decision is extracted hereinbelow :-*

"3.2 The definition of 'inputs' is limited to the definition of 'input services' as can be seen from the definition given above. Credit of duty paid on inputs is available when the inputs are used for providing an 'output service'. Therefore, there is a need to say that the inputs have been used for providing an 'output service'. In the case of 'input service', the definition includes input services used by a provider of taxable service for providing an output service. Therefore the definition of input and input service are pari materia as far as the service providers are concerned. That being the position, the decision of the Hon'ble High Court of Andhra Pradesh would be applicable to the present case. In that case also, the Hon'ble High Court took the view that without use of cement and TMT bars for construction of warehouse assessee could not have provided 'storage and warehousing service'. In this case also, without utilizing the service, mall could not have been constructed and therefore the renting of immovable property would not have been possible. The issue involved is squarely covered by the decision of the Hon'ble High Court of Andhra Pradesh. Since the service tax demand itself is not sustainable, the question of imposition of penalty does not arise. The appeal is allowed with consequential relief to the appellants."

7. *We find from the case records that the adjudicating authority has held that the Cenvat credit on the disputed services has also been taken by the appellant after the amendment of the definition of input service w.e.f. 1-4-2011. The appellant contended that the entire credit was availed prior to such date of amendment. Since, there is dispute about the period of taking Cenvat credit, we are of the view that the matter should go back to the original authority for ascertaining the period, when the Cenvat credit was taken by the appellant in its Cenvat account. If the credit has been taken prior to 1-4-2011, the benefit of Cenvat credit should be allowed by the original authority."*

4. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellant. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Order dictated in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)