

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No.42545 of 2015

[Arising out of Order-in-Original No.LTUC/416A & 416B-(C)/2015-(C) dated 29.09.2015 passed by Commissioner of Central Excise, Large Tax Payer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101]

**M/s.Chettinad Cement Corporation
Ltd.**

.... Appellant

Rani Meyyammai Nagar,
Karikkali Post (Via. Guziliamparai)
Dindigul District,
Tamil Nadu 624 703.

VERSUS

**The Commissioner of GST &
Central Excise**

... Respondent

Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

WITH

Excise Appeal No.42546 of 2015

[Arising out of Order-in-Original No.LTUC/416A & 416B-(C)/2015-(C) dated 29.09.2015 passed by Commissioner of Central Excise, Large Tax Payer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101]

**M/s.Chettinad Cement Corporation
Ltd.**

.... Appellant

Rani Meyyammai Nagar,
Kaarakkali Post (Vi. Guziliamparai)
Dindigul District,
Tamil Nadu 624 703..

VERSUS

**The Commissioner of GST &
Central Excise**

Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

... Respondent**APPEARANCE :**

Shri R. Parthasarathy, Consultant for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40370-40371/2026

DATE OF HEARING : 08.01.2026
DATE OF DECISION : 17.03.2026

Per: Shri P. Dinesha

The Assessee, who is the Appellant in this Appeal, has assailed the order of Commissioner who vide the impugned Order-in-Original dated 29.09.2015 has dismissed its Appeal by upholding the denial of input service credit.

2. Shri R. Parthasarathy, Id. Consultant appeared for the Appellant and Smt. O.M. Reena, Id. Additional Commissioner appeared for the Revenue, heard both sides and perused the orders of lower authorities and also considered the judicial precedents relied upon during the course of arguments.

3. Brief undisputed facts as could be gathered from the impugned order are that it appears that the Internal Audit Group of the LTU visited the Assessee between 10.12.2014 and 14.02.2014 for audit of accounts and they appear to have found that the Assessee's unit at Kalaikali are having captive limestone mines in various places like Devarmalai, Dholipatti, etc.; while excavating limestones from these mines, the rejects were segregated which were unusable, were loaded and transported to the dumping yard away from the factory, for which the Assessee-Appellant had engaged the services of M/s.Chettinad Earthmovers Pvt. Ltd. [CEPL] and M/s.Thriveni Earthmovers Pvt. Ltd. [TEPL] for loading and transporting the materials from the mines to the dumping yards; it was found by the Audit Group that the Appellant had availed cenvat credit of the service tax paid on the above services provided by CEPL and TEPL which, was

felt by the Revenue as ineligible since according to them, the above activity did not fall within the ambit of 'input services' as defined under Rule 2(l) of the Central Credit Rules, 2004 (CCR 2004, for short). The above thus resulted in the issuance of Show Cause Notices proposing to recover the above cenvat credit and the details of SCNs are as under :-

S.No	SCN No. & Date	Period involved	Amount of credit demanded
1.	LTUC/240/2014-C dt. 25.06.2014	June 2009 to March, 2014	21417706
2.	LTUC/177/2015-C dt. 27.04.2015	April 2014 to March 2015	12209145
			33626851

It appears that the Appellant filed a detailed reply to the above SCNs which was considered during adjudication and the Commissioner however, vide a common impugned Order-in-Original Nos. LTUC/416A & 416B-(C)/2015-(C) dated 29.09.2015 rejected the same *inter alia* holding that the activity of loading and transporting waste and rejects cannot be treated as an 'input service' under Rule 2(l) *ibid*.

4. After hearing both sides, we find that the only issue to be decided by us is, 'whether the transporting reject/waste materials from the mines to the dumping yards is an 'input service' and the Appellant is eligible for availing cenvat credit on the above service?'

5. From a perusal of the impugned order, the Commissioner has rejected the claim of the Appellant for three reasons viz. (i) there was no nexus between the transporting of reject and the manufacturing activity, (ii) transporting of rejects is unconnected with the activity of manufacturing of cement and (iii) transporting of rejects is not an activity relating to 'input service'. He has also relied on a decision of Delhi Bench in the case of **CCE Delhi Vs Maruti Suzuki India Ltd.** [2015 (38) STR 503 (Tri.-Del.)]. The facts of the above case as appearing at page 7 of the impugned order reproduced by the Commissioner reveal that the Assessee had availed credit of the service tax paid on the activity of network cable laying/dismantling, installation of network etc. The Bench disallowed the credit after analyzing the products. The Commissioner has also referred to an order of Chennai Bench in the case of **Thriveni**

Earthmovers (P) Ltd. Vs CCE Salem [2009 (15) STR 393 (Tri.-Chennai)] wherein, facts as reproduced at para-13 of the impugned order reveal that the Bench had held that the movement of limestone rejects cannot be classified under 'Cargo Handling Service' and that such activity would fall under mining of mineral etc. The said order/decision has been distinguished by the Commissioner by observing that the Tribunal did not go into the issue of classification of the activity of removal of overburdens but limited itself to the taxability of the same under Service Tax law. We are at a loss to observe here that when the nature of an activity is classified under a particular head for the purposes of service tax, how the Commissioner can state that the classification is different for Central Excise Act ?. It is not his case that the said ruling in the case of **Thriveni Earthmovers (P) Ltd. supra** has been overruled or set aside by a higher judicial fora, on an Appeal filed by the Revenue and nor could the Commissioner bring on record any distinguishing facts. Hence, at the outset, we are of the view that the interpretation sought to be adopted in the impugned order is totally incorrect and unsustainable in law. We say so also for the reason that the Commissioner is trying to rely on a totally unconnected order in the case of **Maruti Suzuki**

India Ltd. *supra* and the issues of which are totally different.

6. The case of the Appellant is that the removal of overburden/waste/reject and loading the same and transporting the same to the dump yard is a technical requirement of the extraction of limestone which is available underneath such overburden/waste/ and hence, without removal of such overburden/reject, the objective of unearthing of limestone mines would be impossible. Once removed, the same has to be loaded to be transported out of the mining area to the dumping yards which is also an essential part of mining services carried out by the Appellant. It is thus claimed that the transportation of reject/waste is connected directly or indirectly to the activity of mining and therefore such activity would definitely fall within the ambit of Rule 2(I) (ii) of CCR. We find merit in the above contentions of the Appellant. We also find that almost similar nature of activity has been held in the case of **Thriveni Earthmovers (P) Ltd *supra*** in an Appeal under the service tax provision as 'mining services' and hence, the availment of the service tax paid would

automatically get covered by the classification for the purpose of service tax which, in no way different for the purposes of Central Excise Act.

7. In view of the above discussions, we do not find any justifiable reasons to sustain the impugned order for which reason the same is set aside. Resultantly, the Appeals stand allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 17.03.2026)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)