CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 1017 of 2011

[Arising out of Order-in-Original No. 11/RDN/2011 dated 30.03.2011 passed by the Commissioner, Service Tax Commissionerate, New Delhi]

M/s Sistema Shyam Teleservices Ltd ……Appellant
334, Udyog Vihar, MTS Tower,
Phase IV, Gurgaon, Haryana 122001

VERSUS

Commissioner of Service Tax, Delhi ……Respondent
IAEA House, 17-B, IP Estate,
MG Marg, New Delhi 110002

WITH

Service Tax Appeal No. 55426 of 2013

[Arising out of Order-in-Original No. 167/ST/PKJ/CCE/Adj/2012 dated 15.10.2012 passed by the Commissioner, Central Excise (Adj.), New Delhi]

M/s Sistema Shyam Teleservices Ltd ……Appellant
334, Udyog Vihar, MTS Tower,
Phase IV, Gurgaon, Haryana 122001

VERSUS

Commissioner, Central Excise, LTU Delhi ……Respondent
NBCC Plaza, Pushp Vihar,
Saket, New Delhi 110017

AND

Service Tax Appeal No. 1242 of 2011

[Arising out of Order-in-Original No. 11/RDN/2011 dated 30.03.2011 passed by the Commissioner, Service Tax Commissionerate, New Delhi]

Commissioner of Service Tax, Delhi ……Appellant
IAEA House, 17-B, IP Estate,
MG Marg, New Delhi 110002

VERSUS

M/s Sistema Shyam Teleservices Ltd ……Respondent
334, Udyog Vihar, MTS Tower,
Phase IV, Gurgaon, Haryana 122001

APPEARANCE:

Mr. Gajendra Maheshwari, Ms. Priyamwada Sinha and Mr. Arnav Mehta, Advocates for the Assessee
Mr. Shyam Raj Prasad, Special Counsel (AR) for the Revenue

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60242-60244/2026

DATE OF HEARING: 18.11.2025
DATE OF DECISION: 17.03.2026

S. S. GARG :

This order will dispose of three appeals. Two appeals viz. ST/1017/2011 & ST/55426/2013 are filed by the Assessees against the impugned Order-in-Original ('OIO') Nos. 11/RDN/2011 dated 30.03.2011 and 167/ST/PKJ/CCE/Adj/2012 dated 15.10.2012 respectively. One appeal viz. ST/1242/2011 is filed by the Revenue against the impugned OIO No. 11/RDN/2011 dated 30.03.2011. All three appeals are taken up together for disposal by this common order. Details of appeals are as under in a tabular form:

S.No.	Appeal No.	Issue	Period	Amount in dispute (Rs.)	OIO No.	Demand status
1.	**ST/1017/2011** filed by the Assessees	Wrongful availment of CENVAT Credit on capital goods such as towers, air conditioners, DG sets, Battery sets and pre-fabricated structures, as well as input services used in construction /erection of transmission towers.	Oct 2008 to March 2010	2,17,21,367/- with interest, equal penalty & penalty of 5000/-	11/RDN/2011 dated 30.03.2011	Demand confirmed
2.	**ST/55426/2013** filed by the Assessees		2010-11	2,69,44,687/- with interest, 200/- or 2% penalty per day and penalty of 5000/-	167/ST/PKJ/ CCE/Adj/ 2012 dated 15.10.2012	

3.	**ST/1242/2011** filed by the Revenue	Denial of transfer of CENVAT Credit upon shifting of Centralized Registration from Jaipur to Gurugram	Oct 2008 to March 2010	1,71,37,92,147/-	11/RDN/2011 dated 30.03.2011	Demand dropped

2. Briefly stated facts of the present case are that the Assessees, M/s Sistema Shyam Teleservices Ltd were registered centrally as a service provider in the category of Telecommunication Services, Transport of Goods by Road Services, Rent-a-cab Service, Business Support Services, Business Auxiliary Services, Renting of Immovable Property Services, Sponsorship Services, Management & Consultancy Services etc. The Assessees were availing CENVAT Credit of service tax on capital goods, input goods and input services under Cenvat Credit Rules, 2004. They got themselves centrally registered w.e.f. 22.09.2009 under the jurisdiction of Division-II, Gurgaon on shifting of their centralized accounting from Jaipur office to Gurgaon office. They were initially registered for cellular mobile telephone and basic telephone services, and leased circuit and other related services at Jaipur and obtained a centralized registration with Service Tax Authorities in Jaipur w.e.f. 10.05.2007. The department entertained the view that the Assessees had taken inadmissible CENVAT Credit on capital goods, input services and input goods during the relevant period in contravention of Rule 3 & Rule 4 of the Cenvat Credit Rules, which was not admissible to them.

2.1 A show cause notice dated 29.09.2010 was issued to the Assessees proposing denial and recovery of Rs.2,17,21,367/- being

ineligible CENVAT Credit taken and utilized for the period Oct 2008 to March 2010. It was also alleged in the show cause notice that the Assessees had shown the opening balance of CENVAT Credit of Rs.1,71,37,92,147/- reflected in column 5B(a) of ST-3 Retuns filed for the period Oct 2009 to March 2010 before Gurgaon Division office, after obtaining centralized registration. It was further alleged that the said amount of CENVAT Credit was not eligible to the Assessees as they had not shifted their business as required under Rule 10(2) of the Cenvat Credit Rules; they had only shifted their centralized accounting function to their Gurgaon office from Jaipur; therefore, Rule 10 of the Cenvat Credit Rules was not applicable in the instant case and consequently the said amount of credit was not admissible to them and the same was liable to be denied and recovered from the Assessees along with interest and penalties. The Assessees filed their reply controverted the allegations in the said show cause notice, and after following the due process, the Adjudicating Authority vide impugned OIO dated 30.03.2011 ordered for recovery of Rs.2,17,21,367/- being ineligible credit taken and utilized by the Assessees along with interest and also imposed equal penalty under Section 78 of the Finance Act and penalty of Rs.5,000/- under Section 77 of the Act. However, the Adjudicating Authority dropped the demand of Rs.1,71,37,92,147/- and refrained from imposing penalty under Section 76 of the Act.

2.2 Subsequently, another show cause notice dated 19.09.2011 was issued proposing to deny and recover the CENVAT Credit of

Rs.2,69,44,687/- for the period 2010-11 on the same grounds that the Assessees had availed/utilized credit on capital goods and input services used for fabrication of towers, which resulted in immovable property, which was not admissible to them in terms of Cenvat Credit Rules. After following the due process, the Adjudicating Authority vide impugned OIO dated 15.10.2012 confirmed the demand of Rs.2,69,44,687/- along with interest thereon and also imposed penalty of Rs.200/- for every day during which failure continues or @2% of such amount of tax per month, whichever is higher, under Section 76 of the Act and penalty of Rs.5,000/- under Section 77 of the Act.

2.3 Being aggrieved by the part of impugned OIO dated 30.03.2011, relating to denial and recovery of credit of Rs.2,17,21,367/- with interest and penalties, and entire impugned OIO dated 15.10.2012, relating to denial and recovery of credit of Rs.2,69,44,687/- with interest and penalties, the Assessees have filed respective two appeals viz. ST/1017/2011 and ST/55426/2013 on various common grounds.

2.4 Being aggrieved by the part of impugned OIO dated 30.03.2011, relating to dropping the demand amounting to Rs.1,71,37,92,147/- with interest thereon and penalty, the Revenue has also filed an appeal viz. ST/1242/2011 on various grounds.

3. Heard both parties and perused the material on record.

(A) Firstly, we are taking the Assessees' appeals viz. **ST/1017/2011** and **ST/55426/2013**, which are against the OIOs dated 30.03.2011 and 15.10.2012, vide which the CENVAT Credit has been denied on inputs, capital goods and input services.

4. The learned Counsel appearing for the Assessees/Appellant submits that the impugned OIOs, denying the CENVAT Credit on capital goods such as towers, air conditioners, DG sets, battery Sets and pre-fabricated structures as well as input services used in construction/erection of transmission towers, are not sustainable in law as the same have been passed without properly appreciating the facts & the law and the binding judicial precedents on identical issue.

4.1 The learned Counsel further submits that the CENVAT Credit on the inputs and capital goods has been disallowed vide the impugned OIOs dated 30.03.2011 and 15.10.2012 on the ground that tower and its parts cannot be considered as parts & accessories of capital goods, and hence these items would not fall under the definition of 'capital goods' in terms of Rule 2(a) of the Cenvat Credit Rules. It has also been held in the impugned OIOs that towers and shelters are not covered as 'inputs' as defined under Cenvat Credit Rules. He further submits that this issue is no more *res integra* and has been settled in favour of the Assessees by the Hon'ble Supreme Court in the case of ***M/s Bharti Airtel Ltd vs. CCE, Pune [2024 (11) TMI 1042 - SC]*** wherein the Hon'ble Supreme Court has held that towers and pre-fabricated buildings do not constitute "immovable property" but are "goods" within the meaning of Cenvat Credit Rules. The Hon'ble

Supreme Court has also observed that such telecom towers and pre-fabricated shelters are not permanently embedded in the earth but are merely bolted to the ground for ensuring stability and can be dismantled, relocated and reassembled without substantial damage. The Hon'ble Supreme Court has also held that although towers and shelters are not themselves devices for transmission or reception of signals, they are indispensable for the functioning of antennas which transmit and receive radio signals and consequently, such infrastructure is essential for rendering the output service of mobile telecommunications and hence, their use in providing output services, qualifies them for credit under the Cenvat Credit Rules. He further submits that the aforementioned judgment of the Hon'ble Supreme Court has been consistently followed by the various High Courts and Tribunal in the following cases:

- ***Bharti Airtel Ltd vs. CCE, Guwahati – 2025 (2) TMI 684 – Guwahati HC***
- ***Vodafone Idea Ltd vs. CC & CCE, Meerut - 2025 (2) TMI 375 – CESTAT Allahabad***
- ***Vodafone Idea Ltd vs. CGST & CE, Coimbatore – 2025 (7) TMI 842 – CESTAT Chennai***
- ***Vodafone Idea Ltd vs. CST, Mumbai-III – 2025 (7) TMI 702 – CESTAT Mumbai***
- ***Vodafone Idea Ltd vs. CST, Mumbai – 2024 (10) TMI 149 – CESTAT Mumbai***
- ***B.S.N.L. vs. CCE, Chhattisgarh – 2025 (1) TMI 66 – Chhattisgarh HC***
- ***B.S.N.L. vs. Commr of Central Tax, Bengaluru East – 2025 (2) TMI 214 – CESTAT Bangalore***

He prays that in view of the above cited decisions, the issue regarding eligibility of CENVAT Credit on inputs and capital goods

used for towers and shelters, can be settled in favour of the Assessees.

4.2 As regards the issue of admissibility of CENVAT Credit on input services with respect to towers and shelters, the learned Counsel submits that the definition of 'input services' as provided under Rule 2(l) of the Cenvat Credit Rules is of wide amplitude and has been consistently interpreted to cover services integrally connected with business. He also submits that issue of availment of CENVAT Credit on 'input services' is no more *res integra* and has been decided by the Larger Bench of the Tribunal in the case of ***Idea Cellular Ltd vs. CST, Mumbai-IV*** *vide* ***Interim Order No. 06/2024 dated 03.04.2024*** *in* ***Appeal No. ST/86951/2015***, wherein the Larger Bench has held that expression "input service" has a wide latitude and therefore, input services used for setting up and operation of telecom towers are eligible for credit, provided such services are used in the course of providing taxable output services.

5. On the other hand, the learned Special Counsel for the Revenue reiterates the finding of the impugned OIOs.

6. After considering the submissions made by both the parties and perusal of the material on record on this issue, we find that the both the issues are no longer *res integra* and have been settled in the aforementioned cases.

6.1 In this regard, we may refer to the finding of the Hon'ble Supreme Court in the case of ***M/s Bharti Airtel Ltd vs. CCE, Pune*** (supra), which is reproduced herein below:

> *"**11.9.9** Applying the tests of permanency, intendment, functionality and marketability, it is quite clearly evident that these items are not immovable but movable within the meaning of Section 3 of the Transfer of Property Act, read with Section 3 (36) of the General Clause Act. If we consider the nature of annexation of the tower to the earth, it is seen that the annexation is not for permanent annexation to the land or the building as the tower can be removed or relocated without causing damage to it. It is also to be noted that the attachment of the tower to the building or the land is not for the permanent enjoyment of the building or the land. Further, the tower is fixed to the land or building for enhancing the operational efficacy and proper functioning of the antenna which is fixed on the tower by making it stable and wobble free. **The fact that the tower, if required can be removed, dismantled in the CKD and SKD and sold in the market is not disputed. Application of the tests evolved and discussed above on these items clearly points to the movability as opposed to immovability of these items. We are, thus, of the view that mobile towers and PFBs are movable properties and hence, "goods".***
>
> **** **** ****
>
> ***11.11.12** We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and **since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a) (A) of***

CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules*. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessees would be entitled to CENVAT Credit on the excise duties paid on these goods.*

**** **** ****

11.12.6 Having held that the tower and pre-fabricated buildings (PFBs) are "goods" and not immovable property and since these goods are used for providing mobile telecommunication services, the inescapable conclusion is that they would also qualify as "inputs" under Rule 2(k) for the purpose of credit benefits under the CENVAT Rules.*"*

(Emphasis Supplied)

6.2 Further, we find that Allahabad Bench of the Tribunal in the case of ***Vodafone Idea Ltd vs. CC & CCE, Meerut*** (supra), after following the above judgment of the Hon'ble Supreme Court, has allowed the CENVAT Credit on tower and its parts and pre-fabricated shelters as well as on input services used in construction/erection of towers. Relevant extract of the Tribunal is reproduced herein below:

*"**4.4.** The dispute between both the decisions has been finally settled by the Hon'ble Supreme Court in the case of Bharti Airtel referred by the appellant counsel holding that credit is admissible and the decision of Hon'ble Bombay High Court has been set aside.*

……

4.5. Taking note of the above we do not find any reason for the denial of the said credit which we hold by following the above decision is admissible to the Appellant. Impugned orders to this extent are set aside.

4.6. Coming to the second issue with regards to the admissibility of CENVAT credit, input service used for erection of such tower we find that as the Hon'ble Supreme Court has considered these goods as capital goods/inputs in the provision of output service the credit in respect of erection of these goods could not have been denied. As the services have been used for provision of output services either directly or indirectly the CENVAT credit could not have been denied.

4.7. *In the above referred decision, Hon'ble Supreme Court while dealing with similar plea, though termed as alternate plea, in respect of the treating the said goods as inputs for providing the output service following has been observed:*

……

Extending the same logic to the use of input services for provision of the output services we will come to inevitable conclusion that these services are squarely covered by Rule 2(1) of CENVAT Credit Rules, 2004 and hence the credit of service tax paid in respect of these services would be admissible to the appellant*."*

(Emphasis Supplied)

6.3 Similarly, Chennai Bench of the Tribunal in the case of ***Vodafone Idea Ltd vs. CGST & CE, Coimbatore*** (supra), has held as under:

*"**10.1** The first issue, viz. Tower related services i.e., services used to erect and construct towers, shelters, electrical and*

laying of optical fibre cables, is squarely covered by the decision of the Hon'ble Tribunal in the case of Vodafone Idea Limited v. CST Mumbai [2024 (10) TMI 149-CESTAT MUMBAI] in favour of the Appellant. It is apt to reproduce the relevant portion.

…….

***10.2** Further, the Hon'ble Delhi High Court in the Appellant's own case vide M/s Vodafone Mobile Services Ltd. Vs. Commissioner of ST. Delhi [2019 (27) GSTL 481 (Del.)] has held that Towers and the Prefabricated shelters are not immovable property. The order reads as under: -*

……..

***10.3** Further, in the case of M/s. Bharti Airtel Ltd. vs. The Commissioner of Central Excise, Pune [2024 (11) TMI 1042 - SC], the Hon'ble Apex Court ruled that Towers and Prefabricated buildings are goods and not immovable property and as these goods are used for providing mobile telecommunication services, they would qualify as inputs under Rule 2(k) for the purpose of credit under the CENVAT Credit Rules, 2004.*

10.4 In view of the above discussion, we hold that the Appellant is eligible for CENVAT Credit on tower related services and tower materials used for erecting towers and shelters which has been quantified to be Rs. 88,86,165. So, ordered accordingly."

(Emphasis Supplied)

7. Further, the CENVAT Credit on 'input services' has been settled by the Larger Bench of the Tribunal in the case of ***Idea Cellular Ltd vs. CST, Mumbai-IV*** (supra) wherein the Larger Bench has held that the input services used for setting up and operation of telecom

towers are eligible for credit, provided such services are used in the course of providing taxable output services.

8. Therefore, by following the ratios of above cited decisions, we are of the considered view that the impugned OIOs, denying the CENVAT Credit on capital goods such as towers, air conditioners, DG sets, battery Sets and pre-fabricated structures as well as input services used in construction/erection of transmission towers, are not sustainable in law and therefore, we set aside the same by allowing both the appeals filed by the Assessees.

(B) Now, we are taking the Revenue's appeal viz. **ST/1242/2011**, which is against the impugned OIO dated 30.03.2011, vide which the learned Commissioner has dropped the demand relating to transfer of CENVAT Credit upon shifting of centralized registration from Jaipur to Gurgaon.

9. The learned Special Counsel appearing for the Revenue submits that the Assessees did not fulfil the condition prescribed in Rule 10 of the Cenvat Credit Rules, 2004 for transferring the CENVAT Credit from Jaipur to Gurgaon. He further submits that the impugned OIO dated 30.03.2011, vide which the Adjudicating Authority has dropped the demand relating to transfer of CENVAT Credit upon shifting of centralized registration from Jaipur to Gurgaon, is not sustainable in law.

9.1 The learned Special Counsel further submits that Adjudicating Authority has erred in holding that '*under Rule 10 of the Cenvat*

Credit Rules, 2004, there is no mention or bar on shifting of function of Centralized accounting and billing of a company. Therefore, when there is no bar under the law on shifting of centralized accounting & billing functioning of a company, an artificial bar cannot be created'.

9.2 The learned Special Counsel also refers to Rule 10(2) of the Cenvat Credit Rules, 2004, which provides for transfer of unutilized CENVAT Credit in certain prescribed situations only. He further submits that this is the only rule dealing with transfer of CENVAT Credit and therefore, it is presumed that the law does not allow the transfer of CENVAT Credit in situations other than those covered in Rule 10 of the Cenvat Credit Rules. He also submits that the present case, being a case of simple transfer of location of the registered premises from Jaipur to Gurgaon, is not covered under Rule 10 of the Cenvat Credit Rules. In this regard, he refers to the decision of the Larger Bench of the Tribunal in the case of ***CCE, New Delhi vs. Avis Electronics Pvt Ltd [2000 (117) ELT 571 (Tri. LB)]*** wherein it has been held that "*when a particular thing is directed to be performed in a manner prescribed under Rules, it should be performed in that manner itself and not otherwise*".

9.3 The learned Special Counsel further submits that in the facts & circumstances of the present case, there appears to be no provision allowing transfer of CENVAT Credit, accumulated on account of input services used for providing telecommunication services, to the newly registered office at Gurgaon.

9.4 The learned Special Counsel further submits that Rule 10(2) of the Cenvat Credit Rules allows transfer of the CENVAT Credit lying unutilized in the accounts of the Assessees to another, in situations where the service provider shifts or transfers its business: *(a)* on account of change of ownership and *(b)* on account of sale, merger, amalgamation, lease or transfer of business to a joint venture. He further submits that the said transfer of credit is allowed only when there is a specific provision of transfer of liabilities of such business in the agreement for aforesaid transfer of business. He also submits that in the present case, it is not disputed that there is no change of ownership; there is no sale, merger, amalgamation, lease or transfer of business to a joint venture; and also there is no transfer of liabilities of such business. Therefore, Rule 10 of the Cenvat Credit Rules does not allow the transfer of credit from Jaipur to Gurgaon.

9.5 The learned Special Counsel further submits that the Adjudicating Authority has grossly erred in allowing the transfer of credit in this case while recording that Rule 10(3) of the Cenvat Credit Rules is not applicable and there is no shifting or transfer of business as there is no change in ownership or rights and liabilities of the Assessees involved in the matter.

9.6 The learned Special Counsel also submits that the Adjudicating Authority has not appreciated that the goods like DG sets, network equipment etc attached with the tower and other network sites, on which the credit was availed by Jaipur office, had not been shifted pursuant to transfer of registration from Jaipur to Gurgaon and

therefore, the provision of Rule 10 of the Cenvat Credit Rules are not applicable to the Assessees.

10. On the other hand, the learned Counsel appearing for the Assessees/Respondent supports the impugned OIO and submits that in the impugned OIO, the Adjudicating Authority has elaborately considered the scope and application of Rule 10 of the Cenvat Credit Rules and has finally held that the CENVAT Credit transferred by the Assessees cannot be disallowed merely on account of transfer of centralized registration when the CENVAT Credit was correctly availed.

10.1 The learned Counsel for the Assessees/Respondent further submits that in the show cause notice dated 28.09.2010, the department has not alleged that the CENVAT Credit transferred by the Assessees from Jaipur to Gurgaon was incorrectly availed in Jaipur. The department has also not alleged that the CENVAT Credit had already been utilized in Jaipur. Therefore, according the learned Counsel, the CENVAT Credit transferred to Gurgaon was correctly availed and utilized in Gurgaon.

10.2 He also submits that accounts and records of the company had been audited by the Officer of Service Tax Authorities, Jaipur and the Office of Accountant General (Audit), Jaipur for the period till September 2009, and no infirmity was detected.

10.3 He further submits that in the present appeal filed by the Revenue, the sole ground is that the CENVAT Credit could only be

transferred in situations covered under Rule 10 of the Cenvat Credit Rules i.e. shifting or transfer of business; and in the present case, not being one of transfer of business, but merely of transfer of centralized registration, the CENVAT Credit could not have been transferred.

10.4 In support of his above submissions, the learned Counsel places reliance on the following cases:

- ***Central Bank of India vs. CC, CE & ST, Bhopal [2019 (365) ELT 565 (Tri. Del.)]***
- ***Mafatlal Industries Ltd vs. CCE & ST, Ahmedabad [2020 (43) GSTL 562 (Tri. Ahmd.)]***
- ***B.S.N.L. vs. CCE & ST, Chandigarh-I [Final Order No. 60015/2024 dated 12.01.2024 in Appeal No. ST/50714/2015]***

10.5 He also submits that the ground raised by the department in the present appeal is beyond the scope of show cause notice dated 28.09.2010 because in the said show cause notice, the allegation against the Assessees is that they had not followed the conditions prescribed in Rule 10(2) of the Cenvat Credit Rules for the transfer of CENVAT Credit. But in the present appeal, the department, while accepting the observations made in the impugned OIO that Rule 10 of the Cenvat Credit Rules was not applicable in the present case, has raised completely a new ground, and has filed the present appeal basically on the ground that credit can only be transferred in situations covered under Rule 10 of the Cenvat Credit Rules and the present case not being covered under the said rule, the CENVAT Credit could not have been transferred.

10.6 He further submits that it is a settled principle of law that unless the foundation has been laid down in the show cause notice, the Revenue cannot be allowed to build a case against the Assessees and therefore, cannot raise a fresh plea. In this regard, he places reliance on the judgments of Hon'ble Supreme Court in the following cases:

- ***CCE, Bhubaneswar-I vs. M/s Champdany Industries Limited [MANU/SC/1611/2009]***
- ***CCE & ST, Chandigarh vs. Shital International [MANU/SC/0884/2010]***

11. After considering the submissions made by both the parties and perusal of material on record, we find that the only issue raised in the Revenue's appeal is whether the CENVAT Credit transferred by the Assessees/Respondent from their centralized registration from Jaipur to Gurgaon, is legally sustainable or not?

12. Further, we find that in the present appeal, the department has not disputed the CENVAT Credit availed by the Assessees at their Jaipur office. The department has also not alleged that the CENVAT Credit had already been utilized in Jaipur.

13. Further, we find that in the impugned OIO, the learned Commissioner has elaborately dealt with this issue by referring to the relevant provisions of the Cenvat Credit Rules. It is pertinent to reproduce the relevant findings of the learned Commissioner on this issue in impugned OIO dated 30.03.2011, which are reproduced herein below:

*"**47.** I find that there are two main issues to be decided with respect to which service tax authorities at Gurgaon had objections:-*

(i) Transfer of unutilized Cenvat Credit of Rs.171,37,92,147/- upon transfer of centralized registration from Jaipur to Gurgaon.

(ii) Recovery of Cenvat Credit amounting to Rs.2,17,21,367/- for the period from October 2008 to March 2010 on goods such as angles, channels, steel structures etc and Rs.50,99,443/- in respect of credit taken on input services for construction/erection of towers situated outside the office premises of the service provider.

***48.** Now, with respect to the first issue, I find that the noticee transferred its centralized registration from Jaipur office to Gurgaon office due to shifting of its centralized accounting and billing system from Jaipur to Gurgaon on account of expansion in its business operations and did not close its operations from in its premises at Jaipur. The noticee at the time of filling the application for centralized registration had informed this office vide letter dated 22nd September 2009 that it proposes to transfer the unutilized Cenvat Credit balance as on 1st October 2009 from its Jaipur office to its office in Gurgaon, upon shifting its centralized accounting and billing system to Gurgaon and obtaining centralized registration at Gurgaon for payment of its future tax liability. It was only after obtaining the centralized registration the noticee had transferred unutilized credit as on 1st October 2009 to its new centralized registration at Gurgaon. I further find that vide letter dated 4th May 2010 of the service tax authorities at Gurgaon, it was alleged that the noticee has not followed the provisions as laid down under Rule 10 of the CCR at the time of transferring the unutilized Cenvat Credit balance from its Jaipur office to its office at Gurgaon, post obtaining centralized registration at Gurgaon*

to which the noticee had submitted that Rule 10 of the CCR is not applicable to them.

49. *Rule 10 of the CCR reads as follows:*

> *(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT Credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.*
>
> *(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT Credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.*
>
> *(3) The transfer of the CENVAT Credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.*

50*. Above perusal and reading of Rule 10 indicates that its sub-rule (2) lays down the criteria for allowing transfer of CENVAT Credit lying utilized in the accounts of a service provider in an event when -*

i. An assessee shifts his business; or

ii. An assessee transfers his business.

51*. Sub-rule (2) further elaborates that both the above events, i.e. shifting or transfer of business would take place on account of the following only:*

a. change in ownership;

b. sale;

c. merger:

d. amalgamation.

e. lease; or

f. transfer of business to a joint venture.

52. *Further, conditions for allowing transfer of CENVAT Credit as laid down in Rule 10(3) would be applicable only if shifting and/or transfer of business of an assessee has taken place.*

53. *Therefore, I find that under Rule 10 there is no mention or bar on shifting of centralized accounting and billing function of a company. Therefore, where there is no bar under the law on shifting of centralized accounting function of a company, an artificial bar cannot be created.*

54. *Further, shifting of business cannot be equated with the shifting of centralized accounting and billing functions on account of expansion of its business operations. In the present case I find that there has been no change in company's business or ownership status, therefore, request for shifting centralized registration cannot be treated at par with change in ownership, sale, merger, amalgamation, lease or transfer of business to a joint venture nor is there a change in the manner of accounting. Further, there is no change in the rights or liabilities of the noticee.*

55. *The mechanism of Centralized registration was introduced to provide administrative and jurisdictional ease to an assessee having centralized billing or centralized accounting system. The act of getting different premises of an assessee under Centralized registration never intended to give the assessee any tax advantage or credit benefits. It was introduced only for operational convenience to pay all output taxes to the Central Government at the Commissionerate where the assessee wants to have centralized registration. Centralized registration never was intended to be equated with the shifting or transfer of business by an assessee.*

56. *I further find that since the test for getting different premises of an assessee covered under centralized registration is the presence of centralized billing or centralized accounting system and any change in such centralized billing or centralized accounting to a different office of the same assessee leads to an obvious consequence of change in centralized registration. I also find that any change in the location for centralized registration does not lead to any change either in the output liability or in the credit availability in the hands of an assessee. Further, where a unit in a Domestic Tariff Area ('DTA unit') is converted to an Export Oriented Unit ('EOU') unit without any change in the business of the company and it has been settled position that such similar changes in the nature of DTA to EOU do not attract Rule 10 of the CCR.*

57. *As pointed out by the noticee, the accounts and records of the noticee have been audited by the Jaipur Service tax authorities and Office of the Comptroller and Auditor General of India for the period till September 2009. The noticee has been declaring all the credit availed by it in its half yearly returns filed with the service tax authorities and have not received any SCN rejecting the credit so availed. Accordingly, once the credit is validly taken by the noticee, then the benefit is available to the noticee without any limitation in time (i.e. is indefeasible) and can be validly utilized by the noticee to discharge its future service tax liability. Moreover, it is a settled principle of law that Cenvat Credit is a substantive right which cannot lapse unless specifically provided in the law and can be utilized at any point in time."*

13.1 Further, we find that in the case of ***Central Bank of India*** (supra), Principal Bench of the Tribunal has held as under:

"6. *After hearing both the sides at length and going through the material available on record, we are of the view that*

appellant is a public sector undertaking Bank, no individual interest is involved. The main ground on which Cenvat credit was denied is lack of proper document for transferring credit lying at various branches to the zonal office upon approval of centralized registration. The fact remains that the documents were available in the books of account and as mentioned no individual interest is involved. ***Further, we find there is no statutory requirement of specified documents for transferring credit available with the multiple registrations to centralized registration. Hence, when there is no dispute regarding the credit originally availed by various branches, transfer of such credit cannot be denied. We are of the view that there is no distribution of credit in the present situation."***

(Emphasis Supplied)

13.2 Similarly, in the case of ***Mafatlal Industries Ltd*** (supra), Ahmedabad Bench of the Tribunal has held as under:

"12. *The demand of Rs. 41,94,123/- has been confirmed on the basis that Cenvat credit could not have been transferred by the appellant's various branches to Nadiad unit under Centralised registration without issuance of proper documents by each unit. In this regard we find that the appellant undisputedly made necessary recording in the statutory books of transfree's branch. There is no document prescribed for such transfers.* ***There is no case of the department that the transferor branches have transferred excess credit or wrong credit. It is also not a case of the department that the Cenvat credit transferred is not out of the credit availed by the branches. Therefore, only on the ground that proper documents under centralized registration was not issued for transfer of credit cannot be denied****. This issue has been considered by this Tribunal in the case of Central*

Bank of India (supra) wherein this Tribunal has considered identical issue as under: ……

(Emphasis Supplied)

13.3 Further, in the case of ***B.S.N.L.*** (supra), Chandigarh Bench of the Tribunal has held that substantive benefit of CENVAT Credit could not be disallowed on account of procedural infractions.

14. In view of our discussion above, we are of the considered opinion that there is no infirmity in the impugned OIO dated 30.03.2011 passed by the learned Commissioner dropping the demand of CENVAT Credit amounting to Rs.1,71,37,92,147/-. Therefore, we uphold the impugned OIO and dismiss the appeal filed by the Revenue.

In Result:

- Both the appeals, viz. ST/1017/2011 & ST/55426/2013, filed by the Assessees are allowed, with consequential relief, if any, as per law.
- The appeal, viz. ST/1242/2011, filed by the Revenue is dismissed.

(Order pronounced in the open court on 17.03.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi