

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 51369 of 2025**

[Arising out of Order-in-Appeal No. 14/ST/DLH/2025-26 dated 23.05.2025 passed by the Commissioner of CGST & Central Excise (Appeal-I), New Delhi]

**M/s. Yokohama India Private Limited** **...Appellant**  
C/o Tipp Logistics,  
Plot No. C-158, Mayapuri Industrial Area,  
Phase-II, Delhi-110064

*VERSUS*

**Principal Commissioner of CGST-Delhi East** **...Respondent**  
Room No. 134, C.R. Building,  
I.P. Estate, East Delhi - 110002

**APPEARANCE:**

Shri Manish Hirani, Advocate for the Appellant  
Shri Ram Pravesh Prasad, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 02.02.2026  
DATE OF DECISION: **07.04.2026**

**FINAL ORDER NO. 50695/2026**

**DR. RACHNA GUPTA**

Present appeal has been filed to assail Order-in-Appeal No. 14/25-26 dated 23.05.2025 vide which the order rejecting the refund claim of amount of Cenvat credit of the service tax paid under Reverse Charge Mechanism has been rejected. The facts in brief are as follows:

1.1 Appellant was audited for the period from 01.04.2016 to 30.06.2017 on 23.12.2021 and 16.02.2022. During the audit it was observed that service tax for the period 2016-17 and 2017-18 (up to June, 2018) is short paid/not paid by the appellant as below:

S.No.	Service	Service tax not paid/short paid	Date of payment	Mode
1.	Legal Consultancy or Import of Service	Rs.83,040/-	02.03.2022	Reverse Charge Mechanism
2.	Service Tax on Ocean Freight	Rs.6,79,550/-	02.03.2022	Forward Charge Mechanism

1.2 On being pointed out, the appellant deposited the aforesaid amount along with amount of applicable interest and the proportionate penalties. After depositing, appellant filed an online refund application dated 29.02.2024/11.03.2024 praying for the amount of service tax and KKC amounting to Rs.7,62,590/- was prayed to be refunded in terms of Section 142(3) of CGST Act, 2017. However, vide show cause notice dated 10.07.2024 the refund was proposed to be rejected opining that there is no express provision under Section 142 of the CGST Act for refund in cash when a rightful amount was paid as per law. The said proposal was initially confirmed vide Order-in-Original No. 12/24-25 dated 27.09.2024. The said order has been upheld vide impugned Order-in-Appeal. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Manish Hirani, learned Advocate for the appellant and Shri Ram Pravesh Prasad, learned Authorized Representative for the respondent.

3. Learned counsel for the appellant has submitted that the refund claim was filed under Section 142(3) of CGST Act, 2017. However sub-clause (8) has wrongly been invoked for rejecting the said claim. It is further submitted that even Rule 9 of Cenvat Credit

Rules, 2004 has wrongly been invoked as the said rule is applicable with respect to the service provider. The appellant herein is though manufacturer of tires but has discharged the service tax liability for receiving certain services and had paid the service tax under Reverse Charge Mechanism. Rejection of the claim while invoking wrong provisions is prayed to be set aside.

3.1 Learned counsel has mentioned that the issue otherwise has already been decided by different benches of this Tribunal and the department has accepted those decisions, since the issue is no more res integra, the order confirming rejection of refund claim is not sustainable. It is also submitted that service tax initially was not paid due to bona fide belief of it to be paid by the service provider. However, the same was paid immediately after it was pointed out but by that time the Goods and Service Tax Act, 2017 (GST Act) was already introduced. Not only this, the time period for filing Tran-1 had also expired. The appellant was left with no opportunity but to invoke Section 142(3) of the GST Act. The submission has not been considered by the adjudicating authorities below. To support his submissions, learned counsel has relied upon the following decisions:

**(i) M/s. Jagannat Polymers Pvt. Ltd. Vs. Commissioner, CGST – Jaipur I in Service Tax Appeal No. 51182 of 2020 decided on 15.12.2021 vide Final Order No. 52078/2021.**

**(ii) M/s. Indo Tooling Pvt. Ltd. Vs. Commissioner of Central Goods and Service Tax & Central Excise, Indore in Excise**

**Appeal No. 50204 of 2020 decided on 09.03.2022 vide Final Order No. 50263/2022.**

**(iii) M/s. Circor Flow Technologies India Pvt. Ltd. Vs. The Principal Commissioner of GST & Central Excise, Coimbatore in Service Tax Appeal No. 40597 of 2020 decided on 16.12.2021 vide Final Order No. 42467/2021.**

**(iv) M/s. Bosch Automotive Electronics India Pvt. Ltd. Vs. Commissioner of GST and Central Excise, Chennai in Service Tax Appeal No. 40010 of 2020 decided on 16.10.2024 vide Final Order No. 41289/2024.**

With these submissions, the impugned order is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the amount in question is admittedly been paid along with the amount of penalty, that too voluntarily. This admission is sufficient to be corroborate the act of suppression on part of the appellant. It is also submitted that had the short payment/non-payment not being pointed out during the audit, the evasion of tax by the appellant, despite being liable under Reverse Charge Mechanism, would have remained unearthed. Hence, the refund claim has rightly been rejected invoking the grounds of apparent suppression. It is further submitted that section 142(8)(a) of the CGST Act, 2017 clearly provides that where any amount of tax becomes recoverable pursuant to assessment or adjudication proceedings, whether initiated before or after the appointed day, such amount shall be recovered as arrears

and shall not be admissible as input tax credit. Audit proceedings form an integral part of the recovery mechanism under the Service Tax law and cannot be excluded from the scope of Section 142(8).

4.1 It is also submitted that Section 142(3) cannot be read in isolation. A harmonious reading of Section 142 makes it clear that refund under sub-section (3) is subject to the bar created under sub-section (8). Once the payment is hit by Section 142 (8), refund of credit stands statutorily barred. It is further submitted that the appellant had not paid service tax prior to 01.07.2017 and therefore no Cenvat credit had accrued or vested before GST. The inability to transition credit under Section 140 cannot create an artificial right to cash refund. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records. The following issue is observed to be adjudicated:

**“Whether the appellant is eligible for refund of Cenvat credit of service tax paid on 02.03.2022 for the period from 01.04.2016 to 30.06.2017 in terms of Section 142(3) of CGST Act, 2017. ”**

6. To adjudicate the same, foremost I have perused Section 142(3) of CGST Act, 2017. It reads as follows:

*“(3) Every claim for refund filed by any person before , on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 :*

**Provided** that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

**Provided** further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

It becomes clear that refund claims for amount of Cenvat credit accrued under existing law are sustainable even after coming into effect of GST, Act. The provision further provides that the amount of said refund shall be paid in cash without invoking Section 11B(2) of Central Excise Act, 1944.

7. In the present case, the refund claim admittedly is of the Cenvat credit of the service tax paid by the appellant under Reverse Charge Mechanism. Apparently, the service tax in question pertains to the period under erstwhile law. Payment of service tax entitled the assessee to claim Cenvat credit. But appellant could not avail/utilize the same at the GST Act was already in existence. Section 142(3) GST Act allows refund of such Cenvat credit in cash. It is not the requisite for invoking this provision that payment should be made prior coming into effect of the CGST Act. Resultantly, the fact that the tax, in the present case was paid much later than CGST Act came into effect i.e. on 02.03.2022 is not relevant to deny the benefit of Section 142(3) of CGST Act. With these observations, the arguments put forth on behalf of the department are not acceptable. Once the tax is paid in terms of the provision of existing law, the payee/assessee is eligible for the Cenvat credit. Due to coming into effect of GST regime such entitlements are being protected in terms of Section 142(3) of the Act.

7. Coming to the plea of the department that the amount in question was paid along with the penalty is sufficient proof of acknowledgment about act of suppression, it is held that the submission is without any evidential basis. The onus is upon the Revenue to prove that the appellant had the intention to evade the tax. Mere fact that the non-payment was objected at the time of audit is miserably insufficient to discharge the said onus. There is nothing on record to prove any positive act on part of the appellant which may amount to be an act of suppression of relevant act or an act of fraud. On the contrary, the bona fide belief of the appellant, the service recipient and the fact that payment/discharge of liability along with the interest and penalty was made immediately after it was pointed out in audit reflects the due compliance of the erstwhile provisions on part of the appellant.

8. We further observe that Rule 9(1)(bb) of Cenvat Credit Rules, 2004, as has been invoked by the adjudicating authorities below does not apply to service recipients. The provision is held to have wrongly been invoked. The issue has earlier been decided as is apparent from three of the decisions relied upon by the appellant. Subsequent thereto also, this Tribunal in the case of **M/s. Indo Tooling Pvt. Ltd. Vs. Commissioner of Central Goods and Service Tax & Central Excise, Indore reported as 2022 (61) GSTL 595 (Tri.-Del.)** has held as follows:

*"8. Having considered the rival contentions, I find that payment of service tax including the cess relating to the period prior to 30.06.2017, paid in the year 2018 during the GST regime, amounts to payment in accordance with law as the same has been paid on the insistence by the Department – audit objection. I*

*further find that the demand pursuant to audit is also bad as the appellant was entitled to cenvat credit being a manufacturer of dutiable items, and as such the situation is revenue neutral. Further, the appellant under the erstwhile Cenvat Credit Rules was entitled to cenvat credit of the said amount. Further, in view of the provisions of Section 142(3) of CGST Act, provides that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 (unjust enrichment). Further, Section 142(8)(a) provides that in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act and the amount so recovered shall not be admissible as input tax credit under this Act. Further, sub-section (5) of Section 142 of the CGST Act provides that every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (unjust enrichment).*

*9. Thus, from a conjoint reading of sub-section (3), (5) and (8)(a) of the CGST Act, it is evident that an assessee is entitled to claim refund of service tax under RCM paid after the appointed day under the existing law and such claim has to be disposed of according to the provisions of the existing law. As the appellant was entitled to cenvat credit of the said amount of Rs. 9,85,827/-, which is now no longer available due to GST regime, they are entitled to refund of the said amount.”*

The same decision has subsequently been followed by Chennai Bench of this Tribunal in the case of **Terex India Pvt. Ltd. Vs. Commissioner of GST & C.E., Salem reported as 2022 (63) GSTL 238 (Tri.-Chennai)**.

9. I do not find any reason to differ from those findings. In totality of entire above discussion, the order under challenge is hereby set aside. Consequent thereto, the appeal is allowed.

[Order pronounced in the open court on **07.04.2026**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

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