

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Excise Appeal No. 55196 of 2023

(Arising out of Order-in-Original No. 09/COMMR/CE/RPR-UJN/2022-23 dated 29.03.2023 passed by the Principal Commissioner, CGST & Central Excise, Commissionerate, Ujjain)

Jayaswal NECO Industries Limited

Siltara Growth Centre,
Raipur (C.G.) - 493111

...Appellant

VERSUS

**Principal Commissioner, CGST &
Central GST & Central Excise Commissionerate,**

Raipur, CGST Bhawan, Dhamtari Road,
Tikrapara, Opposite Pujari Park,
Raipur, CG - 492001

...Respondent

APPEARANCE:

Ms. Sukriti Das and Shri Shivam Bansal, Advocates for the Appellant

Shri Bhagwat Dayal, Authorised Representative for the Respondent

AND

Excise Appeal No. 55419 of 2023

(Arising out of Order-in-Original No. 09/COMMR/CE/RPR-UJN/2022-23 dated 29.03.2023 passed by the Principal Commissioner, CGST & Central Excise, Commissionerate, Ujjain)

The Commissioner, CGST &

**CGST & Central Excise,
GST Building,** Dhamtari Road,
Tikrapara, Opposite Pujari Park,
Raipur, (C.G.) - 492001

...Appellant

VERSUS

M/s. Jayaswal Neco Industries Limited

Siltara Growth Centre,
Raipur (C.G.) - 493111

...Respondent

APPEARANCE:

Shri Bhagwat Dayal, Authorised Representative for the Appellant

Ms. Sukriti Das and Shivam Bansal, Advocates for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.04.2026
DATE OF DECISION: 02.06.2026

FINAL ORDER NO's. 51015-51016/2026

JUSTICE DILIP GUPTA:

Excise Appeal No. 55196 of 2023 has been filed by Jayaswal NECO Industries Limited¹ to assail that portion of the order dated 29.03.2023 passed by the Principal Commissioner that disallows CENVAT credit of Rs. 53,94,564/- (including credit of Rs. 33,44,889/- reversed by the appellant before issuance of show cause notice) with interest and penalty.

2. **Excise Appeal No. 55419 of 2023** has been filed by the department to assail that portion of the order dated 29.03.2023 passed by the Principal Commissioner that drops the demand of recovery of CENVAT credit amounting to Rs. 67,50,989/-.

3. The appellant is engaged in the manufacture of dutiable goods such as sponge iron, pig iron, billets, classifiable under Chapter 72 of the First Schedule to Central Excise Tariff Act, 1985²

4. The appellant availed CENVAT credit on various input services, details of which were reflected in the periodical returns filed by it.

5. An audit was initiated by the officers of the Internal Audit Party, Central Excise Commissionerate, Raipur for the period from March 2012 to January 2014 and certain discrepancies were communicated by the department by a Final Audit Report dated 01.09.2014.

6. An audit was also conducted by CAG for the period April 2011 to

1. **the appellant**
2. **Tariff Act**

March 2013, wherein the CAG also intimated several observations by a letter dated 03.06.2014.

7. Subsequently, special audit of records of the appellant was conducted for the period April 2011 to January 2014, wherein several observations were conveyed to the appellant by a letter dated 22.07.2014.

8. In response to the audit memos, the appellant made detailed submission and explained that CENVAT credit had been validly availed on the input services. Meanwhile, CENVAT credit of Rs. 33,44,889/- availed on various services was reversed by the appellant with interest of Rs. 14,06,799/-.

9. However, a show cause notice dated 23.02.2016 was issued to the appellant proposing to recover a central excise duty amounting to Rs. 2,49,40,473/- with interest and penalty, alleging wrongful availment of CENVAT credit on various issues like credit availed on ineligible input services, credit availed on services which were not received in the factory premises of the appellant and CENVAT credit availed on the basis of invalid documents. A proposal was also made for appropriation of CENVAT credit with interest which was reversed by the appellant.

10. The appellant filed a detailed reply dated 13.03.2003 and contested the proposals made in the show cause notice.

11. The show cause notice was adjudicated by the Principal Commissioner by an order dated 29.03.2023. CENVAT credit to the extent of Rs. 1,95,45,909/- availed by the appellant against various input services was allowed, but CENVAT credit amounting to Rs. 53,94,564/- was disallowed. The details of the demands proposed in the show cause notice which were subsequently dropped/confirmed by the

order are as follows:

S No.	Nature of service	Demand proposed in show cause notice	CENVAT credit reversed	Balance amount	Demand confirmed in order	Demand dropped
1.	Insurance services (These include marine cargo insurance, plant & machinery insurance, storage policy, survey fees etc.)	63,03,431	3,66,910	59,36,521	9,50,177	49,86,344
2.	Club membership services	1,48,952	1,48,952	-	-	-
3.	Outdoor catering services	7,58,564	7,58,564	-	-	-
4.	Hotel accommodation services	7,820	7,820	-	-	-
5.	Civil construction services	19,34,821	19,07,941	26,880	26,880	-
6.	Geological survey and mining consultancy services	8,00,723	-	8,00,723	-	8,00,723
7.	Works Contract services	10,72,618	-	10,72,618	10,72,618	-
8.	Pandal / shamiana services	52,066	52,066	-	-	-
9.	Supply of tangible goods service	38,15,860	-	38,15,860	-	38,15,860
10.	Input services received by sister concern (i.e., M/s Maa Usha Urja Ltd.)	97,486	97,486	-	-	-
11.	Repair & maintenance of railway tracks situated in the Assessee's premises	9,90,906	-	9,90,906	-	9,90,906
12.	Services received from various vendors [Credit -Rs. 89,52,076]	-	-	-	-	-
	a) Pooja Agency	15,42,796	-	15,42,796	-	15,42,796
	b) BK Enterprises	4,19,864	-	4,19,864	-	4,19,864
	c) Shova Construction	2,12,574	-	2,12,574	-	2,12,574
	d) A. Mukharjee	25,853	-	25,853	-	25,853
	e) Anand Infracon	6,84,634	-	6,84,634	-	6,84,634
	f) J.K. Construction	60,66,355	-	60,66,355	-	60,66,355
13.	Coal Mining	5,150	5,150	-	-	-
	Total	2,49,40,473	33,44,889	1,26,43,508	20,49,675	1,95,45,909

12. Feeling aggrieved with the aforesaid order to the extent it was against the appellant, the appellant has filed Excise Appeal No. 55196 of 2023.

13. Ms. Sukriti Das, learned counsel for the appellant assisted by Shri Shivam Bansal made the following submissions:

- (i) The demand of CENVAT credit amounting to Rs. 20,49,675 confirmed by the impugned order is both factually incorrect and legally unsustainable;
- (ii) In this connection, learned counsel for the appellant placed in detail each of the services against which the CENVAT was denied and also placed certain decisions to which reference shall be made at the appropriate stage;
- (iii) The extended period of limitation under the proviso to section 11A(1) of the Central Excise Act, 1944³ is not invocable. Penalty not imposable, and interest not recoverable; and
- (iv) The Principal Commissioner committed no illegality in allowing CENVAT credit of Rs. 67,50,989/- availed by the appellant.

14. Shri Bhagwat Dayal, learned authorised representative appearing for the department, however, submitted that Principal Commissioner did not commit any error in disallowing CENVAT credit of Rs. 53,94,564/-. Learned authorised representative also submitted that the Principal Commissioner committed an error in dropping the demand of CENVAT credit of Rs. 67,50,989/-.

15. The submissions advanced by the learned counsel for the

3. the Excise Act

appellant and the learned authorised representative appearing for the department have been considered.

16. The Principal Commissioner has disallowed CENVAT credit of Rs. 20,49,675 to the appellant against the following input services and the details are:

S. No.	Nature of services	Amount (in Rs.)	Period of dispute
1.	Insurance services (instead should be Survey services)	9,50,177	25.01.2012 to 10.11.2014
2.	Works contract services (in nature of repair & maintenance of plant and machinery)	10,72,618	30.09.2012 to 01.08.2015
3.	Civil construction services (supply of manpower services)	26,880	27.04.2011 to 04.05.2011
TOTAL		20,49,675	

17. The submissions made in respect of each of the three services shall be dealt separately.

Marine cargo insurance services

18. The Principal Commissioner has disallowed CENVAT credit of Rs. 9,50,177 on marine cargo insurance services for the reason that the appellant failed to make any submissions or justify the availment of input service credit on such service.

19. It is seen that the appellant had submitted relevant documents, including the head-wise break up of CENVAT credit availed by the appellant on insurance services received during the period under dispute. This is clear from the reply submitted by the appellant to the show cause notice dated 23.2.2016. The following bifurcation was provided:

Nature of Insurance Service	Service Tax	ED Cess	SHE Cess	Total (in Rs.)

Fire, Plant & Machinery	25,88,538	47,830	23,915	26,60,2833
Marine Cargo	9,22,637	18,359	9,181	9,50,177
Erection all risk	19,36,009	38,721	19,359	19,94,089
Boiler Explosion	69,075	1,277	639	70,991
Survey fees/ survey services	1,17,103	2,345	1,166	1,20,614
Storage Policy	1,19,895	2,399	1,199	1,23,493
Public Liability	14,876	298	149	15,323
Money Insurance	1,505	31	15	1,551
Total	57,69,638	1,11,260	55,623	59,36,521

20. The Principal Commissioner has accepted the submissions of the appellant and allowed the CENVAT credit of service tax paid on the above insurance services as admissible, since the said services were directly connected with the business of the appellant and hence, qualified as 'input services' under rule 2(l) of CENVAT Credit Rules, 2004⁴. However, the Principal Commissioner treated the CENVAT credit figure of Rs. 1,20,614/- as pertaining to marine cargo insurance while holding it as admissible, instead of the CENVAT credit amount of Rs. 9,50,177/- that was actually claimed by the appellant on the said services.

21. CENVAT credit of Rs. 1,20,614/- availed by the appellant during the period from 25.1.2012 to 10.11.2014 pertains to survey services as is clear from the aforesaid chart.

22. Thus, the Principal Commissioner considered incorrect CENVAT credit figures in the impugned order. The finding in the Order that the appellant neither offered any explanation nor submitted any documents for admissibility of CENVAT credit amounting to Rs. 9,50,177/- is,

4. the 2004 Credit Rules

therefore, incorrect. The appellant would, therefore, be entitled to avail credit of Rs. 9,50,177/-.

Works Contract

23. The Principal Commissioner has confirmed the demand of CENVAT Credit amounting to Rs.10,72,618/- availed by the appellant during the period from 30.09.2012 to 01.08.2015 on works contract services in respect of plant and machinery for the reason that the same are specifically excluded from the definition of the input services under rule 2(I) of the 2004 Credit Rules. The Principal Commissioner has also held that taxing statutes have to be strictly interpreted and thus, the submission of the appellant that works contract services for plant and machinery were distinct from the services of construction of a building or a civil structure, was not acceptable.

24. It is seen that the appellant had availed works contact services for repair/maintenance of the existing plant & machinery installed in its factory premises and not for construction of a new building or a civil structure or a part thereof. This fact is not disputed by the department and the same is also corroborated from the invoices issued by the supplier(/s).

25. From 01.04.2011 onwards, the bar from availing CENVAT credit on works contract services under the exclusion clause of rule 2(I) of the 2004 Credit Rules is restricted only to works contract services when used for construction of building or a civil structure or a part thereof. The relevant portion of the rule 2(I) of the 2004 Credit Rules is reproduced below:

“Rule 2(I). “input service” means any service, -

- (i) used by a provider of output services for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred to as specified services) in so far as they are used for -

- a) construction or execution of works contract of a building or a civil structure or a part thereof; or
- b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services;"

26. Works contract services in respect of erection, repair, maintenance, painting and fabrication of plant/machinery cannot be construed as construction of a civil structure. Thus, it will do not fall in the excluded category of rule 2(l) of the 2004 Credit Rules. CENVAT credit cannot, therefore, be denied to the appellant. Thus, the denial of CENVAT credit amounting to Rs. 10,72,618/- confirmed by the order cannot be sustained.

Manpower supply services

27. CENVAT credit amounting to Rs. 26,880/- has been denied to the appellant for the reason that such credit pertains to civil construction services and is excluded from the definition of 'input services' under rule 2 (I) of the 2004 Credit Rules.

28. CENVAT credit of Rs. 26,880/- was availed by the appellant on manpower supply services received from M/s Mahamaya Construction, Siltara, Raipur for repair/maintenance of plant & machinery during the factory shutdown and not on civil construction services. This is clear from the invoices dated 27.04.2011 and 04.05.2011 issued by the supplier.

29. As the said repair/maintenance activities undertaken by the said supplier were integral to the manufacturing activity of the appellant, the same qualifies as 'input service' in terms of rule 2(I) of the 2004 Credit Rules. Thus, the appellant was justified in availing CENVAT credit of Rs. 26,880/-.

30. The appellant was, therefore, clearly entitled to the CENVAT credit of Rs. 20,49,675/- and the demand confirmed by the impugned order cannot be sustained.

31. It would, therefore, not be necessary to examine whether the extended period of limitation contemplated under the proviso to section 11A(1) of the Central Excise Act was correctly invoked.

32. **Excise Appeal No. 55419 of 2023** has been filed by the department to assail that part of the order passed by the Principal Commissioner that has allowed CENVAT credit of Rs. 67,50,989/-.

33. The contention that has been raised by the learned authorised representative is that the said credit has been allowed to the appellant

on the basis of invoices which do not contain the description of services provided and, therefore, such invoices are not valid documents for availing CENVAT credit, as is contemplated under rule 9(2) of the 2004 Credit Rules.

34. It is seen that CENVAT credit of Rs. 67,50,989/- was availed by the appellant on manpower supply services received from Anand Infracon and J.K. Construction during the period from 25.04.2011 to 31.08.2015. This is corroborated from the copies of the invoices issued by the said service providers for the services provided during the period under dispute. These invoices were submitted by the appellant to the department during the audit proceedings, by a letter dated 05.12.2015.

35. The Principal Commissioner has held that there is no dispute as regards to the receipt of the said services by the appellant for use in its manufacturing operations and so payment of service tax against the said taxable services by the service providers and coverage of the said manpower supply services under the ambit of 'input services', as defined under rule 2(I) of the 2004 Credit Rules is justified.

36. As all the substantive conditions prescribed under rule 4 of the 2004 Credit Rules stood fulfilled, CENVAT credit for procedural lapses cannot be denied to the appellant.

37. This is also what was held by the Tribunal in **M/s. Adbur Private Limited vs. CST, Delhi⁵** and the relevant portion of the decision is reproduced below:

"9. Regarding denial of Cenvat credit on the ground that the invoices were addressed to unregistered premises of the appellant, we note that there is no dispute regarding eligibility of input service for

5. Service Tax Appeal No. 3630-3632 of 2012 decided on 26.04.2017

availability of credit to the appellant. The denial of credit is only with reference to address in the document. We find in various decisions, this Tribunal held that the credit cannot be denied on this reason. Reference can be made to the decision in **Manipal Advertising Services Pvt. Ltd. vs. CCE, Mangalore [2010 (19) S.T.R. 506 (Tri. – Bang.)]**. We also note that in the appellant's own case on the same issue, the Original Authority for the later period held that denial of credit cannot be justified on this ground, vide order dated 21/07/2016."

38. Thus, for all the reasons stated above, the impugned order dated 29.03.2023 passed by the Principal Commissioner so far as it disallows CENVAT credit of Rs. 53,94,564/- is set aside and Excise Appeal No. 55196 of 2023 filed by the appellant is allowed. Excise Appeal No. 55419 of 2023 filed by the department is, however, dismissed.

(Order Pronounced on **02.06.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)