

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 27014 of 2013

(Arising out of **Order-in-Original** No.10/2013-ST-HYD-III-Adjn (Commnr) (TRF) dated 25.03.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

M/s Larsen & Toubro Ltd.,

ECC Division,
6-3-1109/1,
2nd Floor,
Navabharat Chambers,
Rajabhavan Road,
Somajiguda,
Telangana – 500 082.

..

APPELLANT

VERSUS

Pr. Commissioner of Central Tax

Rangareddy - GST

H.No.1-98/7/43.
Vip Hills,
Jaihind Enclave,
Madhapur,
Hyderabad,
Telangana – 500 081.

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RESPONDENT

APPEARANCE:

Shri Narendra Dave, Advocate for the Appellant.

Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30320/2026

Date of Hearing: 17.02.2026

Date of Decision: 12.06.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against Order-in-Original No. 10/2013-ST-HYD-III-Adjn (Commnr) (TRF) dated 25.03.2013, whereby, CENVAT Credit amounting of Rs. 2,22,31,277/- along with interest has been disallowed under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 and equal penalty has been imposed under Rule 15(4) of the CENVAT Credit Rules read with Section 78 of the Finance Act.

2. The fact, in brief, Rashtriya Ispat Nigam Ltd., (hereinafter referred to as "RINL") floated an international tender for design, engineering, manufacture, supply, erection, commissioning and performance guarantee of Blast Furnace no.3 at Visakhapatnam Steel Plant. For execution of the project, a consortium comprising i) Larsen & Toubro Ltd., (Appellant) ii) Paul Wurth Italia S.P.A (PWI), and iii) Paul Wurth India Pvt Ltd., (PWIPL), was constituted. Under the consortium arrangement, Paul Wurth Italia SPA (hereinafter called PWI) was designated as the Leader and Principal contractor. Subsequently, a supplementary agreement dated 12.04.2007 was executed under which consortium members agreed to pay "leadership fee" to PWI at 4.3% of their respective contract value. The appellant paid such leadership fee and discharge Service Tax thereon under Reverse Charge Mechanism by classifying the activity under "Consulting Engineer Service" in terms of Section 66A of the Finance Act, 1994. The Service Tax so paid was distributed through ISD mechanism by L&T Chennai office and ultimately availed as CENVAT Credit by the appellant.

3. The Department has taken a view that the leadership fee pertained to contract M-720 which related primary to manufacture and supply of indigenous plant and machinery and therefore, the Service Tax paid thereon was attributable to exempted trading/manufacturing activity and not eligible for credit. Accordingly, proceedings were initiated culminating in the impugned order.

4. Learned Counsel for the appellant submitted that the Service Tax was admittedly paid and accepted by the Department. The appellant received the credit through a valid ISD mechanism and no proceedings have been initiated against the ISD distributor. The entire project constituted a

composite turnkey contract and the Department cannot artificially vivisection the contractual arrangement.

5. Learned Counsel for the appellant further submitted that the service received from PWI were Consulting Engineer Services specifically covered under Rule 6(5) of CENVAT Credit Rules, 2004 and therefore, full credit is admissible. Even, otherwise the leadership fee was paid in relation to the entire consortium project and not merely to manufacture of goods. Learned Counsel for the appellant further submitted that the issue is revenue neutral and there is no suppression and intention to evade the tax. Therefore, period of limitation cannot be invoked.

6. Learned Authorized Representatives reiterates the findings of the Adjudicating Authority, inter alia, submitted that the contract M-720 substantially related to manufacture and supply of plant and machinery. The service received was attributable to non-taxable/exempt activities. Therefore, Rule 6 of CENVAT Credit Rules would apply and the credit was not available. The demand, interest and penalty have been rightly confirmed.

7. We have carefully considered the submission of both the parties and examined the records.

8. The issue for determination is, whether CENVAT Credit of Service Tax paid on leadership fee is admissible.

9. We find that the Service Tax paid on leadership fee was distributed through Input Service Distributable mechanism by L & T Chennai office. The Department has not disputed the payment of Service Tax, genuineness of invoices, receipt of service, and / or distribution of credit by ISD. No any proceedings have been initiated against the ISD unit. Once credit has been

validly distributed through ISD, denial of such credit at recipient's end merely on account of an alleged procedural irregularity and ISD stage is legally unsustainable.

10. This Tribunal in the case of India Cements Ltd., Vs Commissioner of Central Tax, Tirupati – GST [2023 (2) TMI 1091 (Tri-Hyd)] held that substantial benefit of CENVAT Credit cannot be denied of mere procedural grounds where receipt of service distribution of credit are undisputed. The relevant para of the decisions as follow:

"14. We further observe that alleged violation of Rule 7 of CCR, 2004, in the given facts and circumstances, is nothing more than the procedural lapse. We rely upon the decision of Hon'ble High Court Gujarat in the case of Commissioner of Central Excise Vs. Dashion Ltd. reported in 2016 (41) S.T.R. 884 (Guj.) wherein it is held that when the invoices for input services are not disputed by the Revenue, the availment of Cenvat credit by the unit of an ISD Distributor cannot be denied on the ground that the service was availed by some other unit, it being merely a procedural deficiency. It is emphasized by the court that substantial benefit of the Cenvat credit provision should not be denied on the mere ground of procedural lapse. In the present case also there is no E/30841/2018, E/30151/2019, E/30578/2021 [DB] 17 dispute about the invoices raised by the ISD, also there is no dispute that major amount of the credit has been distributed on pro rata distribution basis only, except that in some invoices it was distributed on the quantity basis. Rule 7 of CCR, 2004 is a procedure. As already discussed above the procedural lapse cannot be a ground to deny the substantial benefit of Cenvat credit. Also the situation is discussed to be revenue neutral. Question of demanding interest and imposition of penalty does not at all arises. This Tribunal, Ahmedaba Bench in the case of Doshion Ltd. Vs. Commissioner of Central Excise, Ahmedabad reported in 2013 (288) E.L.T. 291 (Tri.-Ahmd.) has held as follows:

"5. We have considered the submissions made by both sides. We find considerable force in the arguments advanced by the learned counsel. The registered office and Vatva office both are located in the same place and appellant has simply utilised the credit at Vatva instead of distributing it to various units. As submitted by the learned counsel, during the relevant period, there was no restriction for utilisation of such credit without allocating proportionately to various units. The omission to take registration as an Input Service Distributor can at best be considered as procedural irregularity and in view of the decisions cited, has to be considered sympathetically. Further, it is also noticed that appellant has not got any extra benefit by doing this. In fact from the statement of Shri Chandresh C. Shah, as explained that above Cenvat credit available to them, 20% of service tax payable only was paid and

balance was paid in cash. In fact, proper distribution would have enabled them to utilise full credit. It would show that the exercise is totally Revenue neutral and no loss has been caused to the Revenue (infact Revenue has gained). In the absence of any legal requirement to avail credit based on the services received during the relevant time and in the light of the decision cited by the learned counsel, the procedural irregularity has to be ignored and the demand confirmed has to be set-aside on this ground. In the result, demand for Cenvat credit of Rs. E/30841/2018, E/30151/2019, E/30578/2021 [DB] 18 1,07,07,142/- with interest and penalty equal to the same imposed under Section 11AC of Central Excise Act, 1944 are setaside."

The procedural irregularities are held to be ignored when there is no apparent loss to the revenue nor any apparent benefit to the assessee."

11. Similar views have been taken in the following decisions:

- i) Indsil Energy Electrochemicals Ltd., Vs Commissioner of Central Excise & Service Tax, Raipur [2016 (9) TMI 944 CESTAT New Delhi]
- ii) Commissioner of Central Excise Vs Schneider Electric India Pvt Ltd., [2018 TIOL-1045 CESTAT Mad]
- iii) M/s Henkel Anand India Pvt Ltd., Vs Commissioner of Central Excise & Service Tax Gurgam – I [2020 (1) TMI 369 CESTAT Chandigarh]
- iv) M/s Shriram Rayons Ltd., Vs Commissioner of Customs GST [2020 (1) TMI 1758 (Tri-Del)]

Accordingly, we hold that denial of credit at recipient end is not sustainable.

12. A significant part of the impugned order proceeds on the basis that contract M-720 involved manufacture and supply of indigenous equipment and therefore the leadership fee must be proportionately attributed to non-taxable activity. We are unable to agree. The records reveal that RINL executed a Covering Agreement with the consortium under which multiple contracts formed integral parts of a single turnkey Blast Furnace Project. The consortium agreement specifically envisages coordinated execution of all obligations. The leadership fee was payable to PWI in its capacity as Consortium Leader and Principal Contractor for overall management,

coordination, integration and successful execution of the entire project. The fee was therefore not linked exclusively to manufacture of goods under Contract M-720.

13. The Hon'ble Supreme Court of India in the case of BSNL Vs Union of India [2006 (2) S.T.R. 161 (S.C.)] reaffirmed the principle that the true nature of a transaction must be determined from the substance of the contract and not by artificially splitting an integrated arrangements. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this dominant nature test. Similarly, the principles laid down in State of Madras Vs Gannon Dunkerley and Co. (Madras) Ltd., [1958 (4) TMI 42 - SC] continue to govern characterization of composite contracts. Applying the aforesaid principles, we find that consortium arrangement constituted an integrated turnkey project and the leadership fee formed part of the overall project management structure. The Department's attempt to isolate Contract M-720 and deny credit accordingly amounts to impermissible vivisection of a composite contractual arrangement.

14. We further find considerable force in the appellant's contention regarding Rule 6(5) of CENVAT Credit Rules, 2004. The appellant discharged Service Tax under the category of "Consulting Engineer Service". Consulting Engineer Service was one of the specified services covered under Rule 6(5) of the CENVAT Credit Rules, 2004 during the relevant period. Rule 6(5) begins with a non-obstante clause and grants full credit in respect of specified taxable services unless such services are used exclusively in exempted goods or exempted services. The Department has nowhere established that the impugned service was used exclusively for exempted

activity. On the contrary, the record show that the leadership fee related to the integrated Blast Furnace Project comprising both supply of goods and taxable service elements. Consequently, the conditions for denial under Rule 6(5) of CENVAT Credit Rules, 2004 are not satisfied.

15. The Tribunal decisions in i) Nava Bharat Ventures Ltd., Vs CCE, Customs & Service Tax [2021 (11) TMI 426 (Tri-Hyd)]

ii) Sahyadri Starch & Industries Pvt Ltd., Vs Commissioner of Central Excise, Kolhapur [2016 (3) TMI 804-CESTAT Mumbai]

iii) Kaleesuwari Refinery Pvt Ltd., Vs Commissioner of Central Excise, Chennai [2007 SCC online CESTAT 2837]

Support the proposition that where Rule 6(5) of CENVAT Credit Rules, 2004 applies, full credit is available. We therefore, hold that the appellant is entitled to the benefit of Rule 6(5) of CENVAT Credit Rules, 2004.

16. An another significance aspect is, that the Department has accepted payment of Service Tax on the leadership fee. If tax paid under Reverse Charge is accepted as correctly paid, denial of corresponding credit without disputing receipt of service leads to a revenue neutral situation. The Hon'ble Supreme Court has repeatedly held that where the entire exercise is revenue neutral, allegations of intention to evade become unsustainable. This circumstance further supports the appellant's case.

17. Since, we have held that the credit itself is admissible, the demand cannot survive. Consequently, interest and penalty imposed under Rule 15(4) of CENVAT Credit Rules read with Section 78 of the Finance Act are also liable to be set aside.

18. Even otherwise, the issue involves interpretation of consortium agreements, Rule 6 and ISD provisions. The entire transactions as disclosed in statutory records. There is no material establishing fraud, collusion, willful mis-statement or suppression of facts. Therefore, imposition of equal penalty is wholly un-warranted.

19. In view of the above discussion, we hold that

i) The leadership fee paid to PWI was received in relation to a integrated turnkey Blast Furnace Project.

ii) The Department has incorrectly dissected a composite contractual arrangement to deny credit.

iii) The Service Tax paid under Reverse Charge Mechanism was validly distributed through ISD.

iv) The appellant is entitled to CENVAT Credit.

20. Therefore, demand is not sustainable, Interest and penalty is also liable to be set aside.

21. Accordingly, the impugned order is set aside and appeal is allowed with consequential reliefs, if any, in accordance with law.

(Pronounced in the open court on 12.06.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)