

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 77079 of 2017

(Arising out of Order-in-Appeal No. 115/RAN/2017 dated 17.07.2017 passed by the Commissioner, Goods & Service Tax and Central Excise (Appeal), Grand Emerald (2nd & 3rd Floor), Ashok Nagar, Kadru-Argora Main Road, Ranchi – 834 002)

M/s. Libra Business Private Limited

: Appellant

Opposite Raj Ground,
Main Road, Jharia,
Dhanbad – 828 111

VERSUS

Commissioner of C.G.S.T. and Central Excise

: Respondent

Ranchi Commissionerate [pertaining to Dhanbad Division]
Grand Emerald, 2nd & 3rd Floor,
Ashok Nagar, Kadru-Argora Main Road,
Ranchi – 834 002

APPEARANCE:

Shri Narayan Agarwal, Chartered Accountant, for the Appellant

Shri Argho Mukherjee, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75722 / 2026

DATE OF HEARING: 12.06.2026

DATE OF DECISION: 18.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 115/RAN/2017 dated 17.07.2017 whereby the disallowance of CENVAT Credit amounting to Rs.1,03,88,050/-, along with recovery of interest and imposition of penalty thereon, as ordered vide the Order-in-Original No. 59/2016/S.Tax/Libra/ADC/DNB(H) dated 23.12.2016, has been upheld by the Ld. Commissioner (Appeals).

2. The facts of the case are that M/s. Libra Business Private Limited, Opposite Raj Ground, Main Road, Jharia, Dhanbad - 828 111 (hereinafter referred to as the "appellant") is a private limited company registered under Service Tax bearing ST Registration No. AACCC6296PSD001, engaged in rendering services under the categories of 'mining of mineral, oil or gas service' and 'goods transport agency service'. During the period from February, 2010 to March, 2010, the appellant had purchased 25 Volvo Make Tippers under the cover of excisable invoices. CENVAT Credit on the aforesaid Tippers was availed by the appellant in their Books of Accounts, to be utilized against liabilities towards output services i.e., mining services, to be rendered by them.

3. As per Rule 4(2) of the CENVAT Credit Rules, 2004, the appellant availed CENVAT Credit on such Tippers to the extent of 50% of the credit available in respect of capital goods for the Financial Year in which the goods were received and the balance credit was availed in the subsequent Financial Year.

4. As the appellant obtained Service Tax Registration only on 21.10.2010, the officers of the Department entertained the view that the CENVAT Credit so availed by the appellant, of central excise duty paid on the said Tippers as capital goods, prior to obtaining registration, was inadmissible and thus liable to be reversed.

5. On the basis of the above allegation, a Show Cause Notice dated 18.04.2015 was issued to the appellant, proposing, inter alia, to deny the CENVAT Credit of Rs.1,03,88,850/- availed by the appellant on the said Tippers during the month of February, 2010 and March, 2010. The Notice alleged that 'Tippers'

were included in the definition of "capital goods" vide Notification No. 25/2010-C.E.(N.T.) dated 22.06.2010 only and hence the appellant having received the Tippers prior to 22.06.2010, the said CENVAT Credit availed by the appellant on Tippers, as capital goods, was ineligible.

5.1. The above Show Cause Notice came to be adjudicated vide the Order-in-Original No. 59/2016/S.Tax/Libra/ADC/DNB(H) dated 23.12.2016 wherein the said CENVAT Credit was disallowed by the Id. adjudicating authority; applicable interest and penalties were also demanded.

5.2. Against the above adjudication order dated 23.12.2016, the appellant preferred an appeal before the Id. lower appellate authority, who, vide the impugned order dated 17.07.2017, has upheld the disallowance of CENVAT Credit, demand of interest thereon, and imposition of penalty under Section 78 of the Finance Act, 1994; the imposition of penalty under Section 77 of the Act was however set aside by the Id. lower appellate authority.

5.3. Aggrieved by disallowance and recovery of CENVAT Credit, along with interest, and imposition of penalty under Section 78 of the Act, the appellant has filed the instant appeal.

6. The Ld. Counsel appearing on behalf of the appellant submits that they had purchased 25 numbers of Volvo Make Tippers during the months of February and March, 2010; in respect of 2 Tippers, vehicle registration was obtained in the months of May and July, 2010 whereas for the balance 23 Tippers, vehicle registration was obtained during October, November and December, 2010. It is submitted that

Tippers cannot be put to use without registration of the said vehicles. The appellant states that the Tippers in question on which CENVAT Credit has been availed by them in the present case have been put to use only after 22.06.2010. Accordingly, it is the appellant's submission that the CENVAT Credit availed by them on the Tippers, as capital goods, cannot be denied.

6.1. Further, it is pointed out by the Ld. Counsel for the appellant that as they had obtained Service Tax Registration w.e.f. 21.10.2010 and had availed CENVAT Credit on the said vehicles by recording in their Books of Accounts during February and March, 2010, the appellant had filed ST-3 Returns for the period from October, 2009 to March, 2010 disclosing the entire availment of credit therein. It has also been submitted by the appellant that they started utilizing the disputed CENVAT Credit only from May, 2011 onwards; that they have ensured that only 50% of the credit was utilized during the said Financial Year, in terms of Rule 4(2)(a) of the CENVAT Credit Rules, 2004. Accordingly, it is the appellant's stand that they have not violated any of the provisions contained in the CENVAT Credit Rules, 2004.

6.2. Furthermore, it is also submitted by the appellant that the entire CENVAT Credit availed on the Tippers was duly reflected in the statutory ST-3 Returns filed by them for the period from October, 2009 to March 2010; the instant Show Cause Notice has been issued only in April, 2015, nearly three years after the Service Tax Audit was conducted in the year 2012. It is the appellant's submission on this score that despite complete disclosure in statutory returns and despite departmental audit/investigation on the same issue, the Show Cause Notice has invoked the

extended period under the proviso to Section 73(1) of the Act, alleging suppression of facts and wilful mis-statement, which is wholly unsustainable in the facts of the present case.

6.3. In view of the above submissions, the Ld. Counsel for the appellant prays for setting aside the impugned order to the extent of disallowance and recovery of CENVAT Credit, along with interest. Accordingly, they have also prayed for waiver of the penalty imposed under Section 78 of the Act.

7. On the other hand, the Ld. Authorized Representative of the Revenue contends that as Tippers were included as "capital goods" only by way of Notification No. 25/2010-C.E.(N.T.) dated 22.06.2010 and the appellant had received all the 25 Volvo Make Tippers during the month of February and March, 2010 and taken the credit thereon in their Books of Accounts, the CENVAT Credit availed on the Tippers is liable to be reversed by the appellant. It is the Revenue' contention that CENVAT Credit can be taken only if the same is eligible at the time of receipt of the goods and accounting in the Books of Accounts; as the goods in the present case have been received prior to 22.06.2010, the appellant is not entitled to the said credit availed by them. Accordingly, he argues that the impugned order has rightly upheld the disallowance of CENVAT Credit. In view of the above contentions, the Ld. Authorized Representative of the Revenue justifies the impugned order.

8. Heard both sides and perused the documents presented before us.

9. It is a fact on record that the appellant herein has received 25 Volvo Make Tippers in the month of February, 2010 and March, 2010. The appellant availed CENVAT Credit of the central excise duty paid on such Tippers by recording the same in their Books of Accounts. It is also a fact that Notification No. 25/2010-C.E.(N.T.) dated 22.06.2010 included 'Tippers' under the definition of eligible capital goods for CENVAT credit with effect from 22.06.2010. Thus, CENVAT Credit availed on Tippers can be utilized for payment of liabilities in respect of output services after 22.06.2010.

9.1. In this case, the appellant took vehicle registration for 2 Tippers in the months of May and July, 2010 and for the balance 23 Tippers in the months of October, November and December, 2010. It is also an admitted position that the appellant has not utilized the CENVAT Credit availed prior to 22.06.2010. We find force in the appellant's submission that the vehicles received cannot be put to use unless their registrations under the Motor Vehicles Act, 1988. It is an admitted fact that the said vehicles were registered by the appellant after 22.06.2010. In fact, the appellant has specifically submitted that they had started utilizing the disputed CENVAT Credit only from May, 2011 onwards, i.e., after 22.06.2010, when Tippers were included in the definition of capital goods. Thus, considering the fact that the said vehicles/Tippers were registered and put to use only after 22.06.2010, we do not find any infirmity in the availment of credit on such Tippers by the appellant.

9.2. We also find that the appellant has utilized only 50% of the credit during the Financial Year in which the goods were received, in terms of Rule 4(2) of the CENVAT Credit Rules, 2004.

9.3. Moreover, we take note of the fact that CENVAT Credit is a substantial benefit given to taxpayers and the same cannot be denied merely on account of procedural infractions or technical grounds if the assessee is otherwise entitled to the same. There is no dispute that duty been paid on the motor vehicles/Tippers in question and the said Tippers have also been used in rendering the output service. The eligibility of CENVAT Credit on the Tippers is required to be considered when the said vehicles are put to use for rendering the output service. As the said vehicles were put to use after 22.06.2010, as already observed hereinbefore, the appellant would be entitled to avail CENVAT Credit on the said tippers and utilize the same for rendering their output services.

9.4. We find that the issue as to eligibility towards CENVAT Credit in respect of Tippers/Dumpers purchased prior to the inclusion of the same in the definition of "capital goods" w.e.f. 22.06.2010 has already been decided by the CESTAT at Hyderabad in the case of *M/s. Vijay Mining & Infra Corp Pvt. Ltd. v. Commissioner of Central Tax, Hyderabad [Final Order No. A/30209/2024 dated 14.03.2024 in Service Tax Appeal No. 30167 of 2017 – CESTAT, Hyderabad]* and thus, the issue is no longer res integra. In the above case, it was observed by the Tribunal that the insertion of goods like tippers, dumpers and other equipment as eligible inputs / capital goods vide No. 25/2010-C.E.(N.T.) dated 22.06.2010 is only clarificatory in nature. For ease of reference, the

relevant portion of the aforesaid order is reproduced below: -

"C. The third issue for consideration- as to whether the appellant is eligible to take cenvat credit on tippers and dumpers which had been purchased prior to the inclusion of the said items in the definition of capital goods vide Notification dated 22.06.2010. The learned counsel for the appellant submits that the issue is covered by the Board Instruction dated 23.10.2008 and also by the judgment in IBC Ltd v Commissioner of Customs, CE.EX& ST., Tirupati, 2016 (45) STR 414. On the other hand, the learned AR for revenue submitted that eligibility of cenvat credit has to be decided when the goods are received and not when the credit is being availed. When the goods i.e tippers and dumpers were received, the same were not covered in the definition of capital goods and thus taking of cenvat credit on the said items prior to 22.06.2010 is irregular and the demand has been rightly confirmed in the impugned order.

a) We have considered the rival submissions advanced by both the sides. We find that this issue is squarely covered by Board Instructions dated 23.10.2008, which reads as under:

"Supply of tangible goods including machinery, equipments and appliance for use, without transferring right of possession and effective control of such tangible goods is a taxable service in terms of provision of Section 65(105) (zzzzj) of the Finance Act, 1994. In some case, vehicles, aircrafts, vessels, etc., are also supplied in the above manner and such activities also fall under the said taxable service. In this regard, a doubt has arisen whether the credit of Excise duty/Additional duty of Customs (commonly known as CVD) paid on such items are available to the provider of such taxable service and if so whether such goods should be considered as 'inputs' or 'capital goods', for the purposes of the Cenvat Credit Rules, 2004.

2. The matter has been examined. It is possible that some of such goods may either fall within the definition of 'capital goods' or may not be covered under the said definition. However, as these goods are primary requirements for providing the above mentioned 'output services' for such service

providers, the goods including vehicles, aircrafts, vessels, etc., are in the nature of 'inputs'. It is emphasized here that this clarification is valid only when the output service is in the nature of service defined under the provisions of Section 65(105)(zzzzj) of the Finance Act, 1994 and the goods in question are the tangible goods supplied during the course of providing the taxable service"

b) We find the appellant in the facts and circumstances meets both the conditions as prescribed (i) output service is in the nature of service defined under the provisions of Section 65(105) (zzzzj) of the Finance Act, 1994 and (ii) the goods in question are the tangible goods supplied during the course of providing the taxable service. The Show Cause Notice has also admitted the nature of service as supply of the tangible goods. We also find the issue is squarely covered by the precedent decision of this Tribunal in IBC Ltd v Commissioner of Customs, CE.Ex& ST., Tirupati, 2016 (45) STR 414 (hyd). We find that under similar circumstances for the period April 2008 to September 2009 it was held that the for supply of tangible goods namely dumpers and tippers, will need to be considered as primary requirement for providing the output service of SOTG. We also find that insertion of goods like tippers dumpers and equipments as eligible input/capital goods vide notification dated 22/06/2010, is Clarificatory in nature. This is further explained or amplified vide Board instructions/circular dated 23/10/2008. We therefore hold that taking of cenvat credit on tippers and dumpers cannot be said to be irregular. Therefore, the demand confirmed by denying the Cenvat credit of Rs.5,88,51,540/- and Rs.4,94,41,516/- are set aside."

9.5. A similar issue also came up for consideration before the Tribunal in the case of *M/s. IBC Ltd. v. Commissioner of Cus., C.Ex. & S.T., Tirupati [2016 (45) S.T.R. 414 (Tri. - Hyd.)]*, wherein it was observed as under: -

"6. Regarding the demand of Rs. 1,11,92,132/- in respect of supply of tangible goods for use of services, the appellant has contended that as per aforesaid Board's Circular dated 23-10-2008, they would have been entitled to credit of Rs. 1,18,08,298/- whereas tax payable was lower than that. We find merit in this contention. Relevant portion of Board's Circular referred to is reproduced below :

....

7. From the above, it is clear that supply of tangible goods viz., dumpers and tippers, etc., will need to be considered as primary requirements for providing the said output service, and hence such vehicles will be in the nature of inputs for the purposes of Cenvat Credit Rules, 2004. This being so, the denial of the credit on the said vehicles by lower authority falls foul of the Board's Circular. The determination of service tax liability in respect of supply of tangible goods service will therefore, require to be predetermined after taking into account eligible input credit on the aforesaid items used by the appellant as primary requirements for providing supply of tangible goods service."

10. Therefore, in view of the discussions hereinabove and by relying on the ratio of the decisions cited supra, we are of the view that the CENVAT Credit has been rightly availed by the appellant on the Tippers in question and the same cannot be denied on the ground that the said vehicles/Tippers were received prior to 22.06.2010. Accordingly, we do not find any merit in the impugned order upholding the disallowance of CENVAT Credit availed by the appellant on the said Tippers.

11. We further find considerable force in the contention of the appellant on the aspect of limitation. It is not in dispute that the CENVAT credit availed on the impugned Tippers stood duly reflected in the statutory ST-3 returns filed by the appellant and the

availment thereof was thus within the knowledge of the Department. It is also borne out from the records that the issue regarding availment of credit on tippers/dumpers had been specifically examined during the departmental audit conducted in the year 2012 and, pursuant thereto, summons had also been issued and statements of the concerned officials of the appellant were recorded. In fact, the Show Cause Notice itself has emanated from the audit proceedings and the demand has been worked out on the basis of the books of accounts, invoices and other records maintained by the appellant in the ordinary course of business. In the aforesaid set of facts, no fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty can be attributed to the appellant so as to justify invocation of the extended period of limitation. As the necessary ingredients for invocation of the proviso to Section 73(1) of the Finance Act, 1994 are absent in this case, we hold that the extended period of limitation cannot be invoked against the appellant in the facts and circumstances of the case. As the entire demand has been raised and confirmed in the impugned order by invoking extended period of limitation, we hold that the entire demand confirmed vide the impugned order is liable to be set aside on the ground of limitation.

12. As the demand on account of disallowance of CENVAT Credit does not survive and the appellant has rightly availed the credit, the question of demanding interest or imposing penalty under Section 78 *ibid.* thereon does not arise.

13. In view of the above findings, we pass the following order: -

- (i) The disallowance of CENVAT Credit of Rs.1,03,88,050/- and recovery thereof, along with interest, is set aside.
- (ii) The penalty imposed under Section 78 of the Finance Act, 1994 is dropped.

14. The impugned order thus stands modified to the above extent and the appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **18.06.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd