IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos. 42435 & 42436 of 2016

(Arising out of Order in Appeal No. 512/2016 (STA – I) dated 01.9.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Valmet Technologies Engineering Pvt. Ltd. **Appellant**
Central Square – I, IV Floor
Thiru Vi Ka Industrial Estate
Guindy, Chennai – 600 032.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Shri Raghav Rajeev, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40855-40856/2026

Date of Hearing: 12.02.2026
Date of Decision: 07.07.2026

Per M. Ajit Kumar,

Both appeals arise out of Order-in-Appeal No. 512/2016 (STA-I) dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai. (impugned order)

Factual Matrix

2. The brief facts are that the appellant is registered with the Service Tax Department and is engaged in providing Consulting Engineer Service and Renting of Immovable Property Service, among others. During audit, it was noticed that the appellant had (i) sublet rented premises to M/s. Metso Power India Ltd. (**Metso**), and part of

the premises to M/s. EPT Technical Services Pvt. Ltd. (**EPT Tech**), without payment of service tax; (ii) collected electricity charges from lessees without including the same in the taxable value; and (iii) availed CENVAT credit on services which were allegedly not eligible input services. Accordingly, a Show Cause Notice (**SCN**), dated 18.01.2012 was issued for the period 2007-08 to 2010-11 proposing demand of service tax on renting of immovable property and on electricity charges, besides denial of CENVAT credit. Thereafter, a Statement of Demand (**SOD**), dated 23.04.2012 was issued for the period 2010-11 proposing denial of further CENVAT credit. After due process, the adjudicating authority confirmed the service tax demands and disallowed the CENVAT credit under Section 73 of the Finance Act 1994 (**FA 1994**), along with interest, and imposed equal penalty under Section 78 in respect of the first Show Cause Notice and penalty under Section 76 in respect of the Statement of Demand. Aggrieved, the appellant preferred appeals before the Commissioner (Appeals). Vide the impugned order, the First Appellate Authority modified the Order-in-Original by extending cum-tax benefit and allowing CENVAT credit in respect of certain services while disallowing the same in respect of others. Hence, the present appeals.

3. The Ld. Advocate Shri Raghav Rajeev appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

Submissions made by the Appellant

3.1 Shri Raghav Rajeev the Ld. Advocate for the appellant submitted as under:

A. Background

A.1 The Appellant entered into a lease agreement with SLCL-CS-JV, the landowner, for taking land/premises on lease along with amenities including parking and maintenance against payment of rent together with applicable Service Tax. The Appellant, in turn, sub-leased the entire premises to its sister concern, Metso. The above arrangements were executed on a back-to-back basis and on identical terms. The Appellant recovered from Metso only the amounts paid to the landowner, without any mark-up, under separate invoices. For July-August 2008, no Service Tax was collected on the rent from Metso Power under a bona fide belief that, as the landowner had already discharged tax on the very same service, no further tax was payable by the Appellant. The Appellant also did not avail CENVAT credit of the tax paid to the landowner. The electricity charges recovered from Metso were pure reimbursements. During April 2007 to February 2009, the Appellant also sub-let a portion of the premises to its associate concern, EPT Tech. Acting under the same bona fide belief, the Appellant did not collect or pay Service Tax. On the issue being pointed out, the Appellant discharged the entire tax of Rs. 47,212/- along with interest of Rs. 68,512/- vide challans dated 27.09.2014.

B. Service tax on rent

B.1 Insofar as Service Tax on rent is concerned, the demand is unsustainable on limitation, since the extended period is not invocable.

B.2 The demand pertains to sub-leasing by the Appellant on a pure back-to-back basis and without any mark-up. The Appellant merely recovered actuals from its sub-lessee.

B.3 Since the landowner had already discharged Service Tax on the rent received from the Appellant, the Appellant entertained a bona fide belief that no further tax was payable on the same transaction chain.

B.4 In **Sree Nandhee Technologies Private Limited Vs Commissioner of GST & CCE** [2025 (12) TMI 224-CESTAT Chennai], the Tribunal held that the issue whether a sub-contractor is liable where the main service provider has discharged tax was debatable and, therefore, the extended period was not invocable. The said ratio squarely applies; hence the impugned order is liable to be set aside.

B.5 For the period prior to 10.05.2008, no Service Tax could be demanded on mere book adjustments between associated enterprises. Reliance is placed on **Sempertrans Nirlon (P) Ltd. v. CCE, Raigad** [2019 (20) G.S.T.L. 560 (Tri-Mumbai)]. Accordingly, the demand for the period prior to 10.05.2008 is liable to be set aside on merits.

B.6 ***Sempertrans Nirlon*** further holds that the extended period is not invocable in such circumstances. Hence, the entire demand on this count is barred by limitation as well.

C. Service tax on electricity

C.1 Supply of electricity is a sale of goods and not a service. Reliance is placed on **ICC Reality (India) Pvt. Ltd. v. CCE** [2013(32) S.T.R. 427 (Tri.-Mumbai)], **Pune-III and Kiran Gems Pvt. Ltd. v. CST, Surat-I** [2019 (25) G.S.T.L. 62 (Tri-Ahmd.)].

C.2 In **Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd.** [2018 (3) TMI 357-Supreme Court], the Hon'ble Supreme Court held that reimbursable expenses cannot be included in the taxable value under Rule 5 of the 2006 Valuation Rules,

the said rule being ultra vires Sections 66 and 67 of the Finance Act, 1994, for the period prior to the 2015 amendment.

C.3 Since the Delhi High Court judgment in **Intercontinental Consultants & Technocrats Ltd.** [(2013) (29) STR 9]], stands affirmed by the Hon'ble Supreme Court, the impugned order is liable to be set aside on this ground alone.

D. Extended period of limitation is not invocable.

D.1 The dispute turns on interpretation of law; therefore, the extended period is not invocable. Reliance is placed on **International Merchandising Company Vs CST, New Delhi**, [2022 (67) G.S.T.L. 129 (S.C)], which held that when the issue turned upon an interpretation of the provisions of the Finance Act, there was no warrant to allow the invocation of the extended period of limitation and to direct the determination of the penalty following the re-quantification of the demand.

E. Denial of Cenvat credit on various input services availed during the period April 2007 to March 2012

E.1 As regards the demand towards denial of CENVAT credit, the extended period is equally not invocable, especially when the Appellate Authority itself has recorded that the issue involves interpretation of law. Reliance is placed on **International Merchandising Company** (supra) to submit that the demand is not enforceable.

E.2 Further, the show cause notice is vague and cryptic and is liable to be set aside on this ground alone. Reliance is placed on **Balkrishna Industries Ltd. v. Commissioner of CGST, Alwar** [2022 (65) G.S.T.L. 247 (Tri-Del)].

F. In view of the submissions the Ld. Counsel prayed that the appeal be allowed in toto, the impugned order be set aside, and consequential reliefs be granted to the Appellant in accordance with law.

Submissions made by the Respondent-Revenue

3.2 Shri M. Selvakumar Ld. Authorized Representative appeared for the Respondent. He took us through the impugned order and submitted that:

A. The appellant admits that Mesto a joint venture company and EPT Tech, an associate company, were permitted to use its premises on rent as sub-lessees. Accordingly, the activity is rightly classifiable as renting of immovable property service and the consideration received as rent is liable to discharge Service Tax.

B. The decision of this Tribunal at Mumbai in **Sunil Hi-Tech Engineers Ltd Vs Commissioner of C. Ex., Nagpur** [2014 (36) STR 408 (Tri.–Mumbai)], held that the appellant is liable to pay service tax on the taxable services rendered by it in the capacity of a sub-contractor. Hence, the plea of non-liability as in the case of a sub-contractor is untenable. Further, the order cannot be extended to tax on rent received from a sub-lessee.

C. No agreement was produced either before the adjudicating authority or in appeal to show that the service recipient was directly liable to pay electricity charges to the Electricity Board, or that the appellant recovered only the actual electricity charges on reimbursement basis without any mark-up.

D. The Appellant claimed to have reversed inadmissible credit and contended that the services supported its business/output service but failed to produce detailed statements or evidence linking the services to taxable output services or showing non-recovery from employees.

E. Following the ratio of **TELCO Construction Co. Ltd.** [2013 (32) STR 482] (relying on **Ultratech Cement Ltd**. and **Manikgarh Cement**), CENVAT credit is admissible only where the service is integrally connected with the business of manufacture/output service. Accordingly, credit on mediclaim insurance (for family members), staff dining charges, anniversary expenses, vehicle maintenance, vehicle insurance, and membership/subscription expenses is inadmissible, being staff welfare/personal expenses not used for providing output services, as held in **Viram Sponge Iron Ltd** [2012-TIOL-66-CESTAT-MUM), **JK Tyre & Industries Ltd** [2012-TIOL-257-CESTAT-Bang].

F. The Ld. A.R. prayed that the appeal may be rejected.

Analysis

4. We have examined the appeal and related documents carefully and heard the rival parties. The following issues have been raised by the appellant at the Bar.

(i) Extended period of limitation is not invocable as the dispute turns on interpretation of law.

(ii) Service Tax is not payable on rent received from sub-lease of property on a back to back basis.

(iii) Demand on electricity charges be set aside as it is only a reimbursement of charges paid.

(iv) Denial of Cenvat credit on various input services availed during the period April 2007 to March 2012 is improper.

We shall take up the issues sequentially.

Interpretation of law

5. The limitation plea, based on interpretation of law, involves a mixed questions of fact and law. It cannot be rejected at the threshold and must be examined. The Appellant has relied upon the Apex Courts judgment in **International Merchandising Company** (supra), to submit that when the issue turned upon an interpretation of the provisions of the Finance Act, there was no warrant to allow the invocation of the extended period of limitation. We find that this Bench in its Order in the case of **Apeejay Surendra Park Hotels Ltd. Versus Commissioner of GST & Central Excise, Chennai** [2026 (6) TMI 112 - CESTAT CHENNAI / Final Order No. 40663/2026, Dated: 02.06.2026], had examined the claim of disputes involving an interpretation of law, in the context of a claim for time bar and held as under:

> "5.1 We find that the expression **"interpretation"** in its ordinary legal sense signifies the process of ascertaining the true meaning, scope and effect of the language, be it that of a word or phrase, that is under dispute. A dispute by itself refers to a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. **Black's Law Dictionary**, 5th Edn., p. 424 defines "dispute" as under:
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> > `**Dispute**.—A conflict or controversy; **a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other**. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'
> >
> > (emphasis added)
>
> In legal usage, interpretation denotes the judicial determination of the meaning of language employed by the Legislature, particularly where the text is said to admit of doubt, ambiguity, limitation, or competing constructions. It does not arise where the controversy is merely factual, such as appreciation of evidence, scrutiny of records, or factual

inferences. **Black's Law Dictionary**, Ninth Edition, defines interpretation as under:

> **"interpretation,** *n.* (14c) 1. **The process of determining what something, esp. the law or a legal document, means**; **the ascertainment of meaning to be given to words or other manifestations of intention**. [Cases: Contracts "Interpretation, as applied to written law, is the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the law designed it to convey to others." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 1 (1896).
>
> "**There is more to interpretation in general than the discovery of the meaning attached by the author to his words**. Even if, in a particular case, that meaning is discoverable with a high degree of certitude from external sources, the question whether it has been adequately expressed remains." Rupert Cross, *Statutory Interpretation 149* (1976)."
>
> (emphasis added)

Every dispute is based on differences in views, but that does not make it interpretational. A mere assertion is not sufficient to prove the existence of an interpretational dispute. **An interpretational dispute must arise from a genuine and demonstrable ambiguity in law, reflected in the pleadings and submissions of the party and in the findings of the authorities. The legal point must be debatable and unresolved, due to the lack of a clarification or binding precedent at the time the lis arose, or a subsequent clarificatory circular being issued evidencing prior ambiguity, which affect the rights of parties in rem under the statute. As per the universally accepted legal principle, one who asserts must prove. Without that factual and legal foundation, a plea of "interpretation" would be seen merely as an attempt to seek an undue advantage under the guise of law."**

(emphasis as in original)

We shall hence examine the claim for the dispute being interpretational, below.

Rent received from sub-lease of property

6. **A 'lease' or 'sub-lease' is not defined in the Finance Act, 1994. Under Section 105 of the Transfer of Property Act, 1882,**

a lease is the transfer of a right to enjoy immovable property for a specified period in return for consideration. The essential feature of a lease is the transfer of possession and enjoyment of the property to the exclusion of others. A sub-lease arises when a tenant transfers this right to a sub-tenant. Rent involves two major elements: parting with possession and consideration for such possession. The concept of a sub-lease mirrors that of a lease. What is a lease between an owner and a tenant becomes a sub-lease when the tenant grants similar rights to another person. However, for the purpose of levy of Service Tax the renting of immovable property does not cover lease simpliciter, it covers the renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce. The appellant, whose activity satisfies these criteria, would *prima facie* be covered by the levy.

6.1 We find that the Appellant has pinned the question of time bar arising from an interpretational issue, on the ratio of the judgment in **Sree Nandhee Technologies** (supra). The said Order of this Bench pertains to the applicability of time-bar specifically regarding a sub-contractor's Service Tax liability on outsourced work, in the light of the Larger Bench Order in the case of **Commr. of S.T., New Delhi Vs Melange Developers Pvt Ltd**. [2020 (33) G.S.T.L. 116 (Tri-LB)]. It would not be proper to cite an Order as a precedent by merely 'matching the colour of one case against the colour of another' *ipse dixit*, without examining the ratio of the judgment and its similarity to facts and law, which in this case are different. Merely because the

prefix "sub" appears in the terms "sub-contract" and "sub-lease", do not make the ratio of a case binding on the other. **A sub-contractor performs work on behalf the main contractor, whereas a sub-lessee occupies the premises to further its own business/ commerce interests and pays consideration for such use. The roles of the parties in the two situations are fundamentally different: a sub-contractor provides services for consideration, whereas a sub-lessee receives the service and pays consideration. The two are therefore not comparable.**

6.2 **Even where rent is charged on a pure back-to-back basis without mark-up, the nature of the arrangement among the parties, is determined by the recitals in the contract document read as a whole, the surrounding circumstances, the intention of the executant and acknowledgement thereof by the parties and not by the quantum of consideration being equal.** [See: **Puzhakkal Kuttappu Vs C. Bhargavi and Others** - (1977) 1 SCC 17 and **Namburi Basava Subrahmanyam Vs Alapati Hymavathi & Ors.** - (1996) 9 SCC 388]. The Appellant has not discussed the two contracts in the above context and a mere assertion does not serve their cause. Hence the order in **Sree Nandhee Technologies** (supra), does not constitute a binding precedent in this case.

6.3 The history, application context, and constitutional status of precedents as gleaned from judgments of Constitutional Courts are detailed in paragraphs 7.1 to 7.7 of Final Order No. 40745/2026, Dated: 23.06.2026 of this Bench in the case of **Edison Gentech Pvt.**

Ltd. Vs Commissioner of GST & Central Excise, Chennai [2026 (6) TMI 1229 - CESTAT CHENNAI], and are not being repeated here.

6.4 Further in the case of a sub-contractor, prior to the issue of the Master Circular in 2007, Boards Circulars held that Service Tax was not required to be paid by certain categories of sub-contractors, provided the principal had paid the Service Tax. Which was never the issue in this case of a sub-tenant. The Hon'ble Supreme Court in **Union Of India & Anr. Vs Major Bahadur Singh** [2005 AIR SCW 6113 / 2006 (1) SCC 368], cited the words of Lord Dennings which have become *locus classicus*, that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. [Also see: **Collector of Central Excise, Calcutta Vs M/s. Alnoori Tobacco Products and Anr**. - 2004 (170) ELT 135 (SC)]; **Escorts Ltd. Vs Commissioner of Central Excise, Delhi – II** - 2004 (173) E.L.T. 113 (S.C.)]

6.5 We had also in our Order in **Apeejay** (supra) held that the legal point which is claimed to be an 'interpretation issue', must be debatable and unresolved, due to the lack of a clarification or binding precedent at the time the lis arose, or a subsequent clarificatory circular being issued evidencing prior ambiguity, which affect the rights of parties in rem under the statute. No submissions showing ambiguity

or a dispute on the taxability of rent received from a sub-leased property has been made before us. A mere reference to **Sempertrans Nirlon** (supra) does not help their cause and is without merit.

Demand of tax on reimbursement of electricity charges

7. The next issue pertains to the demand of tax on reimbursement of electricity charges paid as per the unit of consumption, for the period from June 2008 to June 2010. The same is also not interpretational in nature. We find that the landmark Madras High Court judgment in **Kumbakonam Electric Supply Corporation Ltd. Vs Joint Commercial Tax Officer** [AIR 1964 MADRAS 477], held that electricity qualifies as "goods" under sales tax legislation. Rejecting the petitioner's argument that electricity cannot be traditionally possessed or moved, the Hon’ble High Court reasoned that because electricity can be transmitted, delivered, and consumed, it constitutes movable property under the Sale of Goods Act, 1930. The judgment was later noticed and affirmed by the Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, Madhya Pradesh, Indore Vs Madhya Pradesh Electricity Board, Jabalpur** [1968 (11) TMI 85 - Supreme Court]. Further, eelectricity is specifically recognized as "goods" under the Central Excise Tariff Act and various State VAT laws. Hence reimbursements or collections of actual electricity charges as per the unit of consumption, from tenants cannot be recogonised as a consideration for a service rendered. No interpretational issue between two competing legal provisions is involved, however, the issue pertains to a wrong application of law, whereby the demand is not sustainable.

Denial of Cenvat credit on various input services.

8. The final issue is whether the Appellant is eligible for CENVAT credit on services such as mobile phones for individuals, rent-a-cab, travel, group/vehicle insurance, vehicle maintenance, club membership, guest house, parking and housekeeping for the period from April 2007 to March 2011 (SCN) and April 2011 to March 2012 (SOD). We find that the above-mentioned inputs services have each been the subject of discussion in various judgments and Boards circulars, too numerous to recite. Hence a claim by the Appellant that the issue is interpretational is acceptable.

Time-bar

9. The plea of the appellant that the issue of time bar related to interpretation of law, was examined and found to be only partially correct. However, the extended period under the proviso to 73(1) of FA 1994 of the Finance Act 1994, can be invoked only in certain specific circumstances mentioned in the section like involving fraud, suppression, willful misstatement, etc. The case made out by Revenue is of deliberate suppression with intent to evade payment of tax. However, the OIO merely alleges the omission/ non-disclosure of tax liability in ST-3 returns, as reflecting the Appellants intention to suppress facts and evade duty, without recording any positive act of willful suppression. As held by the Apex Court in **Pushpam Pharmaceutical Co. Vs Collector of Central Excise, Bombay** [1995 Suppl. (3) SCC 462], mere failure to disclose does not constitute suppression unless done deliberately to evade duty. Moreover, the visit

by the Audit team has not unearthed transactions that were not recorded in the books of account neither was access to information being deliberately denied to the Audit team by the Appellant etc. Hence neither non-inclusion of the information in ST-3 returns nor the recording of objections by the audit team by itself is conclusive of suppression. The Principal Bench of this Tribunal at New Delhi examined a similar issue in its Order in the case of **M/s GD Goenka Private Limited Vs The Commissioner of Central Goods and Services Tax, Delhi South** [FINAL ORDER NO. 51088 /2023, Dated: 21.08.2023 / 2023 (8) TMI–995-CESTAT NEW DELHI], and held as under:

> "21. This legal position that the primary responsibility for ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs [CBEC] in its **Manual for Scrutiny of Service Tax Returns** the relevant portion of which is as follows:
>
> > 1.2.1A The importance of scrutiny of returns was also highlighted by **Dr. Kelkar in his report on Indirect Taxation [Report of the Task Force on Indirect Taxation 2002,** Central Board of Excise and Service Tax, Government of India.]. The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below:
> >
> > > **It is the view that assessment should be the primary function of the Central Excise Officers. Self- assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.**
>
> 22. Therefore, to say that had the audit not been conducted, the incorrect availment of CENVAT credit would not have

> come to light is neither legally correct nor is it consistent with the CBEC's own instructions to its officers."
>
> (emphasis added)

In view of the foregoing, invocation of the extended period is unsustainable and the demand is liable to be confined to the normal period. We therefore proceed to examine the issue of limitation separately in respect of the SCN and the SOD.

(a) SCN No. 337/ 2012, dated 18.10.2012

9.1 In the Appeal Memorandum, the Appellant contends that the demand in the Show Cause Notice (SCN) dated 18.10.2012 is time-barred, except for the period from October 2010 to March 2011, which they concede fairly falls within the normal limitation period.

9.2 Tax cannot be imposed by consent; it is payable only if legally due. We find that the SCN dated 18.10.2012 covers the period up to March 2011, when the normal limitation period was one year. The issue is whether the demand for October 2010 to March 2011 is sustainable, since Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law.

9.3 As discussed above under Section 73(1) of the Finance Act, 1994, the normal limitation period for issuing a Show Cause Notice (SCN) in cases not involving fraud, suppression, or wilful misstatement was one year from the "relevant date" as defined in Section 73(6). This position continued up to 27.05.2012, when by the Finance Act, 2012, the words "one year" were substituted with "eighteen months" in section 73(1), with effect from 28.05.2012 (the date on which the Finance Bill, 2012 received Presidential assent). The Act did not specifically make this amendment retrospective in application. The SCN

dated 18.10.2012 however was issued after the amendment came into force, by which time the demand for the period October 2010 to March 2011, to be made within one year was 'dead'.

9.4 Regarding the **retrospectivity of limitation laws**, two key judicial precedents clarify the legal position:

i. The Five-Member Larger Bench Order in **ATMA STEELS PVT. LTD. AND OTHERS Vs COLLECTOR OF CENTRAL EXCISE, CHANDIGARH AND OTHERS** [1984 (17) E.L.T. 331 (Tribunal - LB)]**,** held that limitation law is procedural and operates retrospectively. **The applicable law is the one prevailing on the date the demand is made, not when the cause of action arises.**

ii. The judgment of the Hon'ble Supreme Court in **UNION OF INDIA Vs UTTAM STEEL LTD.** [2015 (319) E.L.T. 598 (S.C.)]**,** lent further clarity to the legal position by holding that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. However, **an amendment extending a limitation period cannot revive a "dead claim" that was already time-barred before the amendment took effect**.

The relevant portion is reproduced below:

> **"10.** We have heard learned counsel for the parties and Shri Bagaria, the learned *Amicus Curiae* at some length. **There is no doubt whatsoever that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it was time barred before an Amending Act with a larger period of limitation comes into force.** A number of

judgments of this Court have recognized the aforesaid proposition. Thus, in ***S.S. Gadgil* v. *Lai and Company***, AIR 1965 S.C. 171, this Court stated :-

> "13. As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income Tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party under Section 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to Section 18 of the Finance Act, 1956, only a limited retrospective operation i.e. up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred."

To similar effect is the judgment in ***J.P. Jani, Income Tax Officer* v. *Induprasad Devshanker Bhatt***, AIR 1969 SC 778. The Court held :

> "6. In our opinion, the principle of this decision applies in the present case and it must be held that on a proper construction of Section 297(2)(d)(ii) of the new Act, the Income Tax Officer cannot issue a notice under Section 148 in order to re-open the assessment of an assessee in a case where the right to re-open the assessment was barred under the old Act at the date when the new Act came into force. It follows therefore that the notices dated 13-11-1963 and 9-1-1964 issued by the Income Tax Officer, Ahmedabad were illegal and ultra vires and were rightly quashed by the Gujarat High Court by the grant of a writ."

In ***New India Insurance Co. Ltd.*** **v.** ***Shanti Misra****,* (1975) 2 SCC 840, this Court said :

> "**The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation**."

Similarly in *T. Kaliamurthi* v. *Five Gori Thaikkal Wakf*, (2008) 9 SCC 306, this Court said :

> "40. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. **Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right**.""
>
> (emphasis added)

Therefore, it is settled law that a demand already barred by time cannot in the normal course be revived by a subsequent amendment simpliciter.

9.4 In the circumstances since the SCN is dated 18.10.2012, the demand for the October 2010 to March 2011 period is time-barred, being issued beyond the one-year limitation period from the (half-yearly) return due date of April 25, 2011, as per the "relevant date", which is explicitly defined under Section 73(6) of the FA 1994. Hence since Revenue has failed to establish grounds for invoking the extended

period, the demand for the October 2010 to March 2011 is also barred by limitation, even though duty was self-assessed by the Appellant. The demand on the basis of SCN No. 337/ 2012, dated 18.10.2012 is hence barred by limitation and the entire demand merits to be dropped.

(b) SOD No. 14/2013 dated 23.04.2013

10. The demand in the SOD pertains only to the denial of ineligible credits, for the normal period. We examine the same.

10.1 Under the Service Tax regime, Cenvat credit was designed to avoid cascading of taxes by enabling a service provider to avail credit of tax paid on input services and utilize it for payment of tax on output services. Rule 2(l) of the Cenvat Credit Rules, 2004 gave "input service" a wide ambit, allowing credit where the service had a real and sufficient nexus with the assessees' output service and the chain of credit remained unbroken. A direct one-to-one correlation was not necessary. In **Commissioner of Central Excise Vs Manikgarh Cement**, 2010 (20) S.T.R. 456 (Bom.), following **Maruti Suzuki Ltd. Vs Commissioner of Central Excise, Delhi**, AIR 2009 SC 534, the Hon'ble Bombay High Court held that unless a nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit was not allowable. Further the expression 'relating to business' in Rule 2(l) of CCR, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee. **Post 01.04.2011 the definition of 'input service' was amended**, primarily removing the phrase 'activities relating to business' and

excluding certain specific services including services used primarily for personal use or consumption of any employee, from its definition.

10.2 The Principal Bench of this Tribunal at New Delhi had an occasion to examine the issue, post the amendment of the definition of 'input service' in the case of **Godawari Power & Ispat Limited Vs Commissioner, Customs, Central Excise**, FINAL ORDER NO. 51519/2023, Dated: 08.11.2023. It held:

> "14. It would be seen from the aforesaid definition of "input service" in rule 2(l) of the Rules that **while the "means" part of the definition has continued to remain the same pre amendment or post amendment, but the "includes" part and the "excludes" part of the definition of "input service" have underdone changes.** Though "services used in relation to setting up" of a factory was included in the inclusive part of the definition of "input services" prior to 01.04.2011 but it was deleted w.e.f. 01.04.2011. The "excludes" part in the definition of "input service" was added w.e.f. 01.04.2011 and it provided that services specified in certain sub-clauses of clause (105) of section 65 of the Finance Act in so far as they were used for construction of a building or a civil structure or a part thereof would be excluded w.e.f. 01.04.2011. It is also seen that the "excludes" part of the definition of "input service" was further amended w.e.f. 01.07.2012."
>
> (emphasis added)

Hence though the phrase 'relating to business' in Rule 2(l) of CCR, 2004 was deleted from the definition of 'input services', an assessee could avail of Cenvat credit if the input service satisfied the "means" part of the definition by having a real and sufficient nexus with the assessee's output service, without being for the personal use or consumption of any of its employee.

10.3 The First Appellate Authority, at para 13(iii) of the impugned order, denied credit only on certain specified services and allowed the rest. Relevant part of the impugned order is reproduced below:

> "In the light of the above definitions and decision if the eligibility of the impugned services for cenvat credit is considered, it would be evident that (a) Medi claim insurance (which covers the family members also) (b) staff dine charges (provided by Accor Services Pvt. Ltd. and Edernred (India) Pvt. Ltd.) (c) Anniversary expenses, (d) vehicle maintenance (e) vehicle insurance and (f) membership and subscription expenses are not eligible for cenvat credit since they are neither used in or relation to provision of output service nor integrally connected to business of the appellant. Except these, all other impugned services are eligible for cenvat credit."

The appellant's reliance on **Balkrishna Industries Ltd.** (supra), is misplaced. Mere allegation of a vagueness of the show cause notice is insufficient to invalidate the proceedings in the absence of prejudice being demonstrated. As held by the Hon'ble Supreme Court in **Natwar Singh Vs Director of Enforcement** [(2010) 13 SCC 255], a plea of violation of natural justice must be founded on actual prejudice and not on a mere technical objection.

10.4 The appellant submitted at the Bar that the inadmissible credit pertaining to the SOD works out to Rs. 12,706/- as per the impugned order. Since the First Appellate Authority has correctly examined the issue in line with our discussion above, the impugned order calls for no interference.

11. Revenue having failed to establish suppression with intent to evade tax, no case for imposition of penalties has been made out and the same is set aside.

Conclusion

12. In view of the foregoing, the impugned order is partly set aside and modified as under:

1. The demand of Service Tax on rent received from sub-lease of properties, being barred by limitation for the extended period is set aside.

2. The demand on reimbursement of electricity charges is not exigible to Service Tax and is set aside.

3. The denial of CENVAT credit pertaining to SCN No. 337/2012 dated 18.10.2012, being barred by limitation for the extended period is set aside.

4. The denial of CENVAT credit pertaining to SOD No. 14/2013 dated 23.04.2013, with applicable interest, is upheld. The amount of Rs.12,706/-, quantified by the Appellant in terms of the impugned order, in their submissions at the Bar, shall be verified by the Original Authority along with the appellant before recovery with interest. In case of dispute on quantification, the Original Authority shall furnish the worksheet to the Appellant, grant an opportunity of hearing and pass a reasoned order within ninety days of receipt of this order. The Appellant shall also cooperate in the said exercise.

5. All penalties are set aside.

13. The appeals are disposed of in the above terms, with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 07.07.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex