

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 53388 of 2014

[Arising out of Order-in-Original No. 22/CE/CHD-II/2014 dated 12.03.2014 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s HPCL Mittal Energy Limited

.....Appellant

(formerly known as "Guru Gobind Singh Refinery Limited),
Village Phulokheri, Talwandi Saboo, Bhatinda,
Punjab

VERSUS

**Commissioner of Central Excise & Service
Tax, Chandigarh-II**

.....Respondent

Central Revenue Building, Plot No.19
Sector-17C, Chandigarh-160017

WITH

Excise Appeal No. 54247 of 2014

[Arising out of Order-in-Original No. 33/CE/CHD-II/2014 dated 30.05.2014 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s HPCL Mittal Energy Limited

.....Appellant

(formerly known as "Guru Gobind Singh Refinery Limited),
Village Phulokheri, Talwandi Saboo, Bhatinda,
Punjab

VERSUS

**Commissioner of Central Excise & Service
Tax, Chandigarh-II**

.....Respondent

Central Revenue Building, Plot No.19
Sector-17C, Chandigarh-160017

APPEARANCE:

Shri B.L. Narasimhan and Ms. Krati Singh and Shri Monarch Mittal,
Advocates for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60435-60436/2026

DATE OF HEARING: 25.02.2026
DATE OF DECISION: 15.07.2026

P. ANJANI KUMAR:

Heard both sides and perused the records of the case.

2. M/s HPCL Mittal Energy Ltd. (hereinafter referred to as HMEL), the appellants in Appeal No. E/53388/2014 & E/54247/2014 have set up a refinery for manufacturing Polypropylene, LPG, Naphta, Motor Spirit, Kerosene, ATF, Diesel, Turpentine oil, Hexane, Coke etc; the appellants required storage tanks for the petroleum products; accordingly, the appellants entered into in agreement with M/s Bridge & Roof Co. (India) Ltd. and M/s Artson Engineering Ltd. for fabrication of storage tanks and mechanical piping; the appellants procured stainless steel sheets/ plates, valves, bolts etc. and supplied by the appellants to the contractors; the contractors purchased other inputs like tools, tackles, plant and equipment required for the fabrication of tanks; the appellants reimbursed the tax paid on the items to the contractors procured by them; the invoices for items procured by the contractors on their own showed the appellants to be the consignee. The appellants availed CENVAT credit on such inputs procured by them as well as those procured by the contractors. On conduct of an audit, Revenue entertained an opinion that the tax paid on the raw material required for the fabrication of storage tank and piping is not admissible to the

appellants as they are raw material/ inputs for the contractor and not the appellants. A show cause notice, dated 02.05.2013, covering the period 01.04.2008 to 07.03.2013, demanding Cenvat Credit of Rs 10,68,46,038, was issued. Another Show Cause Notice, dated 25.09.2013, covering the period 01.04.2009 to 28.04.2012, demanding Cenvat credit of Rs 31,99,88,570 was issued. The proposals in the show cause notices were confirmed vide Orders-in-Original dated 12.03.2014 and 30.05.2014 confirming the denial of CENVAT credit along with interest and equal penalty. Hence. two appeals No. E/53388/2014 & E/54247/2014.

3. Shri B.L. Narsimhan, learned Counsel for the appellants submits that the appellants have correctly availed the CENVAT credit on raw materials in terms of Rule 3 of the CCR, 2004 which allows credit if the conditions prescribed therein are fulfilled; the conditions are that the goods received should qualify as inputs or capital goods; the person availing CENVAT credit should be a manufacturer of final products or a service provider and the inputs or capital goods should be received in the factory of the manufacturer of final product or provider of output service. He takes us through the definition of the inputs, pre and post 1.4.2011 and submits that the raw materials in question qualify to be called "inputs" in terms of Rule 2(k) of the CCR; though the definition has undergone a change w.e.f. 01.04.2011, raw materials have always qualified as eligible inputs before or after amendment; it is not disputed that the raw materials are used for construction of storage tanks and mechanical piping

etc. and are directly utilized in relation to manufacture of final products.

4. Learned Counsel for the appellants submits also that the definition of 'input' is expansive and seeks to cover goods that have a relation with the final products; sub-clause (i) needs to be read with sub-clause (F), to understand the ambit of the definition; reading both the sub-clauses conjointly, it refers to all the goods which have some use in the manufacture the final products, either directly or indirectly; the raw materials are used for the purpose of fabricating storage tanks/ mechanical pipeline by M/s HMEL in manufacturing the final products; thus, the raw materials also qualify to be 'inputs' for the Appellants post 01.04.2011. He submits that Circular No. 943/4/2011-CX dated 29.04.2011, clarified the scope of 'inputs' to state that credit of all goods used in the factory to manufacture the final product, except when specifically denied, shall be available to the manufacturer of the final product; only the credit on the goods which have no relationship with the manufacture of final product is not allowed.

5. Learned Counsel submits, in respect of M/s HMPL i.e. Appeal ST/53390/2015, that as per sub-section (ii) of Rule 2(k) of the Credit Rules, all goods which are used for providing the output service would qualify as 'inputs'; the ambit of "*all goods...used for providing any output services*", is quite wide to not only include the goods directly used for providing output services, but also includes all goods indirectly used for providing output services as well, as held in *Bharti Airtel Ltd 2025 (391) ELT 3 (SC)*; the raw materials

are used for fabricating the floating roof tanks which are used by the Appellant M/s HMPL for receiving and storing crude oil which is further transported to HMEL through pipelines i.e. providing the output services. He submits that there is no change in the definition of the 'inputs' for service provider post 1.4.2011; any goods used for providing output service qualify as inputs.

6. Learned Counsel for the appellants submits in addition that the excise duty for the raw materials was borne by the Appellants; the impugned Orders have not disputed the payment of excise duty, the credit availed on the same goods should also not be denied to the Appellants; further, the Contractors confirmed that no credit has been availed by them in respect of the inputs; the same is not disputed by the department; it is also not disputed that the appellants are manufacturers of final products or service providers. He relies on *Mundra Ports & Special Economic Zone Ltd 2015 (39) STR 726 (Guj.)* and *M/s Indian Oil Corporation Ltd Final Order No. 60017/2022, dated 07.01.2022 (Tri. - Chan.)* and *2021 (46) GSTL 61 (Tri. - Chan.)*

7. Learned Counsel for the appellants submits also that the raw materials have been received in the premises of the Appellants; stainless-steel sheets/plates were procured by the Appellants themselves; with respect to the other inputs, the invoices confirm the delivery of the goods in the premises of the Appellants; credit cannot be denied. He relies on

- *International Tractors Ltd., 2007 (220) ELT 155 (Tri. - Del.)* upheld in *2010 (255) ELT 196 (P & H)* and further affirmed in *2022 (65) GSTL 3 (S.C.)*

- Gujarat Ambuja Cements 2001 (130) ELT 129 (Tri. - Delhi) affirmed in 2010 (256) ELT 356 (H.P.) and upheld in 2022 (65) GSTL 3 (S.C.)
- M/s. Hindustan Zinc Ltd Final Order No. 50649-50661/2025, dated 13.05.2025 (Tri. – New Delhi) and (2023) 11 Centax 43 (Tri.-Delhi)
- N.R.C. Ltd., 2011 (135) ELT 1012 (Tri. -Mumbai) affirmed by 2008 SCC Online Bom 1894
- Rajaram Bapu Patil SSK Ltd 2007 (208) ELT 372 (Tri. - Mumbai) affirmed in 2019 (365) ELT 14 (Bom.)
- M/s. Larsen & Toubro Limited and Ors Final Order Nos. 76365-76367/2024, dated 25.06.2024 (Tri. – Kol.)
- M/s Rajasthan Spinning & Weaving Mills (RSWM) LTD, Final Order No. 50491/2023, dated 11.04.2023 (Tri. – New Delhi)

8. Learned Counsel for the appellants submits also that since the raw materials are an integral part for the fabrication, erection and commissioning of the storage tanks, mechanical piping etc. and floating roof tanks, which in itself are capital goods; it is submitted that raw materials shall thus also qualify to be 'capital goods'; therefore, the Appellant shall be allowed the benefit of Cenvat credit on same as they fall under the scope and ambit of Rules 2(a)(A) and 2(k) of the Credit Rules. He relies on M/s Thiru Arooran Sugars and Ors 2017 (355) ELT 373 (Mad.) and 2017 (356) ELT 201 (Mad.)

9. Learned Counsel for the appellants submits that the reliance placed by the adjudicating authority, on the decision of the Tribunal in Vandana Global Limited 2010 (253) ELT 440 (Tri. - LB), to hold that the rule making authority never intended to include goods such as steel, which are used in fabrication of immovable capital goods,

which are further used in manufacturing the final product in the definition of 'input', is incorrect; the said judgement has been overruled by the Hon'ble High Court of Chhattisgarh 2018 (16) GSTL 462 (Chhattisgarh) holding that goods like steel that are used in fabrication of capital goods, are to be treated as 'input' in relation to their final products, in accordance with Rules 2(a)(A) and 2(k) of the Credit Rules; moreover, the finding is beyond the Show Cause Notice. Learned Counsel also relies on IOL Chemicals and Pharmaceuticals Ltd., (2023) 8 Centax 88 (P & H) affirmed by Supreme Court (2023) 10 Centax 180 (S.C.) and Winsome Yarns Ltd (2023) 8 Centax 202 (P&H.); In any case, this finding of the Authority is beyond the SCN itself.

10. Learned Counsel for the appellants submits further that Rule 9 of the Cenvat Credit Rules, 2004 lays down the documentary requirement in the form of an invoice, read with the provisions of Central Excise Rules, 2002 and Service tax Rules, 1994, on the basis of which an assessee is entitled to avail Cenvat credit on the duty paid; Rule 11(2) of the Excise Rules specifically provides that the invoice to contain the name of the consignee; in the present case, all the invoices issued in respect of raw materials contain the name of the Appellants as 'consignee'; there is no dispute that all other particulars that are required to be mentioned on the invoice are mentioned on such invoice; it was held in International Tractors Ltd, 2010 (255) ELT 196 (P & H) affirmed by Supreme Court in 2022 (65) GSTL 3 (S.C.) and in Hindustan Zinc Ltd., (2023) 11 Centax 43 (Tri.-Delhi) that credit shall be available to the Appellants when

their name appears as 'consignee' on the invoices. He further submits that there is no dispute with respect to the eligibility of the credit; the only dispute raised by the department is that the raw materials qualify as 'inputs' only for the contractors and not for the Appellants; however, in the instant case, contractors have not availed any credit in respect of the raw materials and credit has been availed only once i.e., by the Appellants; since one party was eligible to avail credit on the duty paid raw materials, the Appellants who are clearly entitled to avail credit on the raw materials, have rightfully availed the same; there is no revenue loss to the government as held in *International Tractors Ltd.*, 2007 (220) ELT 155 (Tri. - Del.) upheld in 2010 (255) ELT 196 (P & H) and further affirmed in 2022 (65) GSTL 3 (S.C.)

11. Learned Counsel for the appellants submits in addition that Entire period in Appeal No E/54247/2014 i.e. 01.04.2008 to 31.03.2012 is barred by limitation; In respect of appeal No. E/53388/2014 period between 01.04.2008 to 31.03.2012 is barred by limitation as extended period cannot be invoked as there was no willful suppression of any fact, fraud or any collusion relating to the availment of credit from the Department; the Appellants also duly filed their statutory returns; they were subject to regular audits; the Department was very well-aware about the activities of the Appellants and the appellants also provided all the requested documents to the department; therefore, there was no intention to suppress any information from the Appellant. He submits that the Adjudicating Authority rejected this submission on the ground that

the returns do not show the usage of inputs; he failed to realize that there is no provision in the statutory returns to show the usage of inputs in respect of which credit was availed; in the absence of such provision, the Appellant cannot be held to have concealed facts; moreover, the Appellants were under bona fide belief that they are rightfully availing the credit; hence, extended period of limitation could not be invoked as held in M/s Socomec India Private Limited Final Order No. 60436/2025, dated 26.03.2025 (Tri. - Chan.), M/s GD Goenka Private Limited Final Order No. 51088/2023, dated 21.08.2023 (Tri. -New Delhi) and M/s Good Year Final Order No. 60572-60573/2024, dated 04.10.2024 (Tri. - Chan.).

12. Learned Counsel submits that since demand is not sustainable, interest and penalty cannot be impose; as already discussed above, there was no suppression on part of the Appellants and no mala-fide intention can be attributed to the Appellants and thus, no penalty is imposable under Rule 15 of the Credit Rules and Section 11AC of the Act/ Section 78 of the Finance Act; in view of provision of Section 11AC(1)(b) of the Act, only penalty up to 50% of the duty demanded could have been imposed as the details of the transactions are available in the specified records of the Appellants. He submits without prejudice to the above, that the issue in the present case involves interpretation of statutory provisions and no penalty can be imposed as held in M/s Uniflex Cables Ltd 2011 (271) ELT 161 (S.C.).

13. Shri Shantanu Meena, Learned Authorized Representative for the Revenue, submits in respect of Appeal Nos. E/53388/2014 and

E/54247/2014, filed by M/s HMEL, that a perusal of the definition of input, under Section 2(I) of Cenvat Credit Rules, makes it clear that before 07.07.2009, the goods i.e. S.S. Sheets/Plates, flanges, pipes, etc are inputs of the contractors; the goods were being used by the Contractors in making of structures for support of capital goods of appellant, before or after 07.07.2009; even if it is assumed that the structure which are being erected and fabricated by the contractors are capital goods of the appellant, the impugned goods i.e. S.S. sheets/ plates, etc have been used, for different types of Mechanical works, Structural and architecture works, Electrical works, Instrumentation works, for making of structures for support of capital goods, which have been excluded from the definition of input in view of the explanation-2 amended w.e.f. 07.07.2009; as the impugned goods are not the input of the appellant, Cenvat credit on the said impugned goods cannot be taken by the appellant.

14. Learned Authorized Representative submits that that the goods were received and used only by the contractors, not by the Appellant, to complete their services and therefore, Cenvat credit is not admissible to the appellant; the reliance on Bannari Amman Sugar Ltd 2010 (250) ELT 326 (Kar.); KCP Ltd 2009 (237) ELT 500 (Tri-Bang); Laxmi Pipes Ltd 012 (280) ELT 448 (Tri-Del.) and GMR Industries Ltd 2009 (241) ELT 388 (Tr. Bang) is incorrect as the issue involved in these cases is about the exigibility or admissibility to Cenvat Credit of goods immovable or goods embedded to earth. He takes us through the provisions of Rules 3, 4 and 9 of the CCR,2004 and submits that from a conjoint reading of the provisions

it is clear that one has to receive inputs and produce some thing or provide a service, to avail the Cenvat credit of duty paid on inputs.

14. Learned Authorized Representative further submits that in the instant case, the contractor is at the basis of transactions; the transaction w. r. t. impugned goods were at first made by the contractors, either by way of purchasing the impugned goods from other manufacturers or by procuring the same from the appellants, free of cost; the contractors had an option to pay Service tax as per Rule 2A of the Service tax (Determination of Value) Rule, 2006, as amended or to pay service tax under "Work Contract (Composition Scheme for Payment of Service Tax) Rules 2007/2009; further, both of them provide that the gross amount or value includes the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; it is clear that the value of the impugned goods was included in the gross value of the contractors to render work contract services.

15. Learned Authorized Representative further submits that when the contractor is not eligible to take Cenvat credit, the same cannot be made permissible to be taken by the appellant for whom work contract services are being rendered; when there are more than one transactions, then the transactions are to be dealt one by one (sequentially) ; it is not the intent of the Law that both will take credit; as per statement dated 20.09.2012 of Sh. Amal Mukherjee, authorized signatory and manager (Taxation) of Bridge & Roof Company India Ltd, they have not availed CENVAT credit of duties

or cess paid on any inputs; however, sample ST-3 returns, for the disputed period, indicate that the said contractor has availed Cenvat credit of inputs, which was although not admissible to them, even though the Cenvat credit cannot be claimed by both the contractors and the appellant. He submits that Cenvat Credit has been introduced to prevent multiple taxation and cascading effect; when the one has availed such type of benefit by way of paying tax on reduced tax rate or by way of getting abatement in valuation, then such benefit of tax cannot be availed again 2nd time in the form of Cenvat credit by the person further in chain. This Law point has not been discussed in any of the cases relied upon by the appellants and therefore, all the decisions are distinguishable.

15. Learned Authorized Representative submits in addition that the goods were received by the contractors; without them services of the contractors could not be completed and not by the Appellant; they used them; in view of the above, Cenvat credit is not admissible to the appellant. He distinguishes the cases relied upon by the appellants, saying that the same are on different set of facts, as follows.

(i). the case of M/s Sunrise Chemical Industries 2010 (262) ELT 110 (Guj.) was about the admissibility of credit on capital goods, purchased by the Principal Manufacturer, M/s. Pidilite Industries Limited.

(ii). The case of M/s Parasrampuriah Synthetics 2004 (170) ELT 327, the issue was about the availability of Cenvat credit of the duty paid on capital goods without their being installed in the factory.

(iii). The case of M/s Goyal M.G. Gases Pvt Ltd 2004 (168) ELT 369 (Tri. -Del), the issue was about the admissibility of credit on the capital goods lying in CKD/ unassembled conditions without being used in the factory

(iv). The case of Arvind Mills Ltd Vs CCE Ahmedabad 2007 (220) ELT 981 (Tri. -Ahmed.), the issue was about the credit of duty paid on Naphtha used in their factory to generate electricity, and a part of which was wheeled out to their own factory located outside the premises.

(v). the case of Rico Auto Industries Ltd 2013 (293) ELT 545 (Tri. - Del), the issue was about denial of Cenvat credit on the basis of wrong mentioning of description of the goods in RG-23A Pt. I.

(vi). the case of International Tractors Ltd. 2010 (255) ELT 196 was about the admissibility of Credit when the other party M/s. Haden Josts Engineering India Ltd. had not taken any Modvat Credit.

16. Learned Authorized Representative submits that the decision in the case of Bharat Oman Refineries Ltd 2017(4) GSTL 221(Tri-Delhi) is applicable to the instant case, appeal No. ST/54247/2014, as the facts of the cases are identical and comparable. Both the disputed goods/inputs purchased by the contractor and supplied by the appellant were used by the contractor for providing works contract service under the scheme of Works Contract (Composition scheme for payment of service tax) Rules, 2007; this scheme of payment of service tax provides a concessional rate of service tax subject to condition that Cenvat credit involved on the inputs and input services used in relation to providing the taxable services specified

under the scheme was not availed; as the contractor had paid service tax under the aforementioned scheme at the concessional rate, it was contractor's conscious decision not to avail the credit on those inputs. And as per the Works contract Rules, 2007, there is total bar of availment of Cenvat credit on such inputs on the contractors as well as on the appellant; no double benefit can be allowed by allowing the disputed Cenvat credit to the appellant. He submits that when the one (Contractor) has availed such type of benefit by way of paying tax on the reduced tax rate or by way of getting abatement in valuation, then such benefit of tax cannot be availed again 2nd time in the form of Cenvat credit by the person further in chain (i.e. Appellant); that is why, or the reason, the Cenvat credit has been denied in the above said composition scheme or valuation Rules; therefore, when the taxpayer/contractor has already been compensated to prevent cascading effect, the benefit of tax for the same transaction or compensation cannot be availed again, 2nd time by the appellant for the impugned goods.

17. Learned Authorized Representative submits that from the combined reading of Rule 2(k), Rule 3 and Rule 4 of the CCR, 2004, it is apparent and very much clear from the plain reading of the said rules that benefit by way of allowing Cenvat credit is not a logistic based benefit, but it is also important to see who has used the inputs; it cannot be blindly given to any person in whose premises the inputs/input services received, but it is important to see who is using those inputs/input services in that premises. He submits that in order to prevent the double taxation or multiple taxation on the

goods or services which are further used to manufacture/produce another goods or services or being used in further chain, the Govt. has introduced Cenvat credit facility to compensate the assessee or the taxpayer by way of issuing Notification to prevent such cascading effect, which inter-alia provides that if any tax paid good or service, which is further used to manufacture/produce another good or service, then the person can take credit of such tax/duty as already has been paid on the good or service that is being used by that person to manufacture/produce another good or service.

18. Learned Authorized Representative submits on the issue of limitation that the same has been rightly invoked; from the facts of record it is clear that the first SCN was issued on the basis of details provided by the appellant and as per statement given by their officials, while the revenue called from them the details of the disputed goods issued by them to the contractors and payment made by the appellant to the contractors involved on the inputs purchased by the contractors on their own account; even after that from the earlier period the appellant only supplied details w.r.t. limited to a few purchase orders; never supplied all details at a time, though the same official were asked for that said details; thus, the appellant suppressed facts, which clearly intended to evade payment of tax by way of taking credit on the inputs which was used by the contractor only and the contractor was paying service tax under Works contract Rules, 2007. Further, the case laws relied upon by the appellant are not relevant to the facts of the present case, as the period involved in those cases are earlier to the 01.06.2007,

when the works contract services came into existence. And for others case laws the facts are not identical to the present case.

19. Learned Authorised Representative submits on the issue of extended period that though the appellants claim that they are registered assesses and were regularly filing returns, those returns were not showing the exact usage of the Cenvatable materials; it was not possible for the department to find out whether Cenvat credit was admissible on the disputed materials or not; this came to the knowledge of the department only after the preventive team visited the premises of the appellant; as the appellants, being registered with the department, are well aware of the provisions of law and there cannot be any ambiguity about availment of Cenvat credit on admissible input/capital goods/ input services; even then they suppressed facts with intention to avail double benefit on the same raw material; extended period has been rightly been invoked. He relies on the judgment this bench in the case of *Lovely Autos* (2023) 10 Centax 279 (Tri. -Chan) and *Neminath Fabrics Pvt Ltd* 2010 (256) ELT 369 (Guj.)

20. Learned counsel for the appellants submits, in rejoinder that the contention of the Department for denial of Cenvat credit to the Appellant by placing reliance on *Bharat Oman Refineries Ltd* (supra) is incorrect as the order was *per incurium*; as submitted above, the Appellant is fulfilling all the conditions under the Act and the Credit Rules for being eligible to avail the credit on the S.S. Sheets/ Plates and other inputs in the present case. He submits that as held in *Galaxy Mercantile Ltd* 2014 (33) STR 39 (Tri. - Del.) (stay order),

Cenvat credit shall still be available to the Appellant, even if the contractors of the Appellant have paid their duty under the Composition scheme. He submits that there is no provision which prohibits the Appellant from availing Cenvat credit merely because the contractors have paid duty under the Composition Scheme. He places Reliance in this regard is placed on the following:

- *Urison Cosmetics Ltd., 2006 (198) ELT 508 (Tri-LB)*
[affirmed in 2008 (22) ELT 504 (SC)]
- *New Holland Construction Equipment (I) Pvt. Ltd -Final Order No. 51767/2021 dated 23.8.2021*
- *Vinod Lath 2017 (5) G.S.T.L. 391 (Tri. - Mumbai)*
- *Meghmani Organics Ltd 020 (371) ELT 318 (Tri. - Ahmd.)*

21. Heard both sides and perused the records of the case. M/s HMEL (Appellants in No. E/53388/2014 & E/54247/2014) set up a refinery for manufacturing of polypropylene; Naptha, Motor Spirt, Kerosene, Aviation Turbine Fuel, Diesel, Motor turpentine Oil, Hexane, Coke, and Sulphur are also produced in the process. M/s HMEL required 'mechanical piping' 'storage tanks', etc, for manufacture and storage of petroleum products. They engaged 2 contractors - M/s. Bridge & Roof Co. (India) Ltd and M/s Artson Engineering Ltd, for fabrication of 'storage tanks; under the agreements M/s HMEL procured the Stainless-Steel Sheets/Plates ('S.S. Sheets/ Plates'), valves, bolts etc. on their own and provided to the contractors at free of cost; the other input materials like tools, tackles, contractor plant & equipment required for the completion and maintenance of the work of fabrication of storage tanks and mechanical piping etc were procured by the contractors; excise duty and service tax on such inputs paid by the contractors was duly reimbursed by M/s HMEL;

S.S Sheets/ plates and all other inputs procured by M/s HMEL were directly received in the factory premises and in respect of the inputs procured by the contractors, M/s HMEL were mentioned as 'consignee' in the invoices.

22. The brief issue that needs to be addressed in these appeals is as to whether M/s HMEL (a manufacturer) is entitled to avail Cenvat credit, on the inputs, purchased by them or by contractors on their behalf and used in their premises, by a Service provider in the fabrication of capital goods or civil and structural works, which are ultimately used by them in the manufacture of excisable final products or in the provision of taxable output service under both conditions i.e. when the Service provider, fabricating the capital goods or engaged in civil and structural works, availed abatement of value while paying service tax and when the said contractor did not avail the abatement.

23. The Revenue seeks to deny Credit on the ground that the said raw materials, supplied by M/s HMEL, i.e. the manufacturer, or procured by the contractors on their behalf, would qualify as inputs for the Contractors for providing the taxable services of fabrication, erection and commissioning of the storage tanks/ mechanical piping etc./ floating roof tanks; the same were not inputs for the Appellants and hence Cenvat credit was availed in contravention of Rule 3 of the Credit Rules, is recoverable under Rule 14 of the Credit Rules read with Section 11A of the Central Excise Act/ Section 73 of the Finance Act, along with applicable interest and equal penalty. On the other hand, the appellants argue that the inputs are received by

them in their factory of production or place of provision of output service; they have borne the incidence of duty and have used them in the manufacture of final dutiable products or in the provision of taxable service; as they satisfy the conditions laid down under Cenvat Credit Rules, credit cannot be denied.

24. We find that it would be useful to have a look at the statutory position in this regard. We find that **Prior to 01.04.2011**, the definition of "inputs" under Rule 2(k) of the Credit Rules is as under:

"(k) "input" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and vehicles, used for providing any output service

Explanation 1.- *The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.*

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer."

24.1. Further, Rule 2(a) of the Credit Rules provides for the definition of capital goods. Relevant extract of the same is reproduced as under:

"(a) "capital goods" means –

(A) the following goods, namely: -

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 and wagons of sub-heading 860692 of the First Schedule to the Excise Tariff Act

(ii) pollution control equipment

...

(vi) tubes and pipes and fittings thereof;

(vii) storage tanks and

...

used-

(1) in the factory of the manufacturer of the final products, or

...;"

24.2 We find that **Post 01.04.2011**, the definition of "input" under Rule 2(k) of the Credit Rules read as follows:

"(k) "input" means –

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service; but excludes –

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for –

(a) construction 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 any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, —free warranty means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer”

24.3. Rule 3 (1) of the Cenvat credit rules, 2004 provides that duty/tax/ cess, which have been paid on any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service, is allowed to take as Cenvat credit by the manufacturer or service provider.

3. CENVAT credit. - (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of

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(i)

(ii)

(x) the Education Cess on total services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004), paid on-

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Explanation. - For the removal of doubts, it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

24.4. Further, Rule 4(1) of the CCR, 2004 provides that on receipt of inputs in the premises of provider of output services, Cenvat credit can be allowed. Rule 4(1) of the CCR, 2004 is as under: -

4. Conditions for allowing CENVAT credit. - (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.

24.5. Rule 9(1) of Cenvat Credit Rules prescribes that Cenvat Credit can be taken on the basis of

(i) Invoice of manufacturer from factory,

- (ii) Invoice of manufacturer from his depot or premises of consignment agent,*
- (iii) Invoice issued by registered importer,*
- (iv) Invoice issued by importer from his premises or consignment registered with Central Excise,*
- (v) Invoice issued by registered first stage or second stage dealer,*
- (vi) Supplementary Invoice by supplier-manufacturer or service provider, except where such payment was on account of fraud, suppression of facts etc.*
- (vii) Bill of Entry Certificate issued by an customs in respect of goods imported through foreign post office,*
- (viii) GAR-7 challan evidencing payment of service tax by the service recipient as the person liable to pay service tax,*
- (ix) Invoice, bill or Challan issued by provider of input service on or after 10-09-2004,*
- (x) Invoice, Bill or Challan issued by input service distributor under Rule 4A of Service Tax Rules.*

25. We find that the eligibility of a manufacturer to avail CENVAT Credit under the Central Excise Act, 1944 is governed by the provisions of the CENVAT Credit Rules 2004 ("CCR 2004"). We find that the following conditions should be satisfied for availing credit.

- (i). the "inputs" and "input services" on which CENVAT credit was availed should satisfy the definition in Rule 2(k) and 2 (l) of the CCR, 2004
- (ii). such inputs should have been received in the factory of manufacture of final product under Rule 3 of the CCR 2004.
- (iii). Conditions specified in Rule 4 of the CCR 2004, as applicable, are to be adhered.

(iv). Tax invoices of such inputs should satisfy the requirements of Rule 9 of the CCR 2004.

26. We shall discuss about the abatement. Abatement in Service Tax refers to a partial exemption where only a specified percentage of the transaction value is taxable, and the remaining portion is excluded from the taxable value. This typically happens where the service provider also supplies some goods along with the services. In such cases, consideration received by him is inclusive of value paid for goods. Since service tax is leviable on the service component, value of goods should not be included in the assessable value. Therefore, abatement was provided as a matter of administrative simplification since tracking exact value of service portion was impractical. Service providers providing works contract service get exemption under the scheme of Works Contract (Composition scheme for payment of service tax) Rules, 2007; this scheme of payment of service tax provides a concessional rate of service tax subject to condition that Cenvat credit involved on the inputs and input services used in relation to providing the taxable services specified under the scheme was not availed.

27. In the instant case, we understand that a manufacturer has engaged a contractor (as a service provider) for fabricating components. The inputs were invoiced to the manufacturer. The contractor has not availed CENVAT credit on the said inputs but has availed abatement while discharging their tax liability as a service provider. The question for consideration is as to whether the manufacturer could have availed CENVAT credit on the inputs and as

to whether Cenvat Credit availment by the manufacturer and the availment of abatement by the contractor-service provider amounts to unintended double benefit in the supply chain.

28. We find that in the instant case, the appellants got storage tanks and mechanical piping manufactured through a contractor; inputs like stainless steel sheets/ plates, valves, bolts etc required by the manufacturer themselves; inputs like tools, tackles, plant and equipment required were procured by the contractors, on behalf of the appellants; the items procured by the contractors were consigned to the factory premises of the appellants and the invoices clearly bear the endorsement 'on account of' in favour of appellants; in both cases, the incidence of duty has been borne by the appellants. There are two situations or scenarios. One being a case where the contractor-service provider has not availed the benefit of abatement while discharging the service tax payable by him and the second scenario is when he availed benefit of abatement.

29. We find that the appellants satisfied the conditions for availing Cenvat credit as the "inputs" and "input services" on which CENVAT credit was availed satisfy the definition in Rule 2(k) and 2 (l) of the CCR, 2004; such inputs have been received in the factory of manufacture of final product under Rule 3 of the CCR 2004; conditions specified in Rule 4 of the CCR 2004, as applicable, have been adhered to and Tax invoices of such inputs satisfy the requirements of Rule 9 of the CCR 2004.

30. It is not the case of the department one or any of these conditions are not satisfied. The only objection by the Revenue appears to be that the items under dispute were not inputs for the appellant but were inputs for the contractor-service provider. We find that this objection does not seem to have any legal basis. In the scheme of things, Cenvat Credit is attached to inputs not the persons. We find that Cenvat rules nowhere attach any condition as to the ownership of the goods or their belongingness to a person. The primary and essential condition required is that the goods must be duty paid and must be used in or relation to excisable goods directly or indirectly in the factory of production. These facts are not denied by the Revenue.

31. The Hon'ble Supreme Court in the case of Bharti Airtel Ltd. Versus Commissioner of Central Excise, Pune 2025 (391) E.L.T. 3 (S.C.) has noted that "input" in relation to manufacturing of final product would mean not only those which are directly used but also indirectly used and not only for manufacture of final product whether contained in the final product or not but also used in relation to manufacture of final product or for any of other purpose. In view of the same, we find that there is no reason as to why the Cenvat Credit availed by the appellants be denied. Therefore, as far as the first scenario, where the said contractor-service provider has not availed the benefit of abatement, is concerned entitlement of the appellants to credit cannot be denied.

32. We now take up the issue of the second scenario, where the contractor-service provider has availed the benefit of abatement. We held above that the credit is attached to goods depending on their usage and not to persons as per the scheme of Cenvat credit. In the second scenario, where the contractor has availed the benefit of abatement, it is not clear as to whether the contractor-service provider paid service tax on the value which includes the value of the inputs in question. It is also not clear as to how such abatement was allowed to the contractor-service provider on the part of the goods which were provided by the appellant as the main contention of the revenue is that the appellant cannot avail credit as they were not inputs to them (the appellant) but were inputs for the contractor-service provider. The question that would arise is as to how the contractor-service provider has availed benefit of abatement on goods not purchased by them. The facts are not part of record and moreover, the issues are not before us for decision.

33. We find that in the instant case, the credit and benefit of abatement that is attached to the goods has been availed twice, once in the form of abatement by the contractor-service provider and as credit by the appellants. We find that Tribunal had an occasion to go in to this issue of availment of Cenvat credit by the contractor as well as manufacturer in the case of Bharat Oman Refineries Ltd (Supra). Relying on the judgment of the larger bench in the case of M/s Gauri Plasticulture Pvt Ltd 2006 (202) ELT, Bench held that what cannot be done directly is not to be allowed to be done indirectly. Bench held that

6. After careful consideration of the facts on record and the submissions of both the sides, it appears that the Appellant's contractor namely M/s Pdetron Engineering Construction Ltd. paid the service tax under composition scheme @ 4% of gross value. On this subject Rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007 is given hereunder:

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

"3.(1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules , 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 1[four per cent.]of the gross amount charged for the works contract .

2 [Explanation. - For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,

(a) including

(i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and

(ii) the value of all the services that are required to be provided for the execution of the works contract ;

(b) excluding

(i) the value added tax or sales tax as the case may be paid
on (li) the cost of machinery and tools used in the execution of

the said works contract except for the charges for obtaining them on hire:

Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7th day of July, 2009.];

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[(4). The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.]]”

6.1 Under the above referred Composition Scheme the service tax is paid @ 4% of gross amount charged for works contract i.e. sale value of the goods and the value of the services provided, instead of payment of service tax @ 10% as payable under Section 66 of the Finance Act 1994. When Contractor namely M/s Petron Engineering Construction Ltd. (or M/s Petron Engineering or M/s. Petron), who are the contractor for providing works contract services to the Appellant, M/s Bharat Oman Refineries Ltd. have opted payment of service tax under the Composite

Scheme, where the value of the goods sold to them has been subsumed in the value of the taxable service, and when they have, thus availed the benefit of the reduced rate of service tax, the recipient of such services, who is the present Appellant namely M/s Bharat Oman Refineries Ltd. would not be entitled to take the CENVAT credit of the duty paid on the goods so sold to the provider of the works contract services, who in the present case is M/s Petrone Engineering Construction Ltd., the contractor to the Appellant M/s Oman Refineries Ltd.

6.2 Further, the Appellant M/s Bharat Oman Refineries Ltd. does not have any concern, connection or nexus with the ownership of the goods initially supplied to the contractor namely M/s Petrone Engineering Construction Ltd. The said goods were supplied to the contractor and the contractor namely M/s Petrone Engineering Construction Ltd. availed the benefit of the reduced rate of service tax (by opting payment of service tax under the Composite Scheme) including for the value of the goods sold to the contractor. The Appellant, therefore, here would not have any right to avail the CENVAT credit for the goods which are actually the inputs for the supplier contractor who opted for Composite Scheme for payment of Service Tax.

6.3 When the CENVAT credit is not available to the contractor, the said Cenvat credit cannot be passed on to the Appellant namely M/s Bharat Oman Refineries Ltd. The CESTAT in the case of M/s Gauri Plasticulture Pvt Ltd. (SUPRA) has held that what cannot be done directly is not to be allowed to be done indirectly. In this case when CENVAT credit on the input goods is not to be allowed to the contractor, who is service provider, the same cannot be passed on indirectly to the Appellant, M/s Bharat Oman Refineries Ltd. The case laws cited by the Appellant are not applicable to the present facts. The contractor has paid service tax under the Composite Scheme, where they have paid service tax at the reduced rate of 4% instead of payment of standard rate of service tax @ 10%. When contractor M/s Petron Engineering Construction Ltd. have exercised this option, they cannot directly or indirectly pass on the CENVAT credit of any input goods to the Recipient of their services. Under the CENVAT scheme the CENVAT credit is passed on by using the invoice

documents, which are to be transferred to the buyer of the goods only. Here buyer of the goods is the contractor and not the Appellant M/s Bharat Oman Refineries Ltd. When the buyer M/s Petron Engineering Constructions Ltd., who is the contractor cannot take CENVAT credit of their input goods, they are not eligible to pass on the CENVAT credit on the said input goods. In other words, the Cenvat credit to which the contractor themselves are not entitled to, the said cenvat credit cannot be transferred to anyone.

33. An appeal against the above decision was permitted to be withdrawn by the Hon'ble High Court of Madhya Pradesh in CEA-101-207. Therefore, the issue requires to be held as has attained finality. In view of the above, even if there is no express provision to such availment of credit, the scheme of Cenvat Credit does not appear to allow such credit twice on the same goods though in different forms. Thus, we are of the considered opinion that the appellants are not entitled to Credit on the inputs on which the benefit of abatement has been availed by the Contractor-service Provider. Though, in *Bharat Oman Refineries Ltd 2017(5) GSTL 49 (Tri-Delhi)* the dispute was pertaining to the period prior to 2012 (pre-negative list regime) and the applicable rules were the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, we find that the position of law is *pari materia* in so far as the issue involved for the period post 2012.

34. Coming to the issue of limitation we find that the Appellants are regular assesseees of the department and have been filing statutory returns regularly. In addition, they were being subjected to regular audits. The appellants provided all the requested documents and

information to the department. The appellants cannot be faulted if the department fails to scrutinise the records and to issue Show Cause Notices in Time. It is difficult to accept that the appellants indulged in suppression of facts etc with an intent to evade payment of duty. We hold that as the revenue was well-aware about the activities of the Appellants., extended period cannot be invoked. We find no merit in the finding of the commissioner that the returns do not show the usage of inputs as the returns do not have a provision to declare the usage of inputs. The appellants can not be blamed for not disclosing what is not expected to be disclosed. Thus, we find that no case is made to allege there was no wilful suppression of any fact, fraud or any collusion relating to the availment of credit from the Department. Therefore, extended period cannot be invoked. We draw force from the decision of the Tribunal in the cases of M/s Socomec India Private Limited Final Order No. 60436/2025, dated 26.03.2025 (Tri. - Chan.), M/s GD Goenka Private Limited Final Order No. 51088/2023, dated 21.08.2023 (Tri. -New Delhi) and M/s Good Year Final Order No. 60572-60573/2024, dated 04.10.2024 (Tri. - Chan.).

35. In view of the above, the appeals are partly allowed by way of remand to re-quantify the duty/credit payable as per the following.

(i). The appellants are eligible to avail CENVAT Credit of inputs on which the Contractor-Service Provider has not availed abatement of Service Tax as per the Works Contract Scheme.

(ii). The appellants are not eligible to avail CENVAT Credit of inputs on which the Contractor-Service Provider has availed abatement of Service Tax as per the Works Contract Scheme.

(iii). Extended Period is not invokable.

(Order pronounced in the open court on 15/07/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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