TRUSHA TUSHAR MOHITE Digitally signed by TRUSHA TUSHAR MOHITE Date: 2026.08.12 17:30:51 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.78 OF 2025.

Prima Private Limited .. Appellant

Versus

The Commissioner of CGST, Central Excise and Service Tax, Pune-I .. Respondent

Mr.Prasad Paranjape a/w Ms.Sonakshi Singh i/b M/s.Lumiere Law Partners, Advocate for the Appellant.

Ms.Shruti D. Vyas a/w Mr.Saket Ketkar, Advocate for Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 07, 2026

P. C.

1. The present Appeal is filed under Section 35G of the Central Excise Act, 1944, challenging the legality and validity of Final Order No. FO/A/85291/2025-EX[SM] dated 5th March 2025 ("**Impugned Order**") passed by the Customs, Excise and Service Tax Appellate Tribunal ("**CESTAT**"), Mumbai, in Appeal No. E/87070/2021-MUM.

Uploaded on - 12/08/2026 Downloaded on - 15/08/2026 13:30:12

2. Having heard the learned Counsel for the parties, we admit the present Appeal on the following substantial questions of law:

> *"(a) Whether, upon remand, the Hon'ble CESTAT erred in law by restricting its consideration only to verification of Goods Transport Agency ("GTA") services, without examining the true nature of construction services and the Appellant's entitlement to credit thereon, thereby failing to discharge its duty as the final fact-finding authority to adjudicate the dispute on merits?*
>
> *(c) Whether denial of CENVAT credit of Rs. 1,85,400 on construction services used for setting up of a factory, for the period prior to 01.04.2011, is sustainable in law, when the definition of "input service" under Rule 2(1) of the CENVAT Credit Rules, 2004 expressly included services used in relation to "setting up, modernisation, renovation or repairs of a factory"?*
>
> *(f) Whether penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004 is sustainable in the absence of fraud, suppression or intent to evade, particularly when the CESTAT's earlier Final Order dated 21.12.2017 had already held the issue to be interpretational and no penalty imposable; and whether the Tribunal erred in selectively applying that order only to remand the GTA issue while disregarding the binding finding on penalty?"*

3. Since the issue involved lies in a narrow compass, with the consent of both the parties, the Appeal is taken up for final disposal.

4. The Appellant is a company incorporated under the Companies Act, 1956, engaged, *inter alia*, in the manufacture of excisable goods and having its factory at Talegaon, District Pune.

Uploaded on - 12/08/2026 **Downloaded on - 15/08/2026 13:30:12**

5. Shorn of unnecessary details, it suffices to state that the present dispute pertains to the eligibility of CENVAT credit of Rs. 1,85,400 contended to be on input services used in relation to setting up of the factory of the Appellant, which was disallowed by the adjudicating and the first Appellate Authority vide their Orders dated 13th January 2020 and 10th March 2021, respectively. Even the CESTAT has not dealt with the submissions made before it with respect to eligibility of CENVAT credit on construction services and on imposition of penalty. The consequence of the said disallowance was confirmation of tax demand, along with interest thereon and an equal amount of penalty.

6. It is the case of the Appellant that when proceedings in relation to its entitlement to CENVAT credit were initiated vide Show Cause Notice dated 11th April 2012, the charge against the Appellant for denial of credit was that it pertained to service tax paid on Goods Transport Agency ("**GTA**") services for transportation of material used by Ganga Constructions for the construction of the Appellant's factory building. Hence, it was alleged that such services had not been used directly or indirectly in or in relation to the manufacture and clearance of final products from the place of removal, as required under Rule 2(1) of the CENVAT Credit Rules, 2004.

Uploaded on - 12/08/2026 **Downloaded on - 15/08/2026 13:30:12**

7. It is the case of the Appellant that there was an error in the Show Cause Notice as well as in the defence taken by the Appellant before the lower authorities, inasmuch as it escaped the attention of all concerned that the amount of Rs. 2,71,889 towards credit availed on GTA services was, in fact, not entirely attributable to GTA services. According to the Appellant, only an amount of Rs. 86,489 pertained to GTA services, whereas, the balance amount of Rs. 1,85,400 related to input services availed for construction of the factory. The Appellant contends that such credit was eligible during the relevant period - viz. June 2008, when the said credit was availed.

8. We find from the record that the Appellant had canvassed this ground before the original authority, the first Appellate Authority as well as before the CESTAT in the remand proceedings. However, the original authority and the first Appellate Authority declined to entertain the said ground on the basis that it constituted a new ground or evidence. According to the Appellant, the said ground ought to have been permitted to be raised in the remand proceedings. We further find that the CESTAT, in the Impugned Order, has not rendered any finding on the eligibility of CENVAT credit to the extent of Rs.1,85,400 and has restricted its finding only on eligibility of CENVAT credit on GTA services. The CESTAT, being the final fact-finding authority under the statute, was duty bound to adjudicate on all issues arising

Uploaded on - 12/08/2026 **Downloaded on - 15/08/2026 13:30:12**

from the record. Its failure to consider the aforesaid contentions and not render findings thereon amounts to failure to exercise jurisdiction vested in it.

9. We also observe that, in the first round of litigation, the CESTAT, vide its Final Order dated 21st December 2017, while remanding the matter, had categorically held that since the issue involved was of an interpretational nature, there was no reason to impose penalty upon the Appellant. Despite the aforesaid finding, in the remand proceedings, the original authority, vide Order-in-Original dated 13th January 2020, imposed penalty equivalent to the credit disallowed and the first Appellate Authority upheld the said Order-in-Original dated 13th January 2020. The CESTAT has not rendered any finding on imposition and confirmation of penalty. It is the case of the Revenue that though the penalty was levied by the original authority in its Order dated 13th January 2020, the said issue was never taken up in Appeal before the First Appellate Authority. Hence, the CESTAT correctly did not render any finding on imposition and confirmation of penalty. This fact is obviously refuted by the Appellant.

10. Considering the facts narrated above, and having perused the records, we are of the opinion that there is considerable substance in the

Uploaded on - 12/08/2026 Downloaded on - 15/08/2026 13:30:12

contentions urged on behalf of the Appellant about non-consideration of its submissions by the original authority, the first Appellate Authority as well as the CESTAT. The Appellant had attempted to canvass the issue of eligibility of CENVAT credit of Rs. 1,85,400 before the lower authorities, both on merits as well as on the ground that the order travelled beyond the Show Cause Notice. However, no finding has been rendered by the lower authorities on this aspect.

11. After considering the submissions of both sides, we do not find it necessary to keep this Appeal pending in this Court. At the same time, we find it appropriate that the issue concerning eligibility of CENVAT credit of Rs. 1,85,400, as well as issue of penalty, be examined by the CESTAT, after permitting the Appellant to raise all grounds available in law. All contentions of the Revenue to oppose the grant of any relief sought by the Appellant are also expressly kept open to be agitated before the CESTAT.

12. In view of the above, the Impugned Order dated 5th March 2025 passed by the CESTAT, Mumbai, in Appeal No. E/87070/2021-MUM is set aside to the extent it concerns denial of CENVAT credit of Rs. 1,85,400 and the consequential interest and penalty thereon. The matter is remanded to the CESTAT for fresh consideration of the Appellant's claim in respect of

Uploaded on - 12/08/2026 **Downloaded on - 15/08/2026 13:30:12**

CENVAT credit of Rs. 1,85,400, after permitting the Appellant to raise all grounds available in law and after granting an opportunity of hearing to both parties, without being influenced by any observations made in the Order.

13. It is once again clarified that all contentions of the parties are expressly kept open to be agitated before the CESTAT.

14. The Appeal is disposed of in the aforesaid terms. However, there shall be no order as to costs.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Mohite

Uploaded on - 12/08/2026 Downloaded on - 15/08/2026 13:30:12