CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70612 of 2021

(Arising out of Order-In-Original No.35-PrCOMMR-ST-NOIDA-20-21, dated - 12.01.2021 passed by Principal Commissioner, Central Goods & Service Tax, Noida)

M/s HCL Technologies Ltd. **.....Appellant**
(B-34/3, Sector-59,
Noida, Uttar Pradesh 201301)

VERSUS

Commissioner, Central Goods & Service Tax, Noida
....Respondent
(C-56/42, Renu Tower, Sector-62
Noida, Uttar Pradesh-201307)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri N. K. Mohan, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70322/2026

DATE OF HEARING : 28.07.2026
DATE OF DECISION : 01.09.2026

SANJIV SRIVASTAVA:

This appeal is directed against order in original No 35/Pr COMMR/ST/NOIDA/ 2020-21 dated 12.01.2021 of the Principal Commissioner Central Goods & Service Tax Noida. By the impugned order following has been held:

ORDER

(I) I disallow the CENVAT credit of Rs. 2,06,11,174/- (Rupees Two Crores Six Lakhs Eleven Thousand One Hundred Seventy Four only) to the party under Rule 14 of the CENVAT Credit Rules, 2004 read with the Proviso

to Section 73(2) of the Finance Act, 1994 as discussed supra.

(II) I confirm the demand of Interest on the disallowed CENVAT credit at applicable rates during the relevant period, on above amount under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 as discussed supra.

(III) I impose a penalty of Rs. 2,06,11,174/- (Rupees Two Crores Six Lakhs Eleven Thousand and One Hundred Seventy Four only) upon the party, under Rule (15)(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for the aforesaid contraventions as discussed supra.

(IV) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon the party under Section 77 of the Finance Act, 1994 as discussed supra.

The dues adjudged above shall be paid forthwith.

2.1 Appellant are registered with service tax vide Centralized Registration No. AAACH1645PST002 for providing output services namely Information and Data Access / Retrieval", "Commercial Training & Coaching Centre, Management", "Maintenance or Repair Service", "Business Support Service" and "Business Auxiliary Service", as defined under erstwhile Section 65(105) (zh), (zzc). (zzg). (zzzq) and (zzb) of the Finance Act, 1994 (hereinafter referred to as the Act). They are availing the facility of Cenvat credit in respect of input services used for providing output services under the provisions of the Cenvat Credit Rules, 2004.

2.2 During the course of scrutiny of the records of the party by the audit officers for the period from April'2011 to March-15 communicated through DAR No.143/2014-15(RUD-I), it has been observed that:-

(a) Para No.1(a) The party availed inadmissible Cenvat Credit of Rs.93,75,625/- on the basis of input services received at their BPO branches situated at Chennai, Hyderabad, Gurgaon during the period 09.06.2011 to 19.08.2014. The said BPO branches were incorporated under centralized registration w.e.f. 20.08.2014. The party also availed the Cenvat Credit on various work viz. Civil, Paint, setting up pipeline, removing Malba etc. Thus, the Cenvat Credit of input services were availed without incorporating the BPO branches in their centralized registration and on the ineligible input services. This cenvat credit is not admissible to the party.

(b) Para No.2 The party has availed inadmissible Cenvat Credit of Rs.1,12,35,549/-on the basis of Service Tax paid on Works Contract Services received for setting up BPO offices at Gurgaon, Chennai, Hyderabad and NOIDA under reverse charges mechanism w.e.f 01.07.2012, in as much as the availability of Cenvat credit on work contract services as input service tax credit has been deleted from w.e.f. 01.04.2011. Moreover, the party has also availed Cenvat Credit of Service tax of Works Contract on account of Civil Work done at various places at BPO offices, which is not admissible to them as per clause (A) of 2(1) of Cenvat Credit Rules, 2004.

2.3 Appellant was requested by the jurisdictional Range Superintendent, vide his office letter C. No. 20/STR-XI/HCL/143/40/15/162 dated 16.03.2015 and reminder even C.No.185 dated 06.04.2015, 280 dated 08.05.2015 & dated 24.08.2015, to deposit the amount involved and submit all payment particulars. Appellant vide letter dated 21.09.2015 & 07.12.2015, submitted that ---

(a) For Para No. 1(a) -- They have taken Cenvat credit amounting to Rs. 84,86,277/-pertaining to their branches located at Chennai, Hyderabad and Gurgaon during the period 09.06.2011 to 19.08.2014 which were not added to their centralized registration upto 20.08.2014 and Cenvat credit of Rs.5,46,513/- taken on input services viz. Civil, paint, setting up pipeline and removing Malba etc. which comes to Rs.90,32,790/-only instead of audit objection of Rs.93,75,625/-.

(b) For Para No. 2 They have taken the Cenvat Credit of Rs. 1,12,35,549/- on account of maintenance, repair, modernization of the existing premises and not on setting of any new office or structure of the office and under the cenvat credit rules, cenvat credit of service tax paid on account of repair. maintenance etc is eligible.

2.4 On conclusion of enquiries and investigations, department was of the view that appellant has wrongly availed CENVAT credit of Rs.2,06,11,174/- (Rs.93,75,625/-+1,12,35,549/-) under Rule 2 & 3 of Cenvat Credit Rules, 2004 read with section 69 of the Finance Act, 1994 and the same is liable to be disallowed and recovered from them along with interest under Rule 14 of CENVAT Credit Rules, 2004.

2.5 Further it was noticed that appellant has not shown any sanctity to the statutory provisions and they have proceeded in a manner defiant to the rule of law and vehemently worked in a prejudicial way in as much as they

- out-rightly negated the procedure for adding the branches in their Centralized registration in terms of Notification No. 11/2008-ST Dated 1/3/2008 w.e.f. 1/4/2008 issued for Application form for registration under Section 69 of the Finance Act, 1994 (32 of 1994); and
- not complying the Notification No. 3/2011-CE (NT) Dated 1/3/2011 w.e.f. 01.04.2011, vide which the work contract services were excluded from the definition of input service by adding a clause (A) in Rule 2(1) of the CCR.

Thus said amount of credit was irregular in nature and had been availed by them fraudulently. This facts came to the notice of the department only during the audit of accounts/records of the party. Therefore, appellant has suppressed the vital facts with intent to avail irregular Cenvat Credit. The said credit is recoverable from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994 along with interest under Rule 14 of CCR by invoking extended period of time beyond normal period of limitation. Appellant was liable to penalty under the provisions of Rule 15(3) of Cenvat Credit Rules'2004 read with Section 78 ibid for wrongly availed the cenvat credit and penalty under the provision of section 77 of the Act ibid for not including the branches in their Centralized Registration for the period 09.06.2011 to 19.08.2014.

2.6 A show cause notice dated 13.04.2016 was issued to the appellant asking them to show cause as to why:-

(a) *CENVAT credit of Rs. 2,06,11,174/- (Rupees Two Crores Six Lacks Eleven Thousands and One Hundred and Seventy Four only) should not be disallowed and recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with the Proviso to Section 73(1) of the Finance Act, 1994*

(b) *Interest involved on the above-said amount should not be recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994*

(c) *Penalty should not be imposed upon them in terms of rule 15(3) of CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for the aforesaid contraventions.*

(d) *Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the contravention o f provisions of Section 69 of the Finance Act, 1994.*

2.7 The show cause notice was adjudicated as per the impugned order referred in para 1 above.

2.8 Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Atul Gupta, Advocate for the appellant and Shri N K Mohan, Authorized Representative for the revenue on 28.07.2026. After conclusion of hearing following order was made

Order Sheet

Heard both the sides. Order Reserved. Both the sides at liberty to file written submissions within one week.

Appellant has filed additional submissions which has been taken on record. Revenue has not filed any submissions.

3.2 Arguing for the appellant learned counsel submits:

- Credit availed in respect of unregistered premises. Issue is no longer res-integra and it has been constantly held that CENVAT Credit is admissible even in respect of the services which are received at the unregistered premises. Reliance is placed on the following decisions:
  - Samsung India Electronics Pvt. Ltd. [2017 (52) STR 497 (T-All)] affirmed by Hon'ble Allahabad High Court as reported at [2017 (52) STR J253 (ALL)]
  - HCL Technologies [Final Order No 70912/2024 dated 28.08.2024 in Service Tax Appeal No 70985/2018]
  - Samsung India Electronics Pvt. Ltd. [Order dated 17.07.2017 of Hon'ble Allahabad High Court in Central Excise Appeal No 85-87/2017]
  - MPortal India Wireless Solution P Ltd. [2012 (27) STR 134 (Kar)]
- Denial of Cenvat Credit in respect of service tax paid on repair renovation and modernization of existing building premises. These services though work contract ser5vices were used for repair, renovation and modernization. Hence are eligible for CENVAT Credit. Reliance is placed on the following decisions:
  - Godawari Power & Ispat Limited [Final Order No 51519/2023 dated 08.11.2023 in Excise Appeal No 51211 of 2020, Delhi Bench]
  - Jai Balaji Industries Ltd. [Excise Appeal No.76215 of 2016-CESTAT Kolkata maintained by Calcutta High Court
  - General Motors India Pvt. Ltd. [(2024) 15 Centax 124 (Tri.-Ahmd)]

- Reliance Industries Ltd [2022-VIL-281-CESTAT-AHM-CE]
- Milestone Preservatives Pvt. Ltd. [2023 (71) GSTL 188 (Tri.-Ahmd)]
- Balkrishna Industries Ltd. [2022 (65) G.S.T.L. 247 (Tri. - Del.)]
- Exide Industries Limited [2016 (43) STR 463 (Tri-Del)]
- Ion Exchange (I) Ltd. [2018 (12) G.S.T.L. 302 (Tri. - Ahmd.)]

➢ Demand for the period upto March 2014 is barred by limitation as all the facts were in the knowledge of department as the appellant had been filing the refunds claims in respect of the Cenvat Credit taken by them in terms of Rule 5 of the CENVAT Credit Rules, 2004. Undisputedly they were also filing the ST-3 returns declaring the credit taken in their returns. Reliance is placed on the following decisions:
  - Nizam Sugar Factory [2006 (197) ELT 465 (SC)]
  - P & B Pharmaceuticals (P) Ltd. [2003 (153) ELLT 14 (SC)]
  - ECE Industries Ltd. [2004 (164) ELT 236 (SC)]
  - Hindustan Heavy Chemicals [2009 (240) ELT 14 (Cal)]
  - Medicaps Limited [2011 (24) STR 572 (T-Del)]
  - ITC Ltd [2014 (291) ELT 377 (T-Kol)]
  - Cemphar Drugs and Liniments [1989 (40) ELT 276 (SC)]
  - Padmini Poroducts [1989 (43) ELT 195 (SC)]
  - Pushpam Pharmaceuticals Co. [1995 (78) ELT 401 (SC)]
  - Uniworth Textiles Limited [20133 (288) ELT 161 (SC)]
  - Sands Hotel Private Limited [2009 (16) STR 329 9T-Mum)]
  - Punjab Chem & Pharma [2001 (135) ELT 227 (T-Del)]
  - Asia Automotive Ltd. [1999 (113) ELT 841 (T-Mum)]

- Impugned order has travelled beyond the show cause notice.
- Interest is not payable as the appellant has rightly availed the credit.
- Penalty is not imposable.

In the written submissions filed subsequent to the hearing appellant has only re-stated what has been submitted during the course

3.3 Authorized Representative re-iterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The issues involved in the present appeal can be grouped in following categories:

a. Whether the credit availed by the appellant in respect of the services availed in respect of the unregistered premises could have been denied.

b. Whether credit availed by the appellant in respect of the work contract services would be admissible to the appellant.

c. Whether extended period of limitation could be invoked for making this demand as per proviso to Section 73 (1) of the Finance Act, 1994.

d. Whether interest under Section 75 is demandable from the appellant.

e. Whether penalty under Section 77 or 78 of the Finance Act, 1994, could have been imposed upon the appellant.

4.3 Whether the credit availed by the appellant in respect of the services availed in respect of the unregistered premises could have been denied.

4.3.1 We do not find any merits in the findings recorded by the impugned order in view of the decision of jurisdictional High Court in case of Samsung India Pvt. Ltd., holding as follows:

"This is a Central Excise Appeal under Section 35-G of the Central Excise Act, 1944 arises out of Appeal No.ST/51147/2015 against the order dated 09.06.2016. The question no.2 is not being pressed by the learned counsel for the appellant. By the impugned order the Tribunal has allowed the claim of the assessee for refund. The department has sought the below noted question to be answered:

"Whether the Hon'ble CESTAT was correct in allowing the CENVAT credit of the services used at unregistered premises and refund thereof?"

This very question came up for consideration in a matter before this Court in the case of Commissioner, Service Tax Commissionerate Vs. M/s Atrenta India Pvt. Noida reported in [2017(2) ADJ 590 (DB)], wherein this Court took a view that the refund could not be denied to the assessee merely on the basis of non-registration of the premises. The Tribunal in this matter has also recorded findings that Stellar Park Premises at Noida were taken on rent only in April 2012. Thereafter, they had applied for inclusion of Stellar Park address in their centralized R.C. on 24.4.2013 and the same was approved and granted on 19.07.2013. ***Even otherwise, under Rules 3 of CCE 2004 it was not a condition precedent that input service have to be received at registered premises only of the output service provider.***

4.4 Whether credit availed by the appellant in respect of the work contract services would be admissible to the appellant

4.4.1 Impugned order records the findings as follows:

"5.3.1. Now I come to the demand of Rs. 1,12.35,549/- which has been raised on the ground that the credit of input services received on the service of works contract is not admissible as the works contract services have been excluded from the definition of input services vide Clause A

of the Rule 2(1) of the CENVAT Credit Rules, 2004 as amended de Notification No. 03/2011 CE (NT) dated 01.03.2011 with effect from 01.04.2011. The party on the other hand, inter alia, contends that the services received in the case are in relation to modernization, repairs, renovation etc of its office premises which are specifically mentioned in the inclusion-clause of the definition of input services. The party has also provided copies of some invoices on sample basis to support their contention. In this regard, I find that the definition of input services was amended with effect from 01.04.2011 vide Notification No. 03/2011 CE (NT) dated 01.03.2011. With effect from 01.07.2012 vide Notification No. 28/2012 CE (NT) dated 20.06.2012, the definition of input services was again amended. The definition after the respective amendments read as under,

> *Rule 2(I) (w.e.f 01.04.2011 to 30.06.2012)*
>
> *"input service" means any service,-*
>
> *(0) used by a provider of output service for providing an output service, or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward Transportation up to the place of removal*

but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract 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 one or more of the specified services, or

services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person, or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person, or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"

Rule 2(1) w.e.f 01.07.2012

"input service" means any service,-

(1) used by a provider of output service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal

but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act

(hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services, or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods, or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person, or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee,"

Therefore, throughout the period involved the service portion in the execution of works contract and construction services in so far as they are used for construction or execution of works contract of a building or a civil structure or a part thereof, was excluded from the definition of input service as defined under the CENVAT Credit Rules, 2004. The party contends that the services received in the case are in relation to modernization, repairs and renovation etc. of its office premises which are specifically mentioned in the inclusion-clause of the definition of input services. The party has also provided copies of some invoices on sample basis to support their contention.

*5.3.2**. In this regard, I find that the party has not disputed that the services were in relation to execution of works contracts. The nature of service is***

also evident from the sample invoices produced by the party as these invoices show that the tax has been paid on reverse charge basis. The exclusion clause of the definition of the input service provides that the service would not be admissible for credit of tax in case it relates to construction or execution of works contract of a building or a civil structure or a part thereof. Therefore, I of the view that even if the services received related to modernization, repairs, renovation etc. the same will not be admissible as input services if the fell in the exclusion clause of the definition of the Rule, ibid. *The inclusion clause as provided in the definition of input service is illustrative only and it cannot override the exclusion clause which is quite specific. Thus the contention of the party that the services are covered under means and inclusion clause of the definition is not acceptable as such services have been excluded from the definition of eligible input services, even if such services have been used for the provision of taxable output services. Further, on examination of the sample invoice produced by the party I see no ground to conclude that the services received did not fall in the exclusion clause as provided under Rule 2(1) of the CENVAT Credit Rules, 2004.*

5.3.3. I observe that the party has placed reliance upon various case laws in support of their contentions wherein services of repair, renovation and modernization of the premises were held to be an input service in terms of Rule 2(1) of the CENVAT Credit Rules, 2004 and the credit was duly allowed: Commissioner Vs Exide Industries Limited, 2016(43) STR463 (Tri-Del and Pr. Commr. Of Central Tax and C. Ex. Raipur Vs Jindal Steel and Power Ltd 2019 (2) TMI 1732.

In the case of Exide Industries, Hon'ble Tribunal Delhi has also hold that the Construction of a factory is excluded from *the definition of input service. In the instant case, the party has availed the CENVAT credit on the construction/setting up of BPO branches at Gurgaon, Chennai, Hyderabad and Noida. So far as the case of M/s Jindal Steel is concerned, the same is not squarely applicable in the instant case as in the case of Jindal Steel, the LPG gas was used as input for manufacturing of capital goods which is not the case here.*

In view of the discussion above, I hold that the services received by the party were not input services as they fell in the exclusion clause to the definition of input service as provided under the CENVAT Credit Rules, 2004, and accordingly, the credit of tax of Rs. 1,12,35,549/- availed by the party on these services is liable to be recovered."

4.4.2 From the perusal of the above it is evident that the impugned order after examining the facts and evidences available on the record has returned a finding of fact to the effect that appellant has availed CENVAT Credit on the Work Contract Services used for Construction/ Setting up of the BPO branches at Gurgaon, Hyderabad, Chennai and Noida. Appellant has not produced any evidence to show that the finding of fact returned in the impugned order is perverse. They have made a claim to the effect that these services were in relation to modernization, repair or renovation of the existing facilities. In absence of any evidence to the effect of use of these services in such a manner we are not in position to agree with the claim made by the appellant.

4.4.3 Appellant has not claimed the credit in respect of services received under the category of repair and maintenance services. The services under the category of repair maintenance are distinct from the work contract services and are subjected to different treatment for levy of service tax. Hon'ble Supreme Court has in case of Larsen And Turbo Ltd. [2015 (39) S.T.R. 913 (S.C.)] clarifying the said distinction has clearly observed as follows:

"17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter

recognized by the world of commerce and law as such, and has to be taxed separately as such. In Gannon Dunkerley, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows :-

> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)*

18. Similarly, in Kone Elevator India (P) Ltd. v. State of T.N. - (2014) 7 SCC 1 = 2014 (34) S.T.R. 641 (S.C.) = 2014 (304) E.L.T. 3 (S.C.), this Court held :-

> *"Coming to the stand and stance of the State of Haryana, as put forth by Mr. Mishra, the same suffers from two basic fallacies, first, the supply and installation of lift treating it as a contract for sale on the basis of the overwhelming component test, because there is a stipulation in the contract that the customer is obliged to undertake the work of civil construction and the bulk of the material used in construction belongs to the manufacturer, is not correct, as the subsequent discussion would show;*

> *and second, the Notification dated 17-5-2010 issued by the Government of Haryana, Excise and Taxation Department, whereby certain rules of the Haryana Value Added Tax Rules, 2003 have been amended and a table has been annexed providing for "Percentages for Works Contract and Job Works" under the heading "Labour, service and other like charges as percentage of total value of the contract" specifying 15% for fabrication and installation of elevators (lifts) and escalators, is self-contradictory, for once it is treated as a composite contract invoking labour and service, as a natural corollary, it would be works contract and not a contract for sale. To elaborate, the submission that the element of labour and service can be deducted from the total contract value without treating the composite contract as a works contract is absolutely fallacious. In fact, it is an innovative subterfuge. We are inclined to think so as it would be frustrating the constitutional provision and, accordingly, we unhesitatingly repel the same." (at para 60)*

19. In Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708 = 2014 (34) S.T.R. 481 (S.C.) = 2014 (303) E.L.T. 3 (S.C.), this Court stated :-

> *"In our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.,*

> *AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr. K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366."*
> *(at para 72)*

20. We also find that the assessees' argument that there is no charge to tax of works contracts in the Finance Act, 1994 is correct in view of what has been stated above.

21. This Court in Mathuram Agrawal v. State of M.P., (1999) 8 SCC 667, held :-

> *"Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section (2)(b) should be*

construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the

> *rateable value of the small property by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated." (at paras 12 and 16)*

22. Equally, this Court in Govind Saran Ganga Saran v. CST, 1985 Supp SCC 205, held :-

> *"The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity." (at para 6)*

23. To similar effect is this Court's judgment in CIT v. B.C. Srinivasa Setty, (1981) 2 SCC 460, held :-

> *"Section 45 charges the profits or gains arising from the transfer of a capital asset to income tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings Section 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge. Parliament has enacted detailed provisions in order to compute the profits or gains*

under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to *the fundamental integrality of the statutory scheme provided for each head." (at para 10)*

24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

4.4.4 Undisputedly the issue in the present case is in respect of the CENVAT Credit availed by the appellant against the services received by them under the category of work contract services. Appellant claim that this credit was in respect of the services used towards modernization, repair and renovation and is within the inclusive part of the definition of input services as per Rule 2 (l) of the CENVAT Credit Rules, 2004 is to be rejected in view of the above decision of the Hon'ble Supreme Court read along with Rule 2 (t) of the CENVAT Credit Rules, 2004 reproduced below:

2. Definitions.

In these rules, unless the context otherwise requires,-

> ***(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.***

In view of the above it is evident that these words used in the CENVAT Credit Rules, 2004 have to be understood in the manner they are defined and used in the Finance Act, 1994. Hon'ble Supreme Court has categorically interpreted and limited the meanings of these terms to services simpliciter and not to composite contracts involving supply of goods and services which fall under the category of Work Contract Services. Service tax in respect of these services against which appellant has claimed the CENVAT Credit was paid under the category of Work Contract Services only.

4.4.5 The decisions referred to by the appellant in their submissions may apply to the facts of those case. However we also observe that none of these decisions have considered the binding precedence of the decision of Hon'ble Supreme Court in case of Larsen And Turbo Ltd., supra read along with Rule 2 (t) of the CENVAT Credit Rules, 2004 and hence being sub-silento cannot be considered as binding precedent. Even otherwise in absence of any concrete evidence to show that the these services were used for purpose other than construction/ setting up of BPO branches at Gurgaon, Hyderabad, Chennai and NOIDA, a finding returned in the impugned order, we do not find any merits in the submissions made by the appellant.

4.4.6 In view of the discussions as above we uphold the demand made for the recovery of the CENVAT Credit availed by the appellant against Work Contract Services received by them, subject to the findings which we record on the issue of limitation in the next paragraph.

4.5 Whether extended period of limitation could be invoked for making this demand as per proviso to Section 73 (1) of the Finance Act, 1994.

4.5.1 On limitation appellant had made following submissions before the adjudicating authority, which have been recorded in the impugned order.

> *"3.13. WITHOUT PREJUDICE, THERE IS NO SUPPRESSION OF INFORMATION BY THE NOTICEE. THUS, DENIAL OF CENVAT CREDIT IS PARTLY TIME BARRED AS EXTENDED PERIOD OF LIMITATION IS NOT INVOCABLE.*
>
> *Without prejudice to the submissions made in the foregoing paragraphs, it is submitted that even assuming without admitting that the Noticee has wrongly taken the CENVAT credit on the aforesaid services, the extended period of limitation cannot be invoked and therefore, the demand is partly time barred. In the present case, the period covered by the SCN dated 22.09.2016 is from April, 2013 to March 2014. Therefore, the SCN is barred for the period prior to October, 2013. Therefore, for the period April, 2011-March, 2014 the denial of credit is beyond eighteen (18) months and thus the denial of credit under the SCN is liable to be dropped to this extent.*
>
> *3.14. Facts already in knowledge of the Department as refund claims under Rule 5 of CCR, 2004 filed by the Noticee*
>
> *The SCN has erroneously alleged that the Noticee has suppressed the material facts from the Department willingly by availing the inadmissible CENVAT credit with intent to evade payment of service tax. It is submitted that the CENVAT Credit availed by the Noticee is in consonance with the output services being rendered by them in accordance with the Rule 2(1) and Rule 3 of the Rules. It is submitted that the Department was aware of all the facts in the present case. The Noticee is registered with Service Tax Department and is exporting Online Information and Data Access/Retrieval service, Commercial Training & Coaching services, Business Auxiliary services, and Business Support services. Since the Noticee is not in a position to utilize the CENVAT credit of its input services availed, the Noticee has*

filed refund claims under Rule 5 of CCR, 2004 till the period October December, 2013. It is to be noted that since the Noticee had been filing for refund, at that itself all the facts were made know to the Department. Therefore, there cannot be any allegation of suppression, fraud etc. on the part of the Noticee.

Further, it is submitted that the Noticee has never suppressed any fact relating to the activities carried on by them with an intention to evade payment of service tax. The Noticee has always cooperated with the Department in their proceedings and has always provided the details asked for by the Department. Many documents were submitted by the Noticee during the investigations and the Noticee did not suppress any information from the department. Therefore, the allegation of suppression is legally and factually incorrect and part of the demand is liable to be dropped on this ground itself. The Noticee was under a bonafide belief that the Credit on the input services availed is admissible to the Noticee.

It is further submitted that the Noticee has not suppressed any material fact with intent to evade payment of Service Tax. With reference to this, it is pertinent to mention various judicial pronouncements that have interpreted the expression "suppression" with reference to Section 11A of the Central Excise Act, 1944 which is pari materia to Section 73 of the Act. In the case of Continental Foundation Jt. v. Commr. of C.Ex., Chandigarh-1 reported in 2007 (216) E.LT. 177 (S.C.), the Supreme Court held that the expression "suppression" has been used in the proviso to Section 11A of the Central Excise Act, 1944 accompanied by very strong word as "fraud" or "Collusion" and therefore, has to be construed strictly. Similarly, the Hon'ble Supreme Court in the case of Commissioner of C. Ex., Bangalore v. Kamataka Agro Chemicals reported in 2008 (227) E.L.T. 12 (S.C.) held that it is well settled that mere non-declaration *is not sufficient to invoke the larger period. Some positive act of suppression is required for invoking larger period of limitation under Section 11A.*

3.15. Suppression cannot be alleged as show cause notices for prior period have been issued by the Department

As stated above, the Noticee has filed various refund clairns for claiming refund of unutilized CENVAT credit (pertaining to various input services) for the period upto December, 2013. On receipt of these refund claims, six show cause notices were issued to oticee which, inter alia, sought to disallow CENVAT credit relating to service tax paid for 'renting of immovable property service because the rent was paid for the premises which were not included in the registration of the Noticee. Furtner the CENVAT credit relating to "Works Contract Services' was also sought to be denied. The Noticee has already filed replies to these SCNs and the same are pending adjudication as on date. It is submitted that the aforesaid SCNs had already analyzed the activities undertaken by the Voticee and made proposals to disallow refund of CENVAT credit. This proves beyond doubt that the Department was aware of the activities carried out by the Noticee. In view of he foregoing, it is submitted that the allegation in the present SCN that there is suppression on the part of the Noticee is wrong and erroneous. Further, it is submitted that it is settled principle of law that suppressions cannot be alleged or held when the department has already issued the show cause notice for the earlier period.

3.16. Regular returns filed by the Noticee

It is further submitted that in any case, the Noticee has been regularly filing its statutory returns with the Department. The Noticee had provided all the information required to be provided in terms of the said returns. The Noticee submitted the said returns on the basis of self-assessment and it was the responsibility of the Department to scrutinize the *assessment made by the Noticee and verify the correctness of the same. In such a situation, the Department cannot invoke extended period of limitation on the basis of suppression against the Noticee. Copies of the ST-3 returns filed by the Noticee for the relevant period are enclosed This clearly shows that there was no intention to evade tax or suppress any information. It is also a settled position of law that, when the returns are regularly filed containing all statutorily required information, then suppression cannot be alleged against an assessee.*

3.17. No intention to avail ineligible CENVAT credit

It is submitted that the Noticee had no intention to act disnonestly and have acted according to the legislative provisions in as much as everything is on record and no CENVAT Credit has been availed without the knowledge of the department.

3.18. Noticee was acting under Bona-Fide belief

In any case, it is submitted that the Noticee had availed CENVAT Credit on the input services, based on the invoices received and the amount of Service Tax paid on the said service, under a bona-fide belief that credit is available on such services with no specific conditions regarding registered premises. That the bona fide belief of the Noticee was pased on various judicial pronouncements which were in favour of the Noticee and the grounds discussed above."

4.5.2 The said submissions were not accepted by the adjudicating authority and it was held that extended period has been rightly invoked for making this demand observing as follows:

5.4. Invoking of Extended period -

5.4.1. Another contention of the party against the demand raised is that the extended period of limitation as invoked under proviso to Section 73(1) of the Finance Act, 1994 for raising the demand is not invokable in the case and the demand s partly time barred as the department was aware *of the facts as refund claims under Rule 5 of the CENVAT Credit Rules, 2004 have been filed by them as six show cause notices with reference to refund claims filed by them have been issued by the department, they provided all 149 the information to the department during investigation, as they acted under a bona-fide belief, as all the details were filed in the Returns filed with the department and as they had no intention to avail irregular credit.*

5.4.2. In this regard I find that the case was detected subsequent to the audit of the records of the party. Thereafter, the department investigated the matter resulting into issuance of demand notice. In terms of the Proviso the department can raise demand for the last 5 years from the relevant date in case any party has willfully contravened the provisions of the Finance Act, 1994 with the intent to evade payment of the Service Tax. In the instant case the demand has been raised for the period 2011-12 to 2014-15 and the notice has been issued on 19.04.2016, therefore, the notice has been served before the expiry of 5 years from the relevant date. Accordingly, the notice is not hit by the limitation clause. Further, the contention of the party that the department was aware about the facts by way of issuance of show cause notices issued with reference to refund claims filed by them, is not acceptable as they have not provided the copies of these show cause notices and in the absence of the same I am not able to arrive at any conclusion, and as they have not provided as to how the same allegations were part of the earlier show cause notices. I am also not inclined to accept their contention that they never intended to avail irregular credit and acted on a bonafide belief as from the findings above it! is clear that they availed irregular credit of crores of rupees in contravention of the provisions of CENVAT Credit Rules, 2004, as they never sought any clarification from the department on the issues involved and continued *to avail irregular credit, as they never came to the department with the fact that the invoices on which credit has been availed belonged to their unregistered mises and as fact of availment of irregular credit came to the knowledge of the department only after the audit of their records was conducted. They continued to avail irregular credit for the years together without getting the said premises registered and without complying the Notification No. 03/2011 CE (NT) dated 01.03.2011 vide which the definition of input service was amended and credit in relation to works contract service was restricted by imposing certain conditions. Various acts of omission and commission on the part of the party leads me but to the conclusion that they violated the provisions of the CENVAT Credit Rules, 2004 and the Finance Act, 1994 with the intent to avail to irregular credit resulting into evasion of tax. Accordingly, I find that the extended period of limitation*

has correctly been invoked in the present case and the demand in not hit by limitation clause

Thus I hold that the party violated the provisions of CENVAT Credit Rules, 2004 so as to avail irregular credit with the intent to evade payment of due tax. Thus, in view of the discussion above I find that the party is liable to pay the irregular credit demanded under impugned show cause notice.

4.5.3 Invocation of extended period of limitation for making the demand is dependent on the existence of the various factors mentioned in the proviso to section 73 (1) of the Finance Act, 1994. Existence of this factors is a question of fact and needs to be examined on the basis of the available records and information. Appellant has taken specific stand before the Commissioner that all the facts were in the knowledge of the department as they had been regularly filing their ST-3 returns declaring the CENVAT Credit taken by them in their ST-3 returns. They had also submitted that they had filed refund claim in terms of the Rule 5 of the CENVAT Credit Rules, 2004. These refund claims have been considered and allowed an disallowed by issuance of the show cause notices. Impugned order though records the submissions, brush aside the same and has only stated that the fact in respect of these inadmissible credit came to the knowledge of department only at the time of audit of records of the appellant and hence extended period can be invoked. We find the logic to be flawed. From plain reading of the proviso to Section 73 (1) it is evident, that the said proviso can be invoked for the reason of commission or omission of any act as per the law by the appellant, leading to existence of the conditions specified by the said section. Impugned order fails to specify any such act which could lead to invocation of the extended period of limitation, when the appellant has declared the credit taken in respect of the disputed services in their ST-3 returns. It is act of omission and commission on the part of appellant which would determine whether extended period could be invoked or not and not the manner in which department has determined that inadmissible credit has been taken by the appellant. We do not find any merits in invocation of the extended period of limitation in the present case. The demand made has to restricted for the period April 2014 to March 2015. As we find that extended period of limitation could not have been invoked on the basis of the facts in the present case, we are not inclined to record any finding in respect of the catena of the decisions relied upon by the appellant in this respect, for the reason that ratio decidendi i.e. law pronounced is precedent and not the finding of facts. However even without consideration of these decisions we conclude that extended period could not have been invoked in this case as has been pleaded by the appellant.

4.6 Whether interest under Section 75 is demandable from the appellant.

4.6.1 Impugned order records findings as follows:

> *5.5. Recovery of Interest -*
>
> *5.5.1. Now, coming to next issue whereby interest has been demanded and sought to be recovered under Section 75 of*

the Finance Act, 1994, the party has submitted that, the Rule 14 of the Rules has been amended vide the Notification 18/2012-CE (NT) dated 17.03.2012 e.f. 01.04.2012) and the word "or" has been substituted as "and", that as a result, the Legislature has brought into force this clarificatory amendment which states that interest is payable only when credit has been wrongly availed and utilized that in the present case they have not utilized the credit as refund thereof has been filed that once credit has not been utilized, interest cannot be demanded in the light of amended provisions and law settled in this regard that interest is compensatory in character and it is imposed on the actual amount of tax withheld, and to the extent tax is "due and payable that when the Government Exchequer has not suffered any loss and the principal amount has not been wrongfully taken/held/utilized, the charge of interest is erroneous.

5.5.2. In this regard, I find that the contention of the party with reference to non-availment of credit under dispute is not supported with facts and figures, and accordingly no relief can be granted on the basis of mere submissions not supported by facts and figures. On the other hand, the provisions of Rule 14 of CENVAT Credit Rules, 2004 mandate that the recovery of inadmissible CENVAT Credit has to be made along with interest. Accordingly I find that interest provisions are applicable in the case and the party is liable to pay the same under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act 1994. Further, I find that Hon'ble CESTAT in the case of Sree Vadivambigai Textile Mills Ltd. V.CCE [2005]1 STT 72 (Chennai-CESTAT) held that levy of interest under Section 75 is mandatory and no leniency can be shown merely because appellant has been declared as a sick company. It is held by the Hon'ble court in the case of CCE, Calicut Vs General Manager Telecom, BSNL STR450 that payment of interest is mandatory in nature. It is also held by the Hon'ble

> *Apex Court in the case of CTT, Lucknow Vs Kanhai Ram Thekedar ELT 185 [SC] that interest is payable on belated payment of tax and no specific notice is required to be given for the same. I also find that the Hon'ble CESTAT in the case of INMA International Security Academy (P) Ltd. Vs. CCE [2005] 1 STT 31 (Chennai-CESTAT) held that the liability to pay interest at prescribed rates was inescapable as the law did not confer any discretion in the matter of levying interest.*
>
> *In view of above, the interest at the appropriate rate is chargeable from the party under Section 75 of the Finance Act 1994.*

4.6.2 As the appellant has taken credit against work contract services used for construction/ setting up of the BPO branches at Gurgaon, Chennai, Hyderabad and Noida and we have held that the same is not admissible and recoverable from them for the period 2014-15, demand of interest in terms of Section 75 of the Finance Act, 1994 cannot be faulted with and is upheld. In case of General Manager Telecom, BSNL [2009 (14) STR 450 (Ker)] Hon’ble Kerala High Court has held as follows:

> *“The appeal is filed against the order of the Customs, Excise and Service Tax Appellate Tribunal cancelling Interest demanded from the respondent under Section 75 of the Finance Act, 1994. The respondent, which is a Government Department, delayed payment of service tax by four days on account of delay in allotting head of account for payment. Learned counsel for the respondent submitted that the amount was deposited in time, but on account of delay in allotting head of ac-count, credit was given for payment only with a delay of four days. Whatever be the reason for the belated payment, we find that the provision for interest containing Section 75 is mandatory. The Tribunal appears to have cancelled the interest on the assumption that find that he had the demand made is penalty. However, on going through the impugned order of the Additional*

Commissioner, waived penalty and the amount of Rs. 19,009/- demanded is only in the form of interest under Section 75, which is mandatory in nature. Learned counsel for the respondent submitted that the amount was also deposited prior to final orders issued by the Tribunal. Since we find that the Tribunal has cancelled the demand treating as penalty, we allow the appeal by cancelling the order of the Tribunal and restoring the demand of interest under Section 75 of the Act.."

4.6.3 Same view has been expressed by Hon'ble Supreme Court in case of SKF India Ltd [2009 (239) ELT 385 (SC)] observing as follows:

"9. Section 11A puts the cases of non-levy or short levy, non-payment or short payment or erroneous refund of duty in two categories. One in which the non-payment or short payment etc. of duty is for a reason other than deceit; the default is due to oversight or some mistake and it is not intentional. The second in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty"; that is to say, it is intentional, deliberate and/or by deceitful means. Naturally, the cases falling in the two groups lead to different consequences and are dealt with differently. Section 11A, however allow the assessees in default in both kinds of cases to make amends, subject of course to certain terms and conditions. The cases where the non-payment or short payment etc. of duty is by reason of fraud collusion etc. are dealt with under sub-section (1A) of section 11A and the cases where the non-payment or short payment of duty is not intentional under sub-section (2B).

10. Sub-section (2B) of section 11A provides that the assessee in default may, before the notice issued under sub-section (1) is served on him, make payment of the unpaid *duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer and inform the Central Excise Officer in writing about the payment made by him and in that event he would not be given the demand notice under sub-section (1). But Explanation 2 to the sub-section makes it expressly clear that such payment would not be exempt from interest chargeable under section 11AB, that is, for the period from the first date of the month succeeding the month in which the duty ought to have been paid till the date of payment of the duty. What is stated in Explanation 2 to sub-section (2B) is reiterated in section 11AB that states where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person who has paid the duty under sub-section (2B) of section 11A, shall, in addition to the duty, be liable to pay interest......It is thus to be seen that unlike penalty that is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis- statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."*

4.7 Whether penalty under Section 77 or 78 of the Finance Act, 1994, could have been imposed upon the appellant.

4.7.1 As we hold that extended period could not have been invoked, in the present case we are also not inclined to uphold the penalty imposed upon the appellant under Section 78 of the Finance Act, 1994, following the decision of Hon'ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] wherein following has been held:

"17. The main body of sub-section 1 lays down the conditions and circumstances that would attract penalty and

the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.

18. One cannot fail to notice that both the proviso to sub section 1 of section 11A and section 11AC use the same expressions: "....by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,...". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under section 11A (1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A (2) there is a legally tenable finding to that effect then the provision of section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under section 11A (2) there would be no application of the penalty provision in section 11AC of the Act. On behalf of the assessees it was also submitted that sections 11A and 11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of section 11AC would come into play only after an order is passed under section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in section 11AC.

19. From the aforesaid discussion it is clear that penalty under section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section."

4.7.2 For imposing penalty under Section 77 impugned order records as follows:

> ***5.7. Imposition of penalty under Section 77 of the Finance Act, 1994-***
>
> *5.7.1. As regards penal provisions under Section 77 of the Finance Act, 1994, the party has contended that delayed inclusion of premises in Centralised Registration is merely a procedural lapse which was corrected in due course; that penalty cannot be imposed under Section 77 as the same is only a residual provision, i.e. this penal provision will be applicable where any provision of the Act is violated, and which violation is not penalized under any other provision that in the present case since there is a specific provision available viz. Section 78 for the alleged violation there can be no simultaneous proposal for position of penalty under Section 77, a residuary penalty provision.*
>
> *5.7.2. In this regard I find that the contention of the party is not acceptable as the penal provisions under Section 77 and 78 of the Finance Act, 1994 are for the different purposes and it cannot be accepted that once penalty under Section 78 has been proposed penalty under Section 77 cannot be imposed.*
>
> *As the party failed to get the unregistered premises registered for more than three years in continuity I find that they are liable for penal action under Section 77 o the Finance Act, 1994.*

4.7.3 From the perusal of the above findings we observe that penalty under Section 77 has been imposed upon the appellant for the reason that they have contravened the provisions of Section 69 of the Finance Act, 1994, by not getting certain premises from where they were providing taxable services registered. We further observe that appellant was having centralized registration. Thus they were registered with the department for providing taxable services. They were also filing the ST-3 returns, showing the receipts in respect of the services provided from the premises indicated for providing the taxable services in their ST-2 certificate and the premises not included therein. It is not the case of the revenue that ST-3 filed by the appellant did not include the turnover of the taxable services provided from this premises not included in the ST-2 certificate. Thus mere non inclusion of these premises in the ST-2 certificate by the appellant cannot be reason to hold that appellant had contravened the provision of Section 69 of the Finance Act,1994 as the appellant was duly registered for provision of taxable services as required by Section 69 ibid. Thus we do not find any merits in the penalty imposed upon the appellant under Section 77.

4.8 Summary and Conclusions:

(a) Demand made in respect of the CENVAT Credit availed by the appellant in respect of the taxable services received in unregistered premises is set aside.

(b) Demand made in respect of the CENVAT Credit availed on the Work Contract Services for construction/ setting up of the BPO branches at Gurgaon, Chennai, Hyderabad and Noida is upheld.

(c) Demand made by invoking extended period of limitation as per proviso to section 73 (1) of the Finance Act, 1994 is set aside and limited to demand for normal period of limitation i.e. for period 2014-15. As we do not have the year wise break of the demand the matter is remanded back to the original authority to recomputed the demand for normal period of limitation i.e. 2014-15.

(d) Demand of interest under Section 75 of the Finance Act, 1994 in respect of demand upheld is confirmed.

(e) Penalties under Section 77 & 78 of the Finance Act, 1994 is set aside.

5.1 Appeal is partly allowed as indicated in the para 4.8 above. Matter is remanded to the original authority for computation of demand for the normal period of limitation (2014-15) as per para 4.8 (b) and (c) above.

5.2 As matter is pertaining to period 2014-15 the adjudicating authority should re-quantify the demand in remand proceedings within three months of receipt of this order.

(Pronounced in open court on 01.09.2026)

Sd/-
(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal