

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 40612 of 2018

(Arising out of Order-in-Appeal No. 428 & 429/2017 (CTA-I) dated 04.12.2017 passed by Commissioner of GST & Central Excise, (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai-600 034.

M/s. Toshiba JSW Power Systems (P) Ltd. **...Appellant**
S.No.74-95, Vaikkadu Village
Andarkuppam Check Post
Manali New Town, Chennai 600 103

Versus

Commissioner of GST and Central Excise **...Respondent**
Newry Towers, No.2054, I Block, II Avenue
12th Main Road, Anna Nagar, Chennai 600 040

AND

Excise Appeal No. 40613 of 2018

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APPEARANCE:

For the Appellant : Shri Raghavan Ramabhadran, Advocate
For the Respondent : Shri M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos.41071-41072/2026

DATE OF HEARING : 22.04.2026
DATE OF DECISION : 09.10.2026

Per Mr. AJAYAN T.V.

These two appeals are filed by M/s. Toshiba JSW Power Systems (P) Ltd. (the appellant) against the common Order in Appeal Nos. 428 & 429/2017 (CTA I) dated 04.12.2017 (the impugned order) passed by the Commissioner of GST and Central Excise (Appeals I), Chennai. As both appeals arise from one order and turn on the same questions, they were heard together and are disposed of by this common order.

2. The relevant facts are that the appellant is a joint venture of M/s. Toshiba Corporation, Japan, M/s. JSW Steel Ltd. and M/s. JSW Energy Ltd. It is registered as a manufacturer of super critical turbines, electric motors, electric generating sets and rotary converters for the power sector, falling under Chapters 84 and 85 of the First Schedule to the Central Excise Tariff Act, 1985, and clears them on payment of duty. During the period in dispute it was setting up, within its factory at Manali, a new plant for the manufacture of steam turbines and generators. For that purpose it engaged M/s. Blue Star Ltd., M/s. ETA Engineering Pvt. Ltd., M/s. Metec Design & Construction Engineers India Pvt. Ltd. and M/s. Shakthi Electricals Chennai Pvt. Ltd. (the contractors) for the design, detailed engineering, supply, construction or installation, testing and commissioning of systems and sub systems of that plant, namely the heating, ventilation and air conditioning system, the stator coil shop, air handling units for the A and B bay expansion, HT, LT and HUP transformers and electrical works, the fire detection and protection system, the industrial water system, the process cooling water system, and street lighting and UPS.

3. A letter of intent was issued to each contractor, followed by two purchase orders, one for the supply of the equipment and the other for its installation, testing and commissioning. The goods were procured by the contractors from manufacturers and dealers whose duty paying invoices named the contractor as the buyer and the appellant as the consignee at its factory. The contractors billed the

appellant separately for erection and commissioning, on which they charged service tax. The appellant took credit of the excise duty shown on the manufacturers' and dealers' invoices as credit on capital goods, and also took credit of the service tax charged on the erection bills.

4. Acting on intelligence, the Department investigated the matter and issued Show Cause Notice No.24/2015 dated 25.09.2015 (the Notice) proposing to recover Rs.1,93,97,137/- as credit wrongly availed during September 2010 to March 2015, under Rule 14 of the Cenvat Credit Rules, 2004 (CCR) read with the proviso to Section 11A(1) of the Central Excise Act, 1944 (the Act) for the period up to 07.04.2011 and with Section 11A(4) of the Act thereafter, together with interest and a penalty under Rule 15(2) of the CCR read with Section 11AC of the Act.

5. Paragraph 6 of the show cause notice extracts the general conditions of contract on which the Revenue rests its case. The scope of work includes all labour, material, tools, plant, equipment and transport required for the full and entire execution and completion of the works. Fluctuations in the price of materials, equipment or labour are not compensated. Watch and ward of all plant and machinery at site for use in the work is the contractor's sole responsibility. The PMC may reject materials or work with which it is not satisfied and direct the contractor to procure supplies from agencies it deems fit. The quoted rates are all inclusive and cover the cost of materials, labour, freight, insurance, all taxes and duties, erection, construction and testing, and any other expenditure incurred for completion of the work as per drawings and specification. The Notice proceeded on three lines. The first was that under the EPCC contracts the contractors were obliged to design, procure, construct, install, test, commission and hand over each system; that the goods were their inputs, consumed and subsumed irreversibly in a plant which, by the Board's Order No.58/1/2002-CX dated 15.01.2002 issued under Section 37B of the Act, is immovable and not excisable; that payment was made for the plant as a whole; and that the appellant, named

only as consignee, had taken credit on non excisable inputs in the guise of capital goods. The second was that the contracts were works contracts taxable under Section 65(105)(zzzza) of the Finance Act, 1994; that the value of the goods stood exempted or excluded from service tax under Notification No.12/2003-ST dated 20.06.2003 or Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (the Valuation Rules), with an attendant bar on credit; and that by the Explanation appended to Rule 3 of the CCR that bar prevails over the Rules, so that the recipient has no locus to take the credit denied to the works contractor and the benefit would otherwise be enjoyed twice. The third was that the appellant had deliberately split composite contracts into supply and service orders, and that the manufacturers had shown the appellant as consignee, in order to facilitate the credit. The Notice relied on *Gujarat State Petronet Ltd. v. CCE, Ahmedabad, 2013 (32) S.T.R. 510 (Tri.-Ahmd.)*, *Ramky Infrastructure Ltd. v. CST, Hyderabad, 2013 (29) S.T.R. 33 (Tri.-Bang.)*, the Board's Circular No.98/1/2008-ST dated 04.01.2008 (reference code 097.02), and, for the extended period, on a statement dated 27.10.2014 of Shri V. Srinivasan, General Manager (Finance and Accounts) of M/s. Metec, who is stated to have admitted that the materials were procured by the works contractor, that the contractor did not take credit on them, and that their value was not included in the value on which service tax was paid.

6. In reply the appellant maintained that the goods were capital goods within Rule 2(a) of the CCR, received and used in its factory; that ownership is not a condition of credit; that it had in any case procured the goods, as shown by the contractors' sale invoices and its own books; that the Board's Order concerns excisability and not credit; that separate orders for supply and service are an industry practice; that the contractors paid service tax on the full value of erection; that any restriction under Notification No.12/2003-ST or Rule 2A binds only the service provider; that Rule 2A is a valuation provision and not an exemption; and that Gujarat State Petronet is distinguishable because there the recipient was a service provider and the contractor had availed Notification No.12/2003-ST under a lump

sum contract, whereas here supply and service were under different contracts and the contractors therefore did not avail that notification.

7. By Order in Original No.68/2016 dated 15.12.2016 the Adjudicating Authority recorded, as facts which the appellant did not deny, that EPC contracts had been awarded, that the contractors were to procure, install, commission and hand over each system, that the systems were immovable, that the contractors had paid service tax under works contract service, and that they were not entitled to credit on the machinery and components. It held that what was handed over was part of an immovable plant, that the value of the items transferred never formed part of the value on which service tax was paid, and that Rule 2A of the Valuation Rules, Explanation 2 thereto and the Explanation to Rule 3 of the CCR barred the credit, relying on Gujarat State Petronet. The authorities cited by the appellant were set aside in a sentence as not exactly identical. Holding that the Department was never in a position to know of the two sets of purchase orders and that the appellant had given no valid reason for them, the Adjudicating Authority confirmed the demand under Section 11A(4) of the Act with interest and imposed an equal penalty under Rule 15(2) of the CCR read with Section 11AC(c) of the Act. A statement of demand No.18/2016 dated 02.05.2016, raising the same demand on the same grounds for April 2015 to March 2016, was confirmed by Order in Original No.4/2017 (S) dated 07.02.2017.

8. The Commissioner (Appeals) rejected the appeals against both orders by the impugned order. He held that the goods were purchased by the contractors under their own orders, received and used by them, and sold to the appellant as a whole plant which, under the Board's Order, is not excisable; that the contracted work was composite, as was evident from the common letters of intent followed by separate supply and service orders; that the contracts were classifiable as works contract service; that under Rule 2A credit on the goods was not allowed to the works contractor; that "in the present case the EPC Contractors have availed Notification No.12/2003-ST", so that by the Explanation to Rule 3 no credit was available to the appellant; and that, since the appellant could not demonstrate a valid

reason for placing two orders and the facts came to light only on investigation, the extended period and the penalties under Rules 15(2) and 15(1) of the CCR were justified.

Submissions on behalf of the appellant

9. Shri Raghavan Ramabhadran, learned counsel for the appellant, contended that the goods are capital goods within Rule 2(a) of the CCR, that they were received and installed in the appellant's factory and are used there in the manufacture of dutiable final products, and that Rule 3(1) requires nothing more. Ownership is not a condition of credit, as held in *CCE, Ludhiana v. Pepsi Foods Ltd.*, 2010 (254) E.L.T. 284 (P&H) and *CCE v. Sunrise Chemical Industries*, 2010 (262) E.L.T. 110 (Guj.). In any event, it was urged, property in the goods passed to the appellant under the contractors' supply invoices, which preceded the erection invoices, and the contractors thereafter acted, in counsel's words, as bailors holding and using the goods on behalf of and for the benefit of the appellant. Reliance was placed, inter-alia, on *CCE v. International Tractors Ltd.*, 2010 (255) E.L.T. 196 (P&H), and on the Board's Circular No.1003/10/2015-CX dated 05.05.2015. The Board's Order No.58/1/2002-CX deals with excisability and not with credit, and immovability after installation is irrelevant to credit on capital goods, as held in *CCE v. The India Cements Ltd.*, 2020 (9) TMI 1158- Madras High Court, *Dalmia Cements (Bharat) Ltd. v. CESTAT*, 2021 (3) TMI 179 -Madras High Court, *Tamilnadu Newsprint and Papers Ltd. v. CCE*, 2021 (3) TMI 179 -Madras High Court and *Bannari Amman Sugars Ltd. v. CCE*, Mysore, 2010 (250) E.L.T. 326 (Kar.).

10. On the second ground, Ld. Counsel argued that the contractors never classified their services as works contract. They paid service tax under the head of erection, commissioning or installation service, as the ST 3 returns of M/s. Shakthi Electricals for October 2014 to March 2015 show, and did not avail Notification No.12/2003-ST during September 2010 to June 2012. It was contended that a classification adopted at the supplier's end cannot be disturbed at the recipient's end, relying on the decision in *Sarvesh Refractories (P) Ltd. v. CCE & C*, 2007 (218) E.L.T. 488 (S.C.), and the Revenue could not recast the

services as works contracts in order to import a restriction that does not apply. Without prejudice, it was maintained that Rule 2A, framed under Section 94(2)(aa) of the Finance Act, 1994, is a valuation provision and not an exemption granted under Section 93, and cannot attract the Explanation to Rule 3 of the CCR.

11. On limitation it was contended that the demand of Rs.1,64,22,439/- for September 2010 to August 2014 is time barred. Separate purchase orders for supply and service are an industry practice. The appellant withheld nothing that the law required it to disclose, and non disclosure of what need not be disclosed is not suppression, as held in *Tamil Nadu Petro Products Ltd. v. CESTAT, TS-160-HC-2017 (Mad)-EXC*, *Prolite Engineering Co. v. Union of India, 1995 (75) E.L.T. 257 (Guj.)* and *Apex Electricals Pvt. Ltd. v. Union of India, 1992 (61) E.L.T. 413 (Guj.)*. The credit was reflected in the ER 1 returns, and reliance was placed on *CCE, Raipur v. Orion Ferro Alloys (P) Ltd., 2010 (259) E.L.T. 84*. It was further argued that the burden of proving suppression lies on the Revenue, as held in *Uniworth Textiles Ltd. v. CCE, Raipur, 2013 (288) E.L.T. 161 (S.C.)*, and a dispute on the interpretation of law does not warrant the extended period, as held in *Ispat Industries Ltd. v. CCE, 2006 (199) E.L.T. 509 (Tri.-Mum.)*, *NIRC Ltd. v. CCE, 2007 (209) E.L.T. 22 (Tri.-Del.)* and *Chemicals & Fibres of India Ltd. v. CCE, 1988 (33) E.L.T. 551 (Tri.)*. Reliance was also placed on *Indian Oil Petronas v. Commissioner of GST & Central Excise, Chennai, 2025 (12) TMI 944 (CESTAT Chennai)*. Penalty and interest, Ld. Counsel urged, fall with the demand, on the authority of *Collector of Central Excise v. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.)*, *Commissioner v. Nakoda Textile Industries Ltd., 2009 (240) E.L.T. 199 (Bom.)* and *Union of India v. Rajasthan Spinning and Weaving Mills Ltd., 2009 (238) E.L.T. 3 (S.C.)*.

Submissions on behalf of the Revenue

12. Shri M. Selvakumar, learned Authorised Representative, reiterated the findings of the authorities below and supported the characterisation of the contracts as composite EPCC contracts split into two sets of orders to facilitate the credit.

Discussion and Analysis

13. We have heard both sides and perused the record, including the letters of intent, the purchase orders, the illustrative invoices of the manufacturers and the illustrative bills of the contractors placed before us. The issues that arise for our consideration are:

- i. What is the true nature of the contracts between the appellant and the contractors, whether the issue of separate supply and erection orders amounts to an artificial splitting of a works contract, and when property in the goods passed to the appellant?
- ii. Whether, in the light of that answer, the goods are capital goods received and used in the appellant's factory so as to entitle it to credit under Rules 2(a) and 3(1) of the CCR?
- iii. Whether that credit is nonetheless barred by treating the contractor's services as works contracts and invoking Rule 2A of the Valuation Rules, and the Explanation to Rule 3 read with Notification No.12/2003-ST?
- iv. Whether the extended period of limitation was validly invoked? And
- v. Whether interest and penalty are sustainable?

The first three issues govern both demands. The fourth arises only in the demand raised under the Notice, the statement of demand for 2015-16 having been issued within the normal period.

14. We begin by dealing with the nature of the contracts and their alleged splitting and when the property in goods would have passed on to the appellant. Both grounds on which the demand rests begin from one premise, that the appellant did not buy goods but procured from each contractor a functioning system under a single contract for engineering, procurement, construction and commissioning. The appellant's answer is that there were two contracts, one of sale and one of service, which the Revenue may not recast. As the remaining issues depend in part on which description is correct in law, we take up the nature of the contracts first.

15. In *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.*, AIR 1958 SC 560, the Constitution Bench held that a building contract is one entire and indivisible contract in which there is no agreement to sell materials as movables, the title to the materials passing to the

owner of the land as an accretion. The Forty Sixth Amendment inserted Article 366(29A)(b), and the Constitution Bench in *Builders' Association of India v. Union of India*, (1989) 2 SCC 645 upheld the power of the States to tax the transfer of property in goods involved in the execution of a works contract. In *Larsen & Toubro Ltd. v. State of Karnataka*, (2014) 1 SCC 708 = 2014 (34) S.T.R. 481 (S.C.), a Bench of three Judges explained, at paragraphs 60 and 63, that goods "in some other form" are goods which have ceased to be chattels and have by incorporation become part of immovable property, and that it is "open to the States to divide the works contract into two separate contracts by legal fiction", one for the sale of the goods involved and the other for the supply of labour and service. At paragraph 82 the Hon'ble Supreme Court, following *State of Punjab v. Associated Hotels of India Ltd.*, (1972) 1 SCC 472, recognised that parties may enter into separate agreements, one of work or service and the other of sale of the materials to be used in executing the work, and that the transaction will then fall into two separate agreements and not be one and indivisible. In *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu*, (2014) 7 SCC 1:2014 (304) E.L.T. 161 (S.C.), the Constitution Bench distilled, at paragraph 42, four propositions. A works contract is an indivisible contract divided by legal fiction into a sale of goods and a supply of labour and services. The dominant nature test does not apply. The term takes in its sweep all genres of works contract. And once the characteristics of a works contract are met, any additional obligation does not change its nature. At paragraph 64 the Hon'ble Apex Court drew the very distinction which arises here. It observed that "if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter." The Court noted that the price there was a composite one for both. These principles were reaffirmed in *State of Karnataka v. Pro Lab*, (2015) 8 SCC 557 : 2015 (321) E.L.T. 366 (S.C.), at paragraph 21, and summarised in *Aristo Printers Pvt. Ltd. v. Commissioner of Trade Tax*,

Lucknow, 2025 INSC 1188 :2025 (10) TMI 387-Supreme Court: (2025) 35 Centax 89 (S.C.), decided on 07.10.2025, at paragraph 33. For the purposes of service tax, the Explanation to Section 65(105)(zzzza) of the Finance Act, 1994 defined a works contract as one in which the transfer of property in goods involved in its execution is leviable to tax as a sale of goods and which is for, among other things, the erection, commissioning or installation of plant, machinery or equipment, or for turnkey projects including engineering, procurement and construction or commissioning projects. In *Ramky Infrastructure Ltd. v. CST, Hyderabad, 2013 (29) S.T.R. 33 (Tri.-Bang.)*, on which the Notice relies, the Tribunal held at paragraph 10.1 that whether a contract is a works contract has to be determined from the nature of the contract as understood by the parties and the scope of the works executed under it, and at paragraph 10.11 that lump sum payments against running account bills indicated the composite and indivisible nature of the contracts. In *CCE v. Larsen & Toubro Ltd., 2015 (39) STR 913 (SC)*, decided on 20.08.2015, the Supreme Court described the works contract as a separate species of contract, distinct from a contract for services simpliciter.

16. On examination of the documents annexed to the appeal, we find that the contracts were documented in a uniform manner. A letter of intent was first issued to each contractor. The letter of intent dated 27.05.2010 issued to M/s. Blue Star Ltd. is typical. It accepted a single price of Rs.10,85,00,000/- for the supply, installation, testing and commissioning of the air conditioning system and spares, stated that the price included excise duty, countervailing duty, VAT and service tax, the break up of which would be indicated in the purchase order, and asked the contractor to proceed with the work while the detailed purchase order was being prepared. Two purchase orders then followed, one for the design, engineering, manufacture, quality control, testing at works and supply of the equipment, and the other for its installation, testing and commissioning. Both orders list among their enclosures, as forming part of the order, the letter of intent, the contractor's bill of quantities, the technical specification and the tender document comprising the general terms and special conditions.

The supply order No.4855 and the erection order No.4856, both dated 03.12.2012 and placed on M/s. Shakthi Electricals Chennai Pvt. Ltd., carry a common Appendix A. That Appendix fixes the total duration for supply and erection of all works, declares the contract value to be inclusive of the basic prices for supply and erection, and requires a performance security of 5% of the combined value of supply and erection. Under it only 55% of the basic supply value is payable against delivery of materials. A further 10% is payable against progressive completion of erection, and the balance 10% on formal handing over after the Project Management Consultant (PMC) issues its completion certificate. The supply orders placed on the other contractors are to the same effect. A part of the supply price is withheld until installation and commissioning, and in the case of the fire detection and protection system until the statutory approval of the system for the entire plant. The defects liability period runs from completion or commissioning as certified by the PMC, and the Appendices to both orders placed on M/s. Metec provide for works contract tax as applicable.

17. We further find from the records that the duty paying invoices name the contractor as the buyer and the appellant as the consignee at its factory. The invoice of M/s. OHM Energy Management Systems Pvt. Ltd. dated 02.07.2013, naming M/s. Shakthi Electricals as purchaser and the appellant as consignee, and the first stage dealer's invoice of M/s. Amman Traders dated 11.01.2011, naming M/s. Blue Star Ltd. as buyer and the appellant as consignee, illustrate the pattern. The contractors' bills on the appellant against the supply orders are running account bills. They state the total contract value and the part of the supply value claimed under the payment terms, and they recover excise duty or its reimbursement together with VAT or CST. The bill of M/s. ETA Engineering dated 30.11.2010 recovers excise duty at 10.3% and a reimbursement of countervailing duty. The fourteenth running bill of M/s. Shakthi Electricals dated 15.07.2013 recovers excise duty at 12.36% and VAT. The bill of M/s. Blue Star Ltd. dated 02.02.2011 claims 65% of the basic value with all taxes and states that the goods are subject to its rights of lien and resale as unpaid vendor and that the customer, on taking delivery,

shall hold them in trust for and on its behalf. The fifth running bill of M/s. Metec dated 04.12.2010 describes the supply as one of fire detection and protection system works and charges VAT on 75% of the base value.

18. Whether a given transaction is a works contract is determined by reading the contract documents together and as a whole. Neither the label the parties give the transaction nor the number of instruments in which they record it is decisive. The appellant's case is that it entered into two separate agreements, one of sale and one of service, of the kind recognised in paragraph 82 of *Larsen & Toubro, 2014 (34) STR 481 (SC)* and in paragraph 64 of *Kone Elevator, 2014 (304) ELT 161 (SC)*. That recognition extends to agreements which are in truth separate. It does not extend to a single bargain recorded in two instruments. The documents we have examined admit of only one answer. The letter of intent issued to each contractor accepted a single price for supply, installation, testing and commissioning, inclusive of excise duty, VAT and service tax, and directed the contractor to proceed with the work. Each of the two purchase orders that followed incorporated that letter of intent, the same bill of quantities and the same tender document containing the general and special conditions. The supply orders do not stand on their own. They fix a completion schedule for supply and erection together. They take security on the combined value. They withhold part of the supply price until erection, commissioning, statutory approval or the PMC's completion certificate, and they run the defects liability period from commissioning. The general conditions extracted in paragraph 6 of the Notice cast on the contractor the full and entire execution and completion of the works, the custody of plant and machinery at site for use in the work, and the risk of the PMC's rejection of materials. M/s. Metec itself described its supply bill as one for fire detection and protection system works, and the orders placed on it provided for works contract tax. What each contractor undertook was to bring into existence a working system in the appellant's factory, supplying the goods for it and erecting and commissioning them. That is a composite contract for supply and installation, which Kone Elevator holds has to be treated as a works contract, and it falls squarely

within clauses (a) and (e) of the Explanation to Section 65(105)(zzzza).

19. We are cognizant that a letter of intent ordinarily records no more than an intention to contract, and that a construction treating it as binding requires a clear and unambiguous intention, as the Supreme Court explained in *South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV)*, AIR 2021 SC 3540. That intention is evident here. The letters accepted the contractors' prices and asked them to commence work, and the purchase orders then made the letters part of themselves. The purchase orders are not two independent bargains. They are two instruments implementing a single bargain whose scope, price and terms were settled in the letter of intent and the tender.

20. Be that as it may, it does not follow that the split was artificial in the sense of a sham or a colourable device. Recording the price of the goods and the price of their erection in separate instruments reproduces in the parties' paperwork the very division which Article 366(29A)(b) effects by legal fiction, as *Larsen & Toubro, 2014 (34) STR 481 (SC)* explains. Nothing on record suggests that the documents were not acted upon as written. Excise duty was paid on the goods by their manufacturers, VAT or CST was paid on the supply portion, and service tax was paid on the erection portion. The split does not of itself establish that the goods were not received by the appellant, or that any exemption was claimed on them. The consequences of the composite character of the contracts, if any, must be found in the provisions considered on the contractors' assessments', and not in the mere fact of the split, an exercise that is for the jurisdictional authorities of the contractors.

21. The appellant's argument that property in the goods passed to it on delivery, and the Revenue's argument that the appellant received only a plant, call for a finding on when property passed. In a works contract the transfer of property in the goods involved takes place when the goods are incorporated in the works. That was the holding of the *Constitution Bench* in *Gannon Dunkerley and Co. v. State of Rajasthan*, (1993) 1 SCC 364, as extracted and applied at

paragraph 30 of *Aristo Printers*, where the Supreme Court added, at paragraph 60, that incorporation is to be understood contextually, by reference to the specific nature of the works contracted for. *Larsen & Toubro, 2014 (34) STR 481 (SC)* at paragraph 80, reiterated that the true effect of an accretion made pursuant to a contract is to be judged from the intention of the parties and not by an artificial rule. Under an ordinary contract of sale, property passes when the parties intend it to pass, subject to any reservation of the right of disposal, under Sections 19 to 25 of the Sale of Goods Act, 1930. The PMC's completion certificate under these contracts marks completion and acceptance of the works. It triggers the final payment and the defects liability period. Nothing in the documents makes the passing of property in the goods await that certificate, and it is not the point at which property passed.

22. The documents do not speak with one voice on the point. On one side, the contractors billed the supply portion on delivery, charged VAT or CST on it, and the appellant states that it accounted the goods as purchases. On the other, the goods at site were in the contractors' watch and ward for use in their work and at their risk, the PMC retained the right to reject them, a part of the supply price was withheld until erection and commissioning, and M/s. Blue Star Ltd. stipulated that the customer would hold the goods in trust for and on its behalf. The charge of VAT on the supply portion is equally consistent with the deemed sale of goods involved in a works contract, and does not by itself fix the moment of transfer. The full general conditions of contract are not before us. Reading what is before us together with the composite character of the contracts, the better view is that the contractors held the goods at site for the purpose of executing their own contracted work, and that property in the goods vested in the appellant, at the latest, as they were incorporated into the systems erected in its factory.

23. The appellant's alternative footing, that the contractors held and used the goods as its bailees, is not made out. The submission describes the contractor as a bailor. A person who holds the goods of another for a purpose is a bailee, and under Section 148 of the Indian

Contract Act, 1872 a bailment presupposes delivery of the goods by the bailor. To succeed on this footing the appellant had to show that it received the goods as owner and then delivered them to the contractors for installation. There is no record of goods received into the appellant's stores and issued to the contractors, of the kind which the Tribunal found in *Gujarat State Petronet*, and the custody and risk at site lay with the contractors. Equally untenable is the Revenue's converse proposition that the appellant received nothing but a plant. On the Revenue's own characterisation, property in the goods passed to the appellant on their incorporation, as goods in some other form in the words of the Apex Court in *Larsen & Toubro, 2014 (34) STR 481 (SC)*. What the appellant acquired were the very duty paid goods, as components of its plant.

24. We accordingly hold, on the first issue, that the contract with each contractor is in substance a single works contract for the design, supply, erection and commissioning of a system; that its documentation in separate supply and erection orders does not make it two contracts in substance, but is not shown to be a sham; that property in the goods passed to the appellant, at the latest, on their incorporation into the systems in its factory and not on the PMC's certification; and that the appellant's case of bailment fails. Whether these conclusions defeat the credit is addressed in the issues dealt with hereinafter.

25. We now address the issue whether the goods are capital goods received and used in the appellant's factory. Rule 3(1) of the CCR allows a manufacturer of final products to take credit of the duty of excise paid on any input or capital goods received in the factory of manufacture of the final product. Rule 2(a)(A) defines capital goods to include goods falling under Chapters 82, 84, 85 and 90 of the First Schedule, pollution control equipment, and components, spares and accessories of such goods, used in the factory of the manufacturer of the final products, but not any equipment or appliance used in an office. Rule 4(2)(a) allows credit of up to half the duty on capital goods received in a factory in the year of receipt, and Rule 4(2)(b) allows the balance in a subsequent year if the capital goods, other

than components, spares and accessories, are in the possession of the manufacturer. Rule 9(1)(a) recognises, as a document for taking credit, an invoice issued by a manufacturer for clearance of capital goods from his factory, and Rule 9(1)(a)(iv) an invoice issued by a first or second stage dealer. The conditions of entitlement are thus the description of the goods, payment of duty evidenced by a prescribed document, receipt in the factory and use in the factory. None of them speaks of ownership at the point of receipt, of the person from whom the manufacturer bought the goods, or of the person who installs them. Possession is relevant only to the second instalment under Rule 4(2)(b), and the systems are in the appellant's possession.

26. The Notice does not dispute that the goods answer the description in Rule 2(a)(A), and neither authority below found otherwise. The appellant's reply stated that most of the goods fall under Chapters 84, 85 and 90 and the rest are their components, spares or accessories, or pipes and fittings. Some of the invoices placed before us, such as the dealer's invoice for steel channels, may raise a question whether every item answers that description. That question was not raised in the Notice, and the Revenue cannot now travel beyond it. *Commissioner of Customs v. Toyo Engineering India Ltd.*, (2006) 7 SCC 592:2006 (201) ELT 513 (S.C) and *CCE v. Shital International*, 2010 (259) ELT 165 (S.C) forbid it. Paragraph 21 of the Notice alleged that the appellant had not discharged its burden under Rule 9(5) of showing use in or in relation to manufacture. Neither authority below pursued that allegation, and paragraph 3 of the Notice itself records that the entire plant was assembled and installed at the appellant's site and handed over to it as a functioning system. We therefore proceed on the footing on which the case was laid.

27. The goods were received in the factory. Each duty paying invoice names the appellant's factory as the consignee, and paragraph 22 of the Notice itself records that the goods were consigned to the factory premises. Rule 3(1) speaks of goods received in the factory, which is a requirement of place and not of person. The finding of the Commissioner (Appeals) that the goods were received

by the contractors and not by the appellant answers a question the Rule does not ask.

28. Ownership is not a condition of the credit. The authorities which so hold must, however, be read against the provisions in force during the period in dispute, which runs from September 2010 to March 2016. Within that period the definition of input in Rule 2(k) was substituted with effect from 01.04.2011 by Notification No.3/2011-CE (NT) dated 01.03.2011. The provisions which govern the present claim did not change in any respect material to it. Throughout the period Rule 3(1) allowed credit of the duty paid on capital goods received in the factory of manufacture of the final product. Throughout the period clause (1) of Rule 2(a)(A) described capital goods as the specified goods used in the factory of the manufacturer of the final products, other than equipment or appliances used in an office. The amendment of 01.04.2011 inserted clause (1A), which extends the definition to goods used outside the factory for generating electricity for captive use within it, and left clause (1) untouched. The appellant claims the goods as capital goods and not as inputs. The decisions to which we now refer were rendered under Rule 57Q of the Central Excise Rules, 1944, under the Cenvat Credit Rules, 2002, or under the 2004 Rules as they stood at the relevant time, but each of them construes the same two requirements of receipt in the factory and use in the factory, which the CCR carried unchanged through the whole of the period before us. In *CCE v. Sunrise Chemical Industries*, 2010 (262) E.L.T. 110 (Guj.) the High Court, construing the corresponding Rule 3 of the Cenvat Credit Rules, 2002, held that the Rule “*nowhere prescribes installation of the capital goods, nor does the Rule refer to ownership of the capital goods. The only requirement prescribed by the Rule is use of capital goods received in the factory after the prescribed date and used in the manufacture or production of final products.*” In *CCE, Jalandhar v. International Tractors Ltd.*, 2010 (255) E.L.T. 196 (P&H), parts of a chassis painting plant ordered from a contractor were received in the assessee’s factory under duty paid invoices naming the contractor together with the assessee as consignee. The High Court upheld the credit because duty had been paid, one of the two parties was entitled

to it, the contractor had not taken it, and the Revenue suffered no loss since the credit was taken only once. The decision is seen reported as affirmed in *CCE, Chandigarh v. Ambuja Cement Ltd., 2022 (382) E.L.T. 166 (S.C.)*. There the Supreme Court upheld credit on parts and components of diesel generating power plant sets because, on the evidence, the plant was “part and parcel of the factory” and was “ultimately used in the manufacture of end product”. The ratio of the Supreme Court’s order is that test of integration into the factory and use in manufacture, and it is satisfied here. In *Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune, 2024 INSC 880: (2024) 24 Centax 266 (S.C)*, the Supreme Court was concerned with providers of output service, for whom capital goods had to be used for providing the output service. It treated mobile towers and shelters as accessories of capital goods within clause (iii) of Rule 2(a)(A), a clause which remained unchanged throughout the period before us, and allowed credit on them. It also upheld the judgment of the Delhi High Court in *Vodafone*, which had held that eligibility is assessed with reference to the goods as received and that their later fastening to the earth is of no consequence. The Board’s own *Order No.58/1/2002-CX*, on which the authorities below placed decisive reliance, states in paragraphs 4(vii) and 5(i) that though a turnkey plant erected at site is not excisable, its components remain dutiable in the normal course. It is precisely the duty paid on such components that the appellant has taken as credit. The Order says nothing about credit, and from a clarification that no further duty is leviable on the plant as a whole, nothing follows as to the duty actually paid on its components.

29. These principles hold good on the characterisation we have adopted under the first issue. Even if property in the goods vested in the appellant only on their incorporation, the goods were received in its factory and are used there as components of a plant which it owns and operates for manufacturing dutiable goods. At the point of use the goods are indisputably the appellant’s. The definition of capital goods speaks of goods used in the factory of the manufacturer, and not of goods used by him. The contrast with the substituted definition of input is telling. From 01.04.2011 Rule 2(k)(i) described inputs as

goods used in the factory by the manufacturer of the final product. When the Parliament in its wisdom revised the definition of inputs during the very period before us and chose to speak of use by the manufacturer, while leaving the definition of capital goods to speak only of use in the factory, the difference must be taken to be deliberate. Handling by an erector, i.e. the contractor, in the course of installation is the ordinary prelude to the use of capital goods, which are almost invariably installed, and often on foundations, before they can be used.

30. The reasoning of the authorities below calls for closer examination, for it is the foundation of the impugned order. It runs thus. The Board's Order treats a plant assembled and erected at site as immovable and not excisable. The goods were consumed by the contractors in bringing that plant into existence. They were therefore inputs of a non excisable product, and no credit can be taken on them by anyone. The flaw lies in the second and third steps, which put the right question to the wrong person. Whether the product into which goods are worked is excisable is decisive when credit is claimed on inputs by the person who makes that product. Under Rule 2(k), both as it stood until 31.03.2011, when inputs were goods used in or in relation to the manufacture of final products, and as substituted from 01.04.2011, when inputs were goods used in the factory by the manufacturer of the final product, credit on inputs is tied to the final product. Rule 2(h), which was not amended during the period, defines final products as excisable goods manufactured or produced from input or using input service. A person who fabricates or erects an immovable plant as his own output therefore cannot take credit on the goods so used, because his output is not a final product. That disability, if it existed at all, lay with the contractors, who erected the plant as their contracted output. It does not travel to the appellant. The plant is not the appellant's final product. The appellant's final products are turbines, generators, motors and converters, which are excisable goods cleared on payment of duty. For the appellant the plant is the means by which those products are made, and the goods incorporated in it are claimed not as inputs of the plant but as capital goods used in the factory. For capital goods the Rules do not ask

whether the plant or system of which the goods form part is itself excisable. They ask whether the goods answer the description in Rule 2(a)(A), whether duty was paid on them, and whether they were received and are used in the factory of a manufacturer of final products. The question of excisability is asked of the appellant's output, and the answer to it is in the appellant's favour. By transposing to the appellant a question that could be put only to the maker of the plant, the authorities below mistook the means of manufacture for its product.

31. Our conclusion is bolstered by the following additional reasons, and they hold for each part of the period. First, the Rules themselves, in both versions of Rule 2(k), treat machinery assembled into a plant within the factory as eligible and withhold credit only on goods of a different kind. Until 31.03.2011, Explanation 2 to Rule 2(k), as amended by Notification No.16/2009-CE (NT) dated 07.07.2009, provided that inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer, but excluded cement, angles, channels, CTD or TMT bars and other items used for construction of a factory shed or building or for laying of foundations or making of structures for support of capital goods. The Supreme Court noticed this Explanation in *Bharti Airtel* at paragraph 11.12.5. Until that date, therefore, even on the Revenue's description of the goods as material worked into a plant, the Rules continued the chain of credit, save for civil and structural items. From 01.04.2011, the substituted Rule 2(k) covered all goods used in the factory by the manufacturer of the final product. It excluded, in clause (B), goods used for construction of a building or civil structure or for laying of foundations or making of structures for support of capital goods, and, in clause (C), capital goods except when used as parts or components in the manufacture of a final product. The exclusion in clause (C) confirms that goods which are themselves capital goods are to be dealt with under Rule 2(a)(A), which is the footing on which the appellant has claimed them. Under neither version did the Parliament deny credit on machinery under Chapters 84 and 85, or on its components, merely because it is erected and integrated into a plant. Both versions single out civil and structural items used for buildings,

foundations and supporting structures. When the Parliament has specified what is to be excluded, the authorities below could not add to the exclusion the very machinery that forms the plant. Whether any individual item in the present claim is a structural item of that kind is a question the Notice did not raise, as we have noted in paragraph 26. Second, the Board's Order itself states that the components of a turnkey plant remain dutiable in the normal course. Duty was charged on them at clearance precisely because the plant as a whole is not a taxable event. If that duty is not credited to the manufacturer who uses the plant to make dutiable goods, it stays embedded in the cost of those goods and is borne again when duty is paid on them. That is the cascading of tax which the scheme of credit exists to remove. Third, almost all heavy machinery falling under Chapters 84 and 85 is installed on foundations and becomes fixed before it is used. If the immovability of an installed plant defeated credit on its components, capital goods credit would be unavailable for most of the goods for which the definition was framed. A construction which empties the definition of most of its content cannot possibly be the correct one.

32. We have not overlooked the recent decision of this Bench in *The India Cements Ltd. v. Commissioner of GST and Central Excise, Tirunelveli*, Final Order No.41010/2026 dated 08.09.2026, 2026 (9) TMI 653 -CESTAT Chennai, where credit was denied to a manufacturer on capital goods imported by a distinct company. That decision turned on the fact that the importer, a separate juristic entity, paid the duty, held the Bills of Entry in its own name and owned the power plant. The statutory entitlement therefore resided in that entity and could not migrate to another merely on account of shareholding or captive use. Here the goods were consigned to the appellant's own factory, became part of its own plant and are used in its own manufacture, and no other person has claimed or could claim the credit. The principle that credit cannot be transferred between entities is untouched by what we decide.

31. *Gujarat State Petronet* does not assist the Revenue on this issue. The assessee there was a provider of the service of transport of

gas through pipelines, and the question was whether pipes laid into a pipeline were used for providing its output service. In answering that question against the assessee the Tribunal expressly distinguished, at paragraph 4.3, the case of plant or equipment brought into existence within a factory by assembling components and bought out parts, observing that "in such a situation capital goods used within the factory have been allowed for the purpose of CENVAT credit". The present case lies on the side of that line which the Tribunal itself recognised as admitting credit.

32. The facts on which entitlement depends, namely the description of the goods, the payment of duty, receipt in the factory and use in the factory, are not in doubt. The only uncertainty concerns the moment at which property passed, and that is a fact the Rules do not make relevant. We therefore hold, on the second issue, that the goods satisfy the definition of capital goods in the appellant's hands and that the appellant is entitled to the credit under Rule 3(1), unless that entitlement is hit by the Explanation to Rule 3, to which we now turn.

33. The Explanation appended to Rule 3 of the CCR provides that where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non availability of credit of duty paid on any input or capital goods, the provisions of such rule or notification shall prevail over the provisions of the CCR. For this provision to defeat the appellant's credit, the Revenue had to show a rule or notification granting an exemption, a condition of non availability of credit annexed to it, a claim to that exemption in respect of these very goods, and a condition capable of operating against the person now claiming credit. The appellant answers that the Revenue cannot reach that result by reclassifying the contractors' services. That answer needs to be stated precisely.

34. In *Sarvesh Refractories (P) Ltd. v. CCE & C*, 2007 (218) E.L.T. 488 (S.C.), the Supreme Court held that a consumer claiming credit could not have the classification declared by the manufacturer, and accepted by the officer having jurisdiction over the manufacturer, altered at its end. In *CCE & C v. MDS Switchgear Ltd.*, 2008 (229)

E.L.T. 485 (S.C.), decided on 07.08.2008, the Supreme Court, at paragraphs 7 and 9, agreed with the view of the Tribunal that the rules entitle the recipient manufacturer to the benefit of the duty paid by the supplier, and that a quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of the recipient unit. The principle is essential to prevent the cascading effect in the credit chain, and it binds the Revenue as much as the assessee. It does not however prevent an adjudicating authority from construing the recipient's own contracts to determine what the recipient received. That is what we have done under the first issue, and it involves no reclassification of anyone's service. Nor does Sarvesh Refractories support the converse proposition, urged for the appellant, that the head under which the contractors chose to pay tax fixes the character of the contract. In *Commissioner of Customs, Central Excise and Service Tax, Noida v. Interarch Building Products Pvt. Ltd., 2023 (73) G.S.T.L. 433 (S.C.): (2023) 6 Centax 40 (S.C.)*, the Hon'ble Supreme Court held, at paragraphs 8.8 and 8.9, that a provider of works contract service has no option to discharge tax on the gross contract value outside Rule 2A or the composition scheme, since such a reading would render Rule 2A and the scheme otiose. The legal character of a works contract thus binds the provider whatever head it adopts, and any departure from Rule 2A is a matter to be corrected in the provider's own assessment. The principle does, however, forbid the Revenue from attributing to a service provider, in proceedings against the recipient, a classification or a valuation that the provider did not adopt and that has not been determined in its own assessment, and then importing a condition attached to that classification. The Explanation is attracted only by an exemption in law, actually claimed. We must therefore examine both what the law treats as an exemption in a works contract and what the contractors in fact did.

35. The first of these questions is answered by the very characterisation on which the Revenue's case rests. In *CCE v. Larsen & Toubro Ltd., 2015 (39) S.T.R. 913 (S.C.)*, the Supreme Court held that the taxable services in Section 65(105) referred to service contracts simpliciter and not to composite works contracts, and that a

charge on an indivisible works contract which did not exclude its non service elements would transgress into forbidden territory. The goods element of a works contract is a deemed sale which Article 366(29A)(b), as construed in *Builders' Association and Larsen & Toubro v. State of Karnataka*, places within the taxing power of the States. The Apex Court then dealt with the exemption notifications pressed by the Revenue in these words. "*Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise.*" The same logic governs the present case. From 01.06.2007 Parliament levied service tax on works contracts, but only on the service element, valued under Rule 2A of the Valuation Rules by deducting the value of the property in goods transferred. That is how the Supreme Court read the scheme in *Interarch Building Products*. Relying on *Larsen & Toubro* and *Gannon Dunkerley and Co.*, it held, at paragraph 8.4, that in a works contract the assessee is liable to service tax on the service element and to sales tax on the element of goods transferred, and, at paragraph 8.9, that the value of the service portion is to be determined under Rule 2A unless the contractor opts for the composition scheme. Rule 2A is thus the statutory measure of the service element, and not a concession carved out of a wider levy. The value of the goods transferred in a works contract was never within the levy. An exemption under Section 93 of the Finance Act, 1994 presupposes a levy that would otherwise attach. A notification exempting the value of goods, if claimed by a works contractor in respect of goods whose value lay outside the levy, would exempt nothing. It cannot be a grant of whole or part exemption on condition of non availability of credit within the meaning of the Explanation to Rule 3. It follows that, once the contracts are held to be works contracts, the question whether any contractor availed Notification No.12/2003-ST on these goods is not relevant to the appellant's credit. That is so for every part of the period in dispute. For the same reason, the deduction of the value of goods under Rule 2A is not an exemption. Rule 2A is a valuation provision framed under Section 94(2)(aa) of the Finance Act, 1994, and the appellant's contention to that effect must be accepted.

36. The provisions in force in each period confirm this conclusion. From 01.07.2012, Notification No.12/2003-ST was no longer in force, having been rescinded by Notification No.34/2012-ST dated 20.06.2012 with effect from that date. The only provision invoked for that period is Rule 2A of the Valuation Rules, as substituted with effect from 01.07.2012, and its Explanation 2, which declares that “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”. Explanation 2 is enacted for the removal of doubts and is addressed in terms to the provider of the taxable service. It says nothing of the recipient. Whether or not any contractor valued its service under Rule 2A after 01.07.2012, the Explanation to Rule 3 does not therefore operate to deny the appellant credit for that period.

37. For September 2010 to June 2012 the position is no more favourable to the Revenue. Rule 2A as it then stood, having been inserted with effect from 01.06.2007, contained no restriction on credit at all. A restriction on credit on inputs was found in Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, as the Tribunal noted in *Ramky Infrastructure* at paragraph 11.4, but those Rules are not invoked here. The only other source was reference code 097.02 of the Board’s Circular No.98/1/2008-ST, which clarifies that the works contract service provider is not eligible to take credit on goods involved in the execution of the works contract. A circular is not a rule or notification granting an exemption, and it is addressed in any case to the provider. The Notice, at paragraph 12, quoted the substituted Rule 2A, which refers to Section 66E(h) of the Finance Act, 1994, a provision which came into force only on 01.07.2012, as the law “during the relevant time”. For this earlier period that is a plain misstatement of the law. Notification No.12/2003-ST, with the proviso inserted by Notification No.12/2004-ST dated 10.09.2004, is the only provision the Revenue could invoke for this period, and for the reasons given in paragraph 35 its availment, if any, by a works contractor in respect of goods transferred in a works contract does not attract the Explanation.

38. Even if the question of availment had been relevant, the Revenue did not establish it. The Commissioner (Appeals) said that the contractors had availed Notification No.12/2003-ST in one sentence, without reference to any return, assessment or document. The Notice put the matter in the alternative, as an exemption or exclusion under Notification No.12/2003-ST or Rule 2A. The statement of the General Manager of M/s. Metec, as summarised in paragraph 23 of the Notice, goes no further than that the contractor did not take credit on the goods and did not include their value in the value on which it paid service tax. No return of any contractor for 2010 to 2012, no assessment, and no statement of the other three contractors is on record. The facts that attract a statutory disentitlement must be established by the Revenue which alleges them. The Revenue had investigated the contractors and recorded the statement of one of them, and it had the onus to establish the allegation made. It did not.

39. In *Gujarat State Petronet* the Tribunal, acknowledging that two views were possible, held that the Explanation to Rule 3 denied credit to a recipient where the contractor had availed Notification No.12/2003-ST. That decision is of a coordinate Bench, and judicial discipline requires that we follow it where it applies or refer the question to a larger Bench if we cannot agree with it. The occasion for either course does not arise. The decision is distinguishable on its facts. The contractors there had admittedly availed the notification on the very pipes, and the recipient was a service provider whose claim failed independently because the pipes were not used for providing its output service. The decision was also rendered before the Judgement of the Supreme Court in *CCE v. Larsen & Toubro Ltd. 2015 (39) S.T.R. 913 (S.C.)* held that no question of exemption arises where there is no levy, and it did not consider the consequence of that principle for the goods element of a works contract. Our conclusion rests on that principle and on the composite character of the present contracts. Whether the Explanation would deny credit to a recipient where the provider has availed a conditional exemption on goods sold under a contract which is not a works contract is a question that does not arise here, and we express no opinion on it.

40. The charge of a double benefit fares no better. The duty on the goods was paid once, by their manufacturers. It has been credited once, by the appellant. The contractors took none. The exclusion of the value of goods from service tax is not a benefit conferred on anyone, but the consequence of the constitutional division of taxing power, and the Tribunal in *Gujarat State Petronet* itself found, at paragraph 3.8, that it made no difference to the revenue whether the credit on the goods was taken by the contractor or by the recipient. Rule 6 of the CCR, invoked in paragraph 14 of the Notice, regulates the credit of a provider of exempted services on its own inputs, and has no application to the appellant. *Ramky Infrastructure*, cited in the Notice, supports the characterisation of turnkey EPC contracts as works contracts, but on the question of credit it held only that a works contractor opting for the composition scheme is barred by Rule 3(2) of the Composition Rules from credit on its own inputs. It added, at paragraph 11.4, that there is no embargo even on such a contractor taking credit on capital goods or input services. It says nothing that would deny credit to the recipient of the works. *Interarch Building Products* is also to the same effect. The restriction it upheld, that a works contractor may take credit only in conformity with Rule 2A or the composition scheme, concerned the contractor's own credit on its inputs, and the Hon'ble Supreme Court said nothing of the credit of the person for whom the works were executed.

41. Of the authorities relied on by the appellant, *International Tractors*, as affirmed, address the receipt of goods in the factory through a contractor and the ownership of such goods. None of them considered the Explanation to Rule 3 in the context of a works contract. The appellant's reliance on them for the proposition that it bought the goods under a contract of sale separate from the erection contract cannot be accepted, for the reasons given in paragraph 18, but they support its entitlement on the footing on which we have decided it. The decisions on immovability, and the decisions of the Madras High Court cited before us, address only the effect of installation on credit. *Sarvesh Refractories* concerned the classification of goods. We have applied its principle by parity only to restrain the Revenue from attributing to the contractors a classification or

valuation not shown to have been adopted. It does not prevent the construction of the appellant's own contracts. The Board's Circular No.1003/10/2015-CX concerns dealers and has no direct application, though the Tribunal in *Gujarat State Petronet*, at paragraph 3.14, treated the taking of credit by a consignee on the manufacturer's invoice in such circumstances as at most a procedural matter curable under Rule 9(2).

42. We are constrained to observe that the authorities below converted a Board Order on excisability and a valuation rule for works contracts into a disentitlement to credit, without first finding the facts on which either could operate. They applied the text of Rule 2A as it stood from 01.07.2012 to a period beginning in September 2010. The Commissioner (Appeals) recorded that the contractors had availed Notification No.12/2003-ST without referring to a single document that showed it, while at the same time treating their services as works contracts valued under Rule 2A. The Adjudicating Authority dismissed a substantial body of authority cited by the appellant in one sentence as not exactly identical, without saying in what respect any of it differed. An adjudicating authority which declines to follow a binding or persuasive decision cited before it owes the assessee, and the appellate forum, the reason. The Commissioner (Appeals) went further and faulted the appellant for failing to demonstrate a valid reason for placing two sets of orders. That approach inverts the burden. A taxpayer who holds duty paying documents and has used the goods as the Rules contemplate need not justify the commercial form of its contracts. It is for the Revenue to establish the facts that attract a statutory bar.

43. We hold, on the third issue, that the Explanation to Rule 3 does not bar the appellant's credit for either period. In a works contract the value of the goods transferred lies outside the levy of service tax, and no exemption in respect of it, whether claimed under Notification No.12/2003-ST or said to arise under Rule 2A, can attract the Explanation. Treating the contracts as works contracts, as we have done, does not by itself amount to a reclassification of the contractors' services. But the denial of credit by attributing to the

contractors an exemption or valuation not shown to have been claimed does amount to one, and it is impermissible. Nothing in this order concludes the contractors' own assessments to service tax.

Extended period of limitation

44. Our findings on the first three issues dispose of both demands on merits. The question of limitation was, however, fully argued, and the manner in which the extended period was invoked calls for comment. We therefore record our finding on it. The Notice was issued on 25.09.2015. The demand for September 2010 to August 2014, stated by the appellant to be Rs.1,64,22,439/-, could be sustained only under the proviso to Section 11A(1) of the Act, as it then stood, or under Section 11A(4). The foundation for suppression, in the Notice and in the orders below, is that the Department learnt of the separate purchase orders only on investigation, that the appellant gave no valid reason for them, and, in the Notice, that the statement of the General Manager of M/s. Metec shows the appellant to have been aware that the contractors had excluded the value of the goods from their taxable value.

45. Suppression, as the Supreme Court explained in *Anand Nishikawa Co. Ltd. v. CCE, Meerut, 2005 (188) E.L.T. 149 (S.C.)*, means that correct information was not disclosed deliberately to evade payment of duty. Where facts are known to both parties, the omission by one to do what it might have done, and not what it must have done, is not suppression, and there must be some positive act on the part of the assessee. The Gujarat High Court in *Prolite Engineering Co. v. Union of India, 1995 (75) E.L.T. 257 (Guj.)* and *Apex Electricals Pvt. Ltd. v. Union of India, 1992 (61) E.L.T. 413 (Guj.)* held that non disclosure of information which the law does not require to be disclosed is not suppression. In *CCE v. Zee Media Corporation Ltd., 2018 (18) G.S.T.L. 32 (All.)*, the High Court affirmed that where the notice itself shows that every detail was maintained by the assessee in its records in the ordinary course, there is no suppression. In *G.R. Infra Projects Ltd. v. State of Madhya Pradesh, Civil Appeal No.11277 of 2026 decided on 19.08.2026, 2026 (8) TMI 1497 –Supreme Court*, a case under the Central Goods and Services

Tax Act, 2017, the Supreme Court held that the requirements which make a notice valid must be found in the notice itself, and that a bare invocation of fraud or suppression, without the material from which it is inferred, cannot sustain the extended period.

46. Tested on the anvil of these principles, the invocation cannot stand. The appellant took credit on duty paying invoices which named it as consignee, entered the credit in its statutory records and reflected it in its returns. The investigation consisted in reading the appellant's own contracts and invoices, which were in its records throughout. No provision of law required the appellant to report the manner in which it had structured its contracts. The statement of the General Manager of M/s. Metec shows, at most, what that contractor did. It is no evidence of any concealment by the appellant. The Notice points to no false declaration and to no positive act of concealment. The Revenue's own authority furnishes a further answer. In *Gujarat State Petronet* the Tribunal, while deciding the question of credit against the assessee, recognised that the issue was not free from doubt and declined to permit the extended period. The Gujarat High Court declined to interfere with that view in *CCE, Ahmedabad III v. Gujarat State Petronet Ltd., 2014 (34) S.T.R. 321 (Guj.)*. The analysis we have had to undertake under the first three issues confirms that the questions were genuinely debatable. The Revenue cannot rely on that decision to deny the credit and, in the same breath, treat the appellant's contrary view of the law as a deliberate device to evade duty. We hold that the extended period was not validly invoked. The demand for the period beyond the normal period of limitation is independently time barred.

Interest and penalty

47. Once the credit is held admissible, there is no amount recoverable under Rule 14 of the CCR, and the demand of interest consequently fails. Penalty under Rule 15(2) of the CCR read with Section 11AC of the Act presupposes both a wrongful availment of credit and the element of fraud, collusion, wilful misstatement, suppression of facts or contravention with intent to evade duty, and penalty under Rule 15(1) presupposes a wrongful availment of credit.

These preconditions being absent here, the penalties imposed cannot survive.

48. In sum, we have accepted the Revenue's characterisation of the contracts as composite works contracts, documented but not divided in substance by the issue of separate supply and erection orders. We have also held that property in the goods passed to the appellant, at the latest, on their incorporation into its plant, and we have rejected the appellant's case of bailment. Those conclusions do not, however, lead to the denial of credit. The appellant received duty paid capital goods in its factory under duty paying invoices naming it as consignee, and the goods are used there, as components of its own plant, in the manufacture of dutiable final products. That satisfies Rules 2(a) and 3(1) of the CCR, which make neither ownership at the point of receipt nor the identity of the erector a condition. The Board's Order No.58/1/2002-CX concerns excisability and itself affirms that components remain dutiable. The Explanation to Rule 3 is not attracted for any part of the period. In a works contract the value of the goods transferred lies outside the levy of service tax, so that no exemption of it, under Notification No.12/2003-ST or Rule 2A, can be an exemption on condition within that Explanation. Explanation 2 to Rule 2A, which applies from 01.07.2012, binds only the provider. In any event the Revenue has not shown that any contractor availed Notification No.12/2003-ST on these goods. The extended period was in any event unsustainable. The impugned order, which confirms both orders in original, cannot therefore be sustained.

49. In the result, the impugned Order in Appeal Nos. 428 & 429/2017 (CTA I) dated 04.12.2017 is set aside. The appeals are allowed with consequential relief, in law, if any.

(Order pronounced in the open court on 09.10.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)