

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH - COURT No. I**

Excise Appeal No. 41539 of 2019

(Arising out of Order in Appeal No. 277/2019 dated 27.06.2019 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office at Madurai)

M/s. The Ramco Cements Ltd.

...Appellant

Ramasamyraja Nagar Post
Virudhunagar District
Tamil Nadu 626 204

VERSUS

Commissioner of GST & Central Excise

...Respondent

Madurai Commissionerate
C.R. Buildings, Lal Bahadur Shastri Marg
Madurai 625 002

APPEARANCE:

Shri R. Parthasarathy, Consultant for the Appellant
Ms. O.M. Reena, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER No. 41098/2026

DATE OF HEARING: 26.05.2026
DATE OF DECISION: 15.10.2026

Per: Shri Ajayan T.V.

M/s. The Ramco Cements Ltd., the appellant, assails Order in Appeal No. 277/2019 dated 27.06.2019 (the impugned order) passed by the Commissioner of GST and Central Excise (Appeals), Coimbatore, Circuit Office at Madurai, in so far as it affirms the denial of CENVAT credit availed on the services of contractors during April 2011 to December 2015, together with interest and an equal penalty. The Commissioner (Appeals) allowed credit relatable to the services of M/s. CIBI Earth Movers, M/s. Coimbatore Earth Movers Hiring Division and Smt. V. Kanchana. That relief has not been questioned by the Revenue and is not in issue before us.

Relevant facts

2. The appellant manufactures cement falling under Chapter 25 of the Central Excise Tariff Act, 1985 at R.R. Nagar, Virudhunagar, and avails CENVAT credit on inputs, capital goods and input services under the CENVAT Credit Rules, 2004 (the Rules). During the period in dispute it set up a captive 25MW thermal power plant with its coal handling system, and also carried out expansion, upgradation, repair and maintenance work in the cement plant. It engaged several contractors for this work and took credit of the service tax charged by them.
3. Officers of the Internal Audit wing of the Madurai Commissionerate audited the appellant's records between 19.12.2011 and 24.12.2011 and again on 01.03.2012, covering the period from December 2010 to November 2011. They took the view that the services received from ten providers fell either under supply of tangible goods or under construction work for laying foundation for erection of machinery or power plants, and so stood outside the definition of input service in Rule 2(I) as substituted with effect from 01.04.2011. Audit Report No. 195/MDU/VNR/2011-12 dated 26.11.2012 quantified the objectionable credit for April to November 2011 at Rs.20,94,630/-. The appellant reversed Rs.10,924/- under protest in May and June 2012 in respect of M/s. K.V. Construction, M/s. Shanthi Cabs and Smt. V. Kanchana, and maintained that the rest of the credit had been correctly taken.
4. The Range officer then took the matter forward. By letters dated 12.08.2014 and 27.10.2014 the appellant described to him the scope of work of each contractor, and by letter dated 12.04.2016 it furnished the credit taken from December 2011 to December 2015. The Range officer accepted that the services of the two earth movers qualified as input services. For the others, the show cause notice sets out the appellant's own description of the work. M/s. Swetha Engineering and M/s. TPM Constructions were said to have done mechanical fabrication work for the coal handling system of the new power plant and upgradation work to raise the limestone crushing capacity. M/s. R.S. Windtech Engineers Pvt. Ltd. had erected motors and compressors by using cranes inside two newly built silos. M/s. Sathiapal Engineers (India) Ltd. had built the chimney of the thermal plant, and M/s. KRG Rain Water Foundations had worked on a rain water harvesting project inside the factory.

5. On this material, Show Cause Notice No. 4/2016-CE dated 26.04.2016 alleged that the work of these contractors involved construction of a civil structure or building and laying of foundation or structures for support of capital goods, and was therefore excluded by clause (A) of Rule 2(I). It proposed to recover Rs.1,30,66,792/- for April 2011 to December 2015 under Rule 14 of the Rules read with Section 11A(4) and Section 11A(5) of the Central Excise Act, 1944 (the Act), to appropriate the Rs.10,924/- paid under protest, and to demand interest under Section 11AA and penalty under Rule 15(2) of the Rules read with Section 11AC of the Act. To sustain the extended period the notice alleged that the details of the credit had not been shown in the ER-1 returns, that the invoices and work orders had not been furnished before the audit, and that but for the audit the wrong availment would not have come to light. In the very same paragraph the notice acknowledged that all the transactions were available in the records maintained by the appellant.
6. In its reply dated 25.06.2016 and its written submissions at the hearing on 07.03.2018, the appellant contended that the services fell within the main and inclusive limbs of Rule 2(I) and relied on decisions of this Tribunal. The Joint Commissioner, by Order in Original No. MDU-CEX-JC-12-2018 dated 28.03.2018, found in paragraph 12 that the credit on the services of the two earth movers was in order. He nevertheless confirmed the entire demand of Rs.1,30,66,792/- with interest, appropriated the amount paid under protest and imposed an equal penalty under Rule 15(2). As to the remaining contractors, he held in a single paragraph that their work clearly involved construction of a civil structure or building and laying of foundation or structures for support of capital goods, and imposed the penalty because the appellant had continued to avail the credit after 2011 with wilful intention.
7. On appeal, the Commissioner (Appeals) noticed the contradiction in the order in original and allowed the credit on the two earth movers and on the manpower supply of Smt. V. Kanchana. The rest of the demand was upheld. The Commissioner (Appeals) held that the bills of M/s. Sathiapal Engineers (India) Ltd. related to an RCC chimney and a fly ash handling system executed as works contract after 01.04.2011; that the credit on M/s. KRG Rain Water Foundations had been rightly

denied; that the appellant had produced no evidence to show that the crane hired from M/s. R.S. Windtech Engineers had not been used for an excluded purpose; that the running bills of M/s. Swetha Engineering related to fabrication and erection of steel structurals for the coal handling system; and that the work of M/s. TPM Constructions was likewise excluded. The claim on M/s. Shanthi Cabs was recorded as not pressed. On limitation the Commissioner (Appeals) held that audit of a unit is not by itself an answer to suppression, that a bona fide belief must be the belief of a reasonable person, and that availing credit in the face of a specific exclusion amounted to suppression with intent to evade duty. Hence this appeal.

Submissions on behalf of the appellant

8. Shri R. Parthasarathy, learned Consultant for the appellant, confined the challenge to the credit of Rs.1,30,43,913/- relatable to six contractors. Of this sum, Rs.87,58,023/- relates to M/s. TPM Constructions, Rs.32,47,277/- to M/s. Swetha Engineering, Rs.6,12,442/- to M/s. Sathiapal Engineers (India) Ltd., Rs.4,04,472/- to M/s. R.S. Windtech Engineers Pvt. Ltd., Rs.19,570/- to M/s. KRG Rain Water Foundations and Rs.2,129/- to M/s. KVS Construction. He contended that clause (A) of the exclusion reaches only the specified construction and works contract services when used for a building, a civil structure, a foundation or structures for support of capital goods, and does not reach erection, fabrication or maintenance of machinery.
9. Turning to the individual contractors, learned Consultant argued that M/s. R.S. Windtech supplied a 330 tonne crane to lift and erect turbines, boilers, bag filters, conveyors, stackers and reclaimers, and that hiring a crane is not civil construction. M/s. Swetha Engineering, it was urged, erected the steam turbine generator, the coal handling system, the coal crusher and the bag house and fabricated the related structures, all of which are machinery. The work of M/s. TPM Constructions was described as fabrication, erection and maintenance of equipment in the cement plant, including the fly ash handling system, cement mill maintenance, a standby elevator at the kiln, the kankar handling system at the mines, belt conveyors, a raw material screening system, bag filters and a slag feeding conveyor. The 90 metre RCC chimney built by M/s. Sathiapal was said to be an integral part of the thermal plant rather than a civil structure in the sense of

the exclusion, the payment of service tax under the works contract composition scheme being immaterial. M/s. KRG had rendered technical consultancy on conservation of water for manufacture, akin to technical testing and analysis, for which reliance was placed on *Semco Electric Pvt. Ltd. v. CCE, Pune, 2013 (30) S.T.R. 572 (Tri. Mum.)*. M/s. KVS Construction had supplied tractors to shift material and waste within the factory. Reliance was also placed on *CCE v. Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Bom.)*, *Radhe Renewable Energy Development P. Ltd. v. CCE & ST, Rajkot, 2015 (37) S.T.R. 388 (Tri. Ahmd.)* and *Sai Life Sciences Ltd. v. CCE, Hyderabad IV, 2017 (51) S.T.R. 55 (Tri. Hyd.)*.

10. Learned Consultant laid stress on what followed for the next period. For January 2016 to June 2017 the Department demanded Rs.21,04,818/- on the services of the very same M/s. TPM Constructions. The Commissioner (Appeals), by Order in Appeal No. 63/2020 dated 29.05.2020, examined the invoices and found the work to be repair and maintenance of factory machinery integral to manufacture, save for the erection of a weighbridge. In the de novo Order in Original No. VNR-CEX-000-AC-000-04-2020, the Assistant Commissioner allowed Rs.20,45,441/- and disallowed only Rs.59,377/. That order, it was said, has been accepted by the Department, and the same view must govern the earlier period.
11. On limitation, it was urged that the notice rests entirely on the audit of 2011-12, that every credit was entered in the statutory records and reflected in the monthly ER-1 returns, and that the Department was told the nature of each contractor's work in 2014. Nothing having been concealed, the notice of 26.04.2016 is barred for all credit taken before 26.04.2015. Reliance was placed on *Pushpam Pharmaceuticals Co. v. CCE, 1995 (78) E.L.T. 401 (S.C.)*, *CCE v. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.)*, *Tamil Nadu Housing Board v. CCE, 1994 (74) E.L.T. 9 (S.C.)*, *Larsen & Toubro Ltd. v. CCE, 2007 (211) E.L.T. 513 (S.C.)* and *Nestle India Ltd. v. CCE, 2009 (235) E.L.T. 577 (S.C.)*, among others. As to penalty, the appellant maintained that Rule 15(2) cannot operate without suppression and that a dispute of interpretation attracts no penalty, citing *Maruti Suzuki Ltd. v. CCE, 2009 (240) E.L.T. 641 (S.C.)* and *CCE v. Gujarat Narmada Valley Fertilizers Co. Ltd., 2009 (240) E.L.T. 661 (S.C.)*.

Submissions on behalf of the respondent

12. Ms. O.M. Reena, learned Authorised Representative, supported the impugned order and reiterated its findings, namely that the services of the six contractors were used for construction of civil structures and structures for support of capital goods and stand excluded from the definition of input service irrespective of their nexus with manufacture, and that the extended period was rightly invoked since the wrong availment came to light only in audit.
13. We have heard both sides and perused the appeal records. We find that the following issues arise for our determination:
 - i. Whether the lower authorities were right in holding that the services of the six contractors fall within clause (A) of the exclusion in Rule 2(I), and what test governs that inquiry?;
 - ii. Whether the extended period under Section 11A(4) of the Act was validly invoked?; and
 - iii. Whether interest and the penalty under Rule 15(2) read with Section 11AC can be sustained?

Discussion and findings

Issue (i). The scope of the exclusion in clause (A) of Rule 2(I)

14. Rule 2(I) was substituted with effect from 01.04.2011 by Notification No. 3/2011-CE (NT) dated 01.03.2011. In so far as relevant, it reads thus.

“(I) “input service” means any service, (i) used by a provider of taxable service for providing an output service; or (ii) used by a 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 modernisation, renovation or repairs of a factory, ... but excludes services, (A) specified in sub-clauses (p), (zn), (ztl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for (a) construction of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; ...”

15. With effect from 01.07.2012, Notification No. 28/2012-CE (NT) dated 20.06.2012 substituted clause (A) so as to exclude the "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", 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, or for laying of foundation or making of structures for support of capital goods. The two versions differ in how they describe the specified services. They do not differ in the purposes for which use of those services is excluded.
16. The main limb of the definition is wide. It takes in any service used, directly or indirectly, in or in relation to the manufacture of final products, and the inclusive limb expressly covers services used in relation to modernisation, renovation or repairs of a factory. The exclusion operates on services that would otherwise fall within these limbs. The Commissioner (Appeals) relied on the decision of this Tribunal in *AET Laboratories Pvt. Ltd. v. CCE, Hyderabad I, 2016 (42) S.T.R. 720 (Tri. Bang.)* for the proposition that once a service is caught by the exclusion, its nexus with manufacture cannot rescue it. That proposition is sound, and we accept it. It also follows that the appellant's reliance on *Ultratech Cement* and on decisions rendered under the definition as it stood before 01.04.2011 does not meet the exclusion, for those decisions did not have to construe it.
17. The exclusion, however, is not engaged merely because a service is rendered in the course of a project, or because it involves steel, fabrication or a works contract. Two conditions must concur. The service must be one of the specified services, and it must be used for one of the two excluded purposes, namely construction of a building or a civil structure or a part thereof, or laying of foundation or making of structures for support of capital goods. Erection, installation and commissioning of machinery, its repair and maintenance, and the hire of equipment such as a crane are not, by themselves, any of these purposes. Equally, a service used to make a structure that supports capital goods is excluded even when the structure is of steel and even when the plant it carries is machinery. Whether a given service falls on one side of the line or the other is a question of fact to be answered from the work order and the invoice, transaction by transaction.

18. A coordinate Bench of this Tribunal has recently applied this very approach. In *Komatsu India Pvt. Ltd. v. Commissioner of GST and Central Excise, Chennai Outer*, Final Order No. 40446/2026 dated 30.03.2026-2026-TIOL-608-CESTAT-MAD, the Bench held that erection, commissioning and installation services, consulting engineering services and manpower supply used for expansion of an existing factory remained input services after 01.04.2011, that the exclusion is confined to construction of a building or civil structure and laying of foundation for support of capital goods, and that the denial failed because the show cause notice did not establish that the services were used for any such purpose. We respectfully agree.
19. We are conscious that Rule 9(6) of the Rules casts on the manufacturer the burden of proving the admissibility of the credit it takes, and the appellant cannot escape that burden. It is discharged in the first instance by producing the invoices and work orders and explaining how the service was used. The appellant did so, in its letters of 2014, in its reply and in the paper book before the lower authorities. Once that material is on record, an authority which holds that the service falls within the exclusion must examine it and say why. Rule 9(6) does not license a blanket assumption that everything done by a contractor on a project site is construction. Nor does it permit an authority to call upon the assessee to prove a negative, as the impugned order did when it faulted the appellant for not proving that a crane had not been used for an excluded purpose, although the show cause notice itself described the crane as having been used to erect motors and compressors.
20. Thus the orders of the lower authorities when scrutinized on the basis of the tests that ought to have been applied, don't withstand scrutiny. In the order in original, having found in paragraph 12 that the credit on the two earth movers was in order, the Adjudicating Authority proceeded in the operative part to confirm the entire demand, those credits included, with an equal penalty. Paragraph 13 attributes to a rent a cab operator and a rain water harvesting consultant the categories of supply of tangible goods and construction work for laying foundation of power plants, an attribution which has no discernible connection with either. Paragraph 14 then disposes of five contractors, and of more than a crore of rupees, in a single sentence that does not

refer to one work order or one invoice. An order of adjudication is meant to adjudicate. One which records a finding in favour of the assessee and confirms the demand regardless, and which visits a penalty equal to the duty on a finding of wilful intention that is nowhere reasoned, does not answer that description. Such orders breed precisely the needless litigation that the Commissioner (Appeals) rightly deprecated.

21. The impugned order is an improvement, in that it at least proceeds contractor by contractor. It too, however, rests on a few sample bills and records bare conclusions, most notably for M/s. TPM Constructions, the largest single component of the demand. It does not engage with the appellant's description of the work, nor test whether each service was in fact used for a building, a civil structure, a foundation or a supporting structure. We also note that for the very next period the Department, on examining the invoices of M/s. TPM Constructions, found the work to be in the nature of repair and maintenance of factory machinery and allowed nearly the whole of the credit. A finding for a different period does not operate as *res judicata*. But the Revenue cannot characterise the same contractor's work of the same description differently from one period to the next without a reason, and any authority examining the earlier invoices must take that finding into account.
22. We therefore hold that the denial of credit on merits, as reasoned in the order in original and the impugned order, cannot be sustained. Whether any part of the credit in fact falls within the exclusion is a question of fact which neither authority examined. Whether it needs to be examined at all depends on our answer to the question of limitation, which we address *infra*. For the credit that we hold below to be time barred, we neither examine nor express any opinion on the eligibility of the services of any individual contractor. The appellant's further contention that the provisions in force from 01.07.2012 were wrongly applied to earlier credit was urged, but it does not arise in that view and we express no opinion on it. The memorandum of appeal also assails the denial of credit on the services of M/s. Shanthi Cabs. That claim was given up before the Commissioner (Appeals), was not pressed before us, and does not survive.

Issue (ii). Extended period of limitation

23. Rule 14 of the Rules applies the provisions of Section 11A of the Act to the recovery of credit wrongly taken. When the notice was issued on 26.04.2016, Section 11A(1) prescribed a normal period of one year from the relevant date. Section 11A(4) extended this to five years only where the duty had escaped by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of the provisions with intent to evade payment of duty. The enlargement of the normal period to two years took effect only on 14.05.2016, after the notice was issued, and cannot revive a demand already barred. The coordinate Bench took the same view in *Komatsu India*.
24. The law on the proviso is well settled. In *Cosmic Dye Chemical v. Collector of Central Excise, Bombay*, 1995 (75) E.L.T. 721 (S.C.), the Supreme Court held that intent to evade duty is built into the expressions fraud and collusion, that misstatement and suppression are qualified by the word wilful, and that contravention is qualified by the words with intent to evade payment of duty. A suppression which is not wilful is not a ground for the extended period. Very recently, in *Lipi Boilers Ltd. v. Commissioner of Central Excise, Aurangabad*, 2025 INSC 1297, the Supreme Court, speaking through J.B. Pardiwala, J., reaffirmed its earlier holdings in *Pahwa Chemicals Pvt. Ltd. v. CCE*, (2009) 4 SCC 658 and *Continental Foundation Joint Venture v. CCE*, (2007) 10 SCC 337. Mere failure to declare is not wilful suppression; there must be a positive act. When the facts are known to both parties, omission by one to do what he might have done is not suppression. The burden of proving suppression lies on the Revenue. And where the assessee has filed its returns, the Revenue has the material on which it could have acted within the normal period. In *Tata Steel Ltd. v. Union of India*, 2026 INSC 920, decided on 25.08.2026, the Court added that the foundational facts from which fraud, wilful misstatement or suppression is inferred must appear in the notice itself, and that a mechanical recital of those words is not an application of mind. That case arose under Section 74 of the Central Goods and Services Tax Act, 2017, but the principle it lays down for invoking an extended period on an allegation of suppression applies with equal force to Section 11A (4).

25. Two further decisions bear directly on the conduct of the Department in this case. In *Orissa Bridge & Construction Corporation Ltd. v. CCE, Bhubaneswar, 2011 (264) E.L.T. 14 (S.C.)*, the Revenue had detected the activity on inspection but issued the notice more than two years later without explanation, and the Supreme Court held the extended period to be unavailable. In *Stemcyte India Therapeutics Pvt. Ltd. v. Commissioner, 2025 (394) E.L.T. 3 (S.C.)*, the Department's own communication seeking details of the assessee's activities showed that it knew their nature, and the Court held that suppression could not then be alleged. The Bombay High Court in *CCE & Cus., Nashik v. Mahindra & Mahindra Ltd., 2018 (11) G.S.T.L. 126 (Bom.)* similarly declined to countenance an extended period where the facts had been detected in audit and no fresh material had surfaced thereafter.
26. Every fact on which the notice rests was before the Department long before 26.04.2016. The credit was entered in the statutory registers and the credit taken was reflected in the monthly ER-1 returns, and the notice does not say otherwise. Its complaint is only that the returns did not show the credit service by service. The ER-1 return did not call for such particulars, and an assessee cannot be faulted for not disclosing what the prescribed form does not ask for. The Principal Bench made the same point about the ST-3 return in *G.D. Goenka Pvt. Ltd. v. Commissioner of CGST, Delhi South, 2023-TIOL-782-CESTAT-DEL*, observing that a difference of view between the assessee and the Revenue on the eligibility of credit, reflected in self assessment, cannot be termed deliberate suppression. The audit party examined these very invoices in December 2011 and March 2012, and the audit report was issued on 26.11.2012. By its letters of 12.08.2014 and 27.10.2014 the appellant set out the scope of each contractor's work to the Range officer, and the notice itself reproduces that description as the basis of its allegation. From that point at the latest the Department knew all that it ever came to know. Yet the notice issued more than three years after the audit report and some eighteen months after those letters, and offers no explanation for the delay.
27. The notice is also at odds with itself. It alleges that the wrong availment would never have come to light but for the audit, and at the same time concedes that all the transactions were available in the appellant's records. It alleges suppression without identifying a single

fact that the appellant withheld, or a single positive act of concealment. What it describes is a difference of view on the reach of an exclusion clause, and the Department's own officers have not been of one mind on it. The Range officer accepted some of the services as eligible. The Adjudicating Authority held some eligible and confirmed them all the same. The Commissioner (Appeals) allowed a part, and for the next period accepted the bulk of M/s. TPM Constructions' work as repair and maintenance. Where the Revenue itself has taken shifting views, it can hardly attribute to the appellant's contrary view an intent to evade.

28. The Commissioner (Appeals) relied on the view of this Tribunal that audit of a unit is not, by itself, a ground against suppression. We do not doubt that proposition, but it does not carry the Revenue's case further. The appellant does not rely on the mere fact of audit. It relies on the fact that the Department had every material particular in its hands for years, and the burden of establishing a wilful withholding never shifted to the appellant. The decisions holding that a bona fide belief must be reasonable assume that the Revenue has first made out a deliberate suppression; they do not relieve it of that burden. Nor can the view of the Special Bench in *Mermaid Marine Products Ltd., 1985 (20) E.L.T. 329*, that evasion need not involve concealment, relied upon in the impugned order, be read so as to dispense with the element of wilful intent which the Supreme Court in *Cosmic Dye Chemical* held to be integral to each limb of the *proviso*.
29. This Bench has consistently declined to sustain the extended period where the demand is culled from the assessee's own records and returns and the audit observations were with the Department well before the notice, as can be seen from the Final Orders in *Exide Industries Ltd. v. Commissioner of GST and Central Excise, Salem, Final Order No. 40664/2025 dated 26.06.2025*, reported in 2025 (6) TMI 1960-CESTAT CHENNAI and *Pallipalayam Spinners Pvt. Ltd. v. Commissioner of GST and Central Excise, Salem, Final Order No. 41119/2025 dated 07.10.2025* reported in 2025 (10) TMI 388-CESTAT CHENNAI . The present case is clearly governed by the said decisions.
30. It follows that the extended period was not available to the Revenue. The demand for all credit beyond one year before 26.04.2016 is barred

by limitation. This disposes of the larger part of the demand without any need to examine the merits of those credits, which, as recorded above, we leave open. The same reasoning governs the Rs.10,924/- reversed under protest in 2012. The credit relatable to Smt. V. Kanchana has already been allowed by the Commissioner (Appeals), and the credit relatable to M/s. K.V. Construction falls within the barred period. Only the sum relatable to M/s. Shanthi Cabs, a claim the appellant has given up, may be retained.

31. What remains is the credit which falls within one year before 26.04.2016. Since the denial on merits has failed for want of the factual examination that the exclusion requires, the proper course for this demand within normal period is to remit it to the Adjudicating Authority to quantify it and to decide its eligibility afresh in accordance with the principles set out in paragraphs 16 to 19 above.

Issue (iii). Interest and penalty

32. The penalty under Rule 15(2) read with Section 11AC rests on the very allegation of fraud, wilful misstatement or suppression with intent to evade that we have found unproved. It cannot stand for any part of the period. For the demand within the normal period, the notice proposed a penalty only under Rule 15(2), on the footing of suppression. The Adjudicating Authority cannot on remand impose a penalty on a footing not proposed in the notice, for adjudication cannot travel beyond the show cause notice, as this Tribunal held in *Galaxy Indo-Fab Ltd. v. Commissioner of C. Ex., Allahabad, 2004 (176) E.L.T. 218 (Tri. Del.)*. The dispute is in any event one of interpretation. No penalty is therefore imposable. Interest under Rule 14 read with Section 11AA will follow only on such credit within the normal period as is found on remand to be ineligible and to have been utilised.
33. In view of our aforesaid discussions and analysis, the impugned Order in Appeal No. 277/2019 dated 27.06.2019 is set aside in so far as it upholds the denial of CENVAT credit of Rs.1,30,43,913/-, the demand of interest thereon and the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The demand for recovery of credit beyond one year before 26.04.2016 is held to be barred by limitation and is set aside, together with the interest thereon. No opinion is expressed on the

merits of that credit. The penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is set aside in its entirety, and no penalty shall be imposed in the remand proceedings.

34. The matter is remanded to the Adjudicating Authority, confined to the credit, if any, that falls within one year before 26.04.2016. The Adjudicating Authority shall first quantify that credit contractor wise, and then decide its eligibility on the work orders and invoices in accordance with the principles laid down in paragraphs 16 to 19 of this order, taking into account Order in Appeal No. 63/2020 dated 29.05.2020 and the de novo order passed pursuant to it. The appellant shall furnish the relevant work orders and invoices within thirty days of receipt of this order. The Adjudicating Authority shall afford the appellant a personal hearing and pass a reasoned order within three months thereafter. Interest shall be payable only on such credit as is found ineligible and to have been utilised. Of the sum of Rs.10,924/- appropriated, only the amount relatable to M/s. Shanthi Cabs shall stand appropriated. The balance shall follow the consequential relief in accordance with law.

The appeal is partly allowed on limitation with consequential relief in accordance with law, and is otherwise allowed by way of remand in the above terms.

(Order pronounced in open court on 15.10.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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