CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Excise Appeal No.41410 of 2018

(Arising out of Order in Original No.29/2018 CH.N.GST, dated 12.03.2018, passed by the Principal Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

Heat and Control (South Asia) Private Limited ...Appellant
Plot No.2, 8th Avenue, 1st Cross Road
Mahindra World City, Chengalpattu Taluk
Kanchipuram District
Chennai 603 004

Versus

Principal Commissioner of GST & Central Excise ....Respondent
Chennai North Commissionerate, 26/1,
Mahatma Gandhi Road, Nungambakkam, Chennai 600 034

APPEARANCE:

Ms. Disha Jain, Advocate for the Appellant
Mr. M. Selvakumar, 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.41164/2026

DATE OF HEARING : 10.06.2026
DATE OF DECISION: 04.11.2026

Per AJAYAN T.V.

M/s. Heat and Control (South Asia) Private Limited, the appellant, manufactures food processing equipment and also renders erection, commissioning and allied services. It assails Order in Original No. 29/2018 CH.N.GST dated 12.03.2018 (the impugned order), by which the Principal Commissioner of GST and Central Excise, Chennai North (the Adjudicating Authority) disallowed and ordered recovery of CENVAT credit of Rs.2,31,65,730/- taken on the service tax paid on a lease premium, with interest, and imposed an equal penalty under Rule 15(3) of the CENVAT Credit Rules, 2004 (the Rules) read with Section 78 of the Finance Act, 1994 (the Act).

Facts in brief

2. The appellant held Central Excise Registration No. AABCH4115KXM001 for its factory at Guindy and Service Tax Registration No. AABCH4115KST001 for its office at Anna Nagar East, Chennai. The taxable services registered at Anna Nagar were consulting engineer, maintenance or repair, erection, commissioning and installation, business auxiliary, intellectual property and goods transport agency services. The service tax of the Guindy factory was also discharged through the Anna Nagar registration. The Anna Nagar certificate had earlier listed the appellant as an input service distributor, and the notice records that this was omitted with effect from 14.12.2013.

3. By a lease deed dated 31.12.2013, M/s. Mahindra World City Developers Ltd. leased 8.33 acres in Plot No. 2, Mahindra World City, Chengalpattu Taluk, to the appellant for 99 years. The stated purpose was to establish a facility for the marketing, manufacture and supply of food processing, inspection and packaging equipment, together with allied agency and spare parts business. A non refundable premium of Rs.18,74,25,000/- was payable. The lessor raised Invoice No. 1008/016/2013 dated 31.12.2013 upon the appellant at its Anna Nagar address and charged service tax of Rs.2,24,91,000/-, education cess of Rs.4,49,820/- and secondary and higher education cess of Rs.2,24,910/-, in all Rs.2,31,65,730/-, under renting of immovable property service.

4. The appellant took credit of this amount in July 2014 in the books of its Anna Nagar registration. The ST-3 return for April to September 2014, filed on 17.10.2014, did not show the credit. The revised return filed on 14.01.2015 showed it in Part I.3, against the entry for any other credit taken, with the description "on acquisition of long term lease land". A factory was then built on the leased land, and Central Excise Registration No. AABCH4115KEM002 was granted for it on 20.06.2016.

5. The matter arose in the audit of the Guindy factory. By its letter dated 06.10.2016 the appellant stated that the invoice related to land to be used for setting up a factory. A pre notice letter dated 28.03.2017 followed, and Show Cause Notice No. 30/2017 was issued on 10.04.2017. The appellant's reply to the pre notice letter is dated

07.04.2017. The acknowledgement on it, under the seal of the office of the Commissioner of Central Excise, Audit II Commissionerate, is however dated 11.04.2017, a day after the notice. In that reply the appellant stated that the credit had not been utilised, and that it would reverse the credit at Anna Nagar and take it in the books of the new factory.

6. The notice proposed to disallow and recover the credit under Rule 14 of the Rules read with Section 73(1) of the Act, with interest under Section 75, and to impose a penalty under Rule 15(3) read with Section 78. Its case was that the words "setting up" were omitted from Rule 2(l) with effect from 01.04.2011 by Notification No. 3/2011-CE (NT) dated 01.03.2011, that taking land on a long lease is an activity only in relation to setting up a factory, that the land had no connection with the Guindy factory or the Anna Nagar office, and that no manufacture had begun when the credit was taken. For penalty, it relied on the surrender of the input service distributor registration, the revision of the return, an alleged intention to shift operations and carry the credit to the new unit, and a legal opinion dated 09.01.2015. It also proposed a penalty under Section 78A on the Director (Taxation).

Reply and the impugned order

7. In its reply dated 18.05.2017, the appellant contended that a notice founded on audit was void, that the lease service fell within the main part of Rule 2(l), and that renting of immovable property is not within the exclusion clause. It relied on *CCE v. Bellsonica Auto Components, 2015 (40) S.T.R. 41 (P & H)*, on the common pool of credit and cross utilisation, and on the absence of any rule making registration a condition for credit. In the alternative, it pleaded that if the credit was not admissible in the Anna Nagar registration, it was admissible in the registration of the Mahindra World City factory, and that there was no intention to evade, since the credit, though taken into the CENVAT account, had not been utilised. On interest, it contended that none was payable because the demand itself was unsustainable. On penalty, it set out the grounds stated in paragraph 8.1 of the notice, among them the allegation that its submission that the credit was only taken and not utilised was a misstatement. It answered them by contending that it had acted bona fide without any intent to evade, that the tax on the lease premium had in any event been paid to the Government, and

that suppression cannot be alleged where the demand rests on an audit of its records. The personal hearing was held on 18.01.2018.

8. The Adjudicating Authority rejected the objection to the audit. It held that the leased land was vacant with no activity on it, that it had no nexus with the services rendered from Anna Nagar, that services in relation to setting up stood excluded from 01.04.2011, and that the factory was registered only in June 2016. It also recorded that the credit "has been utilized in respect of manufacturing Registration". Penalty was justified by the reasons in the notice and by a failure to furnish a list of records under Rule 5(2) of the Service Tax Rules, 1994. The proposal under Section 78A was dropped. The demand was confirmed with interest and an equal penalty.

Submissions on behalf of the appellant

9. Ms. Disha Jain, learned Counsel for the appellant, argued that the main part of Rule 2(l) covers any service used, directly or indirectly, in or in relation to manufacture, and that the omission of "setting up" from the inclusive part does not take such services out of it. She relied on *Shell India Pvt. Ltd. v. Commissioner of Central Tax, 2021 (11) TMI 1127- CESTAT Bangalore*, affirmed in *(2025) 27 Centax 444 (Kar.) : 2023 (1) TMI 147- KARNATAKA HIGH COURT* and maintained in *2025 (392) E.L.T. 313 (S.C.)*, on *Komatsu India, 2026 (3) TMI 1628-CESTAT CHENNAI* and *Nemak Aluminium Castings, 2025 (7) TMI 335 – CESTAT CHENNAI*, and specifically on *Zuari Cement, 2025 (12) TMI 449 – CESTAT BANGALORE* and *Kellogs India, 2020 (7) TMI 414 – CESTAT HYDERABAD* on lease premium.

10. Ld. Counsel contended that registration is not a condition for credit, citing *mPortal India Wireless Solutions v. CST, 2012 (27) S.T.R. 134 (Kar.)*, *SCIOinspire Consulting, 2017 (3) G.S.T.L. 45 (Mad.): 2017 (4) TMI 943- MADRAS HIGH COURT*, *The CGST & CE, Chennai North v. Rakindo Kovai Township, 2021 (3) TMI 130- Madras High Court* and *Sungreen Ventilation Systems, 2025 (7) TMI 697 – Cestat Chennai*. One to one correlation is not required, as held in *Ramesh Foods, 2004 (174) E.L.T. 310 (S.C.)*, and cross utilisation is permitted, as held in *CCE v. S.S. Engineers, 2016 (42) S.T.R. 3 (Bom.).* Liability rests on the legal entity, not on each registration, as held in *Tata Yazaki Autocomp v. UOI, 2022 (382) E.L.T. 492 (Bom.)* and *Entraco Power*

Systems v. CCE, 2017 (3) G.S.T.L. 129 (Tri. Mumbai). Denial would defeat the scheme against cascading, as held in *Beico Industries, 2014 (36) S.T.R. 551 (Tri. Ahmd.)*. In the alternative, non registration as an input service distributor is a curable lapse, as held in *CCE v. Dashion, 2016 (41) S.T.R. 884 (Guj.)*, *CCE v. Pricol, 2021 (48) G.S.T.L. 235 (Mad.)*, Circular No. 1063/2/2018-CX dated 16.02.2018, *Bank of India, 2026 (2) TMI 1022- Cestat Chennai* and *AVO Carbon India, 2024 (8) TMI 1205- Cestat Chennai*.

11. It was further urged that the impugned order, passed eleven months after the notice, offends Section 73(4B)(a) of the Act, citing *IDFC First Bank v. UOI, (2023) 10 Centax 256 (Bom.)*. On penalty, counsel argued that no deliberate act was established, that the appellant acted bona fide and that the issue was interpretative, citing *Pushpam Pharmaceuticals, 1995 (78) E.L.T. 401 (S.C.), Cement Marketing Co. of India, 1980 (6) E.L.T. 295 (S.C.)* and *Maruti Suzuki, 2009 (240) E.L.T. 641 (S.C.)*.

12. At the hearing on 10.06.2026 the appellant was permitted to file additional submissions. The appellant filed additional submissions on the availment and utilisation of the credit on 19.06.2026, with the ST-3 returns from April 2014 to March 2017 and the ER-1 returns of the Mahindra World City factory for March and June 2017. It was contended that the credit remained untouched in the Anna Nagar ledger until September 2016. It was then reversed in the return for October 2016 to March 2017, filed on 21.04.2017, and taken in the ER-1 return of the new factory for March 2017. It was carried there unutilised as closing balance in the ER-1 return for June 2017.

Submissions on behalf of the respondent

13. Mr. M. Selvakumar, learned Authorised Representative, reiterated the findings of the impugned order. He maintained that services for setting up a factory ceased to be input services from 01.04.2011, that the leased land had no nexus with the output services of the Anna Nagar registration, that the factory was registered only in 2016, and that the appellant took the credit in an unrelated service registration after surrendering its input service distributor registration.

Analysis

14. We have heard both sides and perused the appeal records, the paper books and the additional submissions with their annexures. The following issues arise for our determination.

(i) Whether the impugned order is void for having been passed beyond six months from the date of the notice, in breach of Section 73(4B)(a) of the Act?

(ii) Whether the service tax paid on the lease premium for the factory land at Mahindra World City is on an input service within Rule 2(l) of the Rules, as it stood after 01.04.2011?

(iii) Whether the credit is recoverable because it was taken in the Anna Nagar service tax registration and not in the account of the factory?

(iv) Whether interest and penalty are sustainable?

15. The appellant has not contested limitation. The notice invoked Section 73(1) alone and not its proviso, and we address it only so far as it bears on penalty under issue (iv).

Issue (i) The objection under Section 73(4B)

16. We take this objection first because it is directed to the validity of the order itself. Section 73(4B)(a) requires the officer to determine the tax "within six months from the date of notice *where it is possible to do so*". The qualifying words are decisive. In *ANI Technologies Pvt. Ltd. v. Union of India, 2025 (11) TMI 517- Bombay High Court*, the Bombay High Court read the identical words in clause (b) as militating against any absolute bar on an order made after the period. The Supreme Court, in *ANI Technologies Pvt. Ltd v. The Union of India & Anr, 2026 (2) TMI 183- SC Order*, dismissing the special leave petition on 29.01.2026 in SLP (C) No. 3185 of 2026, recorded that the High Court had *correctly interpreted the expression*. The jurisdictional High Court in *Steel Authority of India Ltd. v. Commissioner of GST & C.E., Salem, 2024 (388) E.L.T. 151 (Mad.)* held that the words do not license the Department to take its own time and that proceedings must be concluded within a reasonable time. That was a delay of twelve years. The decision relied on by the appellant, *IDFC First Bank Ltd. v. Union of India, (2023) 10 Centax 256 (Bom.)*, is to the same effect. There the Bombay High Court held that the words cannot be read to defeat

the timelines, but recognised that a reasonable and plausible delay beyond the period may be justified. It quashed a notice that had lain unadjudicated for about twelve years. This Bench, in *Meena Fire Works Industries v. Commissioner, (2025) 34 Centax 7 (Tri. Mad.)*, drew these strands together. Following the jurisdictional High Court, it held that the time limit is elastic and that delay beyond it does not by itself vitiate the order. It held further that where the objection is raised for the first time before the Tribunal, the reasons for the delay must be called for through the Authorised Representative, unless the timeline narrated in the order itself satisfies the Tribunal. The contention that the impugned order is void merely because it was passed after six months therefore fails in law. Whether the delay here was reasonable is a question of fact. The impugned order records the reply of 18.05.2017 and the hearing of 18.01.2018 but gives no reason for the interval between them, and no explanation was called for. Since the appeal succeeds on merits for the reasons that follow, nothing turns on that question, and, as in Meena Fire Works, we do not enter upon it.

Issue (ii) Whether the lease premium is on an input service

17. The notice rests on one proposition, namely that the omission of "setting up" from the inclusive part of Rule 2(l) removed services used for setting up a factory from the definition. Rule 2(l), as it stood in 2014, defines input service as any service used by a provider of output service for providing an output service, or 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*. An inclusive part follows. The exclusions follow that, and clause (A) excludes construction and works contract services in so far as they are used for construction of a building or civil structure or for laying foundations. Renting of immovable property is not among the excluded services. The amendment of 2011 narrowed the inclusive part. It left the main part untouched and added no exclusion for setting up.

18. The question is therefore whether a lease of the very land on which the factory stands is used in or in relation to manufacture. It plainly is. The Hyderabad Bench answered this precise question in *Kellogs India Pvt. Ltd. v. Commissioner of Central Tax, Tirupathi GST, 2020 (7) TMI*

414- CESTAT Hyderabad. There the service was the lease of a plot in an industrial estate, taxed as renting of immovable property, and the Bench observed that *without such land no factory can be set up nor can any manufacture take place*. It found a direct nexus with manufacture. The Bangalore Bench in *Zuari Cement Ltd. v. Commissioner of Central Tax & Central Excise, Kerala, 2025 (12) TMI 449-CESTAT Bangalore* allowed credit on a lease premium for land taken to set up a plant, and also held that services received before commercial production are not thereby disqualified. Both followed the reasoning in *Shell India Pvt. Ltd. v. Commissioner of Central Tax, Bangalore North, 2021 (11) TMI 1127 -CESTAT Bangalore*. Coordinate Benches of this Tribunal at Chennai have taken the same view. In *Nemak Aluminium Castings (I) Pvt. Ltd. v. Commissioner, 2025 (7) TMI 335 -CESTAT Chennai*, the services denied as setting up services included long term lease rent for the factory land, and the Bench held that services used for setting up a factory fall within the means clause unless specifically excluded. In *Komatsu India (P) Ltd. v. Commissioner, 2026 (3) TMI 1628 -CESTAT Chennai*, which concerned services used to expand an existing factory, the Bench held that the deletion of the words setting up did not narrow the main limb of the definition, and that the exclusions must be strictly construed. We find no decision taking a contrary view, and none was placed before us.

19. Fairness requires us to state the limits of the Shell India line. The Karnataka High Court dismissed the Revenue's appeal in *(2025) 27 Centax 444 (Kar.): 2023 (1) TMI 147- Karnataka High Court*, but on the basis that no credit had been claimed on fresh construction. The Supreme Court dismissed the special leave petition in *(2025) 28 Centax 190 (S.C.)*. Such a dismissal neither affirms the reasoning below nor declares the law, as held in *Fuljit Kaur v. State of Punjab, 2010 (262) E.L.T. 40 (S.C.)*. We therefore rest our conclusion on the text of Rule 2(l) and on the reasoning of *Kellogs India* and *Zuari Cement*, which we respectfully adopt, and on the decisions of the coordinate Benches in *Nemak Aluminium Castings* and *Komatsu India*, which bind us. On that basis, a lease of land is not construction, and the narrower basis of the High Court's affirmance does not militate against the appellant.

20. The remaining objections do not alter this. That the land was vacant when leased and that manufacture began later is inherent in every new factory. Rule 4(7) allows credit on input services on or after receipt of the invoice, and makes no reference to the commencement of production. That the factory was registered only on 20.06.2016 is equally beside the point. Registration is not a condition for credit, as held in *mPortal India Wireless Solutions (P) Ltd. v. CST, 2012 (27) S.T.R. 134 (Kar.)*, followed by the jurisdictional High Court in *Commissioner of GST & Central Excise, Chennai North v. Rakindo Kovai Township Ltd., 2021 (3) TMI 130 –Madras High Court* and in *Commissioner of Service Tax III v. CESTAT, 2017 (3) G.S.T.L. 45 (Mad.)*, and by this Bench in *Sungreen Ventilation Systems (P) Ltd. v. Commissioner, 2025 (7) TMI 697 – Cestat Chennai*. The ER-1 returns on record show that the new factory was in production of food processing equipment under Chapter Heading 84388090 by June 2017. The nexus is thus established on the record and not merely asserted. We hold that the service tax on the lease premium was paid on an input service of the appellant as a manufacturer, and that the ground in the notice fails.

Issue (iii) Credit taken in the Anna Nagar registration

21. This is the ground on which the impugned order principally rests, and the Revenue is right on one part of it. The lease of a factory site at Mahindra World City was not used for providing the consulting, erection or other services rendered from Anna Nagar. The first limb of Rule 2(l) is not satisfied. The services did not qualify as input services of the Anna Nagar output service provider. Had the credit stood only on that limb, it would have failed.

22. Entitlement, however, flows from the definition to the person. Rule 3(1) allows *a manufacturer or producer of final products or a provider of output service* to take credit, and the appellant is one legal person that is both. In *Royal Enfield (A Unit of Eicher Motors Ltd.) v. Commissioner, 2026 (10) TMI 1163 -CESTAT Chennai*, vide *Final Order Nos. 41095 to 41097/2026 dated 15.10.2026,* this Bench held that a registration identifies the registrant and the place at which its credit is accounted for, and is *not the source of the entitlement, which flows from the definition*. Following *CCE v. Pipavav Shipyard Ltd., (2023) 4 Centax 246 (Guj.)*, it also held that credit cannot be denied merely

because it is reflected in one return instead of the other. The present case is not on all fours with Royal Enfield, where both registrations stood at the same premises. Here the factory was a separate unit, and the proper course was to pass the credit to it through an input service distributor, or to take it in that unit once registered.

23. The departure was procedural. Until 31.03.2016, Rule 7 provided that an input service distributor *may distribute* credit, and it did not compel distribution. The want of an input service distributor registration is a curable irregularity that does not defeat an admissible credit. That was held in *CCE v. Dashion Ltd., 2016 (41) S.T.R. 884 (Guj.)*, which the Board accepted in Part I of Circular No. 1063/2/2018-CX dated 16.02.2018. The jurisdictional High Court followed it in *CCE v. Pricol Ltd., 2021 (48) G.S.T.L. 235 (Mad.)*, and so did this Tribunal in *Bank of India v. Commissioner, 2026 (2) TMI 1022 – Cestat Chennai*. A coordinate Bench applied Dashion in *AVO Carbon India Pvt. Ltd. v. Commissioner, 2024 (8) TMI 1205 -CESTAT Chennai*, where credit on services common to the DTA unit and the EOU of the same assessee had been taken without an input service distributor registration. In that decision, the demand on credit of rent taken by one unit for the other, and later reversed and taken again by the other unit, was upheld only because the appellant did not contest it. It decides nothing on the question before us. The invoice was addressed to the Anna Nagar office, which was the lessee's address in the lease deed. When the credit was taken, the factory had no registration in whose account it could be entered.

24. The returns also show how the credit was held at Anna Nagar. We have examined Part I.3 of each ST-3 return month by month. Before July 2014 the service tax credit at Anna Nagar was negligible, standing at Rs.23,730/- at the end of June 2014. With the lease credit, the balance rose to Rs.2,25,00,674/- at the end of July 2014. Thereafter the closing balance of service tax credit never fell below Rs.2,24,91,000/- in any month up to September 2016. It came closest at Rs.2,24,93,232/- in November 2014, Rs.2,24,93,687/- in February 2016 and Rs.2,24,91,972/- in September 2016. The education cess balance never fell below Rs.4,49,820/-, its lowest being Rs.4,49,977/- in November 2014. The secondary and higher education cess balance never fell below Rs.2,24,910/-, its lowest being Rs.2,24,989/- in the same month. The half yearly closing figures tally with those in the

additional submissions. No amount was used in any month for payment of excise duty, which disproves the finding of the Adjudicating Authority that the credit was utilised in the manufacturing registration. The position held until the reversal. The closing balances from October 2016 to February 2017 remained above Rs.2,24,91,000/-, the lowest being Rs.2,24,91,311/- in February 2017. The return filed on 21.04.2017 then shows a reversal of Rs.2,24,91,000/-, Rs.4,49,820/- and Rs.2,24,910/- in March 2017, described as "Lease Land". As a matter of account, the other credit in the ledger was always sufficient to meet every debit, and the balance never fell below the lease credit. Rule 14(2), inserted by Notification No. 6/2015-CE (NT) dated 01.03.2015 and omitted with effect from 01.04.2016 by Notification No. 13/2016-CE (NT) dated 01.03.2016, deemed the opening balance of each month to be utilised before the credit taken during that month. In November and December 2015, the debits exceeded the other credit in the opening balance, by Rs.28,031/- and Rs.1,17,829/- respectively. Even if that other credit is taken to have been used first, the rule would treat Rs.1,45,860/- of the lease credit as used in those two months, though the credit taken during each month was enough to meet the excess. Nothing turns on this. The credit was admissible, and Rule 3(4) permitted the appellant to use it for service tax on its own output services.

25. The consequence is that a credit admissible to the appellant was held in the account of its own service tax registration, and later moved to the unit to which it belonged. The Revenue lost nothing. Rule 14, as substituted by Notification No. 6/2015-CE (NT), provides in clause (i) of sub-rule (1) for recovery of credit taken wrongly even if it is not utilised, and in clause (ii) for recovery with interest of credit taken and utilised wrongly. Non-utilisation is therefore not by itself an answer to a demand. The answer here is that the credit was not taken wrongly. Rule 14 recovers such credit from the manufacturer or the provider of output service, that is, from the person who took it. The appellant was both, and the credit was admissible to it. A credit admissible to the person who took it is not taken wrongly merely because it was first entered in the account of another registration of the same person. The demand of Rs.2,31,65,730/- is unsustainable.

26. Two matters require to be stated expressly. The fresh availment of this credit in the ER-1 return of the Mahindra World City factory for March 2017 is not the subject of this notice. Its compliance with Rule 4(7) and the other provisions of the Rules, and its later carry forward, are therefore not before us, and we do not express any view on them. They remain open to examination in accordance with law, subject to limitation. Second, the appellant has reversed the credit at Anna Nagar and has taken it at the factory. The setting aside of the demand shall not entitle the appellant to take the credit again at Anna Nagar or to seek its refund, since that would allow the same credit to be enjoyed twice.

Issue (iv) Interest and penalty

27. No interest arises on a credit that was admissible. In July 2014, Rule 14, as amended by Notification No. 18/2012-CE (NT) dated 17.03.2012, provided for recovery with interest only where credit was *taken and utilised wrongly*. Rule 14, as substituted by Notification No. 6/2015-CE (NT) dated 01.03.2015 and in force when the notice was issued, keeps that distinction, providing for interest only under clause (ii) of sub-rule (1). The jurisdictional High Court has explained the principle in *Commissioner of C. Ex., Madurai v. Strategic Engineering (P) Ltd., 2014 (310) E.L.T. 509 (Mad.)*. There credit taken wrongly had been reversed before use. Following *Commissioner v. Bill Forge Pvt. Ltd., 2012 (279) E.L.T. 209 (Kar.)*, the Division Bench held that *mere taking itself would not compel the assessee to pay interest as well as penalty*. It also held that the amendment of Rule 14 to the words taken and utilised had answered the doubts that existed earlier. The Karnataka High Court took the same view in *CCE v. Gokaldas Images (P) Ltd., 2012 (28) S.T.R. 214 (Kar.)*, holding that reversal of an unutilised credit amounts to not taking it at all. A coordinate Bench applied Bill Forge in *AVO Carbon India* and set aside interest on credit that had been reversed while a sufficient balance was held. Since the credit was admissible, we need not consider whether the deemed use of Rs.1,45,860/- noticed earlier would have attracted interest had it been otherwise.

28. The penalty falls with the demand, and it fails independently as well. Section 78, as substituted with effect from 14.05.2015 and in force when the notice was issued, makes liable only *the person who has been served notice under the proviso to sub-section (1) of section 73*. Rule 15(3), as amended from the same date, imposes penalty in terms of Section 78(1). This notice was not issued under the proviso, and it did not need to be. The credit was shown in the revised return filed on 14.01.2015. Rule 7B of the Service Tax Rules, 1994 provides by its Explanation that, where a revised return is filed, the relevant date for Section 73 is the date of the revised return. *Komatsu India* is not to the contrary, for its finding on limitation was rendered under Section 11A of the Central Excise Act in a manufacturer's case, and it had no occasion to consider Section 73(6)(i)(a) of the Act read with the Explanation to Rule 7B, which fix the date of the revised return as the relevant date here. The period of eighteen months from 14.01.2015 had not expired when the Finance Act, 2016 enlarged the normal period to thirty months with effect from 14.05.2016. The notice of 10.04.2017 was thus within the normal period, and the Department rightly invoked Section 73(1) alone.

29. Even under Section 78 and Rule 15(3) as they stood in July 2014, penalty required fraud, collusion, wilful misstatement, suppression of facts or contravention with intent to evade payment of tax. These are the very ingredients that extend the period of limitation. In *Union of India v. Rajasthan Spinning and Weaving Mills, 2009 (238) E.L.T. 3 (S.C.)* the Supreme Court held that, absent such an allegation and finding, the penalty provision does not apply. The appellant did not conceal the credit. It declared it in the statutory return under a description that named the lease land, and it was from that very return that the notice drew the fact. Suppression means a deliberate withholding of information with intent to evade, and the burden of proving it lies on the Revenue, as held in *Pushpam Pharmaceuticals Company v. CCE, 1995 (78) E.L.T. 401 (S.C.)* and *Uniworth Textiles Ltd. v. CCE, 2013 (288) E.L.T. 161 (S.C.)*. Taking a legal opinion before claiming a credit is evidence of bona fides, not of intent to evade. A penal provision is not attracted where the assessee acts on a bona fide belief without a guilty mind, as held in *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, 1980 (6) E.L.T. 295 (S.C.)*. In *Maruti Suzuki Ltd. v. CCE, 2009 (240) E.L.T. 641 (S.C.)* the Supreme Court declined penalty in a CENVAT credit dispute

because repeated amendments to the Rules had generated much litigation. We may add that *Strategic Engineering*, which binds us, declined penalty even where the credit was wrongly taken, because it was never used. The present credit was admissible, and on the account it was left untouched.

30. We are constrained to observe that the penalty was imposed on reasoning that cannot bear scrutiny. The impugned order branded as a misstatement the appellant's submission, recorded in paragraph 8.1 of the notice and pleaded again in paragraph 69 of the reply, that the credit had only been taken and not utilised. It did so without examining the returns in the Department's own possession, and those returns bear the submission out. It recorded, against the same returns, that the credit had been utilised in the manufacturing registration. It added a ground of penalty under Rule 5(2) of the Service Tax Rules that the notice never proposed, when the Revenue is confined to the case set out in its notice, as held in *Commissioner of Customs v. Toyo Engineering India Ltd., 2006 (201) E.L.T. 513 (S.C.)* and *CCE v. Champdany Industries Ltd., 2009 (241) E.L.T. 481 (S.C.).* It disposed of the authorities cited in reply as not relevant, without discussing any of them. An adjudicating authority is bound to meet the contentions raised before it with reasons. A penalty of Rs.2,31,65,730/-, equal to the entire credit, in a case where the Revenue suffered no loss, is not the measured exercise of a quasi judicial power.

Conclusion

31. We sum up our discussions and analysis. The objection under Section 73(4B) fails in law, for the words *where it is possible to do so* make the time limit elastic and a delay beyond it does not by itself vitiate the order. Whether the delay here was reasonable on facts need not be decided, since the appeal succeeds on the other issues. On merits, the service tax on the lease premium was paid on an input service of the appellant as a manufacturer, and the omission of "setting up" from the inclusive part of Rule 2(l) does not exclude it. The credit was taken in the account of another registration of the same person, which was a procedural irregularity. The returns show that the other credit in that registration always exceeded every debit, until the lease credit was reversed and carried to the unit to which it belonged. The demand, the

interest and the penalty therefore cannot stand. The validity of the fresh availment at the Mahindra World City factory is left open.

32. In view of the foregoing, the appeal is allowed and the impugned order is set aside. The credit of Rs.2,31,65,730/- reversed by the appellant in its Anna Nagar service tax registration shall not be taken again in that registration or refunded to the appellant. Nothing in this order shall be construed as an opinion on the fresh availment of the said credit in the ER-1 return of the Mahindra World City factory for March 2017 or on its subsequent carry forward. These remain open to examination in accordance with law, subject to the law of limitation.

The appellant shall be entitled to consequential relief in accordance with law, subject to our directions above.

(Order pronounced in the open court on 04.11.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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