CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 61399 of 2019

[Arising out of Order-in-Appeal No. 128/CE/CGST-APPEAL-GURUGRAM/SG/2017 dated 27.09.2019 passed by the Commissioner (Appeals), Central GST, Gurugram]

M/s Maruti Suzuki India Limited **……Appellant**
Palam-Gurugram Road,
Gurugram, Haryana 122001

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Gurugram **……Respondent**
Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

APPEARANCE:

Ms Krati Singh and Ms Samiksha Uniyal, Advocates for the Appellant
Shri Aniram Meena and Shri G.D. Bansal, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60606/2026

DATE OF HEARING: 17.11.2026
DATE OF DECISION: 19.11.2026

P. ANJANI KUMAR :

The appellants, M/s Maruti Suzuki India Limited, are in appeal against the impugned Order-in-Appeal dated 27.09.2019, whereby the Commissioner (Appeals) upheld the Order-in-Original dated 29.03.2019 passed by the Joint Commissioner of CGST, Gurugram.

2. Briefly stated, the facts of the case are that the appellants procured natural gas, which is used as an input in the manufacture of motor vehicles, under an agreement with Gas Authority of India Ltd ('GAIL'). In terms of the contract, the appellants are required to off-take a minimum quantity of gas every month, failing which they were liable to pay a penalty amount. The appellants defaulted in purchase of minimum quantity for about 4 to 5 years. Pursuant to a mutual understanding with GAIL, the appellants paid an amount of Rs.8,55,85,634/- as compensation for short off-take of gas. GAIL has paid service tax on the compensation received by them considering the same to be a consideration for a declared service of tolerance. The appellants have taken credit of service tax of Rs.1,19,81,989/-. The Revenue disputed the availment of credit alleging that no input service had been availed by the appellants against the tax paid and, as such, the credit was not admissible. Accordingly, a Show Cause Notice dated 07.12.2016 was issued to the appellants, which culminated in the confirmation of demand and imposition of penalty vide the aforementioned Orders. Hence, the present appeal.

3. Ms. Krati Singh, learned Counsel for the appellants, assisted by Ms. Samiksha Uniyal, submits that CENVAT credit cannot be denied at the recipient's end when the payment of service tax has not been disputed at the service provider's end. In support of this contention, she relies on CBEC Circulars No. 877/15/2008-CX dated 17.11.2008 and No. 1014/2/2016-CX dated 01.02.2016, as well as the following decisions:

- *CCE, Bhubaneshwar-II vs. Sarvesh Refractories P. Ltd – 2001 (9) TMI 174 CESTAT Kolkata – affirmed by Hon'ble Court in 2007 (11) TMI 23 Supreme Court*
- *Royal Sundaram General Insurance Company Ltd vs. CCE & ST LTU – 2024 (7) TMI 270 Madras High Court*
- *M/s Modular Auto Ltd vs. CCE, Chennai – 2018 (8) TMI 1691 Madras High Court*
- *M/s Cholamandalam MS General Insurance Co. Ltd vs. CGST, Chennai – 2021 (3) TMI 24 CESTAT Chennai – followed in 2021 (9) TMI 442 CESTAT Chennai*
- *M/s National Insurance Company Limited vs. CST – 2026 (8) TMI 1503 CESTAT Kolkata*

3.1 The learned Counsel further submits that no proceedings were initiated in respect of their Manesar unit, which had a similar arrangement with GAIL, even though the said unit had also availed similar credit and duly informed the department vide letter dated 09.02.2015. Therefore, the Revenue cannot take a contrary stand in respect of the appellants' Gurugram unit. For this proposition, she relies on the following judgments of the Hon'ble Supreme Court:

- *Birla Corporation Ltd vs. CCE - 2005 (7) TMI 104 Supreme Court*
- *Indian Oil Corporation Ltd vs. CCE - 2006 (8) TMI 8 Supreme Court*

3.2 She further submits that the activity is squarely covered under the inclusive clause of the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, as the same was incurred in relation to the procurement of inputs. In this regard, she relies on the following cases:

- *M/s Honda Cars India Ltd vs. CCE - 2019 (3) TMI 236 CESTAT New Delhi*

- *The Ramco Cements Ltd vs. CCE - 2019 (12) TMI 391 CESTAT Chennai*

4. Shri Aniram Meena, learned Authorized Representative for the Revenue, assisted by Shri G.D. Bansal, reiterates the findings of the impugned order and submits that it is not the case of the Revenue that service tax was paid by GAIL. Rather, the objection of the Revenue is that the said service does not qualify as an 'input service' for the appellants in terms of the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004.

5. Heard both sides and perused the records of the case.

6. We find that in the instant case, the Revenue seeks to deny CENVAT credit to the appellants on the sole ground that the declared service of 'tolerating an act or a situation', on which service tax was discharged by GAIL, does not qualify as an 'input service' for the appellants. A perusal of the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004 reveals that it comprises two parts, namely, the 'means' part and the 'inclusive' part. The inclusive part permits availment of credit on the services used in relation to procurement of inputs.

7. We find that the penal amount paid by the appellants to GAIL is undoubtedly in relation to the procurement of goods. If the appellants did not procure natural gas from GAIL, there would have been no occasion to pay the penal amount and the applicable service tax for the same. Therefore, it has to be understood that the penalty paid by the appellants is in the course of the services they availed for

procurement of inputs. We also find that the Revenue has not disputed the payment of service tax by GAIL which is undoubtedly in relation to the sale of natural gas by them. Therefore, as a corollary, the service has to be understood to be in or in relation to the procurement of natural gas, the input, by the appellants. The Revenue having accepted that GAIL has rendered the service to the appellants cannot say that the appellants have not received any service.

8. We find that the Tribunal has dealt with this issue in a number of cases. In this regard, we note that Chennai bench of the Tribunal in the case of *M/s Cholamandalam MS General Insurance Co. Ltd* (supra), has held as follows:

> **"6.1** The allegation of the Department is that no services have been provided by the dealers to the appellant as per the invoices and therefore, the appellant is not eligible to avail credit of the Service Tax reflected in this invoices. In paragraph 31 of the Order-in-Original dated 30.01.2017, the crux of the allegations of the Department has been recorded by the Original Authority, as under :
>
> > *"31. On careful consideration of the statements of personnel of M/s. Chola and Dealers, I find that*
> >
> > *(i) The payment made by M/s. Chola to M/s. Hyundai/Dealers of Motor Vehicles is only a percentage of OD premium collected and the said payout details are calculated by the Head Office of M/s. Chola and communicated to the Dealers;*
> >
> > *(ii) M/s. Chola could not term such payout as commission (which would be in violation of IRDA guidelines) and hence the Dealers were given prescribed format to raise invoices as if they provided "computing network connectivity through extranet, internet space, furniture and fixtures, consumables, salary of staff, computers, printers, electronics and electricity";*

(iii) the Dealers accordingly raised invoices on the insurance companies in the format provided to them and

(iv) the Dealers have not provided the services as mentioned in the description of the invoices. In other words, the description of the services contained in the invoices used for availing Cenvat Credit do not reflect the true description of the services."

6.2 From the above, it can be seen that the case of the Department is that the *payout* paid by the appellant to the dealers on the OD premium collected by the dealers from the customers is camouflaged as service provided by the dealers to the appellant; that therefore, the services contained in the invoices have actually not been provided by the dealers to the appellant and thus, Cenvat credit is not eligible.

7.1 Though in the Show Cause Notice the main allegation is that the description of services in the documents on which credit has been availed is not correct, at the time of adjudication, the main finding is that no services have been provided by the dealers to the appellant and that therefore credit is not eligible. At this juncture, it needs to be pointed out that the Department has no dispute with the Service Tax collected from the appellant by the dealer and remitted to the Government. The assessment of Service Tax paid at the dealer's end has not been disturbed/questioned by the Department; only the credit availed at the service recipient's end has been questioned by issuing the present Show Cause Notice.

7.2 If the Department contends that no service has been provided, the crucial question arises as to why Service Tax was collected from the dealer. The discussion by the Original Authority at paragraph 37 countering this argument is as under:

"37. As regards their contention in Para N.1 to N.7 that if no service is provided by the Dealer there is no requirement to pay service tax; that at the time of accepting service tax from the dealer, the department chooses to look at the form of transaction and accept service tax. In this regard, I find that the issue involved is not about the service tax payable by the Dealer. It is about the mentioning of true description of services in the invoice and the services mentioned in the invoices in the instant case admittedly were not provided by the

Dealers. Only after the in-depth investigation conducted with the Dealers, the fact of Dealers issuing invoice with the description suggested by the Taxpayer have come to light. Hence their contention that department cannot approbate and reprobate in the same case is not valid."

7.3 It is not disputed that the dealer has paid Service Tax on the services described in the invoices. If that be so, the denial of credit at the recipient's end cannot be justified by the Department without reopening the assessment at the dealer's end."

9. In view of the above, we are of the considered opinion that the impugned order is not sustainable; accordingly, we set aside the same. The appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 19.11.2026)

(P. DINESHA)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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