CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Excise Miscellaneous Application No.40169 of 2026

Excise Appeal No. 42072 of 2018

(Arising out of Order-in Appeal No.24/2018 SLM - CEX, dated 07.02.2018 passed by the Commissioner of GST and Central Excise (Appeals), Coimbatore, No.1, Foulks Compound, Anai Road, Salem 636 001).

M/s. Bata India Limited **...Appellant**
Post Box No.39, No.73 and 74
SIPCOT Phase – 1
Hosur 635 126

Versus

Commissioner of GST & Central Excise **...Respondent**
No.1, Foulkes Compound
Anaimedu, Salem 636 001

APPEARANCE:

For the Appellant :Ms. Derlene Joshna, Advocate for the Appellant
For the Respondent: Ms. G. Krupa Authorised Representative

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

FINAL ORDER No.41199/2026

DATE OF HEARING :03.07.2026
DATE OF DECISION: 23.11.2026

Per AJAYAN T.V.

M/s. Bata India Limited, the appellant, has called into question the Order in Appeal No.24/2018 dated 07.02.2018 of the Commissioner of GST and Central Excise (Appeals), Coimbatore, sitting at Salem. By that

order the first appellate authority upheld Order in Original No.05/2017 (CE) dated 28.02.2017 of the Additional Commissioner of Central Excise, Chennai III Commissionerate, which had denied Cenvat credit of Rs.1,13,36,030/- availed at the Hosur factory during September 2015 to April 2016 on the strength of the challans of the appellant's Input Service Distributors, and had demanded the amount with applicable interest and imposed a penalty of Rs.10,00,000/-.

Relevant Facts of the case

2. The appellant manufactures footwear falling under chapter 64 of the First Schedule to the Central Excise Tariff Act, 1985, at its factory at Hosur, and pays duty on the basis of the retail sale price under Section 4A of the Central Excise Act, 1944 (the Act). Its corporate office at Gurgaon and its four Regional Distribution Centres (RDCs) at Faridabad, Kolkata, Thane and Bangalore are registered as Input Service Distributors. Each of them receives the invoices of service providers and distributes the credit of the service tax so paid to the appellant's manufacturing units by challans issued under the Cenvat Credit Rules, 2004 (CCR). The Hosur factory took credit on such challans.

3. Show Cause Notice No.55/2016-CE dated 06.10.2016 listed the services whose credit had been so distributed, namely manpower supply, security, courier, telephone, transport, rent, commission, convention, design, banking, technical, works contract, legal, cleaning, web hosting, C&F agent, business exhibition, chartered accountant, intellectual property, scientific and technical consultancy, consulting engineer, maintenance and repair, advertising agency and management consultancy. The notice had only a single allegation. Because these services were rendered at the corporate office and the RDCs, which are places other than the factory, they could not be regarded as used by the manufacturer directly or indirectly in or in relation to the manufacture of final products or their clearance up to the place of removal, and so were not input services under Rule 2(l) of the CCR. The notice proposed recovery of Rs.1,13,36,030/- under Rule 14 of the CCR read with

Section 11A(1) of the Act, interest under Rule 14 read with Section 11AA, and a penalty under Rule 15(1) of the CCR.

4. The notice was the twelfth of its kind. Eleven earlier notices and statements of demand, covering April 2008 to August 2015, had raised the very same allegation against the appellant. They had been adjudicated against it, and its appeals against those orders were pending before this Tribunal when the present notice was decided.

Reply and the orders below

5. In its reply dated 19.01.2017 the appellant contended that the definition of input service is of wide amplitude, that it does not impose any condition as to the place where a service is received, that credit distributed by an Input Service Distributor cannot be questioned at the end of the recipient unit, and that the identical dispute for the earlier periods was pending before this Tribunal. The Additional Commissioner noticed the eleven earlier orders, recorded that he found no reason to differ from them, and stated that he had drawn the substantial part of his findings from those orders. He held that the services had been consumed after clearance at places other than the factory and bore no nexus to manufacture, that the words activities relating to business had been omitted from Rule 2(l) with effect from 01.04.2011, and that the jurisdictional officer of the recipient unit was competent to question the credit. He confirmed the demand with interest and imposed a penalty of Rs.10,00,000/- under Rule 15(1) of the CCR read with Section 11AC(1)(a) of the Act, with the option of payment at twenty five per cent under Section 11AC(1)(b).

6. The appellant preferred an appeal before the aforesaid appellate authority. By its letter dated 02.01.2018 it requested that the appeal be deferred because the appeals for the earlier periods were listed before this Tribunal on 24.01.2018. The Commissioner (Appeals) declined, relying on Board Circular No.1053/2/2017-CX dated 10.03.2017, and dismissed the appeal. She held that the jurisdictional officer of the

recipient unit could question the credit, that after 01.04.2011 services used at the corporate office and the RDCs in connection with the business activities of the appellant stood outside the definition, and that some of the services fell within the exclusions in clauses (A), (B), (BA) and (C) of Rule 2(l). She further held that outward transportation from the factory gate to the RDCs and from the RDCs to the retail shops was ineligible because, for goods assessed under Section 4A, the place of removal is the factory gate. She also found that no evidence of nexus had been produced and that the decisions cited by the appellant related to the period before 01.04.2011.

Developments after the impugned order

7. Four months later, by Final Order Nos.41784-41792/2018 dated 05.06.2018, reported as *Bata India Ltd. v. CCE & ST Chennai III, 2018 (6) TMI 1414 - CESTAT Chennai*, this Tribunal decided the appellant's appeals against the eleven earlier orders, covering April 2008 to August 2015. At paragraph 5.1 the Bench held, on the strength of the Board's letter FNo.137/3/2006-CX. dated 02.02.2006, that a depot can be the place of removal even for goods assessed under Section 4A, so that eligible services availed up to the RDCs qualify for credit. At paragraph 5.3 it found that the disputed services had been provided at the corporate office or the RDCs, that the definition of input service has always been inclusive, and that many services listed in it must of necessity be performed away from the factory. At paragraph 6 it concluded thus.

"Accordingly, we hold that all the input services which have been disputed except for GTA beyond the RDCs are very much eligible services for the purpose of Rule 2(l), whether before 1.4.2011 or after that date."

8. Following *Commissioner of Central Excise and Service Tax v. Ultra Tech Cement Ltd., 2018 (9) G.S.T.L. 337 (S.C.)*, the Bench upheld the denial of credit on goods transport agency (GTA) services beyond the RDCs from 01.04.2008. It set aside all the penalties. The Revenue did

not carry the order further. The appellant appealed against the adverse part to the High Court of Madras in C.M.A. Nos.375 to 377, 402, 409, 413, 437, 446 and 449 of 2019. By its common judgment dated 28.01.2019, reported as *Bata India Ltd. v. Commissioner of Cus., C. Ex. & S.T., Chennai III, 2019 (24) G.S.T.L. 326 (Mad.)*, a Division Bench held that the point of sale had not been examined and directed the adjudicating authority to examine whether the goods moved to the RDCs without sale and whether the retail outlets at which they were finally sold were the place of removal. Paragraph 25 of the judgment reads as follows.

"In the result, while leaving the substantial questions of law open, we allow these appeals and set aside the orders passed by the Tribunal as well as the Adjudicating Authority insofar as they deny the input service credit availed in respect of GTA services on or after 1-4-2008. In all other aspects, the orders passed by the Tribunal stand confirmed."

9. The Commissioner of GST and Central Excise, Salem again denied the GTA credit by Orders in Original Nos.06-16/2021 and 17/2021 dated 19.01.2021. This Tribunal set those orders aside by Final Order Nos.42472-42483/2021 dated 17.12.2021, reported as *Bata India Ltd. v. Commissioner of G.S.T. and Central Excise, Salem, 2021 (12) TMI 790 - CESTAT Chennai*, because the factual exercise directed by the High Court had not been undertaken, and remanded the matter once more. By Order in Original No.65/2022 CE (Commissioner) dated 30.11.2022, covering the periods April 2008, September 2008 to August 2015 and April 2017 to June 2017, the Commissioner examined the appellant's pattern of sale and recorded at paragraph 23.11 as follows.

"on examination of the sales pattern of the assessee and the invoices issued by the assessee from RDC to retail outlets, I find that invoice was issued for the movement of goods from RDC to their retail outlets on stock transfer basis which means that, till goods are sold at the retail outlet of the assessee, the ownership of the goods was with the assessee and the ultimate sale happens only at retail outlets owned by the assessee. Under these circumstances, in the instant case, the place

of removal is the Retail outlet of the assessee. Accordingly, I find that CENVAT credit of Service tax paid for the transportation goods from RDC to retail outlets is admissible."

10. The appellant has placed these four orders on record through Miscellaneous Application No.C/MISC/40169/2026 dated 17.04.2026.

Submissions on behalf of the appellant

11. Ms. Derlene Joshna, learned counsel for the appellant, contended that the issue is no longer res integra in the appellant's own case. Final Order Nos.41784-41792/2018, *Bata India Ltd., 2018 (6) TMI 1414 - CESTAT Chennai*, supra, allowed credit on every disputed service other than GTA, and the Revenue did not appeal. The High Court, in *Bata India Ltd., 2019 (24) G.S.T.L. 326 (Mad.)*, supra, interfered only with the GTA portion and confirmed the rest. Order in Original No.65/2022 has since allowed even the GTA credit from the RDCs to the retail outlets, and the Revenue has not appealed against it either. Counsel urged that the services, the business model of stock transfer from the factory to the RDCs and thence to the appellant's own retail outlets, and the governing provisions remained the same in the impugned period. She submitted a synopsis of her contentions on the date of hearing which also contained a tabulation of each service in the notice against the corresponding sub item of paragraph 4 of the 2018 order, and relied on *Commissioner of Central Excise, Mumbai v. Bigen Industries Ltd., 2006 (197) E.L.T. 305 (S.C.)* and *Marsons Fan Industries v. Commissioner of C. Ex., Calcutta, 2008 (225) E.L.T. 334 (S.C.)* for the proposition that the Revenue, having accepted these orders, cannot take a different stand for the intervening period.

12. In the alternative counsel argued that the expression in or in relation to the manufacture is of the widest import, citing *Collector of Central Excise v. Rajasthan State Chemical Works, 1991 (55) E.L.T. 444 (S.C.)* and *Union of India v. Ahmedabad Electricity Co. Ltd., 2003 (158) E.L.T. 3 (S.C.)*, together with the Press Note dated 12.08.2004. She

maintained that the place of receipt of a service is irrelevant, unlike the case of inputs and capital goods, and that credit validly distributed by an Input Service Distributor cannot be denied at the end of the recipient unit, citing *CST v. Godfrey Philips India Ltd., 2009 (14) S.T.R. 375 (Tri.-Ahmd.)*. For individual services, apart from the reliance placed on the decisions in ground F of the appeal grounds, she relied on *Thiru Arooran Sugars Ltd. v. Commissioner of C. Ex., Puducherry, 2017 (51) S.T.R. 25 (Tri.-Chennai)*, *Integra Software Services Pvt. Ltd. v. Commissioner of C. Ex., Puducherry, 2017 (48) S.T.R. 137 (Tri.-Chennai)*, *Integra Software Services Pvt. Ltd. v. Commissioner of C. Ex., Puducherry, 2017 (50) S.T.R. 145 (Tri.-Chennai)* and *Hinduja Foundries Ltd. v. Commissioner of Central Excise, Chennai I, 2017 (47) S.T.R. 241 (Tri.-Chennai)*. Interest and penalty, she said, cannot survive once the demand fails.

Submissions on behalf of the respondent

13. Ms. G. Krupa, learned Authorised Representative, reiterated the findings of the impugned order.

Issues for determination

14. We have heard both sides and perused the record. Three issues arise.

i. Whether the credit for September 2015 to April 2016 can be denied on the ground that the services were received at the corporate office and the RDCs, in the face of the orders since passed in the appellant's own case for the periods on either side?

ii. Whether the additional grounds in the impugned order, namely the exclusion clauses of Rule 2(l), can sustain any part of the demand?

iii. Whether interest and penalty survive?

Discussion and findings

15. The miscellaneous application may be disposed of at the threshold. It is styled as one under Rule 10 of the CESTAT (Procedure) Rules, 1982 for additional grounds, though its prayer is to bring on record four documents. What is sought to be placed is not fresh evidence of fact but orders of this Tribunal, of the jurisdictional High Court and of the Revenue's own adjudicating authority in the appellant's own matter, every one of them passed after the impugned order and so incapable of production earlier. They bear directly on the question to be decided, and their genuineness is not in question. Rule 23 of the said Rules permits this Tribunal to admit a document for a substantial cause, and none could be more substantial than a binding adjudication between the same parties on the same question. The application is allowed and the documents are taken on record.

16. We take up the first issue, which disposes of the bulk of the demand. The show cause notice made a single allegation, and it was locational. It did not say of any service that it lacked nexus with the manufacture of footwear, or that it fell within an exclusion, or that its credit had been wrongly apportioned. It said only that services received at the corporate office and the RDCs, being places other than the factory, could not be input services. That is word for word the allegation of the eleven earlier notices. The adjudicating authority itself understood the present case to be a repetition of them, for it recorded that it found no reason to differ from the earlier orders and drew the substantial part of its findings from them. Identity of the issue, with those in the earlier notices, is therefore the Revenue's own case.

17. That allegation was answered between these very parties by Final Order Nos.41784-41792/2018. This Tribunal held that every disputed service other than GTA beyond the RDCs was an input service, and it

held so expressly for the period after 01.04.2011 as well as before. The omission of the words activities relating to business with effect from 01.04.2011, which is the principal reason given by both authorities below, was thus considered and found not to disentitle the appellant. The Revenue accepted the order. When the appellant took the adverse part to the High Court, the High Court confined its interference to GTA credit. It noticed, at paragraph 18, that the Tribunal had allowed the credit availed at all the RDCs on services such as renting of premises, courier, telephone and security irrespective of the amendment, and it declared in terms that in all other aspects the orders of the Tribunal stood confirmed. The finding on the non GTA services has therefore attained finality between the parties, and nothing has been shown to us that would detract from it.

18. The Supreme Court has repeatedly held that the Revenue cannot accept a decision in an assessee's case and then take a contrary stand against the same assessee on the same facts. In *Bigen Industries*, supra, the Court held that the earlier decision of the Tribunal between the parties on the same facts, having attained finality because the Revenue filed no further appeal, precluded the Revenue from taking a different stand. In *Birla Corporation Ltd. v. Commissioner of Central Excise, 2005 (186) E.L.T. 266 (S.C.)* the Court refused to permit the Revenue, which had taken a conscious decision to accept a principle, to take the opposite stand, observing that *if we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary*. The rule rests on the public interest captured in the maxim *interest reipublicae ut sit finis litium*, that there be an end to litigation, and on the plain unfairness of treating one assessee differently for one period on an identical footing.

19. The doctrine applies only where the facts are the same, and we have tested that. Nothing in the notice, the order in original or the impugned order suggests that the appellant's business, the manner in which the services were procured at the corporate office and the RDCs,

or the method of their distribution changed after August 2015. The appellant asserts that they did not, and the Revenue has not controverted it. The law, too, remained the same. The limb of Rule 2(l) that governs a manufacturer, together with its inclusive part, was in the same terms during the impugned period as in the post 2011 period construed in the 2018 order, and the amendments of 2016 did not touch it. We note that some descriptions in the present notice, such as web hosting, design, intellectual property, convention and consulting engineer services, are not named in paragraph 4 of the 2018 order, and counsel's table places them under residual sub items. That is of no consequence. The 2018 order did not turn on the identity of each service. It rejected the locational premise on which the denial rested, and that premise is the only one the present notice advances. Having alleged nothing service specific, the Revenue cannot improve its case at this stage.

20. No doubt, on GTA beyond the RDCs the 2018 order went against the appellant. However, that part of the 2018 order no longer stands, the High Court having set it aside and directed an examination of the point of sale. The examination was made by the Revenue's own Commissioner in Order in Original No.65/2022. She found that the goods move from the RDCs to the appellant's own retail outlets on stock transfer, that ownership remains with the appellant until the sale at the outlet, and that the retail outlet is the place of removal. The credit on transportation from the RDCs to the retail outlets was accordingly allowed. Counsel stated that the Revenue has not appealed against that order, the Authorised Representative did not dispute it, and nothing on record suggests otherwise. In *Marsons Fan Industries*, supra, the Supreme Court set aside an order of the Tribunal because the Department had accepted a later decision of its own adjudicating authority, for another period and in respect of the same assessee and similar goods, which took the contrary view. The same course must follow here. The view that for goods assessed under Section 4A the factory gate alone is the place of removal also stands rejected between

the parties by paragraph 5.1 of the 2018 order, which the Revenue accepted, and it also cannot be reconciled with Rule 2(qa) of the CCR, in force from 11.07.2014, under which a depot or any other premises from where the goods are to be sold after clearance is a place of removal. Transport from the factory to the RDCs therefore is to be accorded the same treatment as transport from the RDCs to the retail outlets.

21. We are conscious that the impugned order was passed before the 2018 order, and the Commissioner (Appeals) cannot be faulted for not following a decision yet to be rendered. Her reasoning nonetheless deserves a word. She held that services used at the corporate office and the RDCs in connection with the appellant's business activities fall outside the definition, and in the same breath acknowledged, at paragraph 6.3, that tax paid on eligible services at a head office, branch office or depot is eligible for credit through the Input Service Distributor mechanism. The two propositions cannot stand together. That mechanism exists precisely to carry to the factory the credit of services received at offices away from it, and the inclusive part of Rule 2(l) names accounting, auditing, financing, recruitment, security, business exhibition, legal services and advertisement, which are seldom rendered within a factory. The reasoning was specious. The first issue is answered in favour of the appellant.

22. The second issue concerns the exclusion clauses. The show cause notice did not invoke clauses (A), (B), (BA) or (C) of Rule 2(l), and the appellant was never called upon to meet such a case. Worse, the services to which the Commissioner (Appeals) applied those clauses, namely construction, renting of motor vehicles, motor vehicle insurance and repair, and life and health insurance of employees, do not figure in the list of services in the notice. The list examined at paragraph 18 of the order in original and reproduced at paragraph 6.6 of the impugned order, which speaks of franchise, rent a cab, insurance and authorised service station, is the list of the earlier proceedings carried forward without verification. Not a rupee of the present demand is attributed to

any of these services. Adjudication of this kind, rendered on the template of earlier proceedings and not on the notice actually issued, falls well short of what a quasi judicial authority owes a party before it. The rule of *secundum allegata et probata*, that a case is decided on what is alleged and proved, binds the adjudicator. In *Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd., 2006 (201) E.L.T. 513 (S.C.)* the Supreme Court held that the Department cannot travel beyond the show cause notice. The exclusion clauses cannot therefore sustain any part of the demand.

23. The appellant also urged that credit distributed by an Input Service Distributor cannot be questioned by the officer having jurisdiction over the recipient unit, and pressed the wider construction of the definition with a series of service specific decisions. The Commissioner (Appeals) rejected the first contention. Since we hold the credit admissible because the question stands concluded between the parties, neither contention needs an answer, and we express no opinion on either. As a Bench of nine Judges cautioned in *Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 SCR 744 : AIR 1967 SC 1*, at paragraph 16, a court *should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it*.

24. As regards the third issue, demand of interest under Rule 14 of the CCR read with Section 11AA of the Act and the penalty under Rule 15(1) read with Section 11AC are founded on the credit being wrongly taken. With that foundation gone, both, the demand of interest and the imposition of penalty are rendered unsustainable.

Conclusion

25. To sum up, the denial of credit rested solely on the place where the services were received. That ground stands rejected between the parties by Final Order Nos.41784-41792/2018, which the Revenue accepted and the jurisdictional High Court confirmed in all aspects other

than GTA. The GTA credit has since been allowed by the Revenue's own adjudicating authority in an order it has not challenged. No difference in fact or law has been shown for the intervening period of September 2015 to April 2016, and the additional grounds in the impugned order lie outside the show cause notice. The conclusion that the demands and penalty imposed cannot stand inevitably follow.

26. In light of our aforesaid discussions and analysis, the Order in Appeal No.24/2018 dated 07.02.2018 is set aside.

The appeal is allowed with consequential relief, in law, if any.

(Order pronounced in the open court on 23.11.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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