

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 52180 OF 2024

[Arising out of Order-in-Appeal No. 103/ST/DLH/2024 dated 03.06.2024 passed by the Commissioner (Appeal-I), Central Tax, Goods and Service Tax and Central Excise, Delhi]

M/s Hindustan Tin Works Ltd.
 426, DLF Tower A, Jassola, Sarita
 Vihar, New Delhi-110 025.

...Appellant

Versus

**Commissioner of CGST
 And Service Tax,**
 C.R. Building, I.P. Estate,
 New Delhi-110 002

...Respondent

APPEARANCE:

Shri R. Krishnan, Advocate for the appellant.
 Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51730/2025

Date of Hearing: 29.10.2025
Date of Decision: 14.11.2025

BINU TAMTA:

1. M/s. Hindustan Tin Works Ltd.¹ is engaged in various taxable services including 'Business Auxiliary Services' , 'Business Support Services, "Erection Commissioning and Installation Service' "Manpower Recruitment/Supply Agency Service', etc., as per the Finance Act, 1994².
2. The dispute in the present appeal relates to disallowance of cenvat credit and demand of service tax of Rs.1,71,61,578/- along with interest and penalties for the period October, 2016 – June, 2017. The demand

¹ The Appellant

² Act, 1994

relates to the disallowance of the entire cenvat credit involving Rs.1.26 crores. The demand proposed in the show cause notice dated 22.04.2023 was confirmed by the Order-in-original dated 19.12.2023. The appeal filed by the appellant has basically confirmed the demand barring an amount of Rs.70,760/-, which was dropped by the impugned order³. Hence, the present appeal has been filed.

3. Heard R. Krishnan, Advocate for the appellant and Shri Rakesh Kumar, Authorised Representative for the respondent.

4. Learned counsel for the appellant has challenged the impugned order with respect to the denial of entire cenvat credit demand for the period October, 2016 to June, 2017. Learned counsel for the appellant has also pointed out that the actual credit taken as per the Cenvat Credit Register is Rs.1,26,00,057/-, whereas the show cause notice and the order-in-original have taken the figure as Rs.1,44,95,227/- from the Service Tax Returns filed and hence, there was an error. The other submissions made in this regard are that the sample cenvat credit taking documents were submitted to the Adjudicating Authority along with Cenvat Credit Register on 15.12.2023 and 19.12.2023, however, the order-in-original has been passed in haste on 19.12.2023 itself without any reference to the documents submitted and without any verification. He also challenged the findings of the Adjudicating Authority that the Cenvat Credit Register was not certified by the Chartered Accountant. He further submitted that during the hearing of the appeal, copies of the Cenvat Credit Register along with the copies of the sample invoices, which were submitted before the Adjudicating Authority, were once again

³ Order-in-Appeal No.103/ST/DLH/2024 dated 3.6.2024

submitted but the learned Commissioner confirmed the demand on the ground that the cenvat credit related to inward invoices were not provided. Learned counsel has referred to the two volumes of the documents and the Chartered Accountant's Certificate as regard to the balance in the Cenvat Credit Register as on 30.06.2017, which was duly carried forward through TRAN-I to the GST Regime in the Electronic Credit Register. In so far as the credit of Rs.67,83,083/- could not have been disallowed, *ex facia*, this amount represented the tax paid under Reverse Charge by challans and the Returns of which were disclosed in the ST-3 Returns and the Chartered Accountant's Certificate. In that view, the learned counsel has prayed that the matter needs to be remanded back to the Adjudicating Authority.

5. On the issue of income of Rs.78,56,612/-, by way of interest on fixed deposits with banks and inter-corporate deposits, the submission of the learned counsel for the appellant is that such income is not liable to be taxed as the same is covered by the Negative List of Service in Section 66D(n)(i).

6. Learned counsel has submitted that the tax payment on balances written back of Rs.14,79,792/- relying on the decisions of the Tribunal in the case of **Grey Worldwide (I) Pvt. Ltd. Vs. CST, Mumbai**⁴. The duty liability on profit on sale of fixed assets has been challenged as the amount represented sale of used capital assets in their factory, whose value was 'zero' in the balance sheet and full excise duty was paid thereon. The demand of tax has been confirmed only for the reason that the proof of receipt of payment was not submitted.

⁴ 2015 (37) STR 597 (Tri.-Mumbai)

7. The demand of service tax of Rs.7,38,897/- on expenses on the ground that these expenses attract tax under reverse charge, the submission of the learned counsel is that wherever reverse charge was applicable, tax was paid without fail. However, in the absence of verification of these details, despite providing the sample copies of invoices with the detailed list in excel sheet and the Chartered Accountant's Certificate, the same has not been taken note of by the authorities below. Moreover, in the list of expenses such as sales promotion, repair of staff car, consultancy for investment advisory services, pest control services, technical consultancy services, transport through rail, diesel fuel and fuel expenses do not attract reverse charge mechanism. Learned counsel has, therefore, prayed that the matter requires to be remanded back to the Original Authority for de novo re-consideration.

8. Learned Authorised Representative has reiterated the findings of the Authorities below. Referring to the provisions of Rule 9(5) of the Cenvat Credit Rules, 2004⁵, learned Authorised Representative submitted that the burden of proof regarding the admissibility of cenvat credit lies upon the manufacturer or provider of goods/service taking such credit. By not producing the corresponding invoices or payment details, the appellant failed to prove that the service tax was paid or that the expenses were not taxable. Learned Authorised Representative has also justified the taxability of other incomes and consequent levy of penalty and interest.

⁵ CCR, 2004

9. In so far as the first issue with regard to the disallowance of the entire cenvat credit is concerned, the Authorities below have ignored the documents produced by the appellant i.e. Cenvat Credit Register along with copies of the sample invoices and the Chartered Accountant's Certificate produced before the Adjudicating Authority on 15.12.2023 and 19.12.2023. However, the order has been passed in haste on the very same day. We find force in the submissions of the learned Counsel that the documents placed have not been considered by the Adjudicating Authority before passing the order on the very same day. We, therefore, agree that the issue needs to be remanded back to the Adjudicating Authority to decide the same afresh, after considering all the documents placed by the appellant.

10. According to the appellant, the income by way of interest on fixed deposits with bank and inter-corporate deposits is covered under the Negative List of Services under Section 66D(n)(i), which reads as under:-

“the Negative List shall comprise of the following services viz.:-

.....

.....

(n) services by way of –

(i) deposits, loans or advances, in so far as the consideration is represented by way of interest or discount”

The Adjudicating Authority has observed that no bank statement has been furnished by the appellant and the Chartered Accountant's Certificate is only based on the ledger account and not on the bank statement. We find that the Adjudicating Authority has erred in ignoring

the fact that the Chartered Accountant's Certificate is based on the audited accounts duly certified by the Auditors and filed with the Registrar of Companies. As is evident from the provisions of Section 66D(n)(i), the income by way of interest is specifically included therein and, therefore, demand made is contrary to the provisions of the Act and hence, unsustainable.

11. The balances written back represents bad debts written off in previous year but recovered subsequently. This is purely a financial transaction of dealing with debtors and bad debts are written off in the Profit & Loss Account as loss but when recovered subsequently, the amount is written back to the P&L Account as income. In **Grey Worldwide (I) Pvt. Ltd.**, the Mumbai Bench of the Tribunal has held that these amounts cannot be construed as consideration received towards services rendered and therefore, the same cannot be sustained in law. The observation of the Tribunal are that after showing these amounts as amounts payable for some time, the amount has been written back as per the provisions of accounting standards. These amounts are in any case payable to the media as and when the claim is lodged and therefore, this amount cannot be construed as consideration received towards services rendered. Therefore, the confirmation of Service Tax demand on these amounts, i.e. volume discounts, rate difference and amounts written back cannot be sustained in law and accordingly, were set aside.

12. Similarly in **DSP Merrill Lynch Ltd. Vs. CST, Mumbai**⁶, referring to the write back of the credit balances in payable account, Bench observed that these activities, as the very nomenclature shows are actual adjustments of expenses/debts etc. and there is no service involved in these activities, therefore, no service tax is payable on these activities. In view of these decisions of the Tribunal, we hold that the demand on this count cannot be sustained and is accordingly set aside.

13. So far as the demand on profit on sale of fixed assets and service tax on expenses is concerned, the Authorities below have ignored Chartered Accountant's Certificate, which duly certifies the amount reflected in the audited accounts. The Adjudicating Authority is required to verify the details, as provided in the copies of invoices certified by the Chartered Accountant's Certificate. In that view, the matter needs to be remanded to the Adjudicating Authority.

14. As noticed above, since the Adjudicating Authority has failed to consider the documents and passed the order in haste on the very same day when the documents were produced, it is evident of the fact that the same have not been considered. Also from the perusal of the impugned orders, the Authorities have repeatedly observed that the appellant has not provided the cenvat availment related inward supplies invoices, which are applicable to avail such credits or supplies under reverse charge. However, the submissions of the learned counsel for the appellant is that the documents have been placed on record, on the date of hearing on 19.12.2023. Non-consideration of the documents relied on by the appellant amounts to violation of principle of natural justice resulting in

⁶ 2016 (44) STR 436 (Tri.-Mumbai)

denial of effective hearing to the appellant. In the circumstances, the only remedy is to remand the matter back to the Adjudicating Authority to decide the issues, so referred afresh. It is made clear that the Adjudicating Authority should decide the issues judiciously applying its mind. The issue of income by way of interest on fixed deposits with bank and inter-corporate deposits and the tax demand on balances written back stands allowed in favour of the appellant and the impugned order in that regard is set aside.

15. The appeal is, allowed by way of remand.

[Order pronounced on 14th November, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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