CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40128 of 2023

(Arising out of Order-in-Original No.02/2023 dated 24.01.2023 passed by Commissioner of GST & Central Excise, Chennai Outer, No.2054, I Block, II Avenue, Anna Nagar, Chennai 600 040)

M/s.Indian Oil Petronas **.... Appellant**
No.143, IPPI-NCTPS Main Road,
Athipattu Village,
Chennai 600 120.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41467/2025

DATE OF HEARING : 24.06.2025
DATE OF DECISION : 15.12.2025

Per: Shri P. Dinesha

Facts in Brief, as explained by the ld. Advocate are that M/s. Indian Oil Petronas, Appellant herein is a company formed as a Joint Venture between M/s. Indian Oil Corporation Ltd., a Government of India Undertaking ("**IOCL**") and M/s. Petronas, a Government of Malaysia Undertaking. The Appellant has been engaged in the activity of manufacturing Liquefied Petroleum Gas ("**LPG**") since August 2012. The Appellant would clear LPG for commercial use on payment of applicable duty under the Central Excise Act, 1944 ("**Excise Act**") and where supplies were meant for household domestic consumers by IOCL, the Appellant would clear the LPG by availing of the exemption under Notification No. 12/2012-C.E. dated 01.03.2012.

2. For setting up the LPG plant, the Appellant entered into an "Engineering Procurement of Materials, Construction and Commissioning Contract" (EPCC Contract) on lump sum turnkey basis with M/s. Punj Lloyd, wherein M/s. Punj Lloyd was required to procure, erect, install and commission an LPG plant at the Appellant's factory premises ("**the Contract**"). To execute the contract, M/s. Punj Lloyd in turn

placed orders for machineries, instruments, pipes and parts & components ("goods") from various third-party manufacturers. These goods were brought into the Appellant's factory directly. During the course of each supply, the third-party manufacturers would raise invoices for payment wherein M/s. Punj Lloyd was referred to as the 'buyer' and the Appellant was referred to as the 'consignee'. M/s. Punj Lloyd did not avail Cenvat Credit of the duties paid on any of the goods procured from the third-party manufacturers. M/s. Punj Lloyd paid service tax under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 ('**STR'** for short) [applies only to Works Contract] on the services portion of the works contract. M/s. Punj Lloyd did not avail of the benefit of composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

3. Ld. Advocate submitted that M/s. Punj Lloyd completed the erection, installation and commissioning of the LPG Plant in the Appellant's premises, the Appellant availed credit of duties paid on the machineries and parts received for the erection of the LPG plant and other sub-systems from M/s. Punj Lloyd as they were 'capital goods' within the meaning of

Rule 2(a) to Cenvat Credit Rules, 2004, apart from duties paid on supply and erection of various sub-assemblies, fire safety equipment, air-conditioning system etc. received from other suppliers. Further, the Appellant also availed CENVAT Credit of the Service Tax paid on the input services of man power supply, consultancy, security services, maintenance services, etc. for operating the LPG Plant. It was contended that the Appellant was remitting applicable Excise Duty and was filing E.R 1 returns regularly.

4. It appears that a SCN dt. 01.04.2015 came to be issued to the Appellant proposing to deny the CENVAT Credit availed by the Appellant on the 'capital goods' inasmuch as M/s. Punj Lloyd paid Service Tax under Rule 2A of the Service Tax Valuation Rules and the said goods being inputs used by M/s. Punj Lloyd thereby falling within the purview of bar under Explanation 2 to Rule 2A of the Service Tax Valuation Rules. The other proposal in the SCN was to deny the credit availed on the input services on the ground that they were used in the setting up of the LPG plant and hence barred w.e.f. 01.04.2011.

5. It appears that the Appellant justified its claims of CENVAT credit claimed through their reply and also relied on various judicial precedents, which came to be considered in adjudication and thereafter the Adjudicating Authority vide Order-in-Original No.02/2023 dated 24.01.2023 held that M/s. Punj Lloyd being the works contractor, is not eligible to avail CENVAT Credit of duty paid on inputs under Explanation 2 to Rule 2A; per final Explanation to Rule 3 of the Credit Rules the non-availability of CENVAT Credit on the said goods would prevail and therefore, M/s. Punj Lloyd were not entitled to avail CENVAT Credit on such goods, the goods used to set up LPG plant would not be eligible for credit in light of the Board Circular No.58/l/2002-CX dated 15.01.2002. It was also held that the decision of **Indian Oil Corporation Ltd. vs. CCC & ST, Rohtak** [2014 (307) ELT 560 (Tri-Del)] would not be applicable; contention that the present demand of Rs.13,98,80,439/- included capital goods credit availed on goods supplied by contractors other than M/s. Punj Lloyd cannot be considered since they had failed to submit the details of the break-up; the Appellant is ineligible for CENVAT Credit since the Works Contract Services used in relation to setting-up of the factory or making structures for support of the capital goods is not an “input service” defined

under the amended Credit Rules w.e.f. 01.04.2011. Aggrieved by the demands raised in the OIO, Assessee-Appellant has filed the present Appeal before this forum.

6. Heard Shri Raghavan Ramabadran, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Assistant Commissioner defended the impugned order.

7. It is the case of the Appellant that the goods supplied by third-party manufacturers qualify as 'capital goods' under Rule 2(a) of the Credit Rules since the goods were notified capital goods falling under Chapter 84, 85 and 90 of the First Schedule to the Central Excise Tariff Act, 1985. Further, the goods were supplied to the Appellant's factory and were used by the Appellant in the factory for production of the final products. Though the invoices mention M/s. Punj Lloyd as the buyer, the orders were placed on behalf of the Appellant, the Appellants were mentioned as 'consignees' in the invoice. The LPG plant is a composite system and each of the goods are integral parts of the entire Plant and without any of the goods it is not possible for the Appellant to manufacture the LPG and supply it for commercial use/domestic use. Hence, in terms of Rule 2(a)(A)(i) and

sub-rule (1) & (2) of Rule 2(a)(A) the goods must be treated as 'capital goods'. Reliance was placed on:

(i) **Indian Oil Corporation Ltd. vs. CC Ex. & S.T., Panchkula** - 2021 (46) GSTL 61 (Tri.-Chan);

(ii) **CCE Raigad vs. JSW Ispat Steel Ltd**. - 2015 (327) ELT 549 (Tri.- Mumbai).

(iii) **CCE, Pune–II vs. M/s. Rajaram Bapu Sahakari Sakhar Karkhana Ltd.** - 2019 (365) E.L.T. 14 (Bom.) and

(iv) **JSW Steels vs. CCE-** 2017 (2) TMI 1071 - CESTAT BANGALORE.

8. It was further submitted that when the duty is ultimately paid by the Appellant on the components of the LPG plant installed in factory premises for rendering the taxable output service, the credit on such payment of duty on the procurement of the capital goods shall be eligible to the Appellant. Reliance was placed on **CCE, Jalandhar vs. International Tractor Ltd. -** 2007 (220) ELT 155 (Tri.-Del) for the above proposition, which later on came to be upheld by Hon'ble High Court in **CCE, Jalandhar vs. International Tractors Ltd.** - 2010 (255) ELT 196 (P&H.) and was also affirmed by the Hon'ble Apex Court in **CCE, Chandigarh vs. Ambuja Cement Ltd**. - 2022 (65) G.S.T.L. 3 (S.C.).

9. It was also submitted that denial of credit on 'capital goods' on the ground that invoices for the goods procured provided ownership over the goods to M/s. Punj Lloyd by treating them as 'buyer' and by treating the Appellant as a 'consignee' but the ownership of the goods at the time of subsistence of the works contract does not have any bearing on the availment of the CENVAT credit on the capital goods. The Appellant would thus submit that there is no embargo on the Appellant in claiming the credit on capital goods even if the ownership dose not vest with the Appellant. Reliance in this regard is placed on **CCE Jalandhar Vs International Tractor Ltd.** - 2007 (220) ELT 155 (Tri.-Del) and **CCE Raigad Vs JSW Ispat Steel Ltd**. - 2015 (327) ELT 549 (Tri.-Bom) for the principle that ownership of the goods is not a criterion for denial of Credit on the capital goods.

10. Thus, the Appellant is eligible to avail CENVAT Credit on the 'capital goods' received in the premises of the Appellant under Rule 3 of the Credit Rules. Reliance is placed on **CCE & CGST vs**. **M/S. Hindustan Zinc Ltd. -** 2023 (7) TMI 427 - CESTAT NEW DELHI.

11. Insofar as the decisions relied upon in the impugned order, ld. Advocate would submit that both **Gujarat State Petronet Ltd. Vs CC & C.Ex Ahmedabad** – 2013 (32) STR 510 (Tri.-Ahmd.) and **Galaxy Mercantiles Ltd. Vs CCE Noida –** 2014 (33) STR 39 (Tri.-Del.) would not be applicable to the facts and circumstances of the present case; **Gujarat State Petronet** (*supra*) dealt with a situation where the works contractor engaged by the Assessee had availed the benefit of exemption under the Notification No.12/2003-ST dated 20.06.2003 and hence, the Tribunal held that Explanation to sub-rule 7 of Rule 3 of the CEVAT Credit Rules would get triggered and held that Credit was not available to the recipient of the Works Contract Service.

12. Without prejudice to the above, it was submitted the Respondent had been made aware of all the material facts when the details pertaining to the credit was sought for vide letter dated 28.10.2013 bearing C. No. IV/6/5/2013-HPU wherein the Department had themselves admitted to the fact that all the relevant returns and CENVAT Credit accounts were verified when the details pertaining to the credit was sought. Despite these, the SCN 01.04.2015 was issued after a lapse of 17 months from the date of issuance of the letter

dated 28.10.2013 and hence, when the very demand is based on the relevant materials and the records duly maintained by the Appellant, it is a settled law that extended period of limitation cannot be invoked. In this regard, reliance is placed on paragraph 20 of **Nucon Industries Pvt. Ltd. Vs CCE Hyderabad -** 2014 (312) E.L. T. 705 (Tri.-Bang.) wherein, it was held that when the material facts were already known to the Department, there cannot be any justification for invoking extended period of limitation. Further reliance in this regard is placed on the following judgements:

a. **Commissioner of Central Tax Vs Zee Media Corporation Ltd**. - 2018 (18) G.S.T.L. 32 (All.)

b. **Anand Nishikawa Co Ltd Vs CCE, Meerut** - 2005 (188) E.L.T. 149 (S.C.).

Ld. Advocate would thus pray for allowing the Appeal by setting aside the impugned order and the demands therein.

13. *Per contra*, Shri Selvakumar, ld. Assistant Commissioner relied on the findings of Commissioner in the impugned order. He would also submit that just because the goods fall under the Chapter Heading of 'capital goods' that would not automatically become eligible for Cenvat credit

under the category of 'capital goods' since the same has been specifically excluded from the definition of "capital goods". Ld. A.R also made the following submissions:

13.1 The items including the said capital goods were procured by M/s. Punj Lloyd for their execution of LPG manufacturing plant at Ennore and it was not procured by M/s.Indian Oil Petronas. It was a Work Contract which included the Capital goods which were purchased by M/s.Punj Lloyd and was included in the contract value. When the value of property of the goods transferred in the execution of work contract is exempted for arriving at the value of service portion of the work contract for payment of service tax, then in terms of Explanation 2, the provider of taxable service shall not take CENVAT credit of duties or cess paid on inputs used in the said work contract.

13.2 The plain reading of 2A (i) of the STR determined how the value of the service portion in the execution of works contract needs to be followed, where in the value of property in goods transferred in the work contract has been exempted from the value of service portion of works contract for payment of service tax. When the value of property in goods is not included in the value for payment of service tax how can the CENVAT Credit on the same can be allowed.

13.3 The CESTAT, New Delhi in the case of **M/s.Galaxy Mercantile Ltd. Vs CCE Noida -** 2014 (33) STR 39 (Tri.-Del.) had, in fact, rightly questioned the *locus standi* of the Appellant therein arguing for the CENVAT credit and agreed with the Revenue stand.

13.4 There is no requirement for availing any Exemption Notification. The valuation under Rule 2A (i) of STR for Works Contract provides for exempting the value of materials and the Explanation 2 of the STR does not allow availment of CENVAT credit and there is also no Notification specified in the Explanation.

13.5 The impugned order is in line with the decision of the Hon'ble Supreme Court in the case of **M/s.VVS Sugars Vs Govt. of Andhra Pradesh** [(1999)4-SCC-192] and therefore there is no infirmity in the impugned order.

13.6 The Tribunal's decision in the case of **Indian Oil Corporation** (*supra*) relied upon by Appellant/Assessee is not about the availment under Rule 2A of the STR and consequently barring the Work Contractor from availing the CENVAT credit.

13.7 The definition of "input service" was substantially changed w.e.f. 01.04.2011, bringing in a specific exclusion clause which was not there before 01.04.2011. The services

specified in sub-clause (zzzza) of clause (105) of Section 65 of the Finance Act used for laying of foundation or making structures for support of capital goods are excluded in the definition. The Work Contract Service used for laying of foundation or making of structures for support of capital goods is not an "input service" w.e.f. 01.04.2011 and thus was correctly denied by the Adjudicating Authority.

13.8 The term in or in relation to "setting up" was removed w.e.f. 01.04.2011, and it was changed as "services used in relation to modernization", "renovation" or "repairs" etc. was inserted and therefore the decision relied upon by the Appellant defining "in or in relation to" and "in the manufacture of goods" are not applicable in the instant case.

13.9 On the issue of invocation of extended period of limitation, Ld. A.R submitted that the Adjudicating Authority has observed that the Appellant had entered into a work contract for setting up of their factory on EPCC contract basis with M/s.Punj Lloyd for an agreed consideration of Rs.2,75,79,75,235/- fully studying the nature of work contract and the availment of the benefit in the valuation of the service for payment of service tax and clearly knowing well that the CENVAT credit on the materials used in the

contract was not available to the contractor and they have attempted to take the credit.

13.10 The extended period of five years under proviso to Section 11A (1) and equal penalty under Section 11AC of the Central Excise Act, 1944 has been imposed in line with the decision of the Hon'ble Supreme Court in the case of **Union of India Vs Dharmendra Textiles Mills Ltd. -** 2008 (231) ELT 3 (SC) and **Rajasthan Spinning & Weaving Ltd**. - 2009 (238) ELT 3 (SC).

He would thus pray for upholding the demands confirmed in the impugned order and dismiss the Appeal.

14. In his rejoinder, ld. Advocate Shri Raghavan Rambhadran would contend that the orders relied upon by the Adjudicating Authority which have only been relied on by the Ld. A.R are on different facts and hence, they are not applicable.

15. We have carefully considered the rival contentions and have also analysed the documents placed on record before us; we have also carefully considered the judicial precedents relied upon during the course of arguments before us. Upon

hearing both sides, we find that the following issues arise for our consideration:

(i) Whether the denial of CENVAT Credit availed on duty paid goods is correct when the goods were claimed to be 'capital goods'?

(ii) Whether the rejection of CENVAT Credit availed of service Tax paid on input services is in order?

(iii) Whether the Revenue has established 'suppression' while invoking the extended period of limitation?

(iv) Whether charging of interest was justified when the credit stood reversed prior to utilisation?

(v) Whether levy of penalty under Section 11AC ibid was proper on the facts of case?

16. We find it relevant in the first place to address the issue of limitation since, if the demand raised in the SCN by invoking the extended period of limitation stands justified, then we can deal with the Appeal on its merits. On the other hand, if invocation of extended period of limitation is found to be faulty, then perhaps there is no necessity to deal with the issue on merits.

17. We find that in paragraph 25 of the SCN, it has been explicitly recorded that the availment of CENVAT Credit was reflected in the ER-1 Returns and therefore, there is no justification to hold that the Appellant has suppressed the facts with intent to avail CENVAT Credit wrongly. This apart, when the payment of duty remains undenied and there is also no denial of the returns being filed by the Appellant regularly, there cannot be any scope to allege suppression, that too with intent to evade duty could be alleged against the Appellant. We draw support on the decision in **CCE Vs Pepsi Foods Ltd. -** (2011) 1 SCC 601 wherein it was held that when the assessee has been paying duty and the goods have been cleared from the factory only upon payment of duty, there is no criminal intent to evade duty. Same view has been reiterated even in the following judgements:

(i) **Hindustan Steel Ltd. Vs State of Orissa** - 1978 (2) E.L.T. (J 159) (SC)

(ii) **Commissioner of CE, C & ST v Panasonic AVC Networks India Co. Ltd.** [2014:AHC:83813-DB].

18. Further, in the judgement of **Canon India Private Limited Vs Commissioner of Customs** in Civil Appeal No.1827 of 2018 [**2021(376) ELT 3 (SC)**] the Hon'ble

Apex Court while dealing with the issue of limitation under the Customs Act, 1962 has observed as under :

> **"Limitation**
>
> **24.** ……. **Under Section 28(4), such a show cause notice must be issued within five years from the relevant date which means the date on which the goods were assessed and cleared, in case the duty was not paid or short paid or erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts. It is, therefore, necessary for us to examine whether there is suppression of facts**.
>
> … ….
>
> … …
>
> **27.** ….. **At this juncture, it is not relevant to see whether the Deputy Commissioner was right or not in taking this decision to clear the goods as exempted goods. What is important is to see whether the importers made any wilful misstatement or suppression of facts and induced the delivery of goods.**
>
> **28.** … …. **The camera could have been operated to see the length of time of the single sequence and whether recording of the single sequence exhausts the total memory of the camera (including extended memory) and whether the cameras were eligible for exemption. It is difficult in such circumstances to infer that there was any wilful misstatement of facts. In these circumstances, it must, therefore, follow that the extended period of limitation of five years was not available to any authority to re-open under Section 28(4)."**
>
> (emphasis added)

19. Further, when the Revenue sought review of the above decision, the Hon'ble Apex Court in its judgement dt. 07.11.2024 in the Review Petition No.400 of 2021 in Civil

Appeal No.1827 of 2018 [**2024 (390) ELT 545 (SC**)] has held at para 168 (page 156) as under :

> "(iii) **This Court in *Canon India* (supra) based its judgment on two grounds: (1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period.** ……. **We clarify that the observations made by this Court in *Canon India* (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in *Canon India* (supra) insofar as the issue of limitation is concerned."**
>
> (emphasis added)

The Hon' ble Apex Court at para 169 (page 160) has held as under :

> **169.** …... **As discussed, the findings of this Court in *Canon India* (supra) in respect of the show cause notices having been issued beyond the limitation period remain undisturbed**.
>
> (emphasis added)

20. The following defense of the Appellant which has been canvassed even before the lower authorities is relevant; it was claimed that the Department was made aware of the material facts when the details pertaining to the credit was sought for vide their letter dt. 28.10.2013 wherein the very officer had admitted the fact that all the relevant returns

and cenvat credit accounts were verified when the details pertaining to the credit was sought. Moreover, it is also undisputed that the very demand is raised based on the materials and records maintained by the Appellant which was subjected to examination by the Revenue.

21. In view of the factual matrix of the present case and the binding ratio decidendi in **Pepsi Foods Ltd.** (*supra*), **Hindustan Steel Ltd**., (*supra*), **Panasonic AVC Networks India Co. Ltd.** and **Canon India Pvt. Ltd.** (*supra*) above, we are satisfied that there was nothing that remained undisclosed by the Appellant and therefore, the allegation as to 'suppression' is clearly baseless. We are, therefore, of the view that the extended period of limitation has been invoked mechanically without satisfying the requirements of Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1994 and hence, the invocation is clearly bad and unsustainable.

22. We have held that the very demand is barred by limitation which is unenforceable in law and therefore, the consequential interest and penalty also cannot sustain and hence, we are of the view that the Appeal should succeed on

the limitation itself which means that the extended period of limitation has been invoked without authority. In view of the above discussion, we do not propose to deal with the issue on merits as the very demand stands set aside.

Appeal stands allowed on limitation with consequential benefits, if any, as per law.

(Order pronounced in open court on 15.12.2025)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)

gs