

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 50208 of 2024**

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/ST/07/2022-23 dated 16.11.2023 passed by the Commissioner of Central Goods & Service Tax and Central Excise, Raipur]

**M/s. R.K. Transport Company**

Navkar Parisar, Pulgaon Naka,  
Durg, Raipur, Chhattisgarh-491001

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & CGST,  
Raipur**

GST Bhawan, Dhamtari Road,  
Tikrapara, Raipur,  
Chhattisgarh - 492001

**...Respondent**

**APPEARANCE:**

Ms. Mehak Mehra, Advocate for the Appellant  
Shri Rohit Issar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 14.10.2025  
DATE OF DECISION: **28.01.2026**

**FINAL ORDER NO. 50170/2026**

**DR. RACHNA GUPTA**

Present appeal is filed to assail the Order-in-Original No. 07/2022-23 dated 16.11.2023 which has been passed pursuant to the directions of remand order by this Tribunal vide Final Order No. 50854/2020 dated 22.09.2020 in Service Tax Appeal No. 55602 of 2014. The facts in brief relevant for the present adjudication are as follows:

1.1 The appellant is engaged in providing "Site Formation and Clearance, Excavation, Earth Moving and Demolition Services". The appellant had availed Cenvat credit on inputs, input services and capital goods under the provisions of Cenvat Credit Rules, 2004.

(hereinafter referred as CCR, 2004). During the audit of the appellants, following discrepancies were noticed by the department:

(i) Non-payment of service tax on the value of material supplied free of cost by the service recipient.

(ii) Excess availment of Cenvat Credit due to the difference in the closing balance of credit for September 2009 and opening balance of credit for October 2009 in the ST-3 returns.

(ii) Wrongful availment of credit of tippers and dumpers.

(iv) Non-payment of interest on *suo moto* reversal of credit owing to the difference in the closing balance of March 2009 and opening balance of April 2009.

(v) Wrongful availment of 100% credit on capital goods in the first year instead of 50%.

1.2 Based on these discrepancies and not finding the reply of the appellant as satisfactory that a Show Cause Notice No. 15-40/2013/3759 dated 23.10.2013 was served upon the appellant proposing the following:

(i) Service Tax amounting to Rs.14,07,98,655/- on the value of diesel, explosive, etc. received by the appellant free of cost.

(ii) Denial of Cenvat credit of Rs.30,05,484/- being the excess availment of Cenvat credit.

(iii) The demand of Cenvat credit amounting to Rs.64,91,195/- on the ground that the credit on tippers was not admissible prior June 2010.

(iv) The demand of interest of Rs.6,53,650/- on *suo moto* reversal of the Cenvat credit.

1.3 The said proposal was initially confirmed vide the Order-in-Original No.33/2014 dated 07.08.2014. In an appeal against the said order that this Tribunal passed aforementioned final order dated 22.09.2020 vide which the appeal was partly allowed by setting aside the entire demand except for the demand relating to disallowance of Cenvt credit amount to Rs.30,05,484/-. The matter was remanded back to the Commissioner for recording afresh finding after taking into consideration the explanation offered by the appellant and after examining all the invoices submitted by the appellant relating to disallowance of Cenvat credit amounting to Rs.30,05,484/-. Pursuant to those remand directions that the impugned Order No. 07/2022-23 dated 16.11.2023 has been passed disallowing the Cenvat credit of Rs.30,05,484/- alleging it to be the excess availment of Cenvat credit. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Mehak Mehra, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the impugned order has been passed without complying with the remand direction of the Tribunal and in fact has travelled beyond the scope of allegation leveled in the show cause notice. Learned counsel has relied upon the following decisions:

**(i) Veekay Concast Pvt. Ltd. & Ors. Vs. Commissioner of Central Excise, Final Order No. 60636-60645 of 2019 dated 23.05.2019.**

**(ii) Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Ltd. reported as 2007 (215) ELT 489 (SC).**

**(iii) Commissioner of Central Excise, Bhubaneswar-I Vs. Chamdany Industries Ltd. reported as 2009 (241) ELT 481 (SC).**

**(iv) Delhi Duty Free Services Pvt. Ltd. Vs. Commissioner of CGST, Delhi South, Final Order No. 51164/2019 dated 14.08.2019.**

3.1 While submitting on the grounds of limitation, learned counsel submitted that the extended period is not invocable, penalty is not imposable and interest is also not recoverable. It is submitted that the department has failed to prove presence of any positive act on part of the appellant necessitating the invocation of the extended period. The impugned order is liable to be set aside on this ground itself. Learned counsel has relied upon the following decisions:

**(i) Shree Flavours LLP Vs. Commissioner, Central Tax (CE & GST), New Delhi, Final Order No. 50708/2022 dated 02.08.2022.**

**(ii) Kanoria Energy & Infrastructure Ltd. Vs. Commissioner, CGST & Central Excise, Udaipur, Rajasthan, Final Order No. 58092-58097/2024 dated 28.08.2024.**

**(iii) Easland Combines Vs. Collector of C. Ex., Coimbatore reported as 2003 (152) ELT 39 (SC)**

**(iv) India Glycols Limited Vs. Commissioner of CGST & Central Excise, Dehradun, Final Order No. 58073/2024 dated 20.08.2024.**

3.2 It is further submitted that the appellant has duly disclosed all the details in its ST-3 returns. It was the responsibility of the departmental officers to verify the veracity of the details therein that too within the normal period of limitation. Due to the failure on part of the department, extended period should not have been invoked. Learned counsel has relied upon the following decisions:

**(i) National Engineering Industries Ltd. Vs. Commissioner of CGST and Central Excise, Jaipur, Excise Appeal No. 55585 of 2023-SM dated 20.12.2024.**

**(ii) Sarda Energy and Minerals Ltd. Vs. Commissioner of Central Excise (Appeals), Raipur, Final Order No. 50897/2023 dated 13.07.2023.**

**(iii) General Manager, GMTD, BSNL Vs. Commissioner CGST, Customs & Central Excise – Dehradun, Final Order No. 50084/2025 dated 24.01.2025.**

**(iv) Delhi Aiport Metro, Express Pvt. Ltd. Vs. Commissioner of Central Excise and Customs, Rohtak, Haryana Final order No. 50031/2024 dated 11.01.2024.**

With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has reiterated the findings arrive at in the order under challenge. The findings in Para 10.5, 10.7 and 10.8 of the impugned order have been reiterated. With these submissions and impressing upon no infirmity in those findings, learned Departmental Representative has prayed for the dismissal of the appeal.

5. Having heard the rival contentions and perusing the entire records, it is observed and held as follows:

5.1 Subsequent to the remand order of this Tribunal dated 22.09.2020, the only issue was with respect to the alleged excess availment of Cenvat credit by the appellant. It is observed that the allegation was solely based upon the noticed difference of Rs.30,05,484/- between the closing balance and credit for the month of September 2009 and the opening balance of credit for the month of October 2009 in the appellant's ST-3 returns. It is observed that since beginning i.e. from the stage of reply to the audit memo dated 13.09.2023 and even in the reply dated 13.09.2023, the appellant had pleaded the inadvertent error while recording the correct figures of Cenvat credit availed and utilized during the period from April 2009 to September 2009 in the ST-3 returns due to which the closing balance of credit for the month of September 2009 stood at Rs.64,97,643/- whereas the opening balance of credit for October 2009 was correctly recorded as Rs.95,03,124/-. It is the amount which is also appearing in the Cenvat credit register.

5.2 All 16 invoices for the said period were duly been provided by the appellant to the adjudicating authorities. At the first round of litigation all the invoices were not considered which is why the matter was remanded back. From Para 10.4 of the impugned order, it is observed that though the Commissioner, post remand, has perused all the 16 invoices but has passed the order without discussing the figures therein. It has been mentioned that none of the "16 invoices in any permutation and combination is able to correlate the figures of credit shown in ST-3 returns and nor to those which are not shown in ST-3 returns".

5.3 It is observed that out of those 16 invoices the total credit availed by the appellant is mentioned as Rs.1,54,21,153/- which has also been acknowledged in the impugned order in Para 10.4 itself. The opening balance of credit for the month of October 2009 therefore should be Rs.95,03,124/-. The said fact stands corroborated from the entries in the credit register vis-à-vis all the 16 invoices. The said register is on the record. Persual reveals as follows:

<b>Month</b>	<b>(A) Opening Balance (in Rs.)</b>	<b>(B) Credit availed (in Rs.)</b>	<b>(C) Reversal of credit/Credit Utilized (in Rs.)</b>	<b>(D=A+B-C) Closing Balance (in Rs.)</b>
April 2009	2,77,96,087	-	1,88,00,727 [sum of amounts appearing in Colum 10 from S.No. 1 to S.No. 33]	89,95,360
May 2009	89,95,360	31,96,937 [Sum of Figures appearing in Column 7a from Entry 34 to 38 relating to invoices enclosed at pg. no. 378-382 of appeal paperbook]	-	1,21,92,297

June 2009	1,21,92,297	64,85,056 [Sum of figures appearing Column 7a from Entries 39 to 44 relating to invoices enclosed at pg. no. 382-392 of appeal paperbook]	-	1,86,77,353
July 2009	1,86,77,353	24,72,000 [Sum of figures appearing Column 7a from Entries 45 to 46 relating to invoices enclosed at pg. no. 393-396 of appeal paperbook]	-	2,11,49,535
August 2009	2,11,49,353	9,92,920 [Sum of figures appearing Column 7a from Entry 47 relating to invoices enclosed at pg. no. 397 of appeal paperbook]	-	2,21,42,273
September 2009	2,21,42,273	22,74,240 [Sum of figures appearing Column 7a from Entries 48 and 49 relating to invoices enclosed at pg. no. 398-401 of appeal paperbook]	1,49,13,389 [Sum of 28,62,841 + 1,20,50,548 as appearing in Column 10 at Entry 48 and 49 of the Credit Register enclosed at Page 377 of the appeal paperbook]	95,03,124
Total of Cenvat Credit availed till September 2009		1,54,21,153		
October 2009	95,03,124 (matches with the opening balance of credit for the month of October 2009)	-	-	-

5.4 This perusal makes it abundantly clear that the figure of credit of Rs.64,97,640/- as the closing balance of September 2009 is the incorrect figure. It should be same as the opening balance of October 2009 i.e. Rs.95,03,124/-. The difference between the two

figures is the amount in question i.e. Rs.30,05,484/-. It is accordingly held that the Commissioner has failed to comply with the remand directions of this Tribunal in true spirit. The plea of the inadvertent error while recording the closing balance of September 2009 has not been discussed properly despite availability of all the relevant documents. The Commissioner is rather observed to have gone to additional findings based on new allegation of availment of 100% credit on capital goods which was not the allegation in the show cause notice. The findings are therefore held to be beyond the scope of show cause notice and are thus liable to be set aside. I draw my support from the decision of Hon'ble Supreme Court in the case of **Ballarpur Industries Ltd. (supra)** and the decision of this Tribunal in the case of **Delhi Duty Free Services Pvt. Ltd. (supra)**.

5.5 Now coming to the issue of invokability of extended period of limitation. It is observed that there is no iota of evidence produced by the department about any positive act of alleged suppression or mis-declaration of fact on part of the appellant. The show cause notice was issued based on appellant's own records. There is no evidence that the pleaded inadvertent error had any mala fide intent. It is accordingly held that the extended period has wrongly been invoked. Penalty is also has wrongly been imposed. The decisions relied upon by the appellant are referred. I draw my support from the decision of Hon'ble Supreme Court in the case of **Collector of Central Excise Vs. Chemphar Drugs and Liniments reported as (1989) 40 ELT 276 (S.C.)**, wherein it is held that extended period is applicable only when something

positive other than mere in action or failure on the part of the manufacture is proved. Conscious and deliberate withholding of the information by manufacturer is necessary for invoking the extended period. If the department had full knowledge or the manufacturer had reasonable belief that he is not required to give a particular information, only normal period of limitation i.e. one year is applicable.

6. In totality of the above discussion, the order under challenge is set aside and the appeal is allowed.

[Order pronounced in the open court on **28.01.2026**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

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