

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 3090 of 2012

[Arising out of Order-in-Original No. 50-53/AKM/CST(ADJ.)/2012 dated 28.06.2012 passed by the Commissioner (Adjudication), Service Tax, New Delhi]

M/s DLF Cyber City Developers Limited

.....Appellant

3rd Floor, Shopping Mall Complex, Arjun Marg,
DLF City, Phase-I, Gurgaon, Haryana-122002

VERSUS

**Commissioner of Central Excise & Service
Tax, New Delhi**

.....Respondent

2nd & 3rd Floor, EIL, Annexe Building, Plot 2B,
Bhikaji Cama Place, New Delhi-110066

APPEARANCE:

Shri Anubhav Goel and Ms. Preeti Goel, Advocates for the Appellant

Shri Shyam Raj Prasad (Special Counsel), Authorized Representative for
the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60125/2026

DATE OF HEARING: 18.11.2025

DATE OF DECISION: 03.02.2026

S. S. GARG:

The present appeal seeks quashing of the impugned Order-in-Original dated 28.06.2012 passed by the Commissioner of Service Tax, Delhi by which the CENVAT credit availed by the appellant for providing the output service of Renting of Immovable Property

Service has been held to be inadmissible and an order of recovery has been made in terms of Rule 14 of CENVAT Credit Rules, 2004 along with interest and penalties.

2. Brief facts of the present case are that the appellant is engaged in the provision of taxable services in the categories of "Transportation of Goods by Road", "Advertisement Services" and "Renting of Immovable Property". The Department entertained a view that the appellant has availed and utilized inadmissible CENVAT credit on input, input services and capital goods in violation of CCR, 2004. On these allegations, Department issued the following SCNs for the period 01.06.2007 to 31.03.2011:

S. No.	SCN Date	SCN No.	Period
1.	13.10.08	DL/ST/AE/Gr-I(2)/257/08/25112	01.06.07 to 31.03.08
2.	29.09.09	D-III/ST/R-II/SCN/Cyber/117/2008/8090	DLF 01.04.08 to 31.03.09
3.	19.10.10	D-III/ST/R-II/SCN/Cyber/117/2008/4698	DLF 01.04.09 to 31.03.10
4.	08.09.11	D-III/ST/R-II/SCN/Cyber/117/2008/4346	DLF 01.04.10 to 31.03.11

3. The appellant filed reply to the SCNs and denied the allegations made therein. After following the due process, the learned Commissioner did not accept the contentions raised by the appellant in reply to the SCN and concluded that the appellant was not entitled to avail CENVAT credit on inputs, input services and capital goods in the construction of immovable properties. The learned Commissioner further held that the appellant has availed

and utilized CENVAT credit on tax/ duty paid on input services and inputs which are inadmissible to the Appellant, for discharging service tax liability on "Renting of Immovable Property Service". The alleged inadmissibility is on the ground that the inputs, and taxable services received by the Appellant are for the purpose of construction of the immovable property which is neither excisable nor a taxable service. Hence, the present appeal.

4. Heard both sides and perused the material on record.

5. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of Input Service as provided in Rule 2(I) of CCR, 2004. Learned Counsel further submits that to avail CENVAT credit, the taxable services should qualify as input service under the definition of Input Service as defined in Rule 2(I) of CCR, 2004. Learned Counsel further took us through the definition of Input Service and submits that the first leg of the definition namely the 'means clause' covers every service used for providing output service and it is nowhere mentioned in the rule that the input service actually be used in rendering of taxable service. Any input service which has nexus with the output service is eligible for taking CENVAT credit. Further, the place where the input service is received or used is immaterial for the purpose of this means-clause.

5.1. Learned Counsel further submits that all the services utilized by the appellant such as Architect Services, Consulting Engineer,

Legal Consultancy, Management Consultant, Security Service, Chartered Accountant and Works Contract Service etc. were used for providing the output service (i.e. Renting of Immovable Property Service). He further submits that the service of renting provided by the Appellant is not possible without constructing and maintaining the building itself. Therefore, the case of the Appellant squarely falls under the means clause and thus credit is available to the Appellant and the appellant's case falls under the inclusive clause. He further submits that in the 'includes clause' a service used in relation to setting up of the premises of an output service provider qualifies in the definition of 'input service'. He also submits that it cannot be disputed that the immovable property is the premises for providing 'Renting of Immovable Property Service' and therefore, the services used for setting up such premises expressly qualifies in the definition of 'input service'. He also submits that 'includes clause' in the definition does not require a one to one correlation between the input and Output service, for the purpose of availing CENVAT credit. He also submits that the '*activities relating to business*' is followed by "such as accounting, auditing, financing, recruitment and quality control, coaching and training computer networking, credit rating, shar registry, and security". He also submits that the only common underlying thread between the said activities is that they are needed to run a business in a commercially expedient manner.

5.2. Learned Counsel further submits that the issue involved in the present case has been considered by various judgments of the Tribunal and the High Courts and more so, in the appellants and its

sister concern's cases and CENVAT credit has been allowed in respect of input, input services which are used by raising the construction for providing output service of 'Renting of Immovable Property'. In respect of his submissions, he relied upon the following decisions:

- CCE Vs Ultratech Cement Ltd. – 2010 (20) STR 577
- Regency Park Property Management Services Pvt. Ltd. Vs Commr. Of ST, New Delhi – 2020 (41) GSTL 372
- Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs CCE – ST/85752/2014
- VITP Private Limited Vs Commr. Of Central Tax, Hyderabad-IV – ST/27964/2013
- CCE Vs Deloitte Tax Services India Pvt. Ltd. – 2008 (11) STR 266
- DLF Cyber City Developers Ltd. Vs CCE, Delhi-IV – ST/60752/2017
- DLF Ltd. Vs Commr. Of Service Tax – ST/3089/2012
- Commr. Of Central GST, Gurgaon Vs DLF Ltd. – STA-11-2021 (O&M)
- DLF Promenade Ltd. Vs Commr. Of Service Tax, - ST/54213/2014

6. On the other hand, learned Special Counsel for the Department has, however, supported the impugned order and submits that the findings recorded therein are inconformity with the provisions of CENVAT Credit Rules, 2004 and do not call for any interference in this appeal. Learned Special Counsel further submits that the learned Commissioner has rightly denied the CENVAT credit on input, input services and capital goods used in the construction of immovable property, which was subsequently leased and they paid the service tax on the rental charges received against the renting of the said immovable property. Learned Special Counsel also referred the CBEC Circular No.98/1/2008-ST dated 04.01.2008 which has

clarified that immovable property is neither subjected to central excise duty nor the service tax and that credit of service tax can be taken only if the output is a service liable to service tax or as goods liable to excise duty.

6.1. Learned Special Counsel further submits that since the immovable property is neither a service nor a good hence input credit cannot be taken in respect of Commercial or Industrial Construction Service or Works Contract Service. Learned Special Counsel has also tried to distinguish the cases relied upon by the appellant on the ground that in those cases, input service was utilized not exactly for the Renting of Immovable Property Service but for construction of either office building which are used for the business purposes. He further submits that the reliance of the appellant, in the case of DLF Ltd. on the basis of M/s Bellsonica Auto Components India Pvt. Ltd. - 2023 (70) GSTL 237 (P&H), is misplaced. He further submits that in the case of M/s Bellsonica Auto Components, issue involved was of admissibility of credit of input and input service used for construction of a factory, which was used further for manufacturing of excisable goods by the manufacturer. Whereas, in the case of DLF Ltd., the issue was not identical but the inputs and input services were used for construction of immovable property for renting of the property by a service provider and not used for manufacturing of goods. He further submits that the fate of the appeal filed by the Department in DLF Ltd. case is not known and hence, the said judgment of P & H

High Court even otherwise cannot be treated as final and hence not reliable at this stage.

6.2. Learned Special Counsel further submits that the matter is still *sub-judice* before the Hon'ble Apex Court as the Hon'ble Court has issued notices in all other identical cases viz. City View Bangalore Properties Private Limited (2023) 9 Centax 51 (SC), Golf Links Software Park Private Ltd 2023 (75) GSTL J5 (SC) etc. (Annexure-C). Learned Special Counsel has prayed that the case may be kept in abeyance till the case is finally decided on merit by the Hon'ble Supreme Court.

7. The submissions advanced by the learned Counsel for the appellant and the learned Special Counsel for the Department have been considered. The issue that arises for consideration in this appeal is as to whether the appellant is entitled to avail CENVAT credit on inputs, input services and capital goods used in the construction of immovable properties. In order to appreciate and decide the issue in right perspective, it would be appropriate to refer to the relevant provisions of the CENVAT Credit Rules, 2004:

13. "Capital goods", "inputs" and "input services" have been defined in sub-clauses (a), (k) and (l) respectively of rule 2 and are reproduced below:

(a) "capital goods" means:-

(A) the following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; and
- (vii) storage tank, used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

**** * * * * *

(k) "input" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1.- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer; but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;

(l) "input service" means any service,

(i) used by a provider of taxable service for providing an output service; or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or

premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

14. Rule 3 of the 2004 Rules deals with CENVAT Credit. The portion relevant for the purposes of this appeal provides that a provider of taxable service shall be allowed to take credit to be called CENVAT Credit on any input service by the provider of output service. Sub-rule (4) of rule 3 provides that the CENVAT Credit may be utilized for payment of service tax on any output service.

7.1. Further, we find that Rule 3 of CCR, 2004 deals with CENVAT credit and the relevant portion for the purpose of the appeal provides that a provider of taxable service shall be allowed to take credit to be called CENVAT credit on any input service by the provider of output service. Sub Rule (4) of Rule 3 provides that the CENVAT credit may be utilized for payment of service tax of any input service. Further, we find that the definition of Input, Input Service has been considered by the Hon'ble Bombay High Court in the case of Ultratech Cement Ltd. (supra) wherein the Hon'ble High Court, in Para 34, held that:

"Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product...."

7.2. The analysis of various definitions makes it clear that where goods or services are utilized by the provider of output service for providing any taxable output service, the same qualify as inputs,

input services and as a result, the excise duty/ service tax paid on such inputs, input services can be availed by the service provider as CENVAT credit. In fact, Renting of Immovable Property Service cannot be provided in the absence of aforementioned input services which were received by the appellant for construction of building which itself is to be used in the provision of output service of Renting of Immovable Property and in the absence of aforesaid input services, the Renting of Immovable Property Service cannot be provided at all. Therefore, we hold that the appellant is eligible to take credit of the service tax paid on input services received by the appellant. We also find that in the case of Regency Park Property Management Services Pvt. Ltd. (supra) wherein in Para 20, the Tribunal, relying on various decisions of High Courts, held that there is no manner of doubt that CENVAT credit availed by the appellant on inputs, input services and capital goods service used for construction of the Mall, which was ultimately let out could not have been denied to the appellant. The findings to the contrary recorded by the Commissioner cannot be sustained and are, accordingly, set aside.

7.3. Further, we find that in the case of M/s VITP Private Limited (supra), the Tribunal relying on the judgement of the Principal Bench in the case of M/s Regency Park Property Management Services Pvt. Ltd. (supra) held that we are inclined to allow the CENVAT credit of input services as availed by the appellant for construction of immovable property which was further let out to various customers. Further, we find that in the appellant's case in

Appeal No. ST/60752/2017, this Tribunal allowed the appeal vide Final Order No. A/60018/2018 dated 03.10.2018 and under Para 9, it has been held that as all the inputs/ input services has been used by the appellant for construction of a building which has been let out by the appellant and paying service tax thereon under the category to 'Renting of Immovable Property Service'. We also find that in the case of the sister concern of the appellant, this Tribunal, vide its Final Order No. A/62037-62038/2018 dated 22.03.2018, held that as the issue has already been decided by this Tribunal holding that any inputs, input service and capital goods used for providing output service viz. 'Renting of Immovable Property Service', the assessee is entitled to avail CENVAT credit.

7.4. We also find that this decision of the Tribunal was challenged by the Revenue before the Hon'ble High Court of Punjab & Haryana and the Hon'ble High Court, after considering the various provisions of CENVAT credit and after relying its earlier decision in the case of M/s Bellsonica Auto Components India Pvt. Ltd. (supra), dismissed the appeal of the Revenue. It is pertinent to reproduce the relevant findings of the Hon'ble High Court as under:

The issue that arises for consideration is whether the services in question fall within the meaning of the term "input service" under Section 2(1)(ii) of the Cenvat Credit Rules, 2004.

We find that identical issue stands dealt with by a Division Bench of this Court in Commissioner of C. Ex., Delhi-III vs. Bellsonica Auto Components India P. Ltd., 2015(40) S.T.R. 41 (P&H). In the aforesaid case the assessee had availed Cenvat credit for service tax paid on civil work of constructing a plant/factory in the premises, namely, the manufacturing plant and for rental of the immovable property leased by it on which the plant was erected. While dealing with the scope and

ambit of Rule 2(1)(ii) and Rule 3(1)(ix) of the Cenvat Credit Rules, 2004 it had been held as follows:-

“Rule 2(1)(ii) and rule 3(1)(ix) of the Cenvat Credit Rules, 2004, in so far as they are relevant, read as under:-

2. **“Definitions.** In these rules, unless the context otherwise requires,- (a) to (k)

(l) “input service” means any service,-

(i)

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.”

3. **“Cenvat credit.** (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereafter referred to as the Cenvat credit) of-

(i) to (viii)

(ix) the service tax leviable under section 66 of the Finance Act;”

6. The department contended that the said services were not eligible for Cenvat Credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of “input service” is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of “input service” and that a line has to be drawn somewhere to avoid undue extension of the phrases ‘directly or indirectly’ and ‘in or in relation to’ by adopting a common sense approach. Immovable property is neither service nor goods and, therefore, input credit cannot be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable

property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to service tax. In this regard, the Commissioner referred to a CBEC Circular dated 04.01.2008. The Commissioner also held that the service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. Metal-sheet.

7. We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(1) by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.

8. The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(1) aptly referred to by Mr. Amrinder Singh as the "means part".

9. The respondents' case also falls within the second part of Rule 2(1) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(1)(ii) which includes within the ambit of the words 'input service' the

setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(1)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product.

10. This becomes clearer from the fact that by an amendment of the year 2011 to rule 2(1), construction services were excluded from the definition of "input service". The amended section in so far as it is relevant reads as under:-

"(1) "input service" means any service,

(ii) (A) specified in sub-clauses (p), (zn), (zzl),(zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for –

(a) construction of a building or a civil structure or a part thereof; or" Clause 105 (zzq) of Section 65 of the Finance Act reads as under:-

"(105) "taxable service" means any service provided or to be provided,-

(zzq) to any person, by any other person, in relation to commercial or industrial construction.

Explanation.- For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force shall be deemed to be service provided by the builder to the buyer."

11. If in fact the said services were not covered by Rule 2(1), it would not have been necessary to introduce the amendment. It is clear, therefore, that prior to the amendment the setting up of a factory premises of a provider for output service relating to such a factory fell within the definition of 'input service'. The amendment of 2011 is not retrospective and is not applicable to the respondents' case."

The dictum laid down in Bellsonica Auto Components India P. Ltd. (supra) would squarely apply in the facts of the present case as well.

At this stage Mr. Amrinder Singh, Advocate for the respondent brings to our notice that an information had been sought from the appellant department under the Right to Information Act and by way of response it had been informed that the decision in Bellsonica Auto Components India P. Ltd. (supra) had been accepted by the department. Such factual premise is not disputed by Mr. Tajender K. Joshi, Advocate for the appellant.

In view of the above, we do not find any patent infirmity in the findings returned by the Tribunal. The questions of law are answered against the appellant and in favour of the assessee/respondent.

Appeal is dismissed

7.5. Learned Special Counsel has raised an argument that some of the decisions involving identical issue is pending before the Hon'ble Apex Court therefore, the present case may be kept in abeyance till the Hon'ble Apex Court decides the issue on merits. In reply to this, the learned Counsel for the appellant submits that the decision of this Tribunal as well as other Tribunals and the Hon'ble High Court wherein it has been held that since there is no Stay granted by the Hon'ble Apex Court in favour of the Revenue, the ratio of the said decision is operative and holds the field as on date and accordingly, the merits of the same was also to be applicable to the instant appeal. Learned Counsel for the appellant submits that mere filing of the appeal without obtaining Stay cannot be a sole ground for keeping the proceedings pending and to support this submission, the following judgements have been cited:

- Schneider Electric India Pvt. Ltd. v. Commissioner of Service Tax, Delhi (2023) 9 Centax 362 (Tri.-Chan)
- Pidilite Industries P. Ltd. v. Collector of Customs 1990 (50) E.L.T. 577 (Tribunal)
- M/s Hindustan Zinc Ltd. v. The Commissioner, Central Excise and CGST, Commissionerate - Final Order No. 50649-50661/2025 dated 13.05.2025-

Excise Appeal No. 51503 of 2022-CESTAT New Delhi

- HDFC Bank Ltd. v. Commissioner of Central Excise, Thane-II-2021 (44) G.S.T.L. 155 (Tri.- Mumbai)
- M.B. Anbarasan Factory v. Assistant Collector of C. Ex. 1992 (60) E.L.T. 195 (Mad.)
- Century Enka Ltd. v. Collector of Central Excise and Customs, Pune 1994 (69) E.L.T. 44 (Tribunal)
- Ecko Cables (P) Ltd. v. Commissioner of Central Excise and Service Tax, Ludhiana Final Order No. 60024/2024 dated 25.01.2024 Excise Appeal No. 60366 of 2022 [SM] - CESTAT Chandigarh
- Kamakshi Tradexim (India) Pvt. Ltd. v. Union of India - 2016 (338) E.L.T. 528 (Guj.)
- Mohanlal Ghanshamdas v. Collector of Customs, New Delhi - 1987 (30) E.L.T. 1014 (Tribunal)
- Western Coalfields Ltd. v. Commissioner of CGST and Central Excise, Nagpur - 2023 (4) Centax 271 (Tri.-Bom.)
- Commr. of Cus. (Import), ACC, Mumbai v. Airmid Aviation Pvt. Ltd. 2019 (370) E.L.T. 1789 (Tri. Mumbai)
- Union of India v. Kamlakshi Finance Corporation Ltd. 1991 (55) E.L.T. 433 (S.C.)
- Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association 1992 (3) SCC 1

7.6. Further, the Mumbai Tribunal of the CESTAT, in the case of HDFC Bank Ltd. (supra), has also considered this issue and has finally distinguished the decision in the case of UOI Vs West Coast Paper Ltd. relied upon by the Revenue, awaiting the decision of the Hon'ble Apex Court. Further, the Hon'ble Delhi High Court, in the case of Principal Commissioner of Central Excise Delhi-I Vs Space Telelink Ltd. – 2017 (355) ELT 189 (Del.) in Para 7, 8 & 9, has observed as under:

7. The revenue has argued that the Supreme Court has entertained a Special Leave Petition against the judgment of the Gujarat and Madras High Courts and furthermore, granted a stay of proceedings and that in these circumstances, the law declared in those judgments are no longer applicable. This submission is fallacious because in *Shree Chamundi Mopeds Ltd. v.*

Church of South India Trust Association (1992) 3 SCC 1, the Supreme Court had observed as follows :

“ While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority.”

8. It is apparent therefore, that an order keeping in abeyance the judgment of a lower Court or authority does not deface the underlying basis of the judgment itself, i.e. its reasoning.

9. In view of the above discussion, this Court holds that the impugned order and reasoning of the CESTAT does not call for interference and the Court is not persuaded to take a view different from those taken by the Gujarat, Allahabad, Punjab & Haryana and Madras High Courts, respectively. The appeals are consequently dismissed.

7.7. Further, we find that construction services used for construction of building are specifically excluded from the definition of 'Input Service' only w.e.f 01.04.2011 and that prior to this date, the said services were very much covered in the definition of 'Input Service' and for that the appellant is entitled to avail CENVAT credit of service tax paid on such input services as the period involved in the present case is prior to 01.04.2011. Further, we find that the Department vide Circular No.943/04/2011-CE dated 29.04.2011 in Sl. No.12 clarified that CENVAT credit of services excluded in the definition of input service w.e.f. 01.04.2011 will be available if such services were received prior to 01.04.2011. We also find that the Circular No. 98/1/08-ST dated 04.01.2008, which has been relied upon by the learned Commissioner to deny the benefit of CENVAT credit is contrary to the statutory provision as well as contrary to the various decisions decided by the Tribunals and the High Courts cited supra. It is a settled law that a circular issued by the Department cannot override the provision of the law as held in the case of Kerala Finance Corporation Vs Commissioner of Income Tax - (1994) 4 SCC 375.

7.8. As regards the invocation of extended period, we find that the appellant has been filing ST-3 Returns and the books of accounts have been regularly audited by the Department and the Department has not been able to bring any evidence on record to show that the appellant has suppressed the material facts from the Department with intention to evade payment of service tax. In this regard, we may refer to the judgment of Uniworth Textiles Ltd. Vs CCE, Raipur

- MANU/SC/0060/2013 wherein it has been held that mere non-payment of duties is not equivalent to collusion or willful misstatement or suppression of facts, otherwise there would be no situation for which ordinary limitation period would apply. Therefore, we find that substantial demand is also barred by limitation.

8. In view of our discussion above and by relying upon the various decisions cited supra, including the decision of the Hon'ble Punjab & Haryana High Court in the case of sister concern of the appellant, we are of the considered view that the impugned order is not sustainable in law and the same is liable to be set aside and we do so by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 03/02/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)