

Service Tax Appeal No. ST/3096/2011

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
BANGALORE**

**REGIONAL BENCH - COURT NO. 2**

**Service Tax Appeal No. 3096 of 2011**

(Arising out of Order-in-Original No. 141/2011 dated 24.08.2011 passed by the Commissioner of Service Tax, Bangalore.)

**M/s. Golf Links Software Park Pvt. Ltd.**

Embassy Point No. 150,  
Infantry Road,  
Bangalore – 560 001.

.....**Appellant(s)**

**Versus**

**Commissioner of Central Tax,**

Bangalore North.

.....**Respondent(s)**

**APPEARANCE:**

Mr. N. Anand, Advocate for the Appellant.

Mr. Rajesh Shastry, Superintendent (AR) for the Respondent.

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**

**HON'BLE SMT. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 21068 / 2025**

DATE OF HEARING: 28.03.2025

DATE OF DECISION: 24.07.2025

**PER : P.A. AUGUSTIAN**

The issue in the present appeal regarding eligibility of the Appellant to claim CENVAT credit on various inputs services.

2. Appellant is involved in various commercial and industrial construction services, renting of immovable property services etc. On verification of the ST-3 returns filed by the Appellant for the period from 01.04.2009 to 31.03.2010, it is observed that they have availed and utilized the ineligible inputs services. Accordingly, proceedings were initiated and the Adjudication authority as per the impugned order, confirmed the demand of duty and also imposed penalty under various provisions of law. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the issue is no more res integra and in Appellant’s own case for the first period from June, 2007 to March 2009 on very same issue, demand was confirmed and in Appeal, this Tribunal vide Final Order No. 21081/2018 dated 02.08.2018 allowed the appeal and set aside the order. Aggrieved by said order, an appeal was filed by the Revenue before the Hon’ble High Court and the Hon’ble High Court of Karnataka vide judgment dated 28.10.2022 **(2023) 8 Centax 30 (Kar.)** dismissed the Department appeal and upheld the finding of this Tribunal that input services like architect service, construction service, management consultancy service, real estate agent service, and erection and commissioning service used for construction of building/premises are admissible input services for taking cenvat credit as against the output service of the appellant. Aggrieved by said judgment, an SLP is filed before the Hon’ble Supreme Court and said SLP is still pending and there is no stay.

4. The Learned Counsel also draw our attention to the chart showing the different input services as held ineligible by the Appellant and the credit against each such services as appended below:

Sl. No.	Input Services	Credit Amount in Rs.
1	Architects Service	3,71,053/-
2	Banking service	33,06,435/-
3	Business support Service	5,99,567/-
4	Chartered Accountant service	13,594/-
5	Commercial or industrial construction service	92,34,995/-
6	Design service	1,23,600/-
7	Insurance service	60,790/-
8	Management consultant service	2,79,18,736/-
9	Real Estate Agent service	8,51,839/-
	Total Credit demanded	4,24,80,609/-

5. The Learned Counsel further submits that the appellant is providing taxable services including renting of immovable property. The

Adjudication Authority confirmed the demand without considering the Rule 2(1) of the Cenvat Credit Rules, 2004 prevailing prior to 01.04.2011 where the expression input service both inclusively and exhaustively so as to encompass in rule 2(1) - "any service used by a provider of taxable service for providing an output service, and includes services used in relation to setting up..... the premises of provider of output service or an office relating to such... premises. The impugned order has not appreciated that all the input services in question were eligible. The learned counsel for the Appellant further submits that issue is no longer res integra and is well settled in favour of the Appellant in large number of cases including **Oberon Edifices & Estates Pvt Ltd v. CCE, (2023) 10 Centax 346 (Tri-Bang.)** wherein this Honorable Bench allowed the cenvat credit on various input services and this Tribunal followed the decision in Golflinks Software Parks (supra). Similarly, in the matter of **Musaddilal Projects Ltd. v. CCE, 2017 (4) GSTL 401 (Tri-Hyd.)** it was held that various inputs and input services for construction of a building were eligible for Cenvat Credit prior to the amendment of law from 1.4.2011. The Tribunal held that when the Appellant was engaged in providing taxable services under the category of renting of immovable property, they could not be denied Cenvat credit thereon. Further in the matter of **Vamona Developers Pvt. Ltd. v. CCE, 2016 (42) STR 277 (Tri-Mum.)**, the Tribunal has ruled that credit on input services used for construction of Mall also eligible for discharge a service tax. Learned Counsel also draw our attention to the following decisions:-

- (i) Mysore Holding Pvt. Ltd Vs. CST, 2017 (52) STR 70 (Tri-Bang.)**
- (ii) Infosys Ltd Vs. Commissioner 2015 (37) STR 862 (Tri-Bang.)**
- (iii) Mundra Ports & Special Economic Zone Ltd Vs. CCE, 2015 (39) STR 726 (Guj.)**
- (iv) CCE Vs. Sai Samhita Storages (P) Ltd, 2011 (23) STR 341 (AP)**
- (v) DLF Promenade Ltd Vs. CST, 2020-TIOL-520-CESTAT-DL**
- (vi) Maharashtra Cricket Association Vs. CCE, 2016 (41) STR 833 (Tri-Mum.)**
- (vii) Oberoi Mall Ltd Vs. CST, 2017 (47) STR 292 (Tri-Mum.)**
- (viii) Agriculture Product Market Committee Vs. CCE, 2013 (30) STR 558**

**(ix) Navratna SG Highway Prop. Pvt. Ltd vs. CST, 2012 (28) STR 166 (T)**

**(x) CCE Vs. Dymos India Automotive Pvt Ltd, 2019 (365) ELT 26 (Mad.)**

**(xi) Commissioner of Wealth Tax Vs. Ramaraju Surgical Cotton Mills Ltd., 1967 (63) ITR 478**

**(xii) Orient Paper Mills Ltd Vs. UOI 1978 (2) ELT J 345 (SC)**

**(xiii) UOI Vs. Ratan Metling & Wire Inds, 2008 (231) ELT 22 (SC-Constitution Bench)**

**(xiv) CCT Vs. Vanenburg IT Park Solutions Pvt. Ltd, 2024 (7) TMI 1399 Telangana HC.**

6. The Learned Counsel further submits that the Adjudication Authority heavily relied on the land mark judgment of Hon'ble Supreme Court in the case of **M/s Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi – III (Civil Appeal Nos. 5554-5555 of 2009 dated 17.08.2009, [2009-TIOL-94-SC (CX)]**. However said judgment was over ruled by Hon'ble Supreme Court in the matter of **M/s. Ramala Sahakari Chini Mills Ltd. Vs. Commissioner of C. Ex., Meerut - I (2010 (260) E.L.T 231 (SC)** where it is held that:-

“11. In Maruti Suzuki Limited (supra), this Court while examining the scope and purport of the term "input" in Rule 2(g) of the 2002 Rules observed that the said definition had three components viz. (i) the specific part (ii) the inclusive part and (iii) place of use, and unless all the three parts were satisfied, credit cannot be claimed on a good as an input.”

“16. Thus, as already stated above, having regard to the language of Rule 2(g) of the 2002 Rules, and the analysis of the afore noted decisions, it appears that by employing the phrase "and includes", legislature did not intend to impart a restricted meaning to the definition of "inputs" and therefore, the interpretation of the said term in Maruti Suzuki Limited (supra), may require reconsideration by a Larger Bench”.

7. The Learned AR reiterated the finding in the impugned order and submits that CENVAT Credit is not available to the appellant in respect of

the Goods/Services, used for the construction of immovable property. As the said Goods/Services do not qualify as Input/Input Services as defined under Rule 2 of CCR 2004. Board's Circular No. 98/1/2008 ST dated 04.01.2008, which appellant states not applicable in the fact of the case is totally unacceptable in as much as the said Circular clearly confirms the ineligibility of the credit on services, used for construction of immovable property, which are neither Goods or Services. Ld AR further submits that since the Revenue Appeal in Appellant's own case is pending before Hon'ble Supreme court in SLP (Civil) 9952/2023 and considering the conflicting Interpretation, craves for awaiting for Outcome of SC Judgement.

8. Heard both sides. The issues involved is denial of cenvat credit on various input services namely, Architects Service, Banking service, Business support Service, Chartered Accountant service, Commercial or industrial construction service, Design service, Insurance service, Management consultant service and Real Estate Agent service., which were used for rendering service under Renting of Immovable Properties, commercial and industrial construction services, etc. This issue is no longer *res integra* in as much as for the previous period, this Tribunal vide Final Order No.21081/2018 dated 02.08.2018 allowed the appeal of the appellant by setting aside the impugned order. An appeal filed by the department against this order of the Tribunal was set aside by the Hon'ble High Court of Karnataka as reported at **(2023) 8 Centax 30 (Kar.)** wherein it was observed as:

"6. We have carefully considered rival contentions and perused the order passed by the CESTAT in *M/s. Millennia Realtors Pvt. Ltd.* The assessee therein, was in the business of renting immovable properties and the issue involved was whether the assessee therein was entitled for CENVAT credit on the input and input services consumed or utilized in construction of the Commercial Complex. After considering various authorities, the Tribunal has held that the assessee was entitled to CENVAT credit both on inputs and input services utilized for the construction to be utilized as output service being renting of immovable property. It is not in dispute that the said order passed by the CESTAT, Bengaluru has not been challenged by the Revenue."

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9. In view of the above, appeal is allowed with consequential relief if any in accordance with law.

(Order pronounced in Open Court on 24.07.2025.)

**(P.A.AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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