

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

WEST ZONAL BENCH, MUMBAI

**Excise Appeal No. 85870 of 2022**

(Arising out of Order-in-Appeal No. SD/311/ST/NGP/2021-22 dated 05.01.2022 passed by the Commissioner of Central Excise & GST (Appeals), Nagpur.)

**M/s Mahindra And Mahindra Ltd.**  
**M.I.D.C. Area, Hingna Road,**  
**Hingna, Nagpur – 440 016**

.....Appellant

*VERSUS*

**Commissioner of Central Excise, Nagpur**  
**P.O. Box 81, GST Bhavan, Civil Lines,**  
**Telanghedi Road, Nagpur,**  
**Maharashtra – 440 001**

.....Respondent

**APPEARANCE:**

Shri Abhishek Chhabra, D.G.M. of the Appellant  
Shri X.P.M. Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 86155/2025**

Date of Hearing: 27.06.2025

Date of Decision: 29.07.2025

Denial of CENVAT Credit on outdoor catering service and order for its recovery with interest and equal penalty passed by the Adjudicating Authority that received affirmation of the Commissioner (Appeals), *vide* his above referred order, is assailed herein.

2. Facts of the case, in brief, is that Appellant having Central Excise registration number is a manufacturer of Tractors and parts. It has been availing input tax credit on inputs, input services and capital goods for the period from October, 2008 to March, 2009 and April, 2009 to August, 2009 including credit on outdoor catering services which was provided in the factory of the Appellant. Such availment was made by Appellant on the basis of Larger Bench decision passed by this Tribunal on 25.09.2008, in the case of *CCE, Mumbai-V Vs. GTC Industries Ltd.*, with due intimation to the Excise Department but show-cause notice was issued to the Appellant on 29.07.2009 for the period from October, 2008 to March, 2009 for recovery of the credit of ₹3,02,003/- availed on account of outdoor catering services alongwith proposal for its recovery with interest and penalty of ₹10,000/- each under the provisions of Central Excise Act as it did not qualify as 'input service' under Rule, 2(I) of the CENVAT Credit Rules (CCR), 2004. Similarly, for the period from April, 2009 to August, 2009 subsequent show-cause notice was issued for recovery of ₹3,25,539/- availed towards outdoor catering service from the Appellant with interest and penalty. Both the matters were adjudicated together that resulted in passing of common adjudication order on 30.09.2020 confirming the entire demand with interest and penalty of ₹10,000/- each that comes to ₹6,47,542/- in total towards inadmissible credit alongwith proportionate interest and penalty. Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum.

3. During course of hearing of the appeal learned Counsel for the Appellant Mr. Abhishek Chhabra submitted that in the reply to the show-cause notices itself given on dated 15.09.2009 and 21.05.2010 respectively against those two show-cause notices, Appellant had brought it to the knowledge of the Adjudicating Authority that as it was manufacturing Tractor which was exempted from Excise duty alongwith some dutiable products, it had proportionately reversed the credit of ₹2,90,378/- and ₹3,09,259/- totalling of ₹5,99,637/- for which the remaining disputed amount would be ₹27,905/- in total. In filing two C.A. Certificates to justify that out of the said balance amount of credit taken towards outdoor catering, employees contribution for both the periods together were only ₹5,360/- which should have been taken as inadmissible credit towards outdoor catering but learned Commissioner had confirmed the entire amount which is not only irregular but also passed beyond the statutory provision, as Hon'ble Bombay High Court in the case of *CCE, Nagpur Vs. Ultratech Cement Ltd.*, reported in 2010 (20) STR 577 (Bom.) had already given its finding that credit availed on outdoor catering to run canteen service, being a mandatory requirement under Factories Act 1948, is admissible except to the extent of cost of food which was recovered from employees.

4. Learned Authorised Representative on the other hand argued in support of reasoning and rationality of the order passed by the Commissioner (Appeals) and pointed out that as because no bifurcating of amount was available with the Adjudicating Authority to separately quantify the amount recovered from its employees, entire

duty demand was confirmed, that needs no interference by this Tribunal.

5. I have gone through the case record, order passed by the Commissioner (Appeals) and other relevant documents. As could be noticed from the show-cause notice itself after Appellant had informed to the Superintendent of Respondent-Commissioner, Central Excise, Range-IV, Nagpur *vide* its letter dated 13.10.2008 that on the basis of judgment passed by the Larger Bench of this Tribunal in the case of *M/s. GTC Industries Ltd.* (Respondent) *cited supra*, regarding availment of credit, it was served with notice on the ground that Department had preferred appeal against the said order. Conduct of the Respondent itself is to be considered as unethical and contrary to the principle of justice as by preferring appeal alone, he had no right to dis-respect the judicial finding then in force at the relevant time though it is another matter that while adjudication was pending and before issue of Order-in-Original, the said Larger Bench order was set aside by the Hon'ble High Court of Bombay. However, the issue has been settled at rest now after pronouncement of the order by Hon'ble High Court of Bombay in the case of *M/s. Ultratech Cement Ltd. cited supra*.

5.1 Interestingly enough learned Commissioner (Appeals) had taken note of the findings of Hon'ble High Court of Bombay in *M/s. Ultratech Cement Ltd.* at para 8 of his order in holding that credit on 'outdoor catering services' are admissible credits except the cost of food which is recovered from the employees but ultimately opined that as because

in the present case the Appellant had not produced documentary evidence suggesting the amount of expenses borne by it before the Lower Authority or at a latter stage of appeal, in the absence of bifurcation, they had no option but to conclude that the entire expenses were recovered from the employees and accordingly disallowed the entire CENVAT Credit. The reasoning offered by learned Commissioner is without logic and highly arbitrary, for the reason that he should not have given a different finding contrary to the principle set by Hon'ble High Court of Bombay in *M/s. Ultratech Cement Ltd. cited supra* that when option at his end was available to seek for a computation of bifurcation itself or send the appeal back for re-computation of admissible or inadmissible credit instead of applying his imagination that since no bifurcation was available, entire CENVAT Credit availed was to be treated as received from the employees. Therefore, I am of the considered view that his order is unsustainable in both law and facts. However, having regard to the fact that C.A. Certificates, which are taken as additional evidence before this Tribunal having value of export evidence, indicate that only ₹5,360/- in total were recovered for both the periods from the employees which is to be treated as inadmissible credit and when on the basis of a judge made law, Appellant had started availing the credits with due intimation to the Respondent-Department penalty under Section 15(2) of the CENVAT Credit Rules, 2004 is not imposable, the following order is passed.

#### THE ORDER

6. The appeal is allowed in part and the order passed by the Commissioner of Central Excise & GST (Appeals), Nagpur *vide* Order-

in-Appeal No. SD/311/ST/NGP/2021-22 dated 05.01.2022 is modified to the extent that Appellant is required to reverse/refund credit of ₹5,360/- with applicable interest, as it is eligible to avail the rest of credits taken on account of outdoor catering service extended in its factory canteen. Consequential relief, if any, be extended to the Appellant after compliance of the above direction within two months of receipt of this order.

(Order pronounced in the open court on 29.07.2025)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

*Prasad*