**(2021) 10 CESTAT CK 0015**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Appeal No. 79503 Of 2018

M/s Jai Balaji Industries Ltd. (Unit I) APPELLANT

Vs

Commissioner Of CGST And Excise, Bolpur RESPONDENT

**Date of Decision :** 01-10-2021

**Acts Referred:**
Cenvat Credit Rules, 2004 — Rule 5

**Citation :** (2021) 10 CESTAT CK 0015

**Hon'ble Judges :** P. K. Choudhary, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

1. The instant appeal has been filed by the assessee, M/s. Jai Balaji Industries Ltd (hereinafter referred to as the Appellant) against denial of Cenvat Credit of Rs.9,60,443/- for the period from March 2011 to July 2011 vide the Adjudication Order dated 12.10.2017 as further upheld by the Ld. Commissioner (Appeal) vide Order in Appeal dated 27.09.2018 which has been assailed in this appeal.

2.1 Briefly stated, the facts of the case are that the Appellant is engaged in the manufacture of sponge iron and allied products and is registered with the Central Excise Department during the period in dispute. The Appellant is availing the benefit of Cenvat Credit of input, input services and capital goods as per the provisions of the CENVAT Credit Rules, 2004 (Credit Rules).

2.2 Show Cause Notice dated 04.08.2016 was issued to deny the credit availed by the Appellant on the strength of invoices issued by its Head Office as 'ISD' on the ground that the said service pertained to input service invoice issued by M/s. Prithavi Associates under the category of Maintenance, Management or Repair Service. It was alleged that the said invoice actually pertained to rack loading service for goods (iron ores) procured by the Appellant which were exported outside India and that the said service did not relate to their manufacturing operations undertaken at the unit where the credit has been availed. It was also alleged that said iron ores against which the loading services were availed from M/s. Prithavi Associates never reached the assessee's factory but were exported outside the country.

3. Heard Shri S. Mohapatra, Ld. General Manager (Taxation) for the appellant and Shri A. Roy, Ld. A.R. for the Revenue through video conferencing and perused the appeal records. Arguments advanced by the representatives from both sides have been duly considered.

4. I find that the issue in this case lies in a narrow compass as to whether loading services availed by the Appellant is eligible for credit. Both the authorities below have denied the credit availed by the Appellant on the basis of ISD invoices issued by the Head Office on the ground that the subject input service for loading is not eligible for credit under the Credit Rules.

5. I find that credit has been denied merely on the ground that goods against which loading services have been availed have not been received by the Appellant in their factory. I also find that the authorities have taken an erroneous view that in order to avail credit of service tax paid on loading services, the goods in respect of which such loading services have been availed, should have also been physically received in the factory of the Appellant which is not correct inasmuch as there is no such condition prescribed in the Credit Rules. The case would have been different had the credit of central excise duty been availed by the Appellant without bringing the goods in the factory which is not the case herein.

6. Moreover, it is admitted in the facts of the case, that the goods in respect of which loading services have been availed have been duly exported outside the country. Even otherwise, in that case also, the appellant would have been eligible for claiming refund of input service under Rule 5 of the Credit Rules subject to compliance with the conditions prescribed therein. In the instant case, instead of availing refund of input service, the appellant has availed the credit under the Credit Rules for payment of output excise duty on excisable goods cleared form the factory. I do not find any reason to deny the credit and hence, the appeal succeeds. In so far as the pleading on limitation is concerned, I find that SCN has been issued in August 2016 by invoking extended period of limitation. Apart from the general aversion, there is no evidence to show that credit has been wrongly availed by way of fraud or suppression. Hence, the impugned demand is also barred by limitation and hence, not sustainable on that count also.

7. The appeal is thus allowed with consequential relief, if any.

(Pronounced in the open court on 01.10.2021)

 