M/S Prism Johnson Limited Vs Commissioner Of Cgst & Central Excise Jabalpur

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 10, 2025

Acts Referred: Finance Act, 1994 â€" Section 73, 76, 77, 77(1)(c), 77(2), 78A
Central Excise Act, 1944 â€" Section 11A, 11AC, 11(4)
Mines and Minerals (Development and Regulation) Act, 1957 â€" Section 2, 3, 4, 5, 13, 14, 15
Cenvat Credit Rules, 2004 â€" Rule 2(l), 14, 15(2)
Central Excise Rules, 2002 â€" Rule 26, 26(2)(ii), 35

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Devesh Tripathi, Mohd. Faraz Anees, Presenjit Pathak, Shyam Raj Prasad, Harsh Vardhan, Rakesh Agarwal

Final Decision: Allowed/Dismissed

Judgement

P.V. Subba Rao, J

1. These five service tax and four excise appeals assail the order-in-original dated 30.06.2021, impugned order read with corrigendum dated

29.07.2024 passed by the Commissioner of CGST and Central Excise, Jabalpur whereby he decided the proposals made in the show cause notice

dated 30.12.2020, SCN issued to the appellants herein covering the period from 01.10.2014 to 30.06.2017.

2. Service Tax Appeal No. 51735 of 2021 is filed by M/s Prism Johnson Ltd., PJL to assail the demand of service tax of Rs.11,25,04,719/- with

interest and penalties under Sections 77 and 78 (1) of the Finance Act, 1994, The Finance Ac.

3. Service Tax Appeal No. 51737 of 2021 is filed by Pradeep Kumar Srivastava, Manager Accounts,, Pradeep to assail penalty of Rs. 1,00,000/-

imposed on him under Section 78A of the Finance Act.

4. Service Tax Appeal No. 51738 of 2021 is filed by Shri Ashish Hinger, Ashish Function Head Finance to assail penalty of Rs. 1,00,000/- imposed

on him under Section 78A of the Finance Act.

5. Service Tax Appeal No. 51739 of 2021 is filed by Shrawan Kumar Pathak, Shrawan, the mine owner, to assail penalties of Rs. 10,000/-under

Section 77(1)(c) and Rs.10,000/- under Section 77(2) of the Finance Act.

6. Service Tax Appeal No. 51740 of 2021 is filed by Manish Bhatia, Manish, Chief Finance Officer of PJL to assail penalty of Rs. 1,00,000/-

imposed on him under Section 78A of the Finance Act.

7. Excise Appeal No. 51730 of 2021 is filed by PJL to assail the denial of CENVAT credit of Rs. 7,70,01,957/- and order for its recovery along

with interest under Rule 14 of CENVAT Credit Rules, 2004, CCR and imposition of an equal amount as penalty under Rule 15(2) of CCR read with

Section 11AC of the Central Excise Act, 1944, Excise Act.

8. Excise Appeal No. 51723 of 2021 is filed by Ashish to assail the penalty of Rs.5,50,00,000/- under Rule 26 (2)(ii) of Central Excise Rules, 2002,

Excise Rules.

9. Excise Appeal No. 51731 of 2021 is filed Manish to assail penalty of Rs. 7,70,00,000/- under Rule 26(2)(ii) of Excise Rules.

10. Excise Appeal No. 51733 of 2021 is filed by Pradeep Kumar Srivastava, Manager Accounts, Pradeep to assail the penalty of Rs. 5,50,00,000/-

under Rule 26(2)(ii) of Excise Rules imposed on him.

11. The facts which led to the issue of the SCN and the impugned order are that PJL is a manufacturer of cement and is registered with the central

excise department. Limestone is one of the raw materials for manufacture of cement. Limestone is a minor mineral and its mining is regulated by the

State Governments.

12. The Government of Madhya Pradesh leased out a limestone mine called Ramasthan Mines to Shrawan. Paragraph 17 of the lease stipulated that

the lessee shall not, without the previous consent in writing of the State Government, transfer the lease to anybody. It further stipulated that without

the previous consent of the State Government, the lessee shall not make any arrangement or contract or understanding whereby the lesseeÃ¢â‚¬Ëœs

operations shall be controlled by any other person or body. The relevant portion of the lease reads as follows:

Ã¢â‚¬Å“17(1) The lessee/lessees shall not without the previous consent transfer in writing of the State Government, which in the case of mining

of lease in respect of any mineral specified in the first schedule to the Act shall not be given except after previous approval of the Central

Government:-

(a) assign, subject, mortgage or in any other manner transfer the mining lease, or any right, title or interest therein or

(b) enter into or make any arrangement, contract or understanding whereby the lessee / lessees will or may be directly or indirectly financed

to a substantial extent by, or under which the lessees's operations or undertakings will or may be substantially controlled by, any person or

body or persons other than the lessee / lessees. Provided that the State Government shall not give its written consent unless,-

(a) the lessee has furnished an affidavit along with his application for transfer of the mining lease specifying therein the amount that he has

already taken or proposes to take as consideration from the transferee.

(b) the transfer of the mining lease is to be made to a person or body directly undertaking mining operations.

(2) Without prejudice to the above provisions, the lessee / lessees may, subject to the conditions specified in the proviso to Rule 35 of said

Rules transfer this lease or any right, title or interest therein to a person holding a certificate of approval and an income tax clearance

certificate from the Income tax officer concerned on payment of a fee of rupees one hundred to the State Government.

Provided that the lessee / lessees shall make available to the transferee the original or certified copies of all plans of abandoned working in

the area and in a belt 65 metres wide & surrounding it.

(Provided further that where the mortgage is an institution or a Bank or a cooperation specified in schedule V it shall not be necessary for

any such a Institution or Bank or Co-operation to hold the said Certificate of Approval and the said income-lax clearance certificate.)

(3) The State Government, may by order in writing determine the lease at any time if the lessee / lessees has / have in the opinion of the State

Government committed a breach of any of the above provisions or has / have transferred the lease or any right, title of interest therein

otherwise than in accordance with clause (2).

Provided that no such order shall be made without giving the lessee/lesses a reasonable opportunity of stating his / their case.Ã¢â‚¬â€‹

(emphasis supplied)

13. There is nothing on record to show either that the State Government gave prior consent in writing to Shrawan to transfer the lease or that he had

transferred the lease to anyone. However, Shrawan signed three agreements with PJL as follows:

(i) Operator agreement

(ii) Commercial agreement

(iii) Agency agreement

14. Through these agreements, Shrawan availed the services of PJL to mine limestone and also sold the limestone so mined to PJL. PJL in turn,

availed the services of M/s AR Transport, ART to raise and transport the limestone. On the services rendered by it, ART paid service tax.

15. PJL had not paid service tax on the services which it had rendered to Shrawan. It had also not received any payment from Shrawan for its

services. Instead, Shrawan charged PJL far less than the market rate for the limestone which it had sold to PJL.

16. According to the Revenue, the difference between the price at which limestone was sold by Shrawan to PJL and to independent parties is the

consideration which Shrawan paid to PJL for the mining services which it had rendered. PJL never obtained a registration under Service Tax nor paid

any service tax. Therefore, according to the Revenue, PJL evaded service tax which is recoverable along with interest and penalties.

17. The service tax appeals are with respect to the demand of service tax and penalties.

18. PJL availed CENVAT credit of the service tax paid on the mining services provided by ART and used it to pay excise duty on the cement

manufactured by PJL. Since mining services had no relation with the manufacture of cement, it is held in the impugned order that they do not qualify

as Ã¢â‚¬Ëœinput servicesÃ¢â‚¬Ëœ under Rule 2(l) of CCR and CENVAT credit was denied, ordered to be recovered with interest and penalties were imposed

which is the subject matter of the excise appeals.

19. It is held in the impugned order that PJL had fraudulently availed and utilized CENVAT credit of Rs.7,70,01,957/- on the strength of invoices

issued by ART but the services rendered by ART were not Ã¢â‚¬Ëœinput servicesÃ¢â‚¬Ëœ as per Rule 2(l) of CCR for manufacture of cement and therefore, it

is liable to be recovered under Rule14 of CCR read with Section 11A of the Excise Act.

20. In the impugned order, the Commissioner decided as follows:

(i) PJL (Noticee No. 1 in SCN) undertook the mining operations for and on behalf of Shrawan (Noticee No. 5) at Ramasthan Mines and not

for itself.

(ii) PJL gave an amount of Rs. 6 crores to Shrawan merely as an advance against the assured future sale of limestone after its extraction.

There was no sale of the entire limestone of the mine by Shrawan to PJL. It was purchased by issuing purchase orders periodically to

Shrawan over 10 years who, in turn, issued bills or invoices for the limestone charging VAT thereon and the said sale took place after its

delivery at the crushing side of PJL being a sale on FOR basis.

(iii) PJL rendered taxable services of mining of limestone to Shrawan but had not paid appropriate service tax as per the Finance Act.

(iv) Shrawan had not transferred his mining rights to PJL. In fact, two commercial transactions are involved in the case -one in which the

PJL rendered mining services to Shrawan and another transaction in which Shrawan sold the limestone to PJL.

(v) ART were not the input service providers for the cement manufactured by PJL and, therefore, no CENVAT credit of the service tax paid

by them is available to PJL.

(vi) PJL indulged in fraudulent activity of wrong availment of CENVAT credit by willful suppression of the fact of unaccounted provisions

of output taxable services from the department with malafide intention to avail inadmissible CENVAT credit. Therefore, CENVAT Credit

could be recovered under Rule 14 of CCR read with Section 11 (4) invoking extended period of limitation. For the same reason he held that

penalty under Section 11AC read with Rule 15A of CCR is liable to be recovered.

(vii) Penalties were imposable on Manish, Pradeep and Ashish as proposed in the SCN.

Submissions on behalf of the appellants

21. Learned counsel for the appellants made the following submissions:

(i) The agreement between the PJL and Shrawan were in the normal course of business on principal to principal basis primarily for sale of limestone

from Ramasthan Mines taken on lease by Shrawan. The finding in the impugned order that PJL undertook the activities of mining operation is devoid

of merit and incorrect and the adjudicating authority had not taken a holistic view of the agreement which, in alia, confirms that the ownership of the

mines was transferred to PJL;

(ii) The commercial understanding agreement and operator agreement, both dated 18.02.2009, have to be read together and cannot be read in isolation

and these point to the following:

(a) The lessee (Shrawan) confirms that the consideration paid in advance for the entire mineable limestone to be raised in due course of time shall

remain firm and shall not vary at any point of time.

(b) The right of ownership of the limestone by the company is valid even after the termination of the contract.

(c) As per operator agreement dated 18.02.2009 Shrawan proposes PJL to take and obtain exclusive right and for sole purpose of mining on the terms

and conditions contained therein and Shrawan shall have requisite approval and licence for excavation of lime stone.

(iii) From the scrutiny and examination of the contract as above it is clear that the limestone was sold by Shrawan to PJL and the services of PJL

were not taken for mining with Shrawan. Thus, the mine was a captive mine of PJL;

(iv) No taxable service was rendered by PJL to Shrawan and, therefore, no invoice was also raised by PJL;

(v) Extended period of limitation was not correctly invoked because PJL was registered with the Central excise department for manufacture of

cement was audited several times;

(vi) In view of above the demand of service tax and interest and penalty cannot sustained;

(vii) Consequently, the personal penalty imposed on Ashish, Manish and Pradeep also need to be set aside.

Submissions on behalf of the Revenue

22. Learned special counsel for the department vehemently supported the impugned order and asserted as follows:

(i) The uncontroverted facts of the case are that Shrawan was the mining lease holder of the mines and had mining and ownership right on the

limestone excavated from it;

(ii) PJL entered into agreement with Shrawan where PJL was required to undertake all activities related to excavation of limestone;

(iii) Under another agreement Shrawan sold the entire limestone to PJL. This agreement also provided that PJL shall pay to Shrawan, the cost of

limestone after deducting the expenses towards mining it;

(iv) As per the third agreement known as commercial agreement as per which Rs. 6 crores shall be paid as a cost of total minable limestone in

advance which was to be adjusted against the rate of limestone to be excavated from the mines in future and sold on FOR basis;

(v) No bill or invoice was raised by Shrawan for the alleged sale of limestone. As per the agreement, PJL issued purchase orders to Shrawan for

purchase and supply of limestone periodically and after limestone was supplied, Shrawan raised invoices for sale of limestone showing much lesser

price than the prevailing market price;

(vi) The payment of Rs. 6 crores towards the sale of limestone paid in 2009 was shown in the balance sheets and P & L account of PJL under head

Ã¢â‚¬Å“current assetsÃ¢â‚¬ and sub-head Ã¢â‚¬Å“advance recoverable in cash or kindÃ¢â‚¬. In the next year it was converted into the head Ã¢â‚¬Å“mineral

procurements rightsÃ¢â‚¬â€‹ in the balance sheets of P & L account;

(vii) PJL entered into another mining contract with ART appointing it as a sub-contractor to excavate the lime stone.

Findings

23. We have considered the submissions advanced by both sides and perused the records.

24. The two key issues to be decided are (a) whether PJL had rendered taxable services to Shrawan and hence was liable to pay service tax as

required; and (b) whether CENVAT credit is available of service tax paid by ART on the services which it had rendered to PJL, treating them as

input services for manufacture of cement.

Service tax

25. According to the Revenue, PJL had rendered taxable service (mining service) to Shrawan but had not paid service tax. PJL did not receive

consideration for its services from Shrawan in cash but instead Shrawan sold limestone to PJL at far lower prices than the prices at which limestone

was sold to independent buyers and this difference was the consideration which PJL received from Shrawan for its services. Service tax has to be

paid, according to the Revenue, on this difference in prices. According to the appellants, PJL had not rendered any services to Shrawan at all.

According to the appellant, Shrawan had transferred the mine and the mining lease to PJL and also sold the entire limestone to PJL through the three

agreements viz., (a) Operator agreement; (b) Commercial agreement; and (c) Agency agreement. The Operator Agreement required PJL to conduct

the mining operations in the mine. The Commercial Agreement was for sale of the limestone to PJL. The Agency Agreement was between Shrawan

and two others who acted as agents and PJL whereby the agents agreed to facilitate purchase of the land from owners of land by PJL.PJL got the

limestone mined using the services of ART and used the limestone to manufacture cement. Therefore, according to the appellants, PJL had not

rendered any services to Shrawan but it had rendered the services to itself because it was the captive mine of PJL and therefore, no service tax is

payable.

26. The question, therefore, is whether PJL had mined the limestone for itself or it had rendered mining services to Shrawan. To answer this, we must

first look at relevant legal provisions. As per article 246, Parliament can make laws with respect to Union List and the State can make laws with

respect to State List. Regulation of Mines and Mineral development, to the extent to which such regulation and development, under the control of the

Union is declared by Parliament by law to be in public interest, is included in Entry 54 of List I (Union List) of the Seventh Schedule. Regulation of

mines and mineral development, subject to the provisions of List I (Union List), is included in Entry 23 of List II (State List) of the Seventh Schedule.

27. The relevant entries are as follows:

Ã¢â‚¬Å“List I (Union List)

Entry 54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the

Union is declared by Parliament by law to be expedient in the public interest.

List II (State List)

Entry 23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under

the control of the Union.Ã¢â‚¬â€‹

28. Thus, development and regulation of mines and minerals to the extent Parliament declares to be in public interest falls under the control of Central

Government and other regulations fall with the State Government. Parliament made this declaration of public interest in Section 2 of the Mines and

Minerals (Development and Regulation) Act, 1957, MMD Act. It reads as follows:

Ã¢â‚¬Å“2. Declaration as to expediency of Union Control. Ã¢â‚¬It is hereby declared that it is expedient in the public interest that the Union should

take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.Ã¢â‚¬â€‹

29. A few important definitions in the MMD Act are below;

Section 3 Definitions:

(ad) Ã¢â‚¬Å“mineralsÃ¢â‚¬ includes all minerals except minerals oils; (ae) Ã¢â‚¬Å“minerals concessionÃ¢â‚¬ means either a reconnaissance permit,

prospecting licence, mining lease, composite licence, exploration licence or a combination of any of these and the expression

Ã¢â‚¬Å“concessionÃ¢â‚¬â€‹ shall be construed accordingly;

(b) Ã¢â‚¬Å“mineral oilsÃ¢â‚¬â€‹ includes natural gas and petroleum;

(c) Ã¢â‚¬Å“mining leaseÃ¢â‚¬ means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such

purpose;

(d) Ã¢â‚¬Å“mining operationsÃ¢â‚¬â€‹ means any operations undertaken for the purpose of winning any mineral;

(e) Ã¢â‚¬Å“minor mineralsÃ¢â‚¬ means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and

any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;

30. Section 4 of the MMD Act prohibits reconissance, mining or prospecting except under a licence issued under the Act. It reads as follows:

Ã¢â‚¬Å“4. Prospecting or mining operations to be under licence or lease.Ã¢â‚¬(1) No person shall undertake any reconnaissance, prospecting or

mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a

prospecting licence or of a exploration licence or, as the case may be, of a mining lease, granted under this Act and the rules made

thereunder:

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31. Sections 5 to 13 provide for various regulations and restrictions on mines and minerals. Section 14 takes quarry leases, mining leases or other

mineral concessions in respect of minor minerals out of the ambit of sections 5 to 13. Section 15 places quarry leases, mining leased and other mineral

concessions in respect of minor minerals squarely within the control of the State Government.

32. Sections 14 &15 read as follows:

Ã¢â‚¬Å“14. Sections 5 to 13 not to apply to minor minerals. Ã¢â‚¬The provisions of sections 5 to 13 (inclusive) shall not apply to quarry leases,

mining leases or other mineral concessions in respect of minor minerals.

15. Power of State Governments to make rules in respect of minor minerals.Ã¢â‚¬(1) The State Government may, by notification in the Official

Gazette, make rules for, regulating the grant of quarryleases, mining leases or other mineral concessions in respect of minor minerals and

for purposes connected therewith.

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33. What is evident from the above is that having declared it to be in public interest, Parliament passed the MMD Act to regulate mines and minerals.

Section 4 of the MMD Act prohibits not only mining but even prospecting and even reconnaissance for minerals without a licence or permit. The

power to issue licences and permits and to regulate falls exclusively within the purview of the State Governments in respect of minor minerals, which

definition includes stones (including limestone).

34. Learned counsel for the appellants submitted that the three agreements which PJL and Shrawan had entered into must be read together. Shrawan

transferred the operation of the mine to PJL and had also sold the land of the mine to PJL and further also sold the limestone of the mines to PJL.

Therefore, according to the learned counsel, the activities of PJL in the mines was only self service. PJL excavated the limestone and used it to

manufacture cement and did not render any service to Shrawan and, therefore, no service tax is payable.

35. These submissions of the learned counsel cannot be accepted. It must be noted that the licence or permit to mine is distinct from the ownership of

the land and the buyer of the mined products. One may own a piece of land but such ownership does not give one the right to mine minerals in the

land. The Constitution permits the Central and State Government to regulate mining and this regulation has been done through MMD Act, according to

which the power to regulate minor minerals rests with the State Governments. Section 4 of the MMD Act explicitly forbids any mining without a

licence or permit. In case of minor minerals such as limestone, the licence has to be granted by the State Government.

36. In this case, the licence to mine in Ramasthan mines was granted by the Government of Madhya Pradesh to Shrawan. One of the conditions of

the licence is that it shall not be transferred without the permission of the State Government. No licence was issued to PJL with respect to these

mines nor is there any permission of the State Government to Shrawan to transfer his licence.

37. The three agreements nowhere indicate that the licence to mine was transferred to PJL. On the other hand, paragraph II B of the Operator

Agreement clearly spells out the nature of the relationship between Shrawan(referred to as Lessee in the agreement) and PJL (referred to company

in the agreement). It reads as follows:

Ã¢â‚¬Å“II B. APPOINTMENT AS OPERATOR

LESSEE hereby appoint the Company, and declare that simultaneously upon execution of this Agreement, the Company shall be and

become, the sole and exclusive operating and raising contractor for the Mining Area to exclusively carry out, inter-alia, mining operations

in the Mining Area and to excavate / extract and / or remove Lime Stone from the Mining Area for and on behalf of LESSEE, for the entire

balance lease period or period of ML Agreement including renewal thereof, whichever is higher or during such extended period thereafter

as may be mutually agreed between the parties.

The appointment shall be effective on and / or from the date of execution of this Agreement, without any further act, deed or documentation

by and between the Company and LESSEE or any other person.

The key terms and conditions forming the binding obligations of the Parties hereto, pertaining to the said operation and excavation

arrangement are set out in ATTACHMENT 3 hereto, which shall form an integral part and parcel of this Agreement.Ã¢â‚¬â€‹

38. Learned counsel for the appellant has also confirmed during hearing that no action has been initiated by the State Government against Shrawan for

transferring the licence. From all of the above, it is clear that the mining licence continued to be with Shrawan, who alone could mine the limestone

either himself or by seeking services of others. The Operator Agreement between Shrawan and PJL, therefore, was nothing but an agreement in

which PJL provided mining services to Shrawan who had the licence to mine limestone. Thus, PJL was the main contractor for mining. In turn, PJL

sub-contracted the mining to ART. Thus, ART was the sub-contractor and PJL was the main contractor who provided mining services to Shrawan.

Neither the fact that the land was sold by Shrawan to PJL nor the fact that the mined limestone was sold to PJL or the fact that PJL used the

limestone to manufacture cement make any change to the legal and factual position that Shrawan continued to hold the licence to mine and PJL was

appointed to operate and was hence only the service provider to Shrawan.

39. While the sub-contractor ART was paid by PJL and it also paid service tax on its services, PJL never paid any service tax nor disclosed that it

was rendering services to Shrawan.

40. Next comes the question of consideration for the services rendered by PJL to Shrawan. No amount was paid in cash by Shrawan to PJL. Instead,

Shrawan sold the limestone to PJL at a price far below the market price. The difference in price is, according to the Revenue, the consideration for

the services of Shrawan. According to the learned counsel, on the other hand, neither was any service rendered by PJL to Shrawan nor was any

consideration paid. According to him, the entire limestone of the mine was sold to PJL for a sum of Rs. 6 crores paid in advance and there was no

sale of limestone of individual consignments of limestone. In the impugned order, the Commissioner held that what was paid was only an advance and

the sale of individual consignments took place when purchase orders were placed from time to time by PJL on Shrawan and the consignments were

dispatched. Individual invoices showed the date and time of delivery. All invoices indicated that sale was on FOR destination basis at the crushing

plant of PJL.

41. We have perused the purchase orders and invoices and also the amount paid in advance. Had the entire limestone been sold, as per the

agreement, to PJL, the question of PJL issuing purchase orders and paying against individual invoices does not arise because it would have been the

property of PJL and there would have been no occasion for Shrawan to sell it to PJL. We find, as a matter of fact, based on the documents available,

that purchase orders were placed and invoices were issued for sale of limestone on FOR destination basis, the destination being the crushing plant of

PJL. Therefore, the amount paid in advance under the Agreement can only be treated as an advance.

42. We have perused the invoices under which the limestone was sold to PJL which clearly show a far lower price than the market price, as

discussed in the impugned order. The reason for this is evident. Had Shrawan mined the limestone and sold it to PJL, it would have had to incur costs

of mining and it would have charged market price for the limestone. Had Shrawan paid PJL for its mining services also, it would have charged market

price for the limestone. Instead of paying PJL for its services and charging market price for the limestone sold to PJL, Shrawan charged a far less

than market price for the limestone. Thus, PJL received consideration for its services from Shrawan in the form of lower price of limestone.

43. The invoices also show that the sale is on FOR destination basis at the crushing site of PJL. Therefore, the submission of the learned counsel for

the appellant that the entire limestone was sold for a single payment in advance holds no water. If that was the case, the entire limestone would have

belonged to PJL itself and there would be no occasion to issue a purchase order to Shrawan nor for Shrawan to issue an invoice. The invoices make it

explicit that each consignment was sold when it reached the destination. The Commissioner has correctly held that the amount paid by PJL to

Shrawan was only an advance.

44. The impugned order is correct in concluding that the PJL had rendered mining services to Shrawan, but it failed to take registration under service

tax or pay service tax. The service tax so payable is recoverable under section 73 of the Finance Act.

45. Learned counsel submitted that the demand was time barred as PJL was registered with the central excise department for manufacture of cement

and its records were audited several times.

46. We are not convinced of this argument. No doubt, PJL was registered as a cement manufacturer and had been filing excise returns but it had not

disclosed to the Department the fact that it was providing mining services nor did it obtain the service tax registration. Scrutiny of returns by the excise

officers or by the excise audit teams naturally will be confined the excise part of its work. When PJL had not even intimated the department about the

services which it was rendering nor had it taken any registration nor paid service tax nor filed the service tax returns, PJL had clearly suppressed all

facts related to rendering of mining services to Shrawan and not paying service tax on them.

47. We have also examined whether the payment of service tax would be revenue neutral, and if so, could this be taken as a factor. We find that the

services were rendered by PJL to Shrawan whose final product was limestone which was an exempted good. Shrawan was not rendering any

service. Thus, the service tax which PJL had to pay would have had to be borne by PJL or Shrawan. Shrawan could not have availed credit of the

service tax, if it was paid, because its final product- limestone- is an exempted good.

48. In view of above, we find that demand of service tax from PJL along with interest and penalties need to be sustained.

49. Pradeep was the Manager Accounts of PJL at the relevant time and hence was a key operator of the appellant firm and in the impugned order

penalty has been imposed on him under Section 78A of the Finance Act. Section 78A is as follows:

Ã¢â‚¬Å“SECTION 78A.Penalty for offences by director, etc., of compan yÃ¢â‚¬" Where a company has committed any of the following

contraventions, namely :Ã¢â‚¬

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the Rules made under the

provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in

violation of the Rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date

on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such

contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly

concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees. Ã¢â‚¬Å“ExplanationÃ¢â‚¬" Ã¢â‚¬"For the

removal of doubts, it is hereby clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or

erroneously refunded, and the proceedings with respect to a notice issued under sub-Section (1) of Section 73 or the proviso to sub-Section

(1) of Section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to Section 76 or clause (i) of the second

proviso to Section 78, as the case may be, the proceedings pending against any person under this Section shall also be deemed to have been

concluded.Ã¢â‚¬â€‹

50. Pradeep was responsible to PJL for the conduct of its business and was in the knowledge of the Agreements which it had entered into with

Shrawan to provide mining services. We, therefore, find no reason to interfere with the penalty of Rs.1,00,000/- imposed on Pradeep under Section

78A of the Finance Act.

51. Ashish was the Function Head, Finance of PJL and was responsible for all matters related to finance and was in knowledge of the Agreements

under which PJL rendered services to Shrawan but had not paid service tax. We, therefore, find no reason to interfere with the penalty of

Rs.1,00,000/- imposed on Ashish under Section 78A of the Finance Act.

52. Manish was the Chief Finance Officer of PJL and was responsible for all matters related to finance and was in knowledge of the Agreements

under which the PJL rendered services to Shrawan but had not paid service tax. We, therefore, find no reason to interfere with the penalty of

Rs.1,00,000/- imposed on Manish under Section 78A of the Finance Act.

53. Shrawan was the mine owner who had received services and penalty of Rs. 10,000 was imposed on him each under Sections 77(1)(c) and 77(2)

of the Finance Act. We find no reason to interfere with these penalties imposed on Shrawan.

54. The impugned order, therefore, needs to be sustained insofar as it pertains to confirmation of demand of service tax with interest from PJL and

imposition of penalties on PJL, Pradeep, Ashsih, Manish and Shrawan under the provisions of the Finance Act.

CENVAT Credit

55. The second issue in the impugned order pertains to PJL taking CENVAT credit of the Service Tax paid by ART on the invoices for services

which it had rendered to PJL. The final product manufactured and cleared by PJL is Cement. It is the case of the Revenue that the services rendered

by ART do not qualify as Ã¢â‚¬Ëœinput servicesÃ¢â‚¬â„¢ for manufacture of cement. Therefore, such Ã¢â‚¬Ëœwrongly availed CENVAT creditÃ¢â‚¬â„¢ was denied

and ordered to be recovered in the impugned order along with interest and penalties. Rule 2(l) of CCR, as it is stood during the relevant period, reads

as follows:

Ã¢â‚¬Å“(l) Ã¢â‚¬Å“input service means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a 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 modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training,

computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital

goods and outward transportation upto the place of removal;Ã¢â‚¬â€‹

56. It has been held in the impugned order that ART had rendered mining services as a sub-contractor to PJL which had a contract to provide mining

services to Shrawan. PJL had not paid service tax on the mining service which it had provided to Shrawan. The services rendered by ART were not

Ã¢â‚¬Ëœinput servicesÃ¢â‚¬Ëœ for manufacture because they were not used in or in relation to manufacture cement.

57. It has further been held that PJL has only been showing the total service tax credit taken during the months in their ER-1 returns and had never

disclosed to the department categories of services on which the service tax credit was taken by them either in the ER-1 returns nor by any other

means. Thus, they fraudulently availed service tax credit and, therefore, the same was held recoverable under Rule 14 of CCR invoking extended

period of limitation. Penalty under Section 11AC read with Rule 15 of CCR was also imposed for these reasons. Penalties were also imposed on

Pradeep, Manish and Ashish.

58. The first question to be considered is whether the services rendered by ART were Ã¢â‚¬Ëœinput servicesÃ¢â‚¬Ëœ for manufacture of cement. We find from

the records of the case and the submissions made by both sides that the services rendered by ART were in relation to quarrying and transporting

limestone in Ramasthan Mines of Shrawan. As discussed while dealing with the service tax issues in this order, nobody can quarry or mine except

under a licence given under the MMD Act. In case of minor minerals, including limestone, the licence can be granted by the State Government.

Government of Madhya Pradesh granted the mining lease to Shrawan stipulating that it cannot be transferred without consent of the Government. We

have already found that it was not transferred and the lease continued to be with Shrawan. Therefore, Shrawan alone was authorized to mine

limestone, which he could do by himself or using contractors.

59. Shrawan entered into an Operator Agreement with PJL and thereby used its services to mine the limestone. PJL, thus, acted as a contractor of

Shrawan and provided mining services to it. PJL, in turn, hired ART to mine and transport the limestone. Thus, ART was the sub-contractor of PJL

and provided services to PJL as such. This chain of services from ART to PJL and PJL to Shrawan comes to an end at with Shrawan who held the

lease of mining and did not render any service to anybody else. Using the services of PJL (rendered through its sub-contractor ART), Shrawan raised

limestone and sold it. The undisputed legal position is that limestone was not excisable and no duty was payable on it. Since no excise duty was

payable, Shrawan could not take any CENVAT credit of any excise duty paid on inputs or service tax paid on input services. Such duties and service

tax would be a cost to Shrawan.

60. Similarly, when Shrawan sold limestone to PJL, no duty was payable on it and PJL could not any CENVAT credit on it. The cement

manufactured by PJL is an excisable product and PJL is entitled to take CENVAT credit of inputs and input services used in or in relation to

manufacture of cement. The services rendered by ART to PJL were in relation to the services which PJL had rendered to Shrawan and the

exempted goods limestone produced by Shrawan. The services rendered by ART clearly had no correlation to the manufacture of cement. Therefore,

the finding in the impugned order that CENVAT credit was wrongly availed by PJL on the services rendered by ART treating it as input service for

manufacture of cement is correct and needs to be sustained.

61. CENVAT credit irregularly taken can be recovered under Rule 14 of CCR and the provisions of section 11Aof the Excise Act apply mutatis

mutandis to such recovery. Therefore, the time limits prescribed under section 11A of Excise Act also apply to recovery of irregularly availed

CENVAT credit under Rule 14 of CCR. It provides for invoking extended period of limitation of five years if duty was not levied or not paid or short

levied or short paid or erroneously recovered by reason of fraud or collusion or wilful misstatement or suppression of facts or violation of the

provisions of the Act or Rules with an intent to evade payment of duty. To recover irregularly availed CENVAT credit by invoking extended period of

limitation under Rule 14 of CCR, one of these aggravating factors must be established.

62. The reason given in the impugned order for invoking extended period of limitation is that PJL had never disclosed in itÃ¢â‚¬Ëœs ER-1 Returns to the

department categories of services on which the service tax credit was taken by them either in the ER-1 returns nor by any other means. Thus, it was

held that they availed the fraudulently availed service tax credit and, therefore, the same was recoverable under Rule 14 of CCRby invoking extended

period of limitation. Penalty under Section 11ACof Excise Act read with Rule 15 of CCR was also imposed for these reasons.

63. We find that ER-1 Returns only require the aggregate CENVAT credit taken to be disclosed and not the details of invoices or inputs or input

services on which the credit was taken. There is also no obligation to disclose to the department the details of the invoices or services on which credit

was taken. It was open to the officer who is mandated to receive the ER1 return to call for further information and details and if he had sought and

PJL had concealed the details, it would have been a different case. Nothing in the records suggests that the officer scrutinizing the Returns had sought

any information which was not given. Therefore, PJL had no obligation to disclose the details which it is said to have not disclosed. This cannot be

termed suppression of facts to invoke extended period of limitation.

64. Insofar as the excise part of the impugned order is concerned, PJL was registered with and it had been filing ER 1 returns and therefore, we find

no ground to invoke extended period of limitation. Therefore, denial of CENVAT credit and order of its recovery under Rule 14 of CCR can only be

confined to the normal period of limitation. The demand for extended period of limitation needs to be set aside.

65. Penalty under Section 11AC read with Rule 15 of CCR was also imposed in the impugned order for the same reason, i.e., PJL had not disclosed

the details of services on which it had availed CENVAT credit in its ER-1 returns. The legal requirement to impose penalty under section 11ACof

Excise Act is the same as the requirement to invoke extended period of limitation, i.e., the wrong availment of CENVAT credit is because of fraud or

collusion or willful mis-statement or suppression of facts or violation of Act or Rules with intent to evade payment of duty. Since we have found that

extended period of limitation was wrongly invoked, we also set aside the penalty imposed under Section 11AC of the Excise Act read with Rule 15 of

CCR.

66. Pradeep, Manish and Ashish have assailed the penalties imposed on them under Rule 26(2) (ii) of the Excise Rules. This Rule reads as follows:

Ã¢â‚¬Å“Rule 26. Penalty for certain offences.Ã¢â‚¬" (1)]Any person who acquires possession of, or is in any way concerned in transporting,

removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows

or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such

goods or two thousand rupees, whichever is greater.

Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1)

of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the

said proceedings shall also be deemed to be concluded.

(2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has

taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules,

2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.Ã¢â‚¬‹

67. Persons who issue invoices or other documents or abet making of such a document on which the user of the said invoice or document is likely to

take or has taken any ineligible benefit under the Act or the Rules made thereunder like claiming CENVAT credit or refund is liable to penalty under

Rule 26(2)(ii) of Excise Rules. The ineligible CENVAT credit was evidently taken by PJL on the strength of the service tax invoices issued by ART.

There is no dispute that ART had provided services to PJL, issued tax invoices and paid service tax on such services. Therefore, there was nothing

improper, let alone illegal or irregular in ART issuing such invoices to PJL. In fact, it was required to pay service tax and issue invoices. The fact that

PJL used such invoices to take CENVAT credit wrongly treating it as an input service for manufacture of cement is an altogether different matter.

Neither the issue of invoices by ART was incorrect nor can Pradeep, Manish and Ashish be accused of abetting issue of such an invoice. Clearly, the

penalties imposed on them under Rule 26(2)(ii) of Excise Rules cannot be sustained and need to be set aside.

68. To sum up:

a) Shrawan was and continued to be the lease holder of Ramasthan mines and this lease was neither consented to be transferred by the Government

of MP, nor was it actually transferred to PJL.

b) Under the Operator Agreement, PJL provided mining services to Shrawan.

c) Instead of paying PJL for its services in cash, Shrawan paid for it by selling the limestone at a far below the market prices.

d) The sale of the limestone for each consignment took place when PJL issued purchase orders and Shrawan supplied the limestone at the crushing

site of the PJL.

e) The amount paid in advance by PJL to Shrawan was only an advance and the purchase orders and invoices were issued later from time to time.

f) PJL neither paid service tax on the services which it had rendered to Shrawan nor filed any return nor had it taken registration under service tax. It

thus, suppressed these facts with an intent to evade paying service tax.

g) Therefore, the demand of service tax , interest and penalties on PJL must be sustained.

h) Considering the role played by Pradeep, Manish, Ashish and Shrawan, the penalties imposed on them under sections 77 and 78Aof the Finance Act

must be upheld.

i) The services rendered by ART to PJL were not in or in relation to the manufacture of cement by PJL. Therefore, no CENVAT credit of the

service tax paid by ART is admissible as Ã¢â‚¬Ëœinput serviceÃ¢â‚¬Ëœ to manufacture of cement by PJL.

j) The irregularly availed CENVAT credit must be recovered but only within the normal period of limitation as the ingredients to invoke extended

period of limitation are not present.

k) Penalties imposed on Pradeep, Ashish and Manish under Rule 26(2)(ii) of the Excise Rules, 2002 cannot be sustained and need to be set aside.

69. Accordingly, the appeals are disposed of as below:

a) Service Tax Appeal No. 51735 of 2021 filed by PJL is dismissed.

b) Service Tax Appeal No. 51737 of 2021 filed by Pradeep is dismissed.

c) Service Tax Appeal No. 51738 of 2021 filed by Ashish is dismissed.

d) Service Tax Appeal No. 51739 of 2021 filed by Shrawan is dismissed.

e) Service Tax Appeal No. 51740 of 2021 filed by Manish is dismissed.

f) Excise Appeal No. 51730 of 2021 filed by PJL is partly allowed upholding the denial of CENVAT credit and its recovery within the normal

period of limitation. Denial and recovery for the extended period of limitation is set aside. Penalty under Rule 15(2) of CCR read with Section 11AC

of the Excise Act is also set aside.

g) Excise Appeal No. 51723 of 2021 filed by Ashish is allowed and the penalty imposed on him under Rule 26(2)(ii) of Excise Rules is set aside.

h) Excise Appeal No. 51731 of 2021 filed Manish is allowed and the penalty imposed on him under Rule 26(2)(ii) of Excise Rules is set aside.

i) Excise Appeal No. 51733 of 2021 filed by Pradeep is allowed and the penalty imposed on him under Rule 26(2)(ii) of Excise Rules is set aside.

[Order pronounced on 10/01/2025]