

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Biswaroop Chowdhury

AD-COM 2 of 2024

with

CS No. 9 of 2019

Titagarh Rail Systems Limited

VS.

**The Board of Major Port Authority For The Syama Prasad
Mookherjee, Port, Kolkata**

For the Appellant : Mr. Sabyasachi Chowdhury, Sr. Adv.,
Ms. Arpita Saha, Adv.,
Mr. Sayantan Bose, Adv.,
Ms. Priyanka Gope, Adv.,
Ms. Manisha Das, Adv.

For the Respondent : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Ashok Kumar Jena, Adv.

Hearing concluded on : 25th April, 2025

Judgment on : 16th May, 2025

Soumen Sen, J.:-

1. This is an appeal from a decree.
2. The plaintiff has filed a suit claiming interest of Rs. 2,81,59,025/- along with pendente lite interest and interest on judgment at the rate of 18 per cent per annum.
3. The learned Single Judge on consideration of the pleadings and evidence dismissed the suit. Hence this appeal.

4. Shortly put, the plaintiff was the successful bidder in respect of eight tenders issued by the defendant between the years 2005 and 2011 for manning, operation, maintenance and repair of several identified pilot vessels and/or launches.

5. Following acceptance of the tenders by the defendant, 8 separate agreements with similar terms and conditions have been executed between the parties.

6. Clause 3.12 of the agreements provides that: *“The rate quoted by the bidders shall be inclusive of all taxes and duties. However, Service Tax and Educational Cess, if applicable, will be reimbursed by KoPT at actual on production of documentary evidence. Service Tax and Educational Cess will not be considered for the evaluation of the Tender”*. (emphasis supplied)

7. Initially the plaintiff was under the impression that service tax was payable only in respect of the daily maintenance charges of the vessels and on that basis the plaintiff raised bills on the defendant together with the bills for reimbursement of service tax restricted to daily maintenance charges. These bills were duly accepted and paid by the defendant from time to time. All the eight contracts were initially entered into by Corporated Shipyard Private Limited (hereinafter referred to as the ‘said company’) with the defendant. However, during the pendency of the said contracts the control and management of the said company was taken over by the plaintiff. Following the merger the plaintiff was in doubt with regard to the applicability of the service tax on the entire service rendered by the plaintiff to the defendant under several contracts. The plaintiff obtained expert opinion on the issue who advised the plaintiff to pay service tax on the

entirety of the service rendered by the plaintiff. In the meantime the Service Tax Voluntary Compliance Encouragement Scheme (VCES) had come into effect upon enactment of the Finance Bill 2013 on 10th May, 2013. With a view to regularising payment of service tax under the aforesaid eight agreements and further to avail of service tax under VCES the plaintiff decided to pay service tax and avail the benefit of VCES.

8. The total service tax liability in respect of eight agreements under the scheme was assessed at Rs.3,94,34,035/- out of which the plaintiff made payment of Rs.2,40,00,000/- on 31st December, 2013. On payment of the said amount the plaintiff had approached the defendant and requested the defendant for reimbursement of the said amount but the defendant had failed and neglected to reimburse the said amount and finding no other alternative the plaintiff paid the balance amount of Rs.1,54,34,035/- after arranging funds on 31st December, 2014 along with interest of Rs.13,97,767/-. The plaintiff alleged that the delay for payment of the balance amount was due to the failure and negligence on the part of the defendant as the defendant did not reimburse the service tax paid by the plaintiff on 31st December, 2013.

9. When the plaintiff had applied for reimbursement of the service tax paid by the plaintiff along with debit notes for reimbursement of the service tax paid by the plaintiff, the defendant insisted for furnishing bank guarantee of the said amount and an indemnity bond cum undertaking for release of the said amount.

10. The plaintiff was aggrieved by this action and filed a writ application being WP No.948 of 2016 for cancellation and/or withdrawal of

the letters issued by the defendant to the plaintiff insisting for furnishing of bank guarantee and indemnity bond. The writ petition was disposed of by the learned Single Judge on 24th February, 2017 by directing the defendant to pay a sum of Rs.3,94,34,035/- towards reimbursement of the service tax within two weeks. The plaintiff was directed to submit the original discharge certificate issued by the service tax department in Form VCES-3 to the defendant and relegated the plaintiff to suit with regard to other claims.

11. In terms of the aforesaid order the defendant reimbursed the aforesaid sum to the plaintiff on 10th March, 2017. In view of the fact that the defendant had failed and refused to reimburse service tax prior to 10th March, 2017 and only after an order was passed in the writ proceeding on 24th February, 2017, following the liberty granted by the learned Single Judge in the writ proceeding, the suit was filed claiming interest for delay in reimbursement of the service tax.

12. The learned Single Judge dismissed the suit on the ground that the defendant was not responsible for the delay as reimbursement of the service tax is dependent upon the plaintiff furnishing original discharge certificate issued by the service tax department in Form VCES-3. The learned Single Judge in this regard relied upon the affidavit filed by the service tax department in the writ proceeding, the order passed by the learned Single Judge in the writ proceeding on 9th December, 2016 and Circular no.176/2/2014-ST dated 20th January, 2014 issued by the Service Tax Department.

13. Mr. Sabyasachi Chowdhury the learned Senior Counsel in assailing the judgment has submitted that the learned Single Judge has

failed to take into consideration the contract which entitles the plaintiff to claim reimbursement of actuals on production of documentary evidence and having regard to the fact that challans have been submitted showing payments of service tax the defendant could not have refused to reimburse the service tax.

14. Mr. Chowdhury has referred to two debit notes dated 1st January, 2014 and 10th August, 2015 and submitted that all documents including challans and Form GAR-7 for Service Tax payment issued under Rule 26 of Receipts and Payments Rule were submitted. In view thereof the defendant could not have insisted for original discharge certificate.

15. It is submitted that once the plaintiff has submitted all the required documents which *inter alia*, include the proof of payment the defendant could not have refused to reimburse the said amount. Moreover, the primary responsibility to pay service tax was of the defendant and they have received the benefit of Cenvat Credit.

16. The learned Single Judge in the writ proceeding did not accept the contention of the defendant for furnishing an irrevocable bank guarantee and an Indemnity bond cum Undertaking as a condition precedent for reimbursement of service tax paid under VCES.

17. Mr. Chowdhury has referred to Rule 9 of the Cenvat Credit Rules, 2004 and submitted that the Cenvat Credit can be taken by the manufacturer or the provider of output service or input service distributor as the case may be. The said credit can be taken, *inter alia*, on the basis of a supplementary invoice and a challan evidencing payment of service tax, by the service recipient as the service person liable to pay service tax. It is

submitted that in view of the fact that challan evidencing payment of service tax has been sent along with debit note in terms of the agreement between the parties the plaintiff is entitled to reimbursement of service tax actually paid and the defendant cannot deny such payment.

18. Mr. Chowdhury has argued that the learned Single Judge has misconstrued the aforesaid provision and Section 107 of the Service Tax Voluntary Compliance Encouragement Scheme 2013. The said scheme provides for the manner in which declaration and payment has to be made of the tax dues within the period prescribed therein and on furnishing of details of payment of declared tax dues and the interest if any, the designated authority issues an acknowledgement of discharge in VCES-3. The said scheme has no manner of application with regard to the reimbursement of the service tax paid by the plaintiff.

19. It is submitted that the entitlement of the petitioner to receive such service tax is also justified on the basis of the decisions of the Allahabad High Court, Calcutta High Court and Delhi High Court. Mr. Chowdhury has relied upon the decision of the Delhi High court and Calcutta High Court in **Pearey Lal Bhawan Association v. Satya Developers Pvt. Ltd.**,¹ and **Bengal Shrachi Housing Development Limited & Anr. V. Union of India & Ors.**,² decided on 15th May, 2014 respectively and submits that it has been accepted by all the High Courts that service tax is a statutory liability and it is a tax which is required to be collected by the service provider from the person to whom service is provided. The service provider is merely a collecting agency.

¹ 2010 SCC Online Del 3660; ILR (2011) 1 Del 604; 2010(173) DLT 685

² W.P. No. 4085(w) of 2014

20. The insistence of the defendant for furnishing an irrevocable bank guarantee, the indemnity bond-cum-undertaking and requiring the plaintiff to furnish VCES-3 was unreasonable and dehors the terms of the contract. The furnishing of the original discharge certificate pursuant to the order dated 24th February, 2017 in the writ proceeding is not an affirmation of the view taken by the defendant that unless such 'Form' is submitted the plaintiff is not entitled to reimbursement. Mr. Chowdhury has referred to the written statement of the defendant to show that the defendant in the written statement has in paragraph 1(a) introduced the phrase "suitable documentary evidence in original" to avail input credit facility which is not the terms agreed upon or contemplated under Clause 2.13 of the contract. It is submitted that production of the challans with evidence of payment disclosed with the debit notes are sufficient compliance of the aforesaid clause. The reimbursement is not dependent upon any other document far less 'Form VCES-3' as insisted by the defendant. Mr. Chowdhury in support of the claim of interest at 18% per annum has submitted that on 31st December, 2013 the plaintiff made a payment of Rs.2,40,00,000/- and debit notes along with all documents including challans reflecting payment of the said sum were raised on 1st January, 2014. In spite of several requests the defendant failed and neglected to reimburse the said amount, as a result whereof, the plaintiff was unable to avail the benefit under the scheme and obtain Form VCES-3. On 31st December, 2014 the plaintiff upon arranging necessary funds, made payment of the balance service tax of Rs.1,54,34,035/- along with interest of Rs.13,97,767/- in terms of section 107(4) of the Finance Act, 2013. The plaintiff was compelled to pay the said

interest due to the neglect and failure to reimburse the first instalment of Rs.2.40 crores by 30th June, 2014. In referring to section 107 of the Finance Act it is submitted that under the scheme the plaintiff was required before 31st December, 2013 to pay not less than fifty percent of the tax dues so declared under sub-Section (1) and submit proof of such payment to the designated authority and for the remaining dues towards service tax was to be paid on or before 30th June, 2014. It was by reason of failure to pay the remaining balance amount of Rs.1,54,34,035/- the plaintiff had to pay interest of Rs.13,97,767/- levied by the service tax authorities towards interest calculated at the rate of 18% per annum on the remaining balance amount being the rate of interest fixed under Section 75 for the period of delay from 1st July, 2014.

21. Mr. Chowdhury has referred to the Notification no. 12/2014 dated 11th July, 2014 issued by the Government of India, Ministry of Finance in exercise of power conferred by Section 75 of the Finance Act, 1994 to show that the Central Government has fixed simple interest @18% per annum for delayed payment of Service Tax up to six months. It is submitted that if the reimbursement were made by 30th June, 2014 the plaintiff could have paid the remaining tax dues within the extended period i.e. 31st December, 2014 without any interest.

22. As the defendant was responsible for the delay the plaintiff is entitled to such rate of interest as was charged by the revenue authority for delayed payment. It is submitted that in any event, the plaintiff is entitled to interest from the respective due dates of the debit notes raised by the plaintiff for reimbursement of service tax till 10th March, 2017 at the rate of

18% per annum. The basis of claim is disclosed in annexure F of the plaint to which attention of the court has been drawn by the learned senior counsel.

23. The basis for the claim for interest at the rate of 18 per cent is stated in paragraph 17 of the plaint which reads as follows:

“17. The dealings and transactions by and between the plaintiff and the defendant is commercial in nature. The agreements between the parties clearly stipulate that the defendant must reimburse the service tax paid by the plaintiff under the said eight agreements, immediately upon a claim for reimbursement of the same accompanied by the documents evidencing payment of the service tax being furnished to it. Notwithstanding such express provision in the said eight agreements between the plaintiff and the defendant, the defendant failed to reimburse the service tax paid by the plaintiff upon demand being made for reimbursement of the sum accompanied by the documentary evidence of such payment by the plaintiff. The plaintiff is as such entitled to claim interest for the delay in reimbursement of service tax at the rate of 18% per annum in respect of the commercial loans and advances granted by them. Furthermore, the Service Tax authorities themselves used to charge interest at between 18% to 30% per annum in respect of the delayed payment of service tax.”

24. Per contra, Mr. Abhrajit Mitra, the learned senior counsel appearing on behalf of the respondent/defendant submits that admittedly the plaintiff did not pay service tax on daily maintenance charges although under the statute, service tax was payable. The plaintiff alleged that it was not paid under a mistaken impression that such tax was not payable on daily maintenance charges. The plaintiff is now seeking to take advantage of its own default and made a claim for interest on the defendant on a specious plea that the defendant reimbursed the amount after a considerable lapse of time. The plaintiff made late payment under VCES 2013. It is an admitted position that unlike regular payment of service tax where Cenvat credit

could have been availed of by the plaintiff against documentary proof of payment of service tax by the defendant, in case of payment under the VCES 2013, a discharge certificate in Form VCES-3 was required. The plaintiff admittedly did not submit Form VCES-3 until a direction was passed in the writ proceeding on 24th February 2017 and thereupon the defendant immediately reimbursed the service tax. On a meaningful reading of the contract, it would appear that the plaintiff would be required to submit suitable documentary evidence in original for claiming reimbursement. Moreover, the witness of the plaintiff during cross examination has accepted that under Clause 2.13 the plaintiff would be required to submit documentary evidence of service tax so as to enable the defendant to avail of CENVAT credit. Mr. Mitra submits that a meaningful interpretation has to be given to the commercial contracts entered into between the parties between 2005 and 2011. He has referred to Clause 2.13 of one of the contracts which reads as follows-

“Clause 2.13

The rate quoted by the bidders shall be inclusive of all Taxes and duties. However, Service Tax & Educational cess if applicable will be re-imbursed by KoPT at actual on production of documentary evidence. Service Tax & Educational Cess will not be considered for the evaluation of the Tender.” (emphasis supplied).

25. Mr. Mitra submits that the requirement to submit such document was also within the knowledge of the plaintiff and this fact was admitted by the witness of the plaintiff in answer to Question no. 20. The said question and answer are set out below:-

“Q. 20: If I suggest to you that the requirement of the plaintiff is to submit documentary evidence for payment of service tax to the

defendant so as to enable the defendant to avail of corresponding impute credit What do you say?/ Since the law allows it.”

26. Moreover, the order passed by the writ court would clearly show that only upon furnishing the Discharge Certificate in Form VCES-3, there would be a corresponding obligation on the part of the defendant to reimburse the said amount. It is submitted that since under the Scheme, the certificate is issued only upon discharge of all payment obligations towards service tax and the plaintiff would not be absolved of liability unless it makes payment in respect of all contracts on which service tax is chargeable and payable, the defendant was justified in not releasing any amount without furnishing a bank guarantee or an indemnity bond as was asked for on 17th May 2015 as a pre-condition of reimbursement of the service tax which was belatedly paid under VCES 2013. The said decision was not contemporaneously challenged. The writ petition was filed in 2016 being W.P. No. 948/2016 when upon an order being passed, the plaintiff furnished the original Discharge Certificate and in turn the defendant reimbursed the service tax paid by the plaintiff. Mr. Mitra has relied upon affidavit of the Commissioner of Service Tax affirmed on 27th January 2017 in W.P. No. 948/2016 paragraphs 3(c) to 3(e) to show that unlike a case when service tax is paid within time, CENVAT credit cannot normally be availed of against service tax paid under VCES, 2013. However by a circular of 12th January, 2014 CBST has since clarified that CENVAT credit would be available “after payment of the entire service tax dues with interest, if any, and obtaining Discharge Certificate in Form of VCES-3.”

27. Mr. Mitra further submits that proviso to Section 107(4) of VCES 2013 [i.e. Chapter VI of Finance Act, 2013] read with notification dated 11th July, 2014, provides for interest payable by a declarant "in case of failure to pay service tax dues in time". Declarant has been defined at Section 105(b) read with Section 107(1) of the said Service Tax Voluntary Compliance Encouragement Scheme 2013 (part of Finance Act).

The aforesaid sections are set out below for convenience.

"Section 105(b) "declarant" means any person who makes a declaration under sub-section (1) of Section 107;

Section 107(1) - Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed."

28. It is neither the case of the plaintiff nor is it a fact that the defendant has made any such Declaration to the Designated Authority required under Section 107(1) for making the defendant "a declarant".

29. Mr. Mitra submits that so far as pre-suit interest is concerned, it is settled law that in the absence of an agreement for payment of interest, interest can be claimed under the provisions of any substantive law like, inter alia, Section 80 of the Negotiable Instruments Act, Section 23 of Trust Act, and Section 61 of Sale of Goods Act. In this regard he was referred to the following decisions:

(i) Vithal Dass Vs. Rup Chand³, paragraph 4.

(ii) Central Bank of India vs Ravindra & Ors.⁴ paragraphs 36 and

37.

³ AIR 1967 SC 188

30. In the absence of any other statute, interest can be claimed under the Interest Act, 1978 in case a notice is given under Section 3(1)(b) thereof. However, there is an express bar to the application of Section 3(1) in case of an express agreement barring payment of interest [Section 3(a)(ii)]. In this case, Clause 6.8 which is an omnibus clause applicable to all moneys payable by the defendant to the plaintiff contains an express bar on payment of interest. Thus, interest cannot be claimed by the plaintiff, even if for the sake of argument, one holds that there was delay in payment of service tax by the defendant. Reliance is placed on the decision of Balwant Kaur Vs. Life Insurance Corporation of India, (AIR 2005 P&H 140 para 13 read with para 10) in support of the aforesaid argument.

31. In reply Mr. Sabyasachi Chowdhury, the learned senior counsel on behalf of the decree holder has submitted that the learned single judge has denied the relief only on the ground that the plaintiff did not submit the original Discharge Certificate issued by the service tax department in Form VCES-3. The plaintiff submitted the Discharge Certificate only after the order passed by the High Court and on receipt of Discharge Certificate the defendant has released a sum of Rs.3,94,34,035/- on 10th march 2017. It was on such basis interest was disallowed. The learned single judge has overlooked Clause 3.12 of the agreement which does not require the production of any Discharge Certificate in original under the VCES Scheme. There is no dispute with regard to co-relation of the service tax paid with the invoices in question. The appellant/plaintiff along with the debit notes submitted the challan, evidencing payment of Service Tax of Rs.2.40 cores,

⁴ (2002) 1 SCC 367

invoice wise detailed calculation sheet and photocopies of all the relevant invoices. The enclosures to the debit notes were sufficient compliance with the obligations of the appellant/plaintiff in terms of the clause of the contract which requires submission of "documentary evidence" to claim reimbursement. The appellant did not get reimbursement from the respondent/defendant either in January, 2014 or soon thereafter. It is submitted that the provisions of VCES Scheme and the discharge certificate cannot be construed to be the 'documentary evidence' as contemplated under the contract. Once the service tax in relation to the contracts in question was paid by the appellant/plaintiff irrespective of normal course or otherwise under VCES, the respondent/defendant was bound to reimburse the same. The Learned Judge has completely erred in referring to the provisions of Sections 107 and 108 of the Finance Act with regard to a declaration becoming conclusive only upon issuance of acknowledgement of discharge. It is submitted that acknowledgement of discharge, as contemplated under Section 107(7) of the Finance Act, makes the declaration given by the appellant/plaintiff under Section 107(1) of the said Finance Act absolute. Such declaration given by the appellant/plaintiff is in relation to the entire service tax liability which the declarant i.e., the appellant/plaintiff had, which included also service tax component of the contracts in relation to the respondent/defendant. In other words, the appellant/plaintiff would be entitled to take benefit of the scheme only upon such declaration being conclusive. The scheme did not and could not form part of any documentary evidence vis-à-vis the contract in question.

32. The appellant has clarified in its letter dated 15th October 2014 that it was due to the mutual lack of clarity regarding applicability of service tax on the services of manning and operation of the vessels rendered by the appellant that Clause 2.13 and/or Clause 3.12 provided for the expression "if applicable". It was only upon obtaining legal opinion in the matter from a firm of Advocates that the appellant opted to make payment of service tax under the VCES 2013. The appellant was entitled to be "reimbursed" by the respondent on actuals upon production of documentary evidence in terms of Clause 2.13 and/or Clause 3.12. The respondent was not oblivious of its liability to reimburse such service tax, inasmuch as Clause 2.13 and/or Clause 3.12 clearly provided for the same to be "reimbursed at actual on production of documentary evidence".

33. Mr. Chowdhury has also relied upon the affidavit affirmed by the Deputy Commissioner (Legal), Service Tax II, Kolkata on 27th January 2017 in W.P. No. 948 of 2016. Reliance was placed on paragraphs 3(d) and 3(f) thereof which states as under:

"(d) As regards admissibility of CENVAT credit Rule 9(1)(bb) and Rule 9(1)(e) of CENVAT Credit Rules, 2004 is to be followed."

(f) "That the respondent no. 1 is entitled to CENVAT credit on the basis of supplementary invoices issued by the petitioner." (emphasis supplied)"

34. Thus, the submission of the respondent that it would not have been eligible for CENVAT credit on the basis of the Debit Notes, challans and invoices raised by the appellant is belied by the affidavit of the service tax authority itself, which makes it abundantly clear that the respondent was

entitled to receive CENVAT credit on the basis of the documentary evidence of payment made over to it by the appellant. Rules 9(1)(bb) and 9(1)(e) of the CENVAT Credit Rules 2004 stipulate as under:

“Rule 9. Documents and accounts. (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-

(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 ...; or

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax ;”

35. In view of the aforesaid it is submitted that the contention of the defendant that until and unless Form VCES-3 in original is made over to it, it would not be possible for the defendant to avail of CENVAT credit, is contrary to the express provision of the Cenvat Credit Rules 2004 as well as the specific stand of the service tax authorities taken before the writ court. The entitlement of Cenvat Credit vis-à-vis respondent/defendant and that of the appellant/plaintiff was on completely different footings and parameters. In the affidavit filed by the tax authorities before the Hon'ble High Court, it was amply clarified that the respondent/defendant was entitled to Cenvat Credit on the basis of supplementary invoices issued by the appellant/plaintiff, who was the petitioner in the writ petition. It had also been clarified that applicable rules to ascertain the documents required for availing benefit of CENVAT Credit are Rules 9(1)(bb) and 9(1)(e) of the Cenvat Credit Rules, 2004. Under said Rules the only two documents that

were required to satisfy the test of "documentary evidence" would be the supplementary invoice, bill or challan issued by the provider of output service and the challan evidencing payment of service tax.

36. The debit notes referred hereinbefore admittedly had both the enclosures and duly complied the requirement of Rule 9(1)(bb) and Rule 9(1)(e) of the Cenvat Credit Rules, 2004. There was, thus, no further requirement of any other documentary evidence with regard to claiming reimbursement of service tax.

37. The declaration made under the VCES Scheme are irrelevant for the present purpose. In the said declaration, the appellant/plaintiff was the 'declarant' and in the event, the declarant paid the taxes, as declared within the time period as formulated in the scheme, the declarant would be immune from penalty, interest and other proceedings, as specified in Section 108 of the Finance Act, 2013. It is in this context Section 108(2) of the said Act has specified that "a declaration made under Sub-Section 1 of Section 107 shall become conclusive upon issuance of acknowledgement of discharge....and no matter shall be reopened thereafter in any proceeding under the chapter before any authority or Court relating to the period covered by such declaration." (emphasis supplied).

38. Mr. Chowdhury has submitted that the learned single judge has failed to appreciate that the entitlement of the plaintiff/appellant for reimbursement of service tax was not dependent on the availability of the CENVAT credit and has failed to take into consideration that once it is demonstrated that the only document under Rule 9 of the Cenvat Credit Rules would be the supplementary invoice and the challan evidencing

payment of the service tax in terms of Rule 9(1)(bb) and Rule 9(1)(e) of the said Rules, the entitlement of the appellant is crystallized and the respondent would be under an obligation to reimburse the amount paid under service tax. In so far as the interest is concerned, it is submitted that the service tax was paid in two tranches. The first tranche of service tax was for a sum of Rs. 2.40 crores paid on 31st December 2013. The plaintiff has claimed an interest at the rate of 18 % per annum for a period of 1164 days from 1st January 2014 to 3rd October 2017 on the amount of Rs. 2,39,45,504/- (involving two contracts with the breakup of Rs. 1,10,86,109/- and Rs. 1,28,59,395/-). Similarly, for the second tranche, the appellant/plaintiff is entitled to interest @ 18% per annum for the period 10th August, 2015 (being the dates of debit notes) up to the date of actual payment namely, 10th March, 2017 comprising of 578 days on the total amount of Rs 1,54,88,531/- (comprising of 6 contracts for Rs. 9,23,675/-, Rs. 22,13,675/-, Rs. 48,96,073/-, Rs. 65,40,987/-, Rs. 25,004/- and Rs. 6,64,117/-).

39. In so far as clause 6.8 is concerned it is submitted that the reimbursement of service tax does not fall under clause 6. The said clause pertains to terms of payment. Clause 6.1 provides in the right-hand marginal note that "All interim payments are advances till issue of Certificate in Form G.C.2." Clause 6.1 further provides that "no sum shall be considered as earned by or due to the Contractor in respect of the work till final and satisfactory completion thereof... given by the Engineer." (emphasis supplied) Therefore, the expression "due to the Contractor" in Clause 6.8 has to be harmoniously read with Clause 6.1 and is in relation to interim

and final payments in terms of Clause 6 and not otherwise. Therefore, the clause of interest not being admissible to the contractor envisaged in Clause 6.8 would apply only to such payments if it satisfies two-fold conditions, namely:-

- (a) Such payment has to be "in respect of the work"; and
- (b) Such payment has to be "due to the Contractor" in respect whereof a certificate of final completion in Form G.C.2 has been given by the Engineer.

40. The entitlement of the plaintiff is as per Clause 3.12 of the bid-document or Clause 2.13 of the bid-document which provides for reimbursement at actuals on production of documentary evidence and not in terms of Clause 6 of the contract. Reimbursement of service tax is not a payment "due to the contractor and does not require a certificate in Form G.C.2 from the Engineer in terms of Clause 6. Therefore, the restriction of Clause 6.8 cannot be applicable to such reimbursement.

41. In the aforesaid background, the prayer of the plaintiff for interest has to be assessed. The facts are admitted. The dispute pertains to reimbursement of service tax. The plaintiff under a mistaken impression that service tax was not payable save and except on daily maintenance charges did not initially pay the service tax. However, after obtaining legal opinion the plaintiff decided to pay the service tax and avail of the Service Tax Voluntary Compliance Encouragement Scheme, 2013. The plaintiff admittedly paid the service tax in relation to the eight contracts in terms of the VCES Scheme introduced on 10th May 2013. The payment was made in two tranches aggregating to a sum of Rs. 3,94,34,035/-.

42. The defendant was approached immediately thereafter for reimbursement. In response to such demand the defendant/respondent in its letter dated 17th September 2015 insisted on furnishing of an irrevocable bank guarantee as per the enclosed format and also an indemnity bond cum undertaking for the contracts. It was contended that under the VCES Scheme, the acknowledgement of discharge in Form No. VCES-3 is issued on the payment of tax dues in full. The said certificate in Form No. VCES-3 issued by the service tax authority is also required to be produced. A further communication to that effect was made on 6th November, 2015 enclosing a proforma irrevocable bank guarantee and indemnity bond cum undertaking. Thereafter, on 28th July 2016 the defendant approached the Commissioner of Service Tax with regard to CENVAT Credit on reimbursement of service tax paid under VCES with the following queries:

“1) After reimbursing the service tax to CSPL based on the supplementary invoice issued by them by way of debit note along with the paid Challan, whether KoPT can take credit based on these documents

2) If not, what other documents are necessary for taking credit by KoPT after reimbursing the -tax to CSPL.”

43. The plaintiff objected to furnishing of irrevocable bank guarantee or indemnity bond and challenged the said demand in a writ petition being W.P. No. 948 of 2016. In the said writ proceeding on 9th June 2016, one of us (Soumen Sen, J) on a prima facie opinion that KoPT could not have refused to refund the service tax paid on account of manning, handling and operation, directed the Commissioner of Service Tax to appear

and clarify the issue. In the said writ petition the Deputy Commissioner (Legal) Service Tax filed an affidavit in which he has disclosed the stand of the service tax authorities in paragraph 3. The said paragraph is reproduced below.

“(a) That the dispute relates to release/ reimbursement of payment to the tune of Rs.4,08,31,202/- to the petitioner no.1 by the respondent no.1.

(b) That the petitioner no.1 being the service provider has provided service to Calcutta Port Trust and they have paid the service tax as being the provider of the said service. Whether the petitioner is entitled to get back the service tax which was paid by them is the dispute between the petitioner and the respondent no.1 and the service tax authority is not involved in the said matter.

(c)That according to petitioner's query dated 12.07.2016 as to whether the amount paid under VCES is Cenvatable or not the Assistant Commissioner in his reply dated 20.07.2016 has categorically pointed out that in terms of Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013 CENVAT Credit cannot be utilized for payment of tax dues under the Scheme. Except this condition all issues relating to admissibility of CENVAT Credit are to be determined in terms of the provision of the CENVAT Credit Rules,

(d) As regards admissibility of CENVAT Credit Rule 9(1)(bb) and Rule 9(1)(e) of CENVAT Credit Rules, 2004 is to be followed.

(e) That in terms of Circular no:176/2/2014-ST dated 12.01.2014 issued by CBEC clarifies that CENVAT Credit shall only be available after payment of entire service tax dues with interest, if any and obtaining discharge certificate in Form of VCES-3 since the declaration made under the Scheme become (conclusive only on issuance of discharge certificate under section 107(7) of the

Finance Act, 2013 and acknowledgment of which is obtained by the Petitioner.

(f) That the respondent no.1 is entitled to CENVAT Credit on the basis of supplementary invoices issued by the petitioner.
(emphasis supplied)

44. The writ petition was thereafter disposed of with the following direction:

“The Kolkata Port Trust shall pay to the writ petitioner No.1 a sum of Rs.3,94,34,035/- against the 8 supplementary invoices raised by the Kolkata Port Trust towards reimbursement of service tax. Such payment shall be made within two weeks from date, simultaneously with the writ petitioner No.1 making over to the Kolkata Port Trust the original discharge certificate issued by the service tax department in Form-VCS-3, a copy whereof has been annexed to the writ petition as Annexure "P-9" thereto, and without demanding any further documents and/or security of any nature. After the writ petitioner No.1 has received the sum of Rs.3,94,34,035/- as directed hereinbefore, it shall be open to the writ petitioner No.1 and/or the Kolkata Port Trust to pursue their respective legal remedies in respect of any other claims that they may have against each other before the appropriate forum, with liberty to each of the said parties to defend the same.

The Service Tax Department will be making available to the Kolkata Port Trust the necessary Cenvat Credit for the said sum of Rs.3,94,34,035/- paid wards service tax on the basis of the supplementary invoices and the original discharge certificate as aforesaid issued by the Service Tax Department as per the statement made in paragraph 3(e) and 3(1) of the affidavit in opposition affirmed on 22nd day of January, 2017 by and on behalf of the Service Tax authority, and thus shall not demand the original discharge certificate from the writ petitioner No.1 for any related or other purpose whatsoever.”

45. The writ court however did not decide any other claim and disposed of the writ petition with the observation that the parties shall be at liberty to claim any other reliefs before appropriate forum.

46. The plaintiff after receiving the reimbursement has filed a suit claiming interest on the aforesaid sum. Under the contract the defendant is required to reimburse service tax on production of documentary evidence. At the time of the contract the VCES Scheme was not in force. The said scheme was introduced on 10th May 2013. The plaintiff availed of the said Scheme and after having paid the said amount has claimed reimbursement. The contention of the plaintiff that upon production of challan and supplementary bill, the plaintiff is entitled to reimbursement appears to be justified as the contract provides for reimbursement upon fulfillment of such conditions. The affidavit of the service tax authorities have clearly clarified in paragraph 3(d) and 3(f) mentioned above that the defendant no. 1 would be entitled to CENVAT credit on the basis of supplementary invoices issued by the plaintiff. As regards admissibility of CENVAT Credit Rule, 9(1)(bb) and 9(1)(e) of the CENVAT Credit Rules, 2004 has to be followed.

47. It is not in dispute that the plaintiff has furnished the challans issued in the statutory forms showing evidence of payment. The proof of payment is evident from submission of Form G.A.R.-7 issued in accordance with the Rule 26 of the Receipts and Payments Rules and authenticity of such documents has not been disputed by the defendant. The plaintiff having fulfilled contractual obligations and furnished documents as required under the aforesaid rules cannot be denied reimbursement on the ground that the original discharge certificate was not produced. The KoPT has not

led any evidence to show that on the basis of the documents produced by the plaintiff they have not availed of the CENVAT Credit.

48. In the affidavit-in-opposition filed on behalf of the Deputy Commissioner, Legal (Service) Tax-II Kolkata in paragraph 3(c) he has referred to the petitioner's enquiry dated 12th July, 2016 as to whether the amount paid under VCES is cenvatable or not, in reply to which the Assistant Commissioner of Service Tax II, Kolkata duly replied by its letter dated 20th July, 2016 stating, *inter alia*, that CENVAT Credit shall only be available after payment of the entire service tax dues with interest, if any and obtaining a discharge certificate in Form-VCES-3. By our order dated 7th March, 2025 we directed the plaintiff/appellant to file a supplementary affidavit disclosing the aforementioned letter dated 12th July, 2016 and the reply received in this regard within two weeks from date. In the said supplementary affidavit of the appellant duly affirmed by one Dinesh Arya on 21st March, 2025 he has disclosed the letter dated 12th July, 2016 from Corporated Shipyard Private Limited the predecessor-in-interest of the plaintiff to the Commissioner (Legal) of Service Tax II, Kolkata Commissionerate and the reply dated 20th July, 2016 issued by the Assistant Commissioner. The reply by the Assistant Commissioner has been reproduced below:

*“Q.22. a) Whether the tax dues amount paid under VCES would be eligible as Cenvat Credit to the recipient of service under a supplementary invoice?
b) Whether Cenvat Credit would be admissible to the person who pays tax dues under VCES as service recipient under reverse charge mechanism?”*

Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013, prescribes that CENVAT Credit cannot be utilized for payment of tax dues under the scheme. Except this condition, all issues relating to admissibility of Cenvat Credit are to be determined in terms of the provisions of the Cenvat Credit Rules.

As regards, admissibility of Cenvat Credit in situations covered under part (a) and (b), attention is invited to Rule 9(1)(bb) and 9(1)(e) respectively of the Cenvat Credit Rules. 2004.

Further, Circular No. 176/2/2014-ST dated 20-01-2014 issued by CBEC clarifies that “CENVAT Credit shall only be available after payment of entire Service Tax dues with interest, if any, and obtaining discharge certificate in form of VCES-3 since the declaration made under the scheme become conclusive only on issuance of acknowledgement of discharge certificate under Section 107(7) of the Finance Act, 2013.” (emphasis supplied)

49. Subsequently Mr. Ashok Kumar Jana, the learned Advocate appearing on behalf of the respondent had produced a communication from the respondent informing that after the original certificate in Form-VCES-3 dated 16th April, 2015 had been received from Corporate Shipyard Private Limited on 10th March, 2017, consequently the respondent had availed CENVAT-Credit of the said amount. Accordingly, the communication from the respondent dated 12th March, 2025 was brought on record for the purpose of deciding the matter.

50. By our order dated 26th March, 2025 we also directed a formal affidavit to be filed by the respondent disclosing the facts narrated in the e-mail with proper evidence of availing CENVAT Credit as stated in the email dated 12th March, 2025. Pursuant to the same, an affidavit was filed, affirmed by Soumendra Mukherjee, the Senior Deputy Chief Accounts

Officer of the respondent on 9th April, 2025. The averments made in the said affidavit which are essential for proper adjudication of the present matter have been reproduced below for convenience:

“8. In terms of the order dated 24.02.2017 passed in the writ petition filed by the appellant abovenamed, the respondent made payment of Rs. 3.94 crores to the appellant. In compliance of the said order dated 24.07.2017, Titagarh Rail System Limited the appellant had herein handed over the original discharge certificate in Form VCES-3 dated 16.04.2015 issued by the Service Tax department. Simultaneously KoPT handed over to the appellant a cheque of Rs. 3.94 crores drawn in the name of Titagarh Wagons Limited which was duly encashed.

9. Only thereafter, the respondent availed CENVAT Credit which is evident from CENVAT Register, for the Month of March, 2017. It would appear from the last page and last row (row no. 155) of the said CENVAT Register that the respondent has availed CENVAT Credit to the tune of Rs.3.94 crores. A copy of the said CENVAT Registrar for the month of March, 2017 is annexed hereto and marked with letter "R-2".

10. It is also evident from the service tax return filed under section 70 of Finance Act 1994 read with Rule 7 of Service Tax Rule, 1994 for the period of October, 2016 to March, 2017 that the respondent has availed CENVAT Credit. A copy of the service tax return for the period from October, 2016 to March, 2017 is annexed hereto and marked with letter "R-3".

11. In the facts and circumstances it is submitted that from the aforesaid statement and documents it is evident that respondent has been able to avail of CENVAT credit after payment of Rs. 3.94 crores to the appellant and after receiving the original discharge certificate in the Form VCES-3 from the appellant.”

51. The claim for interest in the instant case essentially sounds in damages. The plaintiff is not claiming any interest under any statute. It is on account of alleged delay in reimbursing the service tax paid by the plaintiff as a service provider. The plaintiff has provided service to the KoPT and they have paid the tax as being provider of the said service. The correspondence exchanged by and between the parties including the communication made with KoPT independently by the parties would show that till 12th July 2016 both the parties were under some confusion with regard to the effect of payment of service tax under the Scheme of 2013 and the impact of duly discharged certificate issued under the said scheme. KoPT was apprehensive that it may not get the benefit of input credit upon the reimbursement being made to the plaintiff on the basis of the challans submitted. There cannot be any doubt that the challans submitted are the documentary evidence as contemplated under the agreement between the parties. The affidavit of the Commissioner (Legal) Service Tax also confirmed that KoPT is entitled to CENVAT Credit on the basis of supplementary invoices issued by the plaintiffs. If the plaintiffs were not to avail of the scheme of 2013 and had paid the amount independent of the scheme the confusion could have been avoided and the claim towards interest on account of delayed reimbursement would have been unimpeachable. There is no allegation that save and except reimbursement of service tax KoPT had breached the contract in any other manner or had delayed payment of the amounts payable under the contract.

52. Section 34 of the Code of Civil Procedure, 1908 grants a discretionary power to the Court to grant interest at such rate as the Court

deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. The discretion has to be exercised reasonably and on sound legal principles upon consideration of the parameters, scope and ambit of Section 34. In the absence of any agreement or statutory provision or mercantile usage interest payable can be only at the market rate and such interest is payable upon consideration of totality of circumstances justifying exercise of such equitable jurisdiction.

53. The plaintiff has not alleged or proved that by reason of such delayed reimbursement the plaintiff was prevented from utilizing the said amount for any gainful purposes and had suffered loss and damages. Ordinarily, even in absence of such proof the Court presumes that if the plaintiff is entitled to the money and had received the money belatedly then on equitable consideration the Court may grant interest at the bank rate prevailing at the relevant point of time in exercise of its equitable jurisdiction. However, in the instant case the immediate justification for not releasing the amount cannot be said to be willful or without any basis at least till 20th July, 2016. Although the KoPT could not have insisted for the bank guarantee and indemnity bond cum undertaking as a condition precedent for release of the amount towards reimbursement, the correspondence made with the authorities concerned by the parties

independent of each other would show that all of them have been seeking clarifications with regard to the requirement of submitting original discharge certificate in VCES-3. We do not agree with the learned single judge that the original discharge certificate was a pre-requisite for claiming reimbursement. The payment of the service tax through the Scheme of 2013 has complicated the issue as it requires a valid discharge certificate so as to absolve the service provider from all liabilities. We accept the submission on behalf of the plaintiff that the production of the challans conforms to Rule 9(1) (bb) and Rule 9(1)(e) of the Cenvat Credit Rules 2004 and as regards admissibility of Cenvat credit the said rules are to be followed. However, on consideration of the whole fact we cannot conclude that there has been an initial inexcusable neglect on the part of KoPT in releasing the amount. However, it cannot be denied that in view of the clarification of the Service Tax Authorities on 20th July, 2016 KoPT should have released the payment. The reimbursement was made on 10th March, 2017. We do not find any satisfactory reason for not releasing the amount immediately after 20th July, 2016.

54. The contract does not stipulate payment of interest on account of delay. However, the commercial nature of the transaction cannot be disputed. It also cannot be disputed that the plaintiff had paid the service tax and the debit notes disclosed and marked as Exhibits during trial clearly show payment towards service tax by the plaintiff in terms of the agreement. Debit notes were marked as Exhibits without any objection. The defendant also does not dispute that service tax has been paid on the dates reflected from challans enclosed with the debit notes. The defendant has accepted the

order passed by the learned Single Judge with regard to reimbursing a sum of Rs.3,94,34,035/- against eight supplementary invoices raised by KoPT towards reimbursement of service tax. It was during the subsistence of the contract that the plaintiff availed of the Voluntary Compliance Encouragement Scheme 2013 and paid the service tax in terms of the scheme. The relevant circulars of the service tax department makes it clear that CENVAT Credit shall only be available after payment of entire service tax dues with interest if any and upon obtaining discharge certificate in Form of VCES-3 since the declaration made in the scheme becomes conclusive only on issuance of discharge certificate under Section 107(7) of the VCES 2013.

55. The agreement requires production of documentary evidence, amongst others for reimbursement. As clarified by the department the defendant would be entitled to CENVAT Credit on the basis of the supplementary invoices raised by the plaintiff. The position would have been simplified and brooks no delay if simultaneously with the payment of service tax the plaintiff along with debit note and challans furnished the discharge certificate and if in spite thereof the defendant had failed to make payment, in which case it can be unhesitatingly said that the defendant is in breach.

56. The plaintiff had made a payment of Rs.2,40,00,000/- on 31st December, 2013 on account of the service tax out of a total of Rs.3,94,34,035/- in aggregate in respect of the eight agreements to the Office of the Commissioner of Service Tax-II, Kolkata. Thereafter, the plaintiff had communicated to the defendant about the said payment and requested for reimbursement of the same but the defendant had failed to

make payment necessitating the plaintiff to arrange necessary funds and make balance payment on 31st December, 2014.

57. The plaintiff had made balance payment of Rs.1,54,34,035/- under VCES and a further sum of Rs.13,97,767/- on account of interest thereon. It was alleged by the plaintiff that the said interest had arisen solely due to the neglect and failure of the defendant to reimburse the first instalment of Rs.2,40,00,000/- to the plaintiff on time. In view of the clarification of the service tax department on 20th July, 2016 the aforesaid amount was payable on the basis of the documents furnished. A timely payment would have saved the payment of interest. It is clear that the entire service tax liability has been cleared by the plaintiff and the defendant had also reimbursed the said service tax of Rs.3,94,34,035/- simultaneously with the respondent making the payment of Rs.3.94 crores to the appellant. In compliance with this court's order dated 24th July, 2017 the appellant had also handed over the original discharge certificate in Form-VCES-3 dated 16th April, 2015 issued by the Service Tax department. As is evident from the CENVAT registrar for the month of March, 2017 and also the service tax return for the period of October, 2016 to March, 2017 the respondent had successfully availed of the CENVAT credit. The refusal on the part of the defendant was an apprehension of whether KoPT would be entitled to take advantage of the CENVAT Credit on the basis of the documents submitted by the plaintiff. The plaintiff had also addressed such query to the Department of Service Tax. On such consideration we upturn the order passed by the learned Single Judge. We are of the view that the plaintiff, having regard to the facts and circumstances of the case and the

disclosures made during the proceeding as also the order dated 24th February, 2017 in W.P No.948 of 2016 shall be entitled to a sum of Rs.26.42 lacs on account of interest on Rs.3,94,34,035/- at the rate of 10% per annum. We have considered the communication dated 20th July, 2016 and the failure of the defendant to release such amount immediately thereafter in allowing interest. There is a delay of almost eight months in releasing the amount since clarification. In the event, the said sum is paid within two months from date it shall not carry any further interest, in default, the said sum shall carry interest at the rate of 10% per annum from the date of institution of the suit till payment.

58. The suit is decreed accordingly.

59. The appeal succeeds.

60. The department is directed to draw up the decree as expeditiously as possible.

I agree

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)