CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50180 of 2019

[Arising out of Order-in-Appeal No.468(SM)ST/JPR/2018 dated 17.10.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur]

M/s. Rajasthan Housing Board, Division-X, ...Appellant
Through Resident Engineer,
Central Lab Building,Sector-8,
Haldi Ghati Gate, Pratap Nagar,
Sanganer,
Jaipur (Rajasthan)-302 033.

Versus

Additional Commissioner,
Central GST Commissionerate-Jaipur, ...Respondent
NCR Building, Statue Circle, C-Scheme,
Jaipur (Rajasthan)-302 015.

Appearance:
Shri B.L. Narasimhan and Ms. Srishti Yadav, Advocates for the appellant.
Shri V.K. Jain, Authorised Representative for the respondent.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 17.02.2026
Date of Decision: 09.03.2026

FINAL ORDER NO. 50319/2026

BINU TAMTA:

1. M/s Rajasthan Housing Board[1] has assailed the Order-in-Appeal No.468(SM)ST/JPR/2018 dated 17.10.2018 confirming the demand of CENVAT Credit on the appellant invoking the proviso to Section 73(1) of the Finance Act, 1994, along with interest and penalty.

[1] The Appellant

2. The facts as stated by the appellant are as under:-

2.1. The appellant is a State instrumentality set-up with the intent to provide measures for dealing with housing accommodation in the State of Rajasthan. In furtherance of its objective, the appellant introduced various housing schemes for offering affordable housing to low and medium income groups. Such housing scheme was in operation during the relevant period.

2.2. For undertaking the construction of houses under one such housing schemes, the appellant awarded Work Order No.306 dated 20.08.2006 to M/s. Crescent Construction Company, Mumbai (Contractor') for construction of 2976 flats at Sanganer, Jaipur. The construction work for this project started in 2006-07 and continued till 2015.

2.3 Out of 2976 flats, the construction and handing over of possession of 332 flats was complete prior to 01.07.2012 Service Tax on the construction of these 332 flats was paid by the Contractor in the relevant period (December 2013 to March 2014) pursuant to which the appellant availed Cenvat Credit of Service Tax charged by the Contractor (also in the relevant period) on the supply of construction services to the appellant prior to 01.07.2012.

2.4 For these 332 flats, the appellant has paid service tax on its output service as and when the flats were sold and amounts were realized from

flat buyers. The date of availment of Cenvat Credit in dispute are as follows:-

Period of work done	Amount of Cenvat Credit in dispute	Date of reimbursement of Service Tax to the Contractor and availment of Cenvat Credit
Jan. to April and Jan.2012	10,00,000	27.12.2013
May to August-2011 and Jan 2012	11,70,388	21.01.2014
August to October-2011 and Jan-2012	10,00,000	06.02.2014
October to December-2007, Feb-March, 2008, June-2008, June-2009, Nov-Dec 2011 and March, 2012	20,43,216	14.03.2014
April-June 2009	7,496	27.03.2014
Total	51,21,100	

3. On the basis of an audit, show cause notice dated February 14, 2017 was issued proposing demand of credit of Rs.52,21,100/- on the ground that the appellant could not have availed the credit of tax paid on inward services received prior to July 1, 2012, as the appellant was not discharging service tax on 'construction of residential complex services' prior to July 1, 2012. Extended period of limitation was invoked on the allegation that had the audit not been conducted, facts of wrongful availment of credit would not have been unearthed. The demand was confirmed by order-in-original dated August 30, 2017. The appeal filed by the appellant has been dismissed by the impugned order. Hence the present appeal has been filed before this Tribunal.

4. Heard both sides and perused the records of the case.

5. Shri B.L. Narasimhan, the learned Counsel for the appellant has restricted his arguments only on the point of limitation. He has submitted that the entire demand is barred by limitation as the period involved is from December 2013 to March 2014 and the show cause notice has been issued on February 14, 2017, which is beyond the normal period of 18 months and, therefore, the show cause notice should have been issued latest by November 10, 2015. Elaborating the ground of limitation, the learned Counsel submitted that the demand in the present case pertains to availment of CENVAT Credit, which has been reflected in the ST-3 Returns filed by the appellant. Since the demand has been proposed and confirmed on the basis of ST-3 Returns filed by the appellant which were in possession of the Department, there cannot be any suppression or unearthing of information. Referring to the contents of the show cause notice, the learned Counsel submitted that SCN nowhere referred to the presence of any malafide on the part of the appellant and in the absence thereof, the extended period of limitation could not have been invoked. Referring to the decision in the case of the appellant itself, it is submitted that the appellant being an instrumentality of State, no suppression or fraud could be alleged and the demand is, therefore, liable to be set aside. It has been clarified that during the audit, the appellant responded to all the letters issued by the Department and, therefore, all the details and documents were verified by the audit team and all the material information was in the knowledge of the Department. In support of his submissions, the learned Counsel has referred to series of decisions.

6. Shri V.K. Jain, the learned Authorised Representative for the Revenue has tried to argue the appeal on merits to justify the invocation of the extended period of limitation. He reiterated the findings that the wrong availment was detected solely through detailed scrutiny of records by the audit team, which would not have been unearthed had the audit not been conducted. He further submitted that under Rule 9(6), the burden of proof for Credit admissibility lies on the provider and the appellant failed to come clean before the Department regarding their unique "delayed possession".

7. To consider the issue of limitation, we may refer to the relevant contents of the show cause notice:-

> **"2.** Whereas during the course of audit of the records of the assessee by the officers of the Central Excise and Service Tax Audit Commissionerate, Jaipur, it was found that the assessee had received services in respect of construction of residential complex from M/s. Crescent Construction Company, Bombay and availed the Cenvat credit amounting to Rs. 52,21,100/- (as detailed below) of service tax paid/reimbursed by them to M/s. Crescent Construction Company, Bombay before July, 2012. The assessee utilized the above mentioned Cenvat credit of Rs.52,21,100/- in providing their output service i.e. "Construction of Residential Complex Service". Further, it was observed that the services provided by M/s. Crescent Construction Company, Bombay to the assessee in respect of construction of residential complex, on which basis the assessee availed the Cenvat credit of service tax paid pertained to the period prior to July, 2012. Whereas the assessee got themselves registered with the Department on 04.09.2013 and furnished the ST-3 Returns from July, 2012 onwards.
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> **9.** And whereas the assessee has not disclosed to the department the fact that the they have wrongly availed the cenvat credit amounting to Rs.52,21,100/- of service tax paid/reimbursed by them to M/s. Crescent Construction Company, Bombay, for the period prior to 01.07.2012, without discharging their service tax liability as service

> provider under the category of "Construction of Residential Complex Service" or in other words without treating their output service as the taxable service. This fact of wrong availment of Cenvat credit was detected through detailed scrutiny of records by the Audit Team. Had the Audit not been conducted, this fact of wrong availment of Cenvat credit would have remained unearthed. Therefore, it appears that the assessee has suppressed the fact with intent to evade payment of Service Tax. Hence, the assessee is liable for penal action in terms of Rule 15(3) of Cenvat Credit Rules 2004, read with Section 78 of the Finance Act, 1994 and extended period for demand is invocable in terms of provisions to Section 73(1) of the Finance Act, 1994."

8. Para 9 of show cause notice merely refers to wrong availment of CENVAT Credit by the appellant which was detected through detailed scrutiny of records by the audit team. The contents of the show cause notice do not refer to any fraud, collusion or suppression on the part of the appellant. In the absence of such allegations, the invocation of extended period of limitation is not justified. The Adjudicating Authority while considering the contention of the appellant objecting the action of the Department in invoking the extended period observed as under:-

> "**12.** As regards contention of the appellant that in the present case neither extended period is applicable nor penalty imposable. In this regard, I observe that the department has detected this issue only during the course of the audit of records of the appellants whereas under the self-assessment procedure greater trust and responsibility is placed on the assessee to appropriately follow Central Excise procedures and discharge duty, therefore, it is their duty to compute the correct assessable value and correct duty payable by them in their assessment documents but this non-payment of Central Excise Duty could be detected only during the course of audit undertaken by the Department. Moreover the appellants have not produced any documentary or otherwise any evidence to establish that the facts regarding receipt of this subsidy and retention of some part of collected VAT have been disclosed the department in any manner. In the self assessment era it is presumed by taxing authority that the assessee have determined and paid their tax liability correctly. I also find that in catena of orders/judgments

> various appellate authorities, in similar facts and circumstances, have held that extended period should be applicable and also penalty under Section 11AC of the Central Excise Act. 1944 is imposable."

9. From the above, we find that even the Adjudicating Authority has proceeded solely on the ground that the issue has been detected only during the course of audit of records and under the self-assessment procedure, the appellant was required to assess and discharge their duty liability appropriately, which the appellant failed to do. The Adjudicating Authority did not even refer to the pre-requisites for the application of the extended period. In fact, the contents of the above para shows complete non-application of mind by the Adjudicating Authority to the existence of the criteria in terms of the proviso to Section 73(1) of the Act with reference to the facts of the present case. The adjudicating authority have not even considered the fact that the appellant took service tax registration on September 4, 2013 and filed the ST-3 returns for the period July 2012. Hence, there is no question of any suppression or wilful misstatement by the appellant with an intent to evade the payment of tax. It is a settled principle of law that in order to prove any of the basic ingredients for invocation of the extended period, there has to be a positive act of suppression on the part of the appellant with an intent to evade the duty liability. We are, therefore, of the view that the Revenue has not been able to make out any specific case of fraud, collusion, or suppression of facts by the appellant to justify the extended period.

10. It is an admitted position that the appellant is a state instrumentality and no suppression or fraud can be alleged. In the earlier decision in their own case, titled as **Rajasthan Housing Board versus**

Commissioner Central Excise[2], the learned Single Member taking note of the decision of the Division Bench of the Tribunal in **Centre for Entrepreneurship Development versus CCE, Bhopal[3]** holding that when an institute run by a State Government and associated in implementation of various welfare schemes of the Government, the allegations of suppression of facts or wilful misstatement can be nothing but absurd and, therefore, concluded that there cannot be an intent to evade the payment of tax.

11. The law on the applicability of the extended period of limitation has been settled in catena of decisions by various forums. Without repeating too many decisions on the point, we may refer to some of the decisions as cited by the learned Counsel. As a matter of fact while invoking the extended period, much emphasis is laid on the point that irregularly availed CENVAT would not have been detected but for the audit and the assessee functioning under self assessment is required to assess the service tax correctly. In both the events, the appellant is guilty of suppression of facts with an intent to evade the payment of tax. Both these arguments of the Revenue have been very well dealt and rejected by the Principal Bench of this Tribunal in the case of **G.D Goenka Pvt. Ltd. Vs. Commissioner of Central Goods and Service Tax, Delhi South[4]**. The observations in this regard are quoted below:-

> **"16.** Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only

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[2] **2021 (52) GSTL 144,**
[3] **2014 (34) STR 373 (Tri.-Del.)**
[4] Final Order No.51088/2023 dated 21.08.2023

eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns. If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self-assessment itself is held to establish wilful suppression with an intent to evade. To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.

19. It has also been pointed out that but for the audit, the allegedly irregularly availed CENVAT credit would not have come to light. It is incorrect to say that but for the audit, the alleged irregular availment of CENVAT credit would not have come to light. It is undisputed that the appellant has been self-assessing service tax and filing ST-3 Returns. Unlike the officers, the assessee is not an expert in taxation and can only be expected to pay service tax and file returns as per its understanding of the law. The remedy against any potential wrong assessment of service tax by the assessee is the scrutiny of the Return and best judgment assessment by the Central Excise Officer under section 72.

20. Thus, 'the central excise officer' has an obligation to make his best judgment if either the assessee fails to furnish the return or, having filed the return, fails to assess tax in accordance with the Act and Rules. To determine if the assessee had failed to correctly assess the service tax, the central excise officer has to scrutinize the returns. Thus, although all assessees self-assess tax, the responsibility of taking action if they do not assess and pay the tax correctly squarely rests on the central excise officer, i.e., the officer with whom the Returns are filed. **For this purpose, the officer may require the assessee to produce accounts, documents and other evidence he may deem necessary. Thus, in the scheme of the Finance Act, 1994, the officer has been given wide powers to call for information and has been entrusted the responsibility of making the correct assessment as per his best judgment. If the officer fails to scrutinise the returns and make the best judgment assessment and some tax escapes assessment which is discovered after the normal period of limitation is over, the responsibility for such loss of Revenue rests squarely on the shoulders of the officer. It is incorrect to say that had the audit not been conducted, the allegedly ineligible**

CENVAT credit would not have come to light. It would have come to light if the central excise officer had discharged his responsibility under section 72.

21. This legal position that the primary responsibility for **ensuring that correct amount of service tax is paid rests on the officer even in a regime of self-assessment was clarified by the Central Board of Excise and Customs**[5] in its Manual for Scrutiny of Service Tax Returns the relevant portion of which is as follows:

> "**1.2.1A** The importance of scrutiny of returns was also highlighted by Dr. Kelkar in his report on Indirect Taxation[6]**.** The observation made in the context of Central Excise but also found to be relevant to Service Tax is reproduced below:-
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> > It is the view that assessment should be the primary function of the Central Excise Officers. **Self-assessment on the part of the taxpayer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers."**
> >
> > **(emphasis supplied)**

12. The Department has initiated proceedings in the present case on account of wrong availment of credit of tax paid on inward services. This issue has also been addressed in **G.D. Goenka Pvt.Ltd.**, which we may take note of as under:-

> **"17.** The argument that the appellant had not disclosed in its returns that it was availing and using ineligible CENVAT credit also deserves to be rejected. The appellant cannot be faulted for not disclosing anything which it is not required to disclose.

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[5] CBEC

[6] Report of the Task Force on Indirect Taxation 2002, Central Board of Excise & and Service Tax, Government of India.

Form ST-3 in which the appellant is required to file the returns does not require details of the invoices or inputs or input services on which it availed CENVAT credit and the appellant is not required to and hence did not provide the details of the CENVAT Credit taken. It also needs to be pointed out that the Returns are filed online and therefore, it is also not possible to provide any details which are not part of the returns. If the format of ST-3 Returns is deficient in design and does not seek the details which the assessing officers may require to scrutinise them, the appellant cannot be faulted because as an assessee, the appellant neither makes the Rules nor designs the format of the Returns. So long as the assessee files the returns in the formats honestly as per its self- assessment, its obligation is discharged."

13. The Bench rightly concluded that:-

"d) Extended period of limitation cannot be invoked unless there is evidence of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of Act or Rules with an intent,

e) Intentional and wilful suppression of facts cannot be presumed because (a) the appellant was operating under self-assessment or (b) because the appellant did not agree with the audit and claimed that CENVAT credit was admissible; or (c) because the appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns and the availment of CENVAT credit which is alleged to be inadmissible and was discovered only during audit."

14. Following the decision in **G.D. Goenka**, the Tribunal in the case of **Delhi Airport Metro Express Pvt Ltd. Vs. Commissioner of Central Excise & Customs**[7] examined the facts of the said case and held that the appellant had not suppressed any information from the Department in

[7] Final Order No.50031/2024 dated 11.01.2024

the ST-3 Returns nor is there any allegation in the show cause notice or finding in the impugned order that a particular fact had not been disclosed. Since all that has been stated is that the appellant was not entitled to take CENVAT Credit, but as it had taken, it suppressed material facts from the Department. Referring to the cardinal principles of law in examining the invocation of the extended period, the Bench held that mere suppression of fact is not enough and there must be a deliberate and wilful attempt on the part of the assessee to evade payment of service tax and in the absence thereof, the extended period of limitation cannot be invoked.

15. As referred to above, the appellant was duly registered with the Service Tax Department and had filed the ST-3 Returns as per the self-assessment and thereby discharged its obligation. The burden thereafter shifts on the Department to examine and scrutinise the returns and act in terms of the provisions of Section 72, providing for best judgement assessment. Neither the show cause notice nor the order-in-original reflects any positive act on the part of the appellant which could establish either wilful misdeclaration or wilful suppression so to evade payment of tax. The learned Authorised Representative has not been able to justify the absence of such allegations. Consequently, we do not find any merits in his arguments.

16. In the circumstances, we hold that the necessary ingredients for invoking the extended period of limitation have not been made out by the

Revenue and, therefore, the demand needs to be rejected being time barred.

17. The impugned order, therefore, deserves to be set aside on the ground of limitation. The appeal is, accordingly allowed.

[order pronounced on 9th March,2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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