

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75351 of 2016

(Arising out of Order-in-Original No. 28/Commr/ST-II/Kol/201516 dated 29.12.2015 passed by the Commissioner of Service Tax-II Commissionerate Kolkata Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road Shantipally Kolkata-700107)

M/s. Radiant Advertising And Marketing (India) Pvt. Ltd. : **Appellant**

Ganga Jamuna Apartments 28/1 Shakespeare Sarani
Kolkata, West Bengal-700017

VERSUS

The Commissioner of CGST & Central Excise, : **Respondent**

Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road
Shantipally Kolkata-700107

APPEARANCE:

Shri N. K. Chowdhury, Advocate for the Appellant
Shri D. Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75456/ 2026

DATE OF HEARING: 13.03.2026

DATE OF PRONOUNCEMENT: 30.03.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Radiant Advertising & Marketing (India) Pvt. Ltd. (herein after referred as the appellant) are engaged in the business of marketing and advertising in print/electronic and other media. They were raising the bills and paying the service tax on 15% of the total amount charged.

1.1. In the present case, the proceeding was initiated against the appellants on two issues. One is

regarding alleged non-payment of service tax to the tune of Rs.1,83,666/- on the advance received during the Financial Years 2008-09, 2009-10, 2010-11 and 2011-12 and the second issue is that the appellants had allegedly taken excess amount of credit of Rs.4,06,138/- on the input services allegedly misleading opening and corresponding closing balances in ST-3 Returns. The said availment of credit and subsequent utilisation of the same are irregular and required to be recovered from the appellants. Demand has been raised invoking extended period of limitation.

1.2. The Ld. adjudicating authority has decided the issue vide Order-in-Original dated 22.12.2015, wherein he has confirmed the demand of service tax of Rs. 6,25,706/- and disallowed the wrongfully availed cenvat credit, along with interest and penalty. On appeal, the Ld. commissioner (Appeals) has upheld the demands confirmed in the impugned order.

1.3. Aggrieved against the confirmation of the demands of service tax and disallowance of credit along with interest and penalty, the appellant has filed this appeal.

2. The appellants submits that the actual amount of advance taken was Rs.10,98,587/-. Out of the said amount, they have subsequently executed some work and adjusted the advance, in some cases goods were supplied and VAT was paid and in some cases some amounts were refunded to the parties from whom advance was taken and some amounts ultimately could not be refunded and the appellants had written off leaving some closing balance in the Financial Year 2011-12 which amount was paid in the subsequent years.

2.1. The appellant submits that the Ld. Adjudicating Authority in his finding in Para 6.2 to 6.2.2 of the Adjudication Order held that the appellants failed to provide any evidence in support of the claim which is contrary to record. The appellants submit that they are at best liable for making payment of service tax on the amount of written off amount @ 15% of the 100% value of the said amount. The appellants also rely upon a decision in their own case having Final Order No. 76704/2024 dated 20.08.2024.

2.2. Regarding the wrongful availment of CENVAT credit, the appellants contended that they had not taken excess amount of credit. The same has been explained through a Chart to show that no excess credit was taken. Closing balance of CENVAT Credit Account on 30.09.2007 was Rs.1,71,372/-. In the intervening period from the last return to the next return date, appellants had received some invoices and payments were made and in the said return, total amount of credit taken was shown in the opening balance. The documents were enclosed to justify that there was no availment of excess credit. The same has been explained in the reply to the Show Cause Notice in Paragraphs 16 to 18 at Pages 9 & 10 of the reply to the Show Cause Notice.

2.3. The appellants submit that demand is also barred by limitation. Since the demand has been emanated from scrutiny of the Balance Sheet, ST-3 Returns and Bills etc. by the officers of the Department, in such circumstances, suppression of fact with intent to evade tax cannot be inferred. Hence, extended period cannot be invoked in this case. Undisputedly, period of dispute in this case is from 2007-08 to 2011-12 in respect of demand

against advance and in respect of credit, the period is from 2007-08 to September, 2012. The demand cannot be raised by invoking extended period by issuing Show Cause Notice on 19.04.2013. Some period is even beyond 5 years. In support of this contention, the appellants rely upon the following decisions on the point of limitation :

(i) Final Order No. 76704/2024 dated 20.08.2024

(ii) Kirloskar Oil Engines Ltd. 2004 (178) ELT 998 (Tri.-Mumbai)

(iii) Hindalco Industries Ltd. 2003 (161) ELT 346 (Tri.-Del.)

(iv) Accurate Chemical Industries 2014 (310) ELT 441 (All.)

(v) Tally Solutions Pvt. Ltd. 2020 (41) GSTL 520 (Tri.-Bang.)

2.4. In view of the above submissions, the appellant prayed for setting aside the demands confirmed in the impugned order and allow the appeal filed by them.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We find that the appellant has received an amount of Rs.10,98,587/- as advance. Out of the said amount, they have subsequently executed some work and adjusted the said advance. In some cases, goods were supplied and VAT was paid and in some cases some amounts were refunded to the parties from whom advance was taken and some amounts ultimately could not be refunded and the appellants had written off leaving some closing balance in the Financial Year 2011-12 which amount was paid in the subsequent years.

5.1. We observe that the Ld. Adjudicating Authority in his finding in Para 6.2 to 6.2.2 of the Adjudication Order held that the appellants failed to provide any evidence in support of the claim. We observe that the appellant has adjusted the advances received and paid service tax later. There is a small amount of advance written off by the appellant. In this regard, we agree with the submission of the appellant that at best they are liable for payment of service tax on 15% of the written off amount, ie, service tax is payable only on 15% of the 100% value of the said written off amount. But, we find that this demand is also not sustainable on the ground of limitation. Thus, we hold that the demand confirmed in the impugned order on this count is not sustainable and hence we set aside the same.

5.2. Regarding wrongful availment of CENVAT credit, we have gone through the Chart shown by the appellant to substantiate their claim that no excess credit has been taken. On perusal of the same, we find that the closing balance of CENVAT Credit as on 30.09.2007 was Rs.1,71,372/-. In the intervening period from the last return to the next return date, the appellants had received some invoices and payments were made and in the said return, total amount of credit taken was shown in the opening balance. The documents enclosed by the appellant justify their claim that there was no availment of excess credit. Thus, we hold that there is no merit in the allegation that the appellant has availed excess cenvat credit. Accordingly, we hold that the demand confirmed on this count is not sustainable and hence we set aside the same.

5.3. We also find merit in the submission of the appellant that the demands confirmed in the impugned order is barred by limitation. Since the demand has been emanated from scrutiny of the Balance Sheet, ST-3 Returns and Bills etc. by the officers of the Department, we observe that the appellant has not suppressed any information from the department with an intent to evade payment of service tax. Hence, we hold that extended period cannot be invoked in this case. In this case, we find that the demand has been raised for the period from 2007-08 to 2011-12 and the Show Cause Notice was issued on 19.04.2013, by invoking extended period of limitation. We find that some period is even beyond 5 years. As suppression of fact with intention to evade the tax has not been established, we hold that the demand raised and confirmed by invoking extended period is limitation is not sustainable and hence we set aside the same on the ground of limitation also.

5.4. As the demands are not sustained, the question of demanding interest or imposing penalties does not arise.

6. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 30.03.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)