

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 55075 OF 2023

[Arising out of the Order-in-Original No. 148/Commr./Delhi East/AP/2022 dated 30.12.2022 passed by The Commissioner of Central Goods & Service Tax, Delhi East, New Delhi – 110 002.]

M/s Tata Teleservices Limited,
Tower 1, 10th Floor, Jeevan Bharti Building,
Connaught Circus,
New Delhi – 110 001.

Appellant

VERSUS

**The Commissioner of Central Goods
& Service Tax, Delhi East,**
C.R. Building, IP Estate,
New Delhi – 110 002.

Respondent

APPEARANCE

Shri Lalitendra Gulani, Shri Mohit Pugalia and Shri Tannu Kumar Takkar, Advocates – for the appellant.
Ms. Jaya Kumari, Authorized Representative for the Department.

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51134/2026

DATE OF HEARING : 12.05.2026.
DATE OF DECISION : 03.07.2026.

RACHNA GUPTA

The appeal has been filed to assail the order-in-original No. 148/2022 dated 30.12.2022. The facts in brief, which resulted into the said order are as follows :-

That the appellant is registered with the service tax department for providing various taxable services. During the audit of their records it was observed that the appellant imported

certain services in the year 2011-12 from outside India on which the service tax liability of Rs. 5,11,74,946/- is to be discharged by the appellant as per the erstwhile Section 66A of the Finance Act, 1994. The appellant discharged service tax liability on said services through CENVAT credit on capital goods instead of making payment through cash. As the provisions of service tax law were not followed, the payment of tax through CENVAT is alleged as non-payment thereof.

2. Department further observed that after discharging their service tax liability wrongly through Cenvat credit, the appellant re-availed the said Cenvat credit amount of Rs. 5,11,74,946/- which also appears to be wrong and illegal in terms of Rule 4 (7) of the Cenvat Credit Rules, 2004. Accordingly, said wrongly availment of Cenvat credit of service tax paid through Cenvat credit in respect of import of services for the period 2011-12 is also recoverable from the appellant. It is further noticed that while re-availing Cenvat credit, the appellant availed excess Cenvat credit to the tune of Rs. 1,36,31,755/- during the period 2011-2012. On being pointed out, the Cenvat credit of Rs. 1,36,31,755/- was reversed. The appellant submitted the Special Auditor Report for October 2011 to March 2012. On verification the demand for the said period was observed to be of Rs. 2,54,84,291/- discharging the service tax liability was denied.

3. Accordingly vide show cause notice No. 02/2017-18 dated 21.04.2017 the said amount on account of services received from

outside India by the appellant was proposed to be recovered. The show cause notice has invoked the extended period of limitation alleging that the appellant had not self-disclosed the service tax liability and audit only had revealed the evasion of service tax. Interest on the proposed amount of service tax at the appropriate rate was also proposed to be recovered along with the proportionate penalties. The said proposal has been confirmed vide the impugned order-in-original dated 30.12.2022. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Shri Lalitendra Gulani, learned counsel for the appellant assisted by Shri Mohit Pugalia and Shri Tannu Kumar Takkar and Ms. Jaya Kumari, learned Authorized Representative for the Department.

5. Learned counsel for the appellant has submitted that the appellant had discharged the service tax liability of Rs. 2,54,84,291/- on the import of certain services for providing the tele-communication services, by utilizing Cenvat credit which was availed in terms of Cenvat Credit Rules, 2004. The said availment has wrongly been denied. Rule 5 of Taxation of Services Rules, 2006 and Rule 4 (7) of Cenvat Credit Rules is wrongly been invoked by the Adjudicating Authority while denying the Cenvat credit for payment of service tax. It is submitted that the findings are contradictory. It is submitted that there have been several decisions which have constantly held that prior to June, 2012 there was no restriction on discharging reversed charge liability

by utilizing Cenvat credit. The decision of Delhi High Court in the case of **Mccann Erickson (India) Ltd.** versus **Principal Commissioner of GST & Central Excise, Delhi East, Delhi East¹** has been relied upon. Finally it is submitted that the service tax was already paid though by utilizing the Cenvat credit. Hence the allegations of evasion of service tax are apparently wrong. Learned counsel also submitted that department has wrongly invoked the extended period of limitation while issuing the show cause notice. The show cause notice is itself gets barred by time. The order under challenge confirming the proposal of such show cause notice is liable to be set aside on this ground as well.

6. While rebutting these submissions, learned departmental representative has reiterated the findings of the original adjudicating authority. It is submitted that the appellant is actually the recipient of service. Hence, they could not availed and utilized the Cenvat credit for discharging the service tax liability under reverse charge mechanism, in terms of the explanation as was added in Rule 3 (4) of Cenvat Credit Rules vide Notification No. 28/2012 w.e.f. 01.07.2012. Learned departmental representative has relied upon the decision of this Tribunal in the case of **Sangam (India) Ltd.** versus **Commissioner of Central Excise, Jaipur – II²**, wherein it has been held that when a service received by the personal is clearly covered by the definition of input service the same cannot be

1. 2019 (10) TMI 99 – Delhi High Court
2. 2012 (26) S.T.R. 241 (Tri. – Del.)

treated as the output service. With these submissions and impressing upon no infirmity in the order under challenge the appeal is prayed to be dismissed.

7. Having heard both the parties. The core issue to be adjudicated in the present appeal is observed to be :

Whether the assessee can discharge the service tax liability under reverse charge mechanism in respect of services received from outside India during the period prior to July 2012 by utilizing the Cenvat credit. We have perused the relevant provisions and observed as follows :-

“(i) Rule 3 (4) of the CENVAT Credit Rules clarifies that CENVAT credit may be utilized for payment, inter alia, of service tax on any output service.

(ii) “Output service” is defined, in Rule 2 (p) of the CENVAT Credit Rules, which envisage that any taxable service, excluding the taxable service referred to in sub-clause (zzp) of Clause (105) of Section 65 of the Finance Act, 1994 provided by the provider of taxable service, to a customer, is an “output service”.

(iii) “Provider of taxable service” is defined, in Rule 2 (r) of the CENVAT Credit Rules as including a person liable for paying service tax.

(iv) Rule 2 (q) of the CENVAT Credit Rules defines “person liable for paying service tax” as having the same meaning, assigned to the expression, in Rule 2 (1) (d) of the Service Tax Rules, 1994 (hereinafter referred to as “the Service Tax Rules”).

(v) In case of services provided by a provider located outside India and received by a recipient located in India, the Indian recipient is, by virtue of Rule 2 (1) (d) (iv) of the Service Tax Rules, defined as the “person liable for paying service tax”.

(vi) The Indian recipient of the service also, therefore, becomes the "person liable for paying service tax", under the CENVAT Credit Rules.

(vii) The Indian recipient of the taxable service also, consequently, becomes the "provider of taxable service", as defined in Rule 2 (r) of the CENVAT Credit Rules.

(viii) Rule 3 (4) of the CENVAT Credit Rules permits CENVAT Credit to be utilized for payment of service tax on any "output service", "Output service" is defined, in Rule 2 (p) of the CENVAT Credit Rules as service provider, by a provider of taxable service.

Section 66A of the Finance Act, 1994, holds that, in cases where service, provided by a provider located outside India, is received by a recipient in India, the service would be deemed to have been provided by the Indian recipient.

The perusal of provisions makes it clear :-

the services received in India, by the appellant, from the service providers located outside India, were deemed to be output services, provided in India, for which the appellant was the service provider.

In this scenario, therefore, service tax, on such services, was payable by utilization of CENVAT Credit, by virtue of Rule 3 (4) of the CENVAT Credit Rules".

8. In the present case it was already been pointed out, hereinabove, that the petitioner was, by dint of the definition of the expression, as contained in Rule 2 (r) of the CENVAT Credit Rules, the "provider of taxable service".

We may also observe, in this context, that this issue has engaged the attention of various High Courts from time to time, including, inter alia, the

High Court of Rajasthan in **Union of India** versus **Kansara Molder Ltd.**³, the High Court of Karnataka in **CST** versus **Aravind Fashions Ltd.**⁴, **[SLP (C) Diary No. 23369/2018]** preferred against which, has also been dismissed by the Supreme Court on 3rd August, 2018], the High Court of Punjab and Haryana in **CCE** versus **Nahar Industrial Enterprises Ltd.**⁵ and the High Court of Bombay in **CCE** versus **U.S.V. Ltd.**⁶.

All these decisions have been digested by the High Court of Bombay in **U.S.V. Ltd.** (supra) para 7 of which reads thus :-

“The view taken by the Tribunal in respect of Rule 3 (4) (e) of the Cenvat Credit Rules, 2004 now stands concluded against the revenue by the decision of the Gujarat High Court in **Commissioner of Central Excise & Customs** versus **Panchmahal Steel Ltd.**⁷, Delhi High Court in **Commissioner of Service Tax** versus **Hero Honda Motors Ltd.**⁸ and Punjab and Haryana High Court in **Commr. of C. Ex., Chandigarh** versus **Nahar Industrial Enterprises Ltd.**⁹ The aforesaid decisions have been followed by this Court in **The Commissioner of CGST & Central Excise** versus **Godrej & Boyce Mfg. Co. Ltd. (Central Excise Appeal No. 23 of 2019)** decided on 24th June, 2019 to allow utilization of CENVAT credit for payment of service tax on reverse charge basis GTA (Goods Transport Agency). The above decision of Gujarat, Delhi and Punjab High Courts were also followed by us in **Commissioner of CGST and Central Excise, Belapur Commissionerate** versus **M/s GTL Infrastructure Limited in (Central Excise Appeal No. 94 of 2019)** decided on 25th June, 2019. In respect of discharge of service tax obligation on reverse charge basis on import of services under Section 66A of the Finance Act, 1994 by utilization of Cenvat credit. Thus there is no reason not to follow our Court’s decision in **GTL Infrastructure Limited (supra)**”.

3. 2018 (15) GSTL 255 (Raj.)

4. 2012 (25) STR 583 (Kar)

5. 2012 (25) S.T.R. 129 (P&H)

6. 2019 – VIL – 334 – BOM – ST.

7. 2015 (37) S.T.R. 965 (Guj.)

8. 2013 (29) S.T.R. 358 (Del.)

9. 2012 (25) S.T.R. 129 (P&H)

9. The Adjudicating Authority has invoked the explanation introduced in Rule 3 (4) of Cenvat Credit Rules, however, the said explanation had to take effect from 1st July 2012. The said explanation says that Cenvat credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. The said explanation from the bare perusal has created a substantive liability and the prohibition on the payment of service tax on reverse charge basis from the Cenvat credit account. It has been the settled position of law that the provisions creating substantive right or liabilities cannot have the retrospective application. We draw our support from the decision of Hon'ble Supreme Court in **State of Punjab versus Bhajan Kaur**¹⁰. It has also the settled position that such provisions cannot be treated as with clarificatory unjust and until the provision itself so declared as was held by Hon'ble Supreme Court in the case of **Virtual Soft System Ltd. versus Commissioner, Income Tax, Delhi**¹¹. In light of this discussion, we hold that explanation to Rule 3 (4) of Cenvat Credit Rules, 2004 since it is in nature of a prohibition cannot be applied prior to 1st July 2012 i.e. the explanation is inapplicable to the period in dispute (October 2011 to March 2012).

10. Further it is observed that the Adjudicating Authority is observed to have given the contradictory findings vis-à-vis Rule 5

10. AIR SC 2276

11. 2007 (9) S.C.C. 665

of the Taxation of Service Rules, 2006 as is apparent from para 55.1 of the impugned order, wherein it has been recorded :-

“I find that the Credit Rules during the relevant period did not prohibit utilization of credit for payment of service tax under reverse charge mechanism. Later on vide Explanation, the utilization of credit for payment of service tax under reverse charge was barred. Further, Rule 5 of the Import of Service Rules restricted only availment of credit and not its utilization”.

11. The Hon’ble High Court of Rajasthan in **Union of India versus Kansara Molder Ltd.**¹² has held otherwise as follows :-

“If we read Rule 2 (q) of Cenvat Credit Rules with Rule 2 (1) (d) (iv), we find that appellant is a person liable to service tax. Once appellant is person liable to service tax, he becomes provider of taxable service under Rule 2 (r) and consequently becomes output service provider under Rule 2 (p) of the Cenvat Credit Rules.

Revenue is also relying on Rule 5 of Taxation of Services (Provided from Outside India and Received in India) Rules. We find that Rule 5 refers to availing of Cenvat credit and not to utilization of credit. We are therefore of the view that the finding of the Commissioner not treating the appellant as output service provider, is not correct and accordingly we set aside the impugned order and allow the appeal”.

12. 2018 (15) G.S.T.L. 255 (Raj.)

12. Similar outcome has arrived at by High Court of Karnataka in **CST versus Aravind Fashions Ltd.**¹³ [SLP (C) Diary No. **23369/2018, preferred against which, has also been dismissed by the Supreme Court on 3rd August, 2018**], the High Court of Punjab and Haryana in **CCE versus Nahar Industrial Enterprises Ltd.** and the High Court of Bombay in **CCE versus U.S.V. Ltd.**

13. In view of these, the decision of this Tribunal in **Sangam India Ltd.** (supra) as relied upon by the adjudicating authority is held to be no more applicable. Finally, we observe that the appellant had paid the entire service tax of Rs. 2,54,84,291/- but by utilizing the Cenvat credit availed for the period prior July 2012. Utilization of such Cenvat credit is held justified in view of above discussion. Hence, we hold that there is nothing on record which may entitle the department to invoke the extended period of limitation. Vide the impugned show cause notice of 21/2017, the demand for the period October 2011 to March 2012 has been proposed. The entire period of demand false under the extended period of limitation in fact even beyond the period of 5 years the show cause notice is held barred by limitation.

14. In totality it is held that the demand of service tax has wrongly been confirmed upon the appellant by wrongly denying the utilization of Cenvat credit by the appellant while discharging the service tax liability under reverse charge mechanism. As a

13. 2012 (25) S.T.R. 583 (Kar)

result, the order under challenge is set aside. Consequently the appeal stands allowed.

(Order pronounced in open court on 03/07/2026.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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