

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 1

Service Tax Appeal No. 10590 of 2019

[Arising out of Order-in-Appeal No AHM-EXCUS-003-APP-137-18-19 dated 03.01.2019
passed by Commissioner (Appeals) -AHMEDABAD]

Effective Teleservices

1st Floor, Info Tower-4, Infocity
Nr. Indroda Circle,
Gandhinagar- Gujarat-382009

...Appellant

VERSUS

**Commissioner, Central GST &
Central Excise, Gandhinagar**

Central GST & Central Excise,
Custom House, Navrangpura,
Ahmedabad-380009-Gujarat

...Respondent

WITH

Service Tax Appeal No. 10067 of 2022

[Arising out of Order-in-Appeal No AHM-EXCUS-003-APP-029-2021-22 dated 20.10.2021
passed by Commissioner (Appeals) -AHMEDABAD]

Effective Teleservices Pvt. Ltd.

101-103, 1st Floor, IT Tower-4, Infocity
Gandhinagar- Gujarat-382009

...Appellant

VERSUS

Commissioner, Service Tax, Ahmedabad

1st Floor Central Excise Bhavan
Ambawadi, Ahmedabad-380015-Gujarat

...Respondent

APPEARANCE:

Shri Vipul Khandhar, Chartered Accountant appeared for the Appellant
Shri P. Ganesan, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11429-11430 /2025

DATE OF HEARING: 27.11.2025
DATE OF DECISION: 15.12.2025

SOMESH ARORA:

The facts of the case, in brief, are that the appellant was having Service Tax Registration No. AAACE9318EST002 for providing "Business Auxiliary Service" and "Renting of Immovable Property Service". The appellant was subjected to Departmental Audit covering the period from April, 2014 to March, 2016 in the course of which it was observed that the appellant was availing Cenvat Credit on "Rent-a-cab" service received from various clients. The Audit was of the view that the said service was not an input service in terms Rule 2(1) of the Cenvat. Credit Rules, 2004 (hereinafter also referred to as CCR, 2004) amended with effect from 01.04.2012. The appellant was issued a Show Cause Notice dated

19.06.2017 for the period 01.06.2012 to 31.03.2012 which was adjudicated by Order in Original No. 07/D/GNR/NK/2018-19 dated 29.08.2018 by the Assistant Commissioner, CGST & Central Excise, Gandhinagar wherein demand of the wrongly availed Cenvat Credit amounting to Rs.24,36,666/- was confirmed.

1.1 The appellant had filed an appeal before the Commissioner (Appeals), Ahmedabad against Order in Original No. 07/D/GNR/NK/2018-19 dated 29.08.2018 by the Assistant Commissioner, CGST & Central Excise, Gandhinagar which was decided vide OIA No. AHM-EXCUS-003-APP-137-18-19 dated 17.12.2018. In the said case the Order of the adjudicating authority denying Cenvat Credit on rent-a-cab service availed by the appellant was upheld and the appeal filed by the appellant was rejected.

1.2 Subsequently, upon the department seeking the details, the appellant submitted that during the period from 01.04.2016 to 30.06.2017 they had availed Cenvat credit of Input Service i.e. Rent-a-cab service. Since the same was considered inadmissible by the department, a Show Cause Notice No. IV/16-22/Effective Teleservices/GNR-II/18-19 dated 26.03.2019 for this further period was issued to the appellant seeking to:

- i. Disallow Cenvat Credit of Rs.7,53,110/- and recovery of the same under Rule 14(1) (f) of the CCR, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994.
- ii. Recovery of Interest under Rule 14 (1) (ii) of the CCR, 2004 read with Section 75 of the Finance Act, 1994.
- iii. Imposition of penalty under Rule 15(3) of the CCR, 2004 read with Section 78 of the Finance Act, 1994 and
- iv. Imposition of Penalty under Rule 15 (1) of the CCR, 2004 read with Section 76 of the Finance Act, 1994.

1.3 The said Show Cause Notice was adjudicated vide Order in Original No. 04/GNR-II/DBS/2020-21 dated 10.07.2020 wherein:

- I. The Cenvat Credit of Rs.7,53,110/- was disallowed and ordered to be recovered under Rule 14 (i) (ii) of the CCR, 2004 read with the provisions of Section 73 of the Finance Act, 1994;
- II. Interest was ordered to be recovered under Rule 14 (1) (ii) of the CCR, 2004 read with Section 75 of the Finance Act, 1994;

III. Penalty of Rs.75,310/- was imposed under Rule 15(1) of the CCR, 2004 read with Section 76 of the Finance Act, 1994.

1.4 The Chartered Accountant for the appellants appeared and submitted as follows:

- Appellant has been providing the service of software development, call centre & support service in relation to the information technology service on 24*7 hours, while providing such service appellant has been providing facility to the employees for the pickup & drop of the employees, which has been precondition for the running of the concern 24*7., it has been used during the working hour for the activities purpose which is the part & parcel of the output service. Without going to the object & usages of the service, the denial of the cenvat was not sustainable & tenable in law.
- Appellant drew attention to the definition of "Input service" as defined in Rule as under.
Input service as defined under Cenvat credit rule-2004.

(1) "input service" means any service, -

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

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and (clearance of final products up to the place of removal.)

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) (services provided by way of renting of a motor vehicle), in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA)service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
 (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]
 (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily **for personal use or consumption of any employee;]**"

- The above provisio excludes the service availed for the personal use or consumption of any employee, where in our case service has been availed during the office hour for the carrying out job of service i.e. pick up & drop facility for the running 24*7 service centre, which is part & parcel of our output service.
- Further, the appellant relied on the Circular No. 943/4/2011-CX., dated 29-4-2011 F. No. 354/73/2011-TRU as under:

2.	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3.	How is the "no relationship whatsoever with the manufacture final product" to be of a determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The relationship "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are relation to the manufacturing business and hence the credit of same is allowed.

- It was pleaded that from the above circular it is clear that input service listed in definition has been disallowed if the service has been availed & utilized for the primarily for personal use or

consumption of employees, which is not so in our case, So the denial of cenvat credit on the basis of the above ratio was not justifiable. So it is not for the personal use just like use of cabs for other than business purpose, but it is for the employees during the business hours only. Further appellant has been engaged in the software development & call centre 24*7 service and for providing such service, the employees of the appellant have to provide pick up & drop facility and thus the appellant availed the service of rent-a-cab for their employees.

- So cenvat availed by the appellant has not been for the personal use of the employee & eligible for the cenvat credit. So denial of the cenvat credit was not tenable & justifiable. Demand on that basis is required to be quashed.
- Rent-a-Cab service is provided by the appellant to their employees as a part of the other act which has a direct bearing on the output service provided by the appellant. In fact the employees are also entitled to conveyance allowance. It also would form part of a condition of service and the amounts spent on the conveyance of the employees is also a factor which will be taken into consideration by the employees in fixing the value of service provided. By no stretch of imagination can it be construed as a welfare measure. It is a basic necessity. At any rate it is an activity relating to business.

Entire demand is time barred

- The show cause notice covers the period from 01.04.2016 to 30.06.2017. The show cause notice has been issued on 26.03.2019 & where as fact in knowledge of the dept's since long. Thus, the show cause notice has invoked the extended period of limitation. The show cause has baldly alleged that the Appellant has suppressed the information from the department.
- During the relevant period department has issued more than 3 consecutive SCN so once notice has been issued by the department during the relevant time. extended period notice by the department has not been sustainable & tenable.

2. Learned AR pointed out as follows:

- It is observed that the appellant was earlier issued a SCN for the period from 01.06.2012 to 31.03.2016 on same issue, which has

already been decided by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-003-APP-137-18-19 dated 17.12.2018 against the appellant.

- The impugned order which has been challenged in the present appeal has denied Cenvat Credit on rent-a-cab service for the further period from 01.04.2016 to 30.06.2017. It is found that the appellant have in the present appeal not put forth any new grounds or judicial pronouncements which call for a different view for the earlier period.
- They found that there is no dispute as regards the eligibility of Cenvat Credit on rent-a cab service availed by the appellant prior to 01.04.2012. It is found that post its amendment we.f. 1.4.2012, exclusions to input services as Rule 2(1) (B) of the CCR, 2004 reads as" services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods,". It is clear from the exclusion clause that appellant was not eligible to avail Cenvat Credit in respect of the services provided by way of renting of a motor vehicle i.e. rent-a-cab service
- The appellant have relied upon a few judgements in support of their Claim for Cenvat Credit on rent-a-cab service availed by them. It is found that the judgements cited by them pertain to the period prior to the amendment of Rule 2 (1) of the CCR, 2004 and, therefore, the same are not applicable to the present case.
- Further, the decision of the Hon'ble Tribunal in the case of Bombay Dyeing and Manufacturing Ltd Vs. CCE(Appeals), Raigad reported at 2018 (363) ELT 1107 (Tri-Mumbai) is squarely applicable to the facts of the present case. In the said case the Hon'ble Tribunal had held at para 4 that

"As regard the rent-a-cab service, it is observed that period involved is June, 2014 to January, 2015 w.c.f. 1-4-2011 rent-a-cab service was excluded from the definition of input service, therefore due to such exclusion the credit in respect of rent-a-cab service is not available to the appellant, In result, I hold that credit in respect of maintenance of company's vehicle, driver's service, gardening service is admissible. The credit in respect of rent-a-cab service is not admissible"
- The Hon'ble Tribunal had in the light of the amended provisions of the CCR, 2004 excluding rent-a-cab service from the definition of

inputs service, held that the credit in respect of rent-a-cab service is not admissible.

- It is also observed that the appellant have raised the issue of limitation on the grounds that the facts were in the knowledge of the department and therefore, extended period of limitation cannot be invoked. That the dispute pertains to period from 01.04.2016 to 30.06.2017 and the notice was issued to the appellant 26.03.2019. In terms of the provisions of Section 73 (1) of the Finance Act, 1994 where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise officer may, within 30 months from the relevant date serve notice to the person chargeable with the service tax which has not been levied or short paid. The period of 30 months is to be reckoned with reference to the relevant date i.e. date of filing of return by the appellant. In terms of Rule 7 (1) of the Service Tax Rules, 1994 the returns are to be filed on half-yearly basis. In view of these provisions, it is found that the notice has been issued to the appellant within the period of limitation and therefore, there is no merit in the contention of the appellant as regards limitation.
- The appellant have also contended that penalty is not imposable upon them as there was no intention in their part to not pay service tax and their actions were under a bona fide belief, however, find the issue of non admissibility of Cenvat Credit in respect of rent-a-cab services was within the knowledge of the appellant and they were also served a notice in this regard in the past. Despite this they have proceeded to avail the inadmissible credit in respect of a service which has been excluded from the input services in terms of the CCR, 2004. This act on the part of the appellant clearly indicates their deliberate and knowing contravention of the provisions of law. Therefore, their claim on lack of intent to not pay service tax is without merit.
- Further he also stated that the judgments quoted by the Learned C.A. are in relation to the rent-a-cab services which were meant for going at any other manufacturing or work related movement from the place of work. As against that there are categorical decisions about the too and fro transporation in the case of Solar Industries India Limited 2022 (60) GSTL 216 Bom. and Solar Industries India Limited 2022 (64) GSTL 257 (SC).

3. Rival submissions have been considered. It is found that the issue of the too and fro transportation of employees is covered by the case of Solar Industries India Limited reported in 2022 (64) GSTL 257 (SC) which is reproduced below:

- “2. Providing transportation service to the employees cannot be said to be “input service” as it has nothing to do with the manufacture of the goods.
3. In that view of the matter, it cannot be said that the High Court has committed any error in denying the Input Tax Credit and holding that such a service is excluded from the input service.
4. We are in complete agreement with the view taken by the High Court.
5. The Special Leave Petition stands dismissed.
6. Pending applications stand disposed of.”

4. In view of the same, appellant has no case on merits. The appeals are therefore liable to be rejected on merits. It is also found that on limitation various judgments have been relied upon by the appellants. It is also found that both the lower authorities have quoted the provisions as amended from 01.04.2011, the period involved in this case is 2015-2016 to 2017-18. It is clear from the order-in-original authority which has endorsed by the Commissioner (Appeals) with Circular No. 943/4/2011-Cx dated 29.04.2011 issued by T.R.U. in para 2 had clearly indicated along with issue in para 12 of the said circular which clarifies as below:

Issue:- is the credit available on service received before 01.04.2011 on which credit is not allowed now? E.g. Rent-a-Cab service.

Clarification:- The credit on such service shall be available if, its provisions had been completed before 01.04.2011

It is clear from the order that both the statutory provision as well as clarification given by the Circular and also the decision of Apex Court in Solar Industries India Ltd. (cited supra) and similarly the decision of B.M.S. Industries Ltd. vs Commissioner, CGST Thane Rural, Final Order No. A/86272/2023 dated 31.08.2023 has been correctly relied upon by the A.R. on merits and all had made position clear that cenvat credit was no more available in the facts and circumstances of the case. The observation of the lower authorities in this regard that assessee had availed cenvat credit and utilized it wrongly by suppressing the facts and not intimating to the department while filing ST-3 returns from time to time with intent to evade has been correctly pointed out and extended. The fact pointed out is that but for the detection by the audit the duty is paid would have remained undetected by the department. The decisions quoted by the appellants were not in context of clear cut statutory provisions and clarifications being

available by the executive authorities. This court observes that SCN in this particular case was, as pointed out by the AR issued as the information was never disclosed in filed S.T.-3 returns. Party has relied on Nizam Sugar Factory case reported in 2008 (9) STR 314 (SC) without placing any earlier SCN on record on same facts. However, it is seen that there were earlier SCNs also issued on these points. Learned A.R. submits that the present one is within normal period of demand (as same was also extended through amendment). If so, this court while being with the department on merits, remands the matter to Commissioner (Appeals) to examine on the aspect of limitation both on facts and legal position.

5. Appeal partly allowed in above terms.

(Order Pronounced in the open court on 15.12.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha