

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70639 of 2019**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-04-19-20, dated -  
15/04/2019 passed by Commissioner (Appeals) CGST, Noida)

**Commissioner, Customs, Excise & Service Tax, Noida**  
**.....Appellant**

(Division-II, C-56/42, Sec-62, Noida)

*VERSUS*

**Computer Science Corporation India Ltd., ....Respondent**

(C-24, Basement First Floor  
Second Floor, Sector-58  
NOIDA, UP 201301)

**APPEARANCE:**

Shri Santosh Kumar, Authorized Representative for the Appellant  
Shri Atul Gupta, Advocate for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**  
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.-70493/2024**

DATE OF HEARING : 31.07.2024  
DATE OF DECISION : 31.07.2024

**P. K. CHOUDHARY:**

The present appeal has been filed by the Revenue against the Order-in-Appeal No.NOI-EXCUS-001-APP-04-19-20, dated-15/04/2019 passed by Commissioner (Appeals) CGST, Noida. The facts of the case in brief are that the Respondent was registered with the Service Tax for providing various taxable services. During the audit of records of the Respondent for the period April 2011 to September 2012, certain discrepancies were noticed and on being pointed out by the audit team respondent deposited tax as follow :-

(i) Rs.7,14,167/- as Service Tax on Bank charges under Reverse Charge Mechanism (RCM) along with interest of Rs. 1,48,273/- vide challan dated 29.11.2012;

(ii) Rs.68,15,580/- as Service Tax on Telecommunication Charges under RCM along with interest of Rs. 2,52,643/- vide challans dated 29.11.2012; and

(iii) Rs.4,20,220/- as Service Tax on ITSS under RCM along with interest of Rs.22,597/- vide challans dated 29.12.2012.

2. Thus, the Respondent accepted and deposited total service tax liability of Rs. 79,49,967/- along with total interest of Rs. 4,23,513/- and intimated the deposit particulars to the audit team. However, the Respondent did not pay the penalty specified under Section 73(4A) of the Act, as applicable at the material time, to conclude the proceedings in terms of the said Section 73 (4A). The Respondent also availed the Cenvat Credit of the said deposited amount of Rs. 79,49,967/- in the month of November, 2012 and December, 2012. The Respondent received refund of this Cenvat Credit amount under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012.

3. For the recovery of the tax and the Cenvat credit as above, a Show Cause Notice<sup>1</sup> dated 19.10.2016 was issued to the Respondent for the demand of Service Tax amounting to Rs. 79,49,967/- under the proviso to Section 73(1) of the Act by invoking the extended period of limitation, alleging suppression of facts with an intent to evade payment of the tax. The amount of service tax and applicable interest thereon already deposited/ paid by the Respondent were proposed to be appropriated against the demand of tax and interest. Penalty under Section 78 of the Act was also proposed. Further it was alleged that the Cenvat availed by the Respondent in respect of the amount of

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<sup>1</sup> SCN

tax was not admissible in terms of Rule 9(1) (bb) of CCR, 2004, a demand of Cenvat Credit of Rs. 79,49,967/-, availed by the Respondent on the strength of challans dated 29.11.2012 and 29.12.2012 vide which the amount of service tax had been deposited under RCM at the time of audit along with interest, was made under Rule 14 of CCR, 2004 read with the proviso to Section 73(1) and Section 75 of the Act. Penalty under Rule 15 of CCR, 2004 read with Section 78 of the Act was also proposed to be imposed for Cenvat Credit alleged to have been wrongly taken. Vide the Order-In-Original the demands were confirmed in full along with the demand of interest, and penalties of equal amount were imposed under Section 78 of the Act both in respect of the demand of tax and the demand of cenvat credit alleged to have been wrongly taken.

4. The Respondent had already deposited/paid Rs. 79,49,967/- (appropriated vide impugned order) out of total confirmed demand amount of Rs. 1,58,99,934/-.

5. Heard both the sides and perused the appeal records.

6. We find that the learned Commissioner (Appeals) vide the impugned Order-In-Appeal has passed a well reasoned and detailed order and the same is reproduced below for ready reference:-

*"4. Being aggrieved by the impugned order, the appellant, filed the instant appeal on the following grounds:*

*(i) The exercise is revenue neutral, thus levy of penalty and invocation of extended period of limitation is unwarranted. The service tax paid on import of service on reverse charge basis is available as Cenvat Credit to the appellant. Relied on case laws wherein it has been held that extended period of limitation cannot be invoked in a revenue neutral situation.*

*(ii) SCN issued is barred by time limitation as per Section 73(1) of the Act.*

*(iii) Extended period of limitation under proviso to section 73(1) of the Act is not invokable. In the instant case there has been no deliberate act on part of the appellant to derive wrongful gain as details pertaining to foreign currency payments in respect of Telecommunication charges, Bank*

*charges and ITSS have been adequately disclosed in financial statements of the appellant and there is no suppression of facts. Reliance placed on various case laws in this regard.*

*(iv) In the instant case, the appellant had a bona-fide belief that he was not liable to pay service tax under reverse charge mechanism on foreign exchange payments and there was no intention to evade duty. However, while carrying out internal reconciliations, the appellant suo-moto deposited service tax under RCM along with applicable interest to avoid litigation and early closure of audit.*

*(v) SCN is issued in non-compliance with Section 73(3) of the Act.*

*(vi) Demand of penalty under Section 78 of the Act for non-payment of service tax on foreign currency payment is incorrect as there was no intent to evade payment of service tax for the reasons of fraud, collusion, willful mis-statement, suppression of facts etc.*

*(vii) Cenvat credit of service tax paid on RCM basis has been correctly availed. Rule 9(1) (bb) of CCR, 2004 is not applicable in the instant case as there is no suppression of facts with intent to evade payment of service tax by the appellant. Reliance is placed on the case law Auto Window V/s CCE [2016(041) S.T.R.0518].*

*(viii) Levy of interest under Rule 14 of CCR, 2004 and penalty under Rule 15 of CCR, 2004 is not correct as the cenvat credit was availed as per provisions of the CCR, 2004. There has been no suppression of facts while availing cenvat credit of service tax paid on RCM basis.*

*5. The case was posted for hearing on 10.01.18, 25.09.18, 27.09.18 and 30.10.18. No one, however, appeared for the personal hearings so fixed. The appeal is therefore taken up for decision on the merits and records of the case.*

*6. I have carefully gone through the facts and records of the case and the submissions made by the appellant in the grounds of appeal. I find that the demand for the period of April, 2011 to September, 2012 has been raised vide show cause notice dated 19.10.2016 by invoking extended period of limitation under the proviso to Section 73 alleging suppression of facts. I find that the show cause notice is based on the findings of the audit wherein the amount of tax short paid/not paid was determined/ ascertained from the records of the appellant. As the demand was raised based on the scrutiny of the records of the appellant, the allegation of suppression of facts is not sustainable. There is nothing in the impugned order to draw the inference of suppression of facts. Besides, as the tax was payable on the RCM basis and the appellant has contended that he was entitled to take cenvat credit of the tax so payable/paid by him, there could*

*be no intent to evade. I further find that the cenvat credit of the tax deposited by the appellant was proposed to be denied by referring to the Rule 9(1) (bb) of CCR, 2004, which is not applicable in the case of the appellant as the allegation of intent to evade or suppression of facts is not sustainable. There is no other ground for proposed denial and recovery of the cenvat credit as the eligibility to cenvat credit of the service tax paid/payable on RCM basis has not been questioned. The demand of service tax for the period April, 2011 to September, 2012 and the demand of cenvat credit taken in the months of November, 2012 and December, 2012 on the basis of the challans dated 29.11.2012 and 29.12.2012, vide which the amount of service tax had been deposited by the appellant under RCM at the time of audit along with interest, raised vide SCN dated 19.10.2016 is, therefore, time barred. The impugned order is therefore liable to be set aside on the grounds of limitation of issuing the show cause notice alone without going into the merits of the case.*

*Hon'ble Supreme Court in the case of Commissioner of Central Excise, Chennai Vs. Chennai Petroleum Corporation Ltd. 2007(211) ELT193 have held that: "Where the department was aware of the activities of the assessee and nothing prevented the Department from visiting the assessee's site to make enquiries, it had to be held that there was no suppression on the part of the assessee to warrant invocation of the extended period of limitation." In Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut 2005(188) ELT149 (S.C.) the Hon'ble Supreme Court held that- "... We find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression"*

*7. I find that on being pointed out by the audit team, the appellant accepted and deposited the Service Tax along with interest, for the period of April, 2011 to September, 2012, on Bank Charges, Telecommunication Charges and ITSS under RCM basis and intimated the deposit particulars to audit team vide his letters dated 07.12.2012, 14.12.2012 and 26.12.2012. The demand of service tax should have been appropriately dealt with taking recourse to Section 73 (3) of the Act which debarred issue of the show cause notice except when the amount of tax paid was short-paid. In the instant case as there was no short payment of tax, no show cause notice was permissible in view of the express*

*provisions of Section 73 (3) ibid. Accordingly proceedings with regard to demand of tax on RCM basis are concluded in terms of the said Section 73(3) given the fact that the appellant had already made the payment of the tax alongwith the applicable interest. The penalty imposed is set aside as no penalty was imposable under the above circumstances.*

*8. In view of the aforesaid discussion and findings, the impugned Order-in-Original No. 74/ST/Addl. Commr./Noida/2016-17 dated 27.03.2017 is set aside, and the appeal bearing No. 1031/ST/Noida/APPL/NOI/2017-18 dated 13.07.2017 filed by M/s Computer Sciences Corporation India (P) Ltd., C-24, Basement, First Floor, Second Floor, Sector-58, Noida, U.P.- 201301 is allowed”.*

7. We further observe that in the present case there was no occasion for the Department to issue the SCN which has resulted in the impugned unwarranted proceedings and the Adjudication Authority grossly erred in not appreciating the facts and in confirming the demand of service tax and ordering for recovery of Cenvat credit and also imposed penalties.

8. We do not find any infirmity in the impugned order and the same is upheld. The appeal filed by the Revenue being devoid of any merits, is dismissed.

(Operative part of the order is pronounced in open court)

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

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