CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70761 of 2024

(Arising out of Order-In-Appeal No.NOI-EXCUS-APPL-001-591-23-24, dated - 04/03/2024 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Clean & Secure Management Consultancy Services Pvt. Ltd. **.....Appellant**
(Plot No. J-20, Bishanpura, Sector-58,
Gautam Buddha Nagar, Uttar Pradesh 201301)

VERSUS

Commissioner, CGST, Noida **....Respondent**
(Noida)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70692/2025

DATE OF HEARING : 28.07.2025
DATE OF DECISION : 25.09.2025

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant-Assessee assailing the Order-In-Appeal No.NOI-EXCUS-APPL-001-591-23-24, dated-04/03/2024 passed by the learned Commissioner (Appeals), CGST, Noida.

2. The facts of the case in brief are that on the basis of data received from the Income Tax Department, it was observed that during the Financial Year 2016-17, there was a difference in the gross value shown in the Income Tax Return as compared to the Service Tax Return. The sale of services in the ITR was Rs.1,65,71,239/- whereas the total value as per Form 26AS

statement was Rs.1,89,99,741/- and the gross value shown in the Service Tax Return was Rs.30,96,600/-. Accordingly, Show Cause Notice[1] dated 08.10.2021 was issued demanding Service Tax amounting to Rs.23,85,471/- alongwith applicable interest and to impose penalty under various sections. The Adjudicating Authority vide Order-In-Original dated 19.05.2023 passed the following order:-

ORDER

> *(i) I confirm the demand of Service Tax amounting to Rs.12,89,978/-(Rupees Twelve Lacs Eighty Nine Thousand Nine Hundred and Seventy Eight only) not paid/short paid by the party, on the taxable value during the period of 2014-15 under the provisions of Section 73(1) of the Finance Act, 1994.Since the party have already deposited of Rs.12,89,978/- vide challan no.2305547431 dated 04.05.2023 (showing date of payment 08.05.2023 on AIO), the same is appropriated against the above confirmed demand.*
>
> *(ii) I confirm the demand of interest of Rs.13,23,730/-on the party at an applicable rates during the relevant period, on the amount of Service Tax demanded/confirmed at point (i) above, under the provisions of Section 75 of the Finance Act, 1994.*
>
> *(iii) I impose penalty of Rs.12,89,978/-(Rupees Twelve Lacs Eighty Nine Thousand Nin Hundred and seventy Eight only) upon the party, under Section 78 of the Finance Act, 1994. If the amount as determined under Section 73 above is paid within 30 days from the date of receipt of the order along with the interest payable thereon as per Section 75, penalty will be only 25% of the service tax determined under Section 73. The benefit of reduced penalty shall be available only if the amount of penalty so determined has also been*

[1] SCN

paid within the period of 30 days from the receipt of the order.

(iv) I Impose penalty of Rs.3,000/-(Rupees Three Thousand Only) under Section 77(1)(d) of Finance Act, 1994.

(v) I drop the demand of service tax of Rs.10,95,493/- (Rupees Ten Lacs Ninety Five Thousand Four Hundred and Ninety Three only)

3. Being aggrieved by the order passed by the Adjudicating Authority, the Department filed appeal before the First Appellate Authority on the ground that the CENVAT Credit of Rs.3,73,932/- has been availed/utilized in contravention of the provisions of Rule 4(1) of the CENVAT Credit Rules, 2004. The learned Commissioner (Appeals) allowed the appeal filed by the Department and passed the following order:-

ORDER

i) Wrongly allowed/set off of demand of Service Tax to the tune of Rs.3,73,932/- is set aside and is ordered to be recovered from the respondent under Section 3(1) of the Finance Act, 1994.

ii) I order for recovery of interest on Rs.3,73,932/- at the appropriate rate, under Section 75 of the Finance Act, 1994.

iii) The penalty of Rs.3,73,922/- is imposed on the respondent under Section 78 of the Finance Act, 1994.

iv) The impugned Order-in-Original No. 01/DC/Div-II/Noida/2023-24 dated 19.05.2023 passed by the Deputy Commissioner, Central GST Division-II, Noida is set aside to the extent mentioned above.

4. Being aggrieved, the Assessee is in appeal before the Tribunal.

5. The learned Advocate appearing on behalf of the Appellant submits that after considering the submissions made by the Appellant, the Adjudicating Authority re-assessed the Service Tax based on differential value between ITR and STR, allowed exemption of Rs. 10 lakhs available to small service provider, and calculated the tax short paid as Rs. 16,63,911/-. The Adjudicating Authority observed that the Appellant has claimed CENVAT credit of Rs. 3,73,933/- on input services during the FY 2016-17 which is requested to be adjusted/set off against the Service Tax demand of Rs. 16,63,911/-. The Adjudicating Authority after satisfying himself with regard to the necessary documents submitted by the Appellantand in view of Rule 9 of CENVAT Credit Rules, 2004 and judicial precedents laid down in the similar matters by the Tribunal in case of M/s Circor Flow Technologies India Pvt. Ltd. Vs. PCC GST & CX in Final Order No. 42467/201 dated 16.12.2021 and in the case of Uttaranchal Cable Network Vs. CCE &ST in Final Order No. 51902/2021 dated 13.10.2021, allowed adjustment of CENVAT credit of Rs. 3,73,933/- against total demand of Rs. 16,63,911/-. Thus, net service tax demand of Rs.12,89,978/-, after paying Rs. 3,73,933/- from CENVAT credit account, was confirmed by the Adjudicating Authority vide OIO dated 19.05.2023. The Appellant had already deposited service tax of Rs. 12,89,978/- vide challan No. 230554731 dated 04.05.2023 (date of payment 08.05.2023 on AIO). Interest of Rs. 13,23,730/-alongwith penalty of Rs.3,25,495/-, total Rs. 16,49,225/- was also deposited on 27.06.2023 to conclude the proceedings.

6. The learned Advocate further submitted that the Original Order dated 19.05.2023 was reviewed/examined by the Principal Commissioner, CGST, Noida under Section 84 of the Finance Act, 1994, and set off of demand of service tax of Rs.3,73,932/- for the period 2016-17 from CENVAT credit account was considered in contravention of third proviso to Rule 4(1) of the CENVAT

Credit Rules, 2004 as the CENVAT credit has been claimed after one year from the date of issue of CENVAT documents specified in Rule 9(1) of the Rules.

7. The appeal so filed by the Department has been allowed by the Commissioner (Appeals), CGST, Noida vide Order-in-Appeal No. NOI-EXCUS-APPL-001-591-23-24 dated 04.03.2024 on the ground that CENVAT credit cannot be allowed in respect of documents issued during the year 2016-17 as the CENVAT credit has been claimed subsequent to SCN dated 8.10.2021 demanding tax not paid during 2016-17 and paid just before confirmation of demand vide OIO dated 19.05.2023, which is contrary to the provisions of the third proviso to Rule 4(1) of CCR, 2004.

8. The learned Advocate vehemently argued that the Appellant-Assessee fulfilled all the requisite conditions for legitimate claim on input services procured and used for output services. Thus, the Appellant submitted all the documents, ledger accounts, input service invoices, CENVAT credit account/statement of input services, bank statement, financial statements in support of its claim for the CENVAT credit against the demand for the FY 2016-17.

9. Thus, the Appellant has claimed CENVAT credit of Rs. 3,73,933 /- for the FY 2016-17 in a legitimate and lawful manner as Condition for allowing CENVAT credit under third proviso to Rule 4 of CENVAT Credit Rules, 2004 limiting the period for availment of CENVAT credit to one year of the date of issue of CENVAT document as prescribed under Rule 9, ibid, may not be applicable in case the taxable value of services and the tax payable thereon are re-assessed for the tax period 2016-17. The benefit of substantial benefit of CENVAT credit may not be disallowed to the Appellant for the tax period for which the demand has been made on account of re-assessment of the taxable value of services and the tax payable.

10. On limitation, the learned Advocate submits that that the SCN has been issued on 08.10.2021 for demand of service tax for the year 2016-17 invoking extended period of limitation of 5 years alleging fraud, collusion, willful mis-statement, suppression of facts or contravention of provisions with intent to evade payment of service tax instead of within the normal limitation period of 30 months.

11. The learned Departmental Representative for the Revenue justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

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

13. The third proviso to Rule 4(1) of the CENVAT credit Rules, 2004 is reproduced as under:

> *"Provided also that the manufacturer or provider of output service shall not take CENVAT credit after one year of the date of issue of any of the documents specified in sub-rule (1) of Rule 9."*

14. I find that the Adjudicating Authority after satisfying himself with regard to the necessary documents submitted by the Appellant, as prescribed under Rule 9 of CENVAT Credit Rules, 2004, allowed adjustment of CENVAT credit of Rs.3,73,933/- against total demand of Rs. 16,63,911/-. The net Service Tax demand of Rs. 12,89,978/-, after paying Rs.3,73,933/- from CENVAT credit account, was confirmed by the Adjudicating Authority. The Appellant had already paid the net tax demand of Rs. 12,89,978/- vide challan No. 230554731 dated 04.05.2023 (date of payment 08.05.2023 on AIO). Interest of Rs.13.23.730/- alongwith penalty of Rs.3.25,495/-, total Rs. 16,49,225/- was also deposited on 27.06.2023 to conclude the proceedings. Accordingly, the denial of CENVAT Credit amounting to Rs.3,73,933/- is not justified and is accordingly, set aside.

15. Regarding invocation of extended period of limitation, I find that CBIC in its Circular No. 1053/02/2017-CX dated 10.03.2017 with regard to issue of SCN invoking extended period of limitation for demand of duty/tax by reason of wilful misstatement, suppression of facts, etc. has issued following guidelines to be strictly followed by the field formations citing Supreme Court decision in case of M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.) in respect of Central Excise provisions which are equally applicable to Service tax matters as under:

> *"3.1 Limitation to demand duty: A show cause notice demanding duty not paid or short paid or erroneous refund can be issued by the Central Excise Officer normally within two year from the relevant date of non-payment or short payment of duty, whereafter the demand becomes time-barred. Where duty has not been paid or short paid by any person chargeable with the duty by reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade payment of duty, a longer period of limitation applies and show cause notice demanding duty can be issued within five years from the relevant date.*

16. The extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice alongwith evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

17. In view of the above, I do not find any ingredients of willful mis-statement or suppression of facts or collusion etc. with

intent to evade payment of tax and as such penalty imposed under Section 78 is set aside. The denial of CENVAT Credit amounting to Rs.3,73,933/- is set aside.

18. Appeal filed by the Appellant-Assessee is allowed with consequential relief, as per law.

(Pronounced in open court on 25.09.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Nihal