CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1647 of 2011

(Arising out of Order-in-Appeal No. 203/2011 dated 16.03.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Nirvana Films
No.279, 5th Main Road,
Indiranagar 1st Stage,
Bangalore – 560 038.

Appellant(s)

VERSUS

The Commissioner of Service Tax
No.16/1, 5th Floor, S.P. Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri M. A. Jithendra, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20705 /2025

DATE OF HEARING: 21.04.2025
DATE OF DECISION: 21.04.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Nirvana Films, Bangalore against Order-in-Appeal No. 203/2011 dated 16.03.2011 passed by the Commissioner (Appeals-II), Bangalore.

2. Briefly the facts of the case are that the appellant is engaged in the activity of providing 'Photography Services' under

Section 65(78), 65(79) and 65(105)(zb) of the Finance Act, 1994, during the disputed period from April 2006 to September 2006. On scrutiny of the ST-3 returns for the above period, it was observed that the appellant had not paid service tax on amount of advances received by them and they had wrongly availed and utilized input service tax credit. Accordingly, the original authority confirmed demand of Rs.27,83,944/- and imposed various penalties and also disallowed cenvat credit to the extent of Rs.5,81,048/-. The appellant filed an appeal against the above order contesting that during the disputed period, they had paid service tax at the rate of 10.2% prior to 18.04.2006 and @ 12.24% from 18.04.2006, hence there was no liability on them. They also contested denial of cenvat credit, since there was no notice denying cenvat credit. The Commissioner (Appeals) in the impugned order held that service tax @ 12.24% was applicable at the time of receipt of payments and also rejected cenvat credit on the ground that the appellant had not furnished the list of input services. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel on behalf of the appellant submitted that prior to 18.04.2006, they received advance amounts from some of the customers and on the date of receipt of these advances as per Section 66 of the Finance Act, 1994 they are liable to pay service tax @10.2% and accordingly, invoices were raised and tax was paid periodically. Similarly, for services rendered/completed on or after 18.04.2006, tax was being paid @12.24%. In terms of Rule 4A(1) of the Service Tax Rules, 1994, the appellant has rightly discharged service tax as per the rates available on the date of receipt of advances. It is also submitted that though the Point of Taxation Rules was introduced in the year 2011 which provides the manner of payment of service tax and confirms that service tax was rightly paid in accordance with the Rules.

3.1 With regard to demand of cenvat credit, it is submitted that the same is not sustainable since Revenue had not questioned the eligibility and entitlement to cenvat credit as per the Cenvat Credit Rules, 2004. It is further stated that without prejudice even if the eligibility is to be considered, the input services being film processing charges, sound engineering services, costume designer services, etc., are all eligible for cenvat credit since these services are used for rendering output services namely T.V. Commercials. Accordingly, it is submitted that the entire order needs to be set aside.

4. The Authorized Representative reiterating the findings of the authorities below submitted that the impugned order needs to be upheld.

5. Heard both sides. The issues to be decided are whether the appellant is liable to pay service tax @10.2% or @12.24% on the advances received by them. The second issue is with regard to denial of cenvat credit on various input services utilized by the appellant. The Commissioner (Appeals) with regard to the service tax payment observes as follows *'I am of the view that on payments which were billed prior to 18.04.2006 but received after 18.04.2006 the appellant should have paid the service tax @12.24% which was applicable at the time of receipt of payments'*. This observation is without any evidence to prove that the payments were received after 18.04.2006. In contrast statements filed by the appellant on the advances received which are reproduced below clearly shows that the appellant had discharged service tax @10.2% and for all other payments received on or after 18.04.2006 service, tax is paid @12.24%. The appellant has also vide letter dated 10.11.2007 has intimated the Revenue that for payments received prior 18.04.2006, the service tax is discharged as per the rates available on that date.

Service Tax details from April 2006 to September 2006 deducted at 10.2%												
Job	Bill Number & date (for advance bill)	Bill Number & date (for balance bill raised after the completion of Taxable service	Advance amount collected	Cheque Recd. date	TDS Amount	Balance amount collected	Cheque recd. date	TDS Amount	Total collected Amount in full	Taxable Amount	Service Tax	Cess on Service Tax
HSBC	46 dt 28/10/2005	46a dt 25/3/2006	2831700.00	09-Nov-05	247289.00	1329011.00	1-Apr-06	0.00	4408000.00	4000000.00	400000.00	8000.00
Documentary	70 dt 21/2/2006	70a dt 20/3/2006	1270030.10	28-Feb-06	0.00	1406507.40	1-Apr-06	0.00	2676537.50	2428799.91	242879.99	4857.60
Life Buoy	75 dt 2/3/2006	75a dt 12/4/2006	3256610.75	7-Apr-06	36954.00	327961.43	19-Apr-06	2124.38	3623650.56	3288249.15	328824.91	6576.50
Hutch Handset	nil	1 dt 6/4/2006	0.00	nil	0.00	4398750.00	11-Apr-06	101250.00	4500000.00	408348.57	408348.46	8166.97
Toyota Corolla	nil	33 dt 13/9/2005	0.00	nil	0.00	220525.00	19-Apr-06	2519.80	223044.80	202400.00	20240.00	404.80
Toyota Corolla	nil	39 dt 27/9/2005	0.00	nil	0.00	98107.00	19-Apr-06	1122.59	99229.59	90045.00	9004.50	180.09
Toyota Corolla	nil	43 dt 13/10/2005	0.00	nil	0.00	81716.00	19-Apr-06	934.00	82650.00	75000.00	7500.00	150.00
HSBC	nil	73 dt 25/2/2006	0.00	nil	0.00	84254.00	24-Apr-06	5008.00	89262.00	81000.00	8100.00	162.00
HSBC	nil	74 dt 25/2/2006	0.00	nil	0.00	130022.00	24-Apr-06	7728.00	137750.00	125000.00	12500.00	250.00
Wills Life Style	nil	49 dt 21/12/2005	0.00	nil	0.00	4290733.00	24-Apr-06	255017.00	4545750.00	1187500.00	118750.00	2375.00
Voltas	nil	66a dt 20/4/2006	0.00	nil	0.00	1682596.00	27-Apr-06	80604.00	1763200.00	1600000.00	160000.00	3200.00
Wills Life style	nil	53c dt 5/01/2006	0.00	nil	0.00	244243.62	27-Apr-06	14517.00	258760.62	234810.00	23481.00	469.62
Hutch Marathon	nil	37a dt 26/9/2005	0.00	nil	0.00	107950.00	2-May-06	2250.00	110200.00	100000.00	10000.00	200.00
Taj Tea Zakir	nil	63a dt 27/4/2006	0.00	nil	0.00	863600.00	3-May-06	18000.00	881600.00	800000.00	80000.00	1600.00
Good knight	nil	42 dt 13/10/2005	0.00	nil	0.00	129541.50	4-May-06	2974.00	132515.50	120250.00	12025.00	240.50
Good knight	nil	44 dt 19/10/2006	0.00	nil	0.00	19391.00	4-May-06	445.00	19836.00	18000.00	1800.00	36.00
Wills Life style	nil	53b dt 05/01/2006	0.00	nil	0.00	110461.00	24-May-06	6566.00	117027.00	106195.10	10619.51	212.39
Tanishq	nil	76 dt 2/3/2006	0.00	nil	0.00	2022154.00	11-May-06	16546.00	2038700.00	1850000.00	185000.00	3700.00
Wills Life style	49 dt 21/12/2005	49a dt 20/7/2006	488487.24	11-May-06	29034.00	422571.29	28-July-06	27480.00	967572.53	878015.00	87801.50	1756.03
Taj Tea Zakir	Nil	69 dt 15/2/2006	0.00	nil	0.00	275272.00	29-May-06	5738.00	281010.00	255000.00	25500.00	510.00
SBI	72 dt 22/2/2006	72a dt 1/6/2006	3445899.00	23-Feb-06	79101.00	1617275.00	9-Jun-06	37125.00	5179400.00	4700000.00	470000.00	9400.00
Maruthi swift	nil	48 dt 4/11/2005	0.00	nil	0.00	323162.00	24-July-06	7438.00	330600.00	300000.00	30000.00	600.00
HSBC	nil	77 dt 9/3/2006	0.00	nil	0.00	49929.00	21-July-06	2967.00	52896.00	48000.00	4800.00	96.00
Life Buoy	nil	75a dt 12/4/06	0.00	nil	0.00	3256610.72	25-July-06	36954.00	3293564.72	2988715.72	298871.57	5977.43
Wills Life style	nil	53a dt 5/1/06	0.00	nil	0.00	39780.00	28-July-06	0.00	39780.00	36098.00	3609.80	72.20
Total	nil	nil	11292727.09	nil	392378.00	23532123.96	nil	635307.77	35852536.82	29596562.45	2959656.25	59193.12

6. The relevant Rule 4A of the Service Tax Rules, 1994 reads as follows:

> **Rule 4A.** Taxable service to be provided or credit to be distributed on invoice, bill or challan:
>
> (1) Every person providing taxable service 5[, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier,] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him 6[in respect of such taxable service] provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:-
>
> (i) the name, address and the registration number of such person;
> (ii) the name and address of the person receiving taxable service;
> (iii) description, classification and value of taxable service provided or to be provided; and
> (iv) the service tax payable thereon:

As per the above Rules, the liability arises on the date of invoice or date of payments whichever is earlier and in the instance case, the rate of tax on the date of receipt of advances prior to 18.04.2006 was @10.2% and the appellant had rightly discharged his liability and therefore, the impugned order to this extent needs to be set aside.

7. With regard to eligibility of utilisation of cenvat credit as rightly pointed out by the appellant, the denial of cenvat credit utilisation cannot be sustained inasmuch as the eligibility has not been questioned, hence, the order confirming the same is devoid of merit.

8. In view of the above observations, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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