

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40861 of 2021

(Arising out of Order-in-Original No. 21/2021(C) dated 29.07.2021 passed by Commissioner of GST & Central Excise, No. 692, MHU Complex, 5th Floor, Anna Salai, Nandanam, Chennai – 600 035)

M/s. Challenge

No. 2, Murali Street,
Mahalingapuram,
Nungambakkam,
Chennai – 600 017.

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai South Commissionerate,
MHU Complex,
No. 692, Anna Salai,
Nandanam,
Chennai – 600 035.

...Respondent

APPEARANCE:

For the Appellant : Mr. M. Karthikeyan, Advocate

For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40529 / 2025

DATE OF HEARING : 21.01.2025

DATE OF DECISION : 09.05.2025

Per Mr. VASA SESHAGIRI RAO

Service Tax Appeal No. 40861 of 2021

has been filed by M/s. Challenge, Chennai, (hereinafter referred to as 'Appellant'), which is a proprietorship concern

engaged in providing Advertisement Agency Services with service tax registration APOPS75000LST001. As a part of data received from third party sources and verification of their ST3 returns and P&L account of the appellant by the Department, revealed certain variations between income declared in the said documents which led to the issuance of Show Cause Notice No. 03/2020 (C) dated 27.05.2020 demanding differential Service Tax of Rs.2,19,93,419/- for the period from October 2014 to June 2017 on the ground that with an intention to evade payment of service tax, they have claimed their taxable income as Trade discounts but which were not passed on to the customers in as much as no expenses have been accounted as trade discounts in the P&L account; and demanding an amount of Rs.3,59,24,783/- for the period from Oct 2014 to June 2017 as they have failed to pay 6%/7% on the exempted value under Rule 6(3)(i) of CCR. The above demands were raised by invoking extended period and the notice proposed to demand interest and imposition of penalty.

2. The appellant contested the above Show Cause Notice *vide* reply dated 01.03.2021 on the ground that they have actually passed on the trade discount offered to their clients, but they have followed different procedures for accounting the same in their books of accounts and have

explained the same with ledger copies and a Chartered Accountant Certificate. With regard to demand of amounts under Rule 6(3)(i) of CCR, they had contested on the ground that the advertisement through print media is exempted and no Cenvat credit has been availed by them on such purchase bills and while invoicing their client for such print media advertisement on cost plus service charge basis, they had discharged service tax on the service charges collected and as such it cannot be considered as fully exempted service and consequently the demand is not sustainable.

3. The Commissioner of GST & Central Excise, Chennai South *vide* the impugned Order in Original No. 21/2021 (C) dated 29.07.2021 adjudged the above SCN wherein after considering the Trade discounts passed on to the customers on strength of the reply filed along with ledger accounts & CA Certificate, he revised and confirmed the demand of Service Tax of Rs.1,12,86,648/- (out of Rs.2,19,93,419/-) and also confirmed the entire demand of an amount of Rs.3,59,24,783/-under Rule 6(3)(i) of CCR along with interest and equal penalty.

4. The appellants have preferred this appeal against the above order on various grounds.

5. The Ld. Advocate Shri M. Karthikeyan, appearing for the appellant put forth that demand of service tax has been made in this impugned proceedings against the appellant on the ground that the trade discount allowed in the invoices raised on the customers has not been actually passed on to the customers inasmuch as there is no expenses in the form of Trade discount in their P&L account and the service tax should have been paid on the gross value. However, the Commissioner has considered the reply filed by the appellant along with the copies of ledger accounts and CA certificate and, consequently in his impugned order has held that the trade discounts allowed in the invoices have been passed on to the clients and have dropped the demand of tax for the year 2015-16, but have confirmed a portion of the demand of tax of Rs.79,50,264/- for Oct 2014 to March 2015 on the ground that only trade discount passed on to the customers have been accounted for in the "Trade Discount Allowed" ledger and the trade discount not passed on i.e., difference between income shown in P&L and this ledger is liable to service tax unless it is an exempted service. Accordingly, he has confirmed a demand of Rs. 79,50,264/- for Oct 2014 to March 2015 in the following manner: -

Income as per P&L (for the second half of the year) as per Annexure A to SCN)	Value declared in ST3 for second half of the year	Advt Income for Print Media (exempted)	Difference in Value claimed as Trade discount but allegedly not offered to clients
A	B	C	D=A-B-C
48,56,43,531	28,85,11,287	10,05,10,988	9,66,21,256
Trade Discount allowed as per Ledger	Difference Amount unexplained	ST (Inclusive of Cesses)	ST Liability
E	F=D-E	G	G=F&G
3,22,95,731	6,43,22,525	12.36%	79,50,264

5.1 He further submitted that entire trade discount allowed in their invoices during the year 2014-15 is Rs.6,06,01,566/- and it is fully captured in the trade discount ledger which is placed at page 59 to 69 of paper book Vol II. This has been certified by the CA also. (Ref para 13.1 of impugned order) Therefore, the appellant submits that after deducting the taxable turnover of Rs.47,61,55,975/- declared in the ST3 returns and the above discount allowed amount of Rs.6,06,01,566/- from the total income of Rs.67,69,63,785/- as per P&L account, the balance amount of Rs.14,02,06,244 represents exempted turnover.

5.2 The Commissioner in Para 13.2 of the impugned order has reckoned the said amount of Rs.6,06,01,566/- and apportioned it for both first and second half of the year of 2014-15 on pro rata basis as Rs.2,15,56,947/- and Rs.3,90,44,619/- respectively. After deducting discount of

Rs.65,41,819/- on exempted print media sales from the said figure of Rs.3,90,44,619/- for the second half of the year 2014-15, the net trade discount amount of Rs.3,22,98,731/- was held to be passed on. After subtracting the said amount of Rs.3,22,98,731/- from the total trade discount value of Rs.9,66,21,256/- wrongly adopted in the SCN and in the impugned order, confirmed the demand of tax on balance discount value of Rs. 6,43,22,525/-.

5.3 He submitted that when there is no demand of tax for the first of the year 2014-15 in the impugned proceedings, then there cannot be any confirmation of demand of tax on such discount of Rs.2,15,56,947/- pertaining to first half of the year 2014-15. Secondly, the Commissioner has determined the discount on exempted sales as Rs.65,41,819/- for the second half of the year 2014-15 and has deducted the same to arrive at the net discount passed on taxable service. That being the case, confirmation of demand of tax on such discounts pertaining to exempted service is also not tenable. Both the said amounts are included in the balance discount value of Rs.6,43,22,525/- and demand of tax confirmed on the same is not at all sustainable, thus he argued.

5.4 It is submitted further that the total trade discount allowed in their invoices for the year 2014-15 itself is only Rs.6,06,01,566/- and the entire amount has been accounted for in the trade discount ledger account. As such it is not known as to how the notice or the impugned order adopted the discount value as Rs.9,66,21,256/-and there is no invoice wise statement furnished by the dept for the same and secondly there is no verification with any of the customer to establish that the discount amount thus shown in the invoice has not been passed on and the customer has paid the gross amount without deduction of discount. Therefore, the confirmation of demand of tax on the difference between such ad hoc figure of Rs.9,66,21,256/- adopted by the dept and the discount value of Rs.6,06,01,566/- as per the ledger statement, which is Rs.3,60,19,690/- is not substantiated and not tenable.

5.5 The Ld. Counsel has put forth that table below would depict the correct picture, and the error committed in the SCN as well as in the impugned order: -

2014-15	Income as per P&L	Value declared in ST3	Exempted turnover	Trade discount allowed
Full year	676963785	476155975	140206244	60601566
Less: values relating to 1 st half of the year	263801235	187644688	54599600	21556947
Balance – correct value of 2 nd half of the year	413162550	288511287	85606644	39044619

Values wrongly adopted in the SCN for the 2 nd half of the year	485643531	288511287	100510988	96621256
Difference (excess income reckoned for 2 nd half)	72480981	0	14906344	57576637

Financial year 2016-17

6. He further submitted that Commissioner proceeded to confirm the demand tax of Rs. 33,36,384/- for the FY 2016-17 as proposed in the SCN on the ground that there is difference, as mentioned below, between the turnover reflected in the ST3 returns and the Balance Sheet (tabulated) and the trade discount allowed of Rs.2,22,42,557/- has not been passed on to the Customers and tax was liable to be paid on such discount value.

Income as per P&L	Value declared in ST3	Advt Income for Print Media (exempted)	Difference in Value claimed as Trade discount but not offered to clients
A	B	C	D=A-B-C
524681815	322953570	179485688	22242557

6.1 However, the appellant has reconciled the above figures and put up the actual figures relating to discount allowed and exempted income as below before the adjudicating authority and supported the same with a CA certificate.

Year	P&L Income	ST3 Income	Difference		Unbilled Revenue
			Exempted (Print Media)	Trade discount	
2015-16	52,46,81,185	14,62,53,212	14,62,53,212	2,61,30,762	2,25,02,743

6.2 He submitted that the Commissioner has taken note of the above and the CA certificate in Para 13.5 of the impugned order and has held as follows in Para 13.6 of the impugned order which read as follows: -

"(ii) The assessee is maintaining individual client ledger (from 2015-16 onwards) and the invoices mentioned there are net of discount only, thereby indicating that these discounts have indeed been passed on to their clients. Therefore no service tax is leviable on them.

(iii) The difference on account of 'unbilled revenue' booked in 2016-17 and offered for service tax in 2017-18 as per assessee's admission is not corroborated in the CA certificate. The assessee has also not provided any reconciliation or ledger accounts as proof that service tax has been discharged on these amounts. Therefore, I hold that it is liable to service tax."

6.3 He pointed out that from the finding recorded by the adjudicating authority in clause (ii) above, that from the year 2015-16 onwards the assessee is maintaining individual ledger and the invoices mentioned there are net of discount only, and the discounts have been passed on to the customers and no service tax is payable on it. From the reconciliation provided by the appellant and certified by the

CA, the trade discount allowed for the year 2016-17 is Rs.2,61,30,762/- and they have accounted for an un-billed revenue of Rs.2,25,02,743/- which is included in total income as per the P&L. The Commissioner in the above findings has accepted that the trade discount of Rs.2,61,30,762/- is passed on to the customers. This is further corroborated by the finding recorded in Para 13.7 to the effect that the above discount amounts (including Rs.2,61,30,762/- for the year 2016-17) have been passed on to their customers based on the ledger accounts and as indicated in the chartered accountant certificate. Despite having held above, the Commissioner in Para 13.8 of impugned order had determined tax liability on discount amount of Rs.2,22,42,557/- as proposed in the SCN without any substantiation or finding in support.

6.4 He further submitted that the Commissioner has held that discounts for the year 2016-17 have been passed on and tax is not liable to be paid on the same and the Commissioner has only held that the appellant is liable to pay tax on unbilled revenue for the reason that the said revenue accounted for in 2016-17 has suffered tax in the year 2017-18 has not been corroborated in the CA Certificate and such payment of tax on unbilled revenue amount has not been proved with documentary evidence.

6.5 The advocate submitted that the demand was made out in the SCN on the ground that trade discount has not been passed on and the SCN did not propose to demand tax on such un-billed revenue included in the total income and hence, the finding of the Commissioner to the effect that tax is liable to be paid on such unbilled revenue is beyond the scope of the SCN and hence it is not tenable at all. Reliance is placed on the decision of *R. Ramadas vs. The Joint Commissioner of Central Excise*, [2020 (11) TMI 84-MADRAS HIGH COURT].

6.6 Secondly, the appellant submitted the provision made towards unbilled revenue in order to recognize the expenses incurred during 2016-17 in respect of 4 customers in accordance with Accounting Standard 9 has been reversed on 1/4/2017 itself and the appellant had raised invoices during 2017-18 along with applicable service tax as and when the services were completely provided to the said customers. In support of the above, the appellant had placed ledger accounts of the said 4 customers for the year 2017-18 along with their reply to SCN (ref para 8.9 of the reply) and the same are placed at page 188 to 194 of Vol II of the paper book. As such the finding of the Commissioner is factually incorrect and not sustainable.

Demand of Rs.3,59,24,783/-payable under Rule 6(3) (i) of CCR:

7.0 The advocate submitted that Advertising on print media is an exempted activity and hence, the appellant are not entitled to avail credit on input or input service used for providing such service. The purchase bills received from the Print Media do not have any service tax and as such the appellant have not claimed any cenvat credit on such bills. They in turn bill their clients for such advertising on print media services by adding a margin/commission of about 2 to 5% on an average. In all such invoices raised on clients for such advertisement on print media, service tax on the value addition/margin charged over and above the purchase value has been discharged.

7.1 The following table provides the details of purchases made from Print Media, Value addition billed over and above such purchase value on the clients and Service tax paid on the value addition for the period involved: -

Year	Print Media Purchases after discount	Print Media Sales after discount	Difference/Value addition/Margin	Service tax paid on the Value addition/Margin
2014-15 (Oct to Mar)	12,56,67,131	13,42,61,928	85,94,797	10,62,317
2015-16	21,63,95,818	22,60,17,289	96,21,471	13,61,279
2016-17	17,21,42,488	17,94,85,688	73,43,200	11,01,030
2017-18 (Apr to Jun)	2,06,59,400	2,15,55,938	8,96,538	1,34,481
Total	53,48,64,837	56,13,20,843	2,64,56,006	22,97,828

7.2 He further submitted that the appellant has not availed credit on the purchase bills received from print media and on any input or input service pertaining to such exempted service except in respect of common input services. Since service tax has been paid on such value addition/margin billed on the client, reversal of credit in terms of Rule 6(3) is not at all required. The value addition on which service tax has been paid is made up of such common input services, there is no wrong in taking credit on the same and therefore, the appellant is not liable to reverse any credit in terms of Rule 6(3). The Commissioner has not disputed the above facts in the order and has not recorded finding in this regard. Thus, the impugned order confirming the demand of Rs.3.59,24,783/-is not sustainable and liable to be set aside.

7.3 Alternatively, he submitted that, if the appellant is required to reverse the credit, it is submitted by the

appellant that they may choose any of the following options as applicable to them under Rule 6(3): -

- a) either pay six percent of the value of exempted services or
- b) pay an amount determined under sub rule (3A) or
- c) maintain separate accounts for receipt, consumption and inventory of inputs and pay an amount determined under sub rule (3A) in respect of input services.

Nowhere there is a compulsion to opt for opting clause (i) of sub rule (3) of Rule 6 and the power to choose a suitable option for paying back the proportionate credit rests with the output service provider.

7.4 He further submitted that the following is the total cenvat credit availed and common credit availed by the appellant during the period involved: -

Year	Total Cenvat credit taken	Common credit on input/input service
2014-15	5,33,17,064	341592
2015-16	5,00,91,227	216060
2016-17	3,79,80,070	217819
2017-18 (Apr to Jun)	68,62,935	
Total	14,82,51,296	7,75,471

7.5 From the above it can be seen that the total credit availed by the appellant is Rs.14,82,51,296/-, but

whereas the common credit which is otherwise in dispute is only Rs.7,75,471/-. However, the show cause notice had proposed to recover credit of Rs.3,59,24,783 in terms of Rule 6(3) which is not tenable at all.

7.6 The advocate placed reliance on the decision of the Hon'ble High Court of Telangana in the case of *Tiara Advertising [2019 (10) TMI 27-TELANGANA AND ANDHRA PRADESH HIGH COURT]* which has dealt with an identical issue. It has been held that the statutory scheme does not vest the service tax authorities with the power of making such a choice on behalf of the assessee in terms of Rule 6(3) of CCR. The decision of the HC was followed in the case of *M/s. Surya Vistacom Private Limited [2022 (7) TMI 719-CALCUTTA HIGH COURT]*.

7.7 Notwithstanding the above defence, he further submitted that the following will be the year wise summary of the actual proportionate reversal to be made by the appellant out of the common input service credit availed by them attributable to the exempted service.

Year	Common input service credit	Exempted print media turnover	Aggregate taxable exempted turnover of and	Proportionate credit to be reversed
2014-15	3,41,592	12,56,67,131	67,69,63,785	63,411
2015-16	2,16,060	21,63,95,818	68,87,20,997	67,886
2016-17	2,17,819	17,21,45,488	52,46,81,815	74,342
(Apr to Jun 17)		1,95,96,486	8,98,84,579	
Total	7,75,471	53,38,04,923	1,98,02,51,176	2,05,639

7.8 He relied on the decision of the Tribunal in the case of *M/s. Cranes & Structural Engineers [2017 (347) ELT 112]* wherein it has been held that merely not following of the procedure prescribed under Rule 6(3A) will not take away the right to avail second option under Rule 6(3) to reverse proportionate credit. Similar view was taken in the following decisions: -

- i. *Aster Pvt Ltd. [2016 (43) STR 411 (Tri. Hyderabad)]*
- ii. *Okay Glass Industries [2015 (9) TMI 776-ALLAHABAD HIGH COURT]*
- iii. *Schwing Stetter India Private Limited [2024 (4) TMI 559-CESTAT CHENNAI]*
- iv. *M/s. Meera Glass Industries [2024 (5) TMI 410-CESTAT ALLAHABAD]*

7.9 He pointed out that the findings of the Learned Commissioner in para 14.2 of the impugned order clearly reveals that the option to reverse proportionate credit has been rejected merely on the ground that the appellant has submitted annual details but failed to submit month-wise details such as total cenvat credit availed, cenvat credit of inputs/input services exclusively used for taxable goods/services to arrive at the quantum of amount payable

as per sub-rule 6(3AA). He submitted that, Rule 6 (3AA) has been introduced to enable the assesseees to reverse proportionate credit at the adjudication level. But, in the instant case, the same has been rejected by the adjudicating authority as mentioned above. The month wise details credit to be reversed as laid down under Rule 6(3AA) of CCR have since been compiled and placed at pages 89 to 99 of Appeal Paper Book, Vol-I.

8. Further, he also put forth that there has been no suppression of any fact, or any willful misstatement with intent to evade payment of Service Tax. Therefore, in view of the above, he pleaded that the demand of service tax of Rs.1,12,86,648/-confirmed in the impugned order and demand of an amount of Rs. 3.59,24,783/-confirmed in the impugned order in terms of Rule 6(3)(i) of CCR is not sustainable both on merit and on limitation as well. Consequently, he submitted that the demand of interest and mandatory penalties are also not sustainable and prayed that the impugned order may please be set aside with consequential relief.

9. The Ld. Authorized Representative Mr. Sanjay Kakkar have argued for the Revenue. Relying upon the findings of the Adjudicating Authority, he has submitted that

the demands raised are sustainable and prayed for rejection of the Appeal.

10. We have carefully heard both sides, perused the records, Detailed submissions on reconciliation along with the Chartered Accountant's Certificate and case laws relied upon.

11. The following questions are required to be decided for the purpose of disposal of this appeal.

- i. Whether the trade discounts mentioned in the invoices raised on the customers has been actually passed on to the customers as contended by the Appellant or not and whether the demand of service tax confirmed in the impugned order for the years 2014-15 and 2016-17 is sustainable?
- ii. Whether the appellant is required to reverse an amount in terms of Rule 6(3) (i) of CCR as a percentage of the value of the exempted services or not?
- iii. Whether extended period of limitation is invokable in this case? and,
- iv. Whether the mandatory penalties can be imposed in this case?

12. It is seen from the show cause notice that the demand of service tax has been made on the ground that the discount allowed in the invoices has not been actually passed on to the customers in view of the reason that the P&L account did not contain any expenditure titled as "trade discount allowed". But for the above reason given, the SCN does not support the allegation with any evidence that the discount allowed in the invoice has not been passed on to the customers. No detailed verification conducted to ascertain whether the discounts in fact was passed on or not or whether only the net amount after discount have been paid for by the customers or whether they have paid the gross amount before discount. In the absence of any such concrete evidence, the impugned notice has made demand of service tax merely on the reason that the P&L account does not have an expenditure titled "trade discount allowed".

13. It is seen from the records, that the appellant has filed a detailed reply along with ledger copies and CA certificates to establish that they had in fact passed on the discount to the customers. The Commissioner in the impugned order has considered the said submissions and documents and have concluded that the discount allowed

was passed on except for confirmation of demand of service tax of Rs. 79,50,264/-for the period Oct 14 to Mar 15 and Rs. 33,36,384/- for the year 2016-17.

14. We find that the demand of service tax in the impugned proceedings has been made for the period from Oct 14 to Mar 15, 2015-16 and 2016-17. The demand for the year 2015-16 has been fully dropped in the impugned order by admitting that the discounts allowed in the invoices have been passed on to the customers. The demand for Oct 14 to Mar 15 has been arrived in the SCN by making deductions from the gross total income of Rs. 67,69,63,785/- as reflected in the P&L for the whole year. It is noticed that the appellant have been declaring only the turnover of the taxable services in the return and not the exempted turnover. Therefore, for determining the income for the period Oct 14 to Mar 15, from such gross total income as per P&L, the taxable turnover of Rs. 18,76,44,688/- declared for the half year from April 14 to Sept 14 have been deducted, which resulted in the income of Rs.48,56,43,531/-. In this, the Appellant has submitted that the exempted turnover for the period from April 14 to Sept 14 as well as the discounts allowed for the said period also should have been deducted to arrive at the gross total income of the half year from Oct 2014 to Mar 2015. In effect, the exempted service turnover

and the discounts allowed for the period April 14 to Sept 14 should have been excluded since demand is only for the period from Oct 14 to Mar 15. Therefore, there is an error in arriving at the gross income and treating Rs.48,56,43,531/- as the gross income for the said period from Oct 14 to Mar 15.

15. Further, in order to arrive at the undeclared income of exempted service and the discounts allowed, from the said gross income of Rs.48,56,43,531/- the declared taxable service value of Rs.28,85,11,287/- for the period Oct 14 to Mar 15 has been deducted which resulted in undeclared income of Rs.19,71,32,244/-. The notice has divided this un-declared income into two namely exempted service of Rs.10,05,10,988/- and discounts of Rs.9,66,21,256/- and no basis has been put forth for this apportionment. Accordingly, the notice has proposed to demand tax on such discount value of Rs.9,66,21,256/-.

16. As already observed the gross income of Rs.48,56,43,531/- itself is inclusive of exempted service turnover of April 14 to Sept 14 and discounts pertaining to the said period, which should have been excluded for arriving at the un-declared income for the period Oct 14 to Mar 15 and thereafter from such undeclared income, exempted

service value and the discount value should have been arrived at on some reasonable means and not definitely on adhoc basis.

17. The appellant have provided the trade discount allowed ledger for the year 2014-15 in full and in terms of the same the total discount value passed on is Rs.6,06,01,566/-. As per the appellant, the said discount is the amount allowed in the invoice and same is the value captured in the ledger account also and there is no other discount which has been allowed in the invoice and which has not been captured in the ledger account. The Commissioner in the impugned order has accepted the said discount value as having been passed on to the customers but considering the erroneous discount value of Rs.9,66,21,256/- as the total discount allowed in the invoice and the amount of Rs.6,06,01,566/- as the amount of discount passed on to the customers as per the ledger, has proceeded to demand tax on the diff value of Rs.3,60,19,690/- which is otherwise erroneous. In the absence of any basis as to how such erroneous value of Rs.9,66,21,256/- has been arrived at and in the absence of any specific invoice or invoice wise working or customer wise working to establish that the appellant had indeed allowed discount in the invoice and has not passed on the same to

the customer and has collected the gross amount before discount from such customers, it is highly illogical to uphold such demand on the basis of imaginery figures.

18. Secondly, the Commissioner in the impugned order has divided the actual discount value of Rs.6,06,01,566/- arrived at by the appellant and established with ledgers and CA certificates, as pertaining to two half years namely for the period from April 14 to Sept 14 and from Oct 14 to Mar 15 on pro rata basis, and accordingly, the Commissioner determined the value of discount passed on for the two half of the year as Rs.2,15,56,947/- and Rs.3,90,44,619/- respectively. Further, he observed that the discount amount of Rs.3,90,44,619/- is inclusive of Rs.65,41,819/- pertaining to exempted service and accordingly, arrived at the net discount passed on value for the second half of the year as Rs.3,22,98,731/-. Thereafter, despite the demand of tax in the impugned proceedings is only for the period from Oct 14 to Mar 15, the Commissioner has confirmed the demand of tax on such discount passed on amount of Rs.2,15,56,947/- which has been identified by him as pertaining to April 14 to Sept 14, and on discount passed on amount of Rs.65,41,819/- after he identifies it as relating to exempted service.

19. In view of the above findings, we are not able to justify or uphold the demand of service tax confirmed in the impugned order for the year 2014-15.

20. With regard to demand of tax of Rs. 33,36,384/- confirmed for the year 2016-17 in the impugned order on the discount amount of Rs.2,22,42,557/-, that the appellant have similarly filed ledger accounts and CA certificate along with their reply for the said year also and reconciled the turnover as follows: -

Year	P&L Income	ST3 Income	Difference		Unbilled Revenue
			Exempted (Print Media)	Trade discount	
2015-16	52,46,81,185	32,29,53,570	14,62,53,212	2,61,30,762	2,25,02,743

The Commissioner in para 13.5 of the impugned order have considered the CA certificate and in Para 13.6 have observed as follows: -

"(ii) The assessee is maintaining individual client ledger (from 2015-16 onwards) and the invoices mentioned there are net of discount only, thereby indicating that these discounts have indeed been passed on to their clients. Therefore no service tax is leviable on them.

(iii) The difference on account of 'unbilled revenue' booked in 2016-17 and offered for service tax in 2017-18 as per assessee's admission is not corroborated in the CA certificate. The assessee has also not provided any reconciliation or ledger accounts as proof that service tax has been discharged on these amounts. Therefore, I hold that it is liable to service tax."

21. Before recording the above findings, the said para 13.6 starts as "On perusal of the above certificate and ledger accounts furnished by the assessee, I find the following:". It is clear from the above clause (ii) that the said clause is applicable for both the years namely, 2015-16 and 2016-17 as the Commissioner has recorded a finding that the assessee is maintaining individual client ledger (from 2015-16 onwards) and the invoices mentioned there are net of discount only, thereby indicating that these discounts have indeed been passed on to their clients. Otherwise there is no finding on the discount pertaining to the year 2016-17 separately against the appellant and clause (iii) above also deals with un-billed revenue and not discounts.

22. As per the reconciliation statement of the appellant the discount allowed is Rs.2,61,30,762/- for the year 2016-17 and the Commissioner in Para 13.7 of the

impugned order has recorded the said amount in the table and has observed that the above discount amounts have been passed on to their customers based on the ledger accounts and as indicated in the CA certificate. But in total contradiction to the above finding, in Para 13.8 of the impugned order, the Commissioner has confirmed the demand of tax on the discount value of Rs.2,22,42,557/- as proposed in the SCN without any finding in this regard, which is erroneous and not tenable at all.

23. The appellant has reconciled the turnover figures and has put forth that the discount allowed value is Rs.2,61,30,762/- and the un-billed revenue included in the total income is Rs.2,25,02,743/-. With regard to the discount allowed, the Commissioner has agreed that the said value has already been passed on to the customers and thereby nullifying the ground contained in the SCN for proposing the demand of service tax for the year 2016-17. The appellant have come up with-un-billed revenue particulars in the reconciliation and the CA also has certified that in terms of Accounting Standard 9 (AS9) in order to recognize the expenses incurred during 2016-17 in respect of 4 customers, the appellant has made a provision for un-billed revenue of Rs.2,25,02,743/-in the year 2016-17 and have reversed the said entry on 1.4.2017 in the next year and invoices for such

value has been raised on the said 4 customers with applicable service tax during the year 2017-18. The appellant said to have furnished the copies of the JV made for making such provision and the ledger accounts of the respective sales/service head for the year 2016-17 and the party ledger account of the said 4 customers indicating reversal of the provision made and the subsequent raising of service invoice on the said parties, as Annexure C-3 along with the reply to the SCN (ref Para 8.9 of the reply), which are contained at Page 188 to 194 of Vol II of the paper book. When all the above details are not in dispute and the only issue is about the payment of service tax on such bills raised during the year 2017-18, which is clearly outside the impugned proceedings, the Commissioner has not made any ground for confirmation of demand during the year 2016-17. Notwithstanding the same, the appellants also have furnished a CA certificate dated 01.07.2024 during the final hearing before this Tribunal, in continuation of the earlier certificate dated 20.02.2021, wherein they have provided the details of invoices raised on the 4 customers as against the provision for un-billed revenue made during 2016-17 and they have also certified that applicable service tax has been remitted in respect of such invoices by the appellant. For ease of reference, the Chartered Accountant's Certificate is extracted below which clearly certifies that the discount

shown in the invoices have in fact have been passed on to their customers. The figures as reflected in the Service Tax returns and Financial Statements have been duly reconciled.



Charles & Chandrasekar LLP
Chartered Accountants

I have examined the Profit & Loss account, ledger accounts and other connected records of M/s Challenge PROP: RATHINASAMY SAKTHIVEL PAN(APOPS7500L) No.2, MURALI STREET, MAHALINGAPURAM NUNGAMBAKKAM Chennai 600034 (hereinafter referred as "Challenge or Firm") with reference to the allegations made in the Show Cause Notice No. 03/2020(C) dated 27.05.2020 issued by the Commissioner of GST and Central Excise, South Commissionerate, Chennai. On the basis of examination of the books of accounts produced by the firm, I report that they have received trade discount from Media, Press, Outdoor advertising companies, etc and passed on a portion of Trade discount to their clients. The manner of passing on the discount to their clients and the reconciliation of income during the period covered in the show cause notice are reported below .

2014-15

I hereby certify that during the year 2014-15, the trade discount has been passed on to the customers by allowing it in the sale invoice itself. Payments have also been received from the Customers for the net amount after discount. Such discounts have been duly accounted for in the ledger account titled "Trade Discount Allowed". At the year end, the aggregate of "Trade Discount allowed" reflected as debit balance in the said ledger account has been transferred to Purchase account by way of journal voucher for the purpose of grouping. Both 'Trade Discount allowed' and 'Purchases' are expenditure items only. In view of the above, there is no balance reflected in "Trade discount allowed" ledger account at the year end.

2015-16

We hereby certify that sales invoices to customers have been raised during 2015-16 for net value after allowing the trade discount. Since such practice would underrate the gross sales value and in order to rectify the above invoicing method and to capture the gross sales value & the trade discount allowed, a journal voucher was passed at the year end. By passing a Journal Voucher, all the discounts passed on to customers have been accounted as expenses by debiting the ledger account "Trade Discount Allowed" and increase the sales income by crediting it to the sales ledgers accounts accordingly.

2016-17

We hereby certify that sales invoices to customers have been raised during 2016-17 for net value after allowing the trade discount. Since such practice would underrate the gross sales value and in order to rectify the above invoicing method and to capture the gross sales value & the trade discount allowed, a journal voucher was passed at the year end. By passing a Journal Voucher, all the discounts passed on to customers have been accounted as expenses by debiting the ledger account "Trade Discount Allowed" and increase the sales income by crediting it to the sales ledgers accounts accordingly.

The firm has included an amount of Rs. 2,25,02,743 in the income head by way of a JV on 31st March 2017 towards unbilled revenue in order to recognize the expenses incurred during 2016-17 in respect of 4 customers in accordance with Accounting Standards-AS-9. This amount was debited on 1st April 2017 itself and the firm raised invoices during 2017-18 as and when services were provided to the clients.



Charles & Chandrasekar LLP Chartered Accountants

This Certificate is based on treatment in the Audited Books of Accounts of the respective years This is issued at the request of Assessee as a clarification for the purpose of Service Tax assessment

This is continuation of our audit certificate dated 20.02.2021 We hereby certify that M/S Challenge has raised invoices amounting to Rs 2,25,02,743/- and paid the applicable service tax. The details of the invoices are furnished below for your information.

S.No	Date	Client	Invoice No	Invoice Value ((Rs)
1	01.04.2017	Group M Media India Pvt Ltd	001/2017-18	5198575
2	01.04.2017	Group M Media India Pvt Ltd	002/2017-18	1762950
3	01.04.2017	Group M Media India Pvt Ltd	003/2017-18	1725000
4	01.04.2017	Group M Media India Pvt Ltd	004/2017-18	507150
5	01.04.2017	Group M Media India Pvt Ltd	005/2017-18	1102092
6	01.04.2017	Group M Media India Pvt Ltd	006/2017-18	615825
7	15.04.2017	CSC Computer Education Pvt Ltd	012/2017-18	115000
8	08.05.2017	AGS Entertainment P Ltd	058/2017-18	3314513
9	08.05.2017	CSC Computer Education Pvt Ltd	059/2017-18	358938
10	08.05.2017	CSC Computer Education Pvt Ltd	060/2017-18	1196460
11	12.05.2017	AURAA CINEMAS	087/2017-18	2474685
12	12.05.2017	AURAA CINEMAS	088/2017-18	711149
13	12.05.2017	CSC Computer Education Pvt Ltd	090/2017-18	429877
14	22.05.2017	AURAA CINEMAS	112/2017-18	2990529
		Total		22502743

PLACE : Chennai
DATE : 01ST July 2024

For M/s. CHARLES & CHANDRASEKAR LLP
Chartered Accountants
Firm's Registration No.: 005759S/S000042

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RAMABADRAN
Date: 2024.07.01
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CA. P. RAMABADRAN,
Partner
Membership No.: 021395
UDIN: 24021395BKBHNS4275

24. As rightly contended by the appellant, the demand of service tax, though on the difference between P&L account and ST3 return, is only on the ground that the trade discount reflected in the invoices have not been actually passed on to the customers. From the findings

recorded herein above, and in view of the fact that the Commissioner himself have agreed that the discounts in question have been passed on to the customers, the entire proposal made with regard to demand of service tax fails and the confirmation of demand on the ground that payment of service tax on un-billed revenue during the subsequent year i.e., 2017-18 (which is again outside the impugned proceeding) has not been proved or corroborated and is no ground and the demand is clearly beyond the scope of show cause notice.

25. In para 8 of the SCN, it is alleged that the appellants have suppressed the taxable value from the department. When the Commissioner himself has agreed that the discounts in question have been passed on to the customers, there is nothing to be suppressed by the appellant and hence invocation of extended time limit also cannot be sustained in this case. Further, the demand of the tax has been raised on the basis of financial statements i.e., Profit and Loss accounts, as such no fraud or suppression can be alleged against the appellants. Extended period of limitation is not invokable as held in the case of *Balajee Machinery Vs. Commissioner of CGST & Excise, Patna-II* [2022 (66) GSTL 440 (Tri.-Kolkatta)].

26. In view of the above, for the reasons set out herein above, we hold that the entire demand of service tax confirmed in the impugned order on the ground of not passing on the discounts to their customers is set aside along with interest and penalties.

27. With regard to demand of amount of Rs.3,59,24,783/- under Rule 6(3)(i) of Cenvat Credit Rules, it is seen that the advertisement service through print media is exempted and the appellant does not get any credit on their purchase bills. The issue is relevant only to the extent of input credit if any availed by the appellant for both taxable activity and exempted activity in common. The appellant has put forth that though advertisement in print media is exempted and their purchase invoices pertaining to print media does not carry any service tax, while invoicing their customers they add service charges to the purchase cost and bill them accordingly. While doing so, they do not charge service tax on the purchase cost but they charge service tax on the service charge added by them and they have remitted such service tax to the Department. As such, they have contended that the print media advertising service rendered by them is not absolutely exempted in order to invoke Rule 6(3) as they have paid service tax on the value addition. The Commissioner though records this plea of the appellant in

Para 14.1 of the impugned order, but has neither considered the same nor recorded any finding for it. The claim of the appellant appears to be reasonable atleast to the extent that the revenue cannot pocket the tax in one hand and ask for reversal of credit on the other.

28. Secondly, the appellant has put forth that as per Rule 6(3) of Cenvat Credit Rules, the provider of output service opting not to maintain separate accounts shall follow any one of the three options provided for therein which are: -

- i. pay six percent of the value of exempted services or
- ii. pay an amount determined under sub rule (3A) or
- iii. maintain separate accounts for receipt, consumption and inventory of inputs and pay an amount determined under sub rule (3A) in respect of input services.

29. The appellant has contended that the power to exercise the option is only with the assessee and the dept cannot exercise such option on behalf of the assessee and in this regard, they have placed reliance on the decision of the Hon'ble High Court of Telangana in the case of Tiara Advertising as reported in 2019 (30) GSTL 474 (Telangana) wherein in an identical service providers case it has been

held that Rule 6(3) of Cenvat Credit Rules offers option to an output service provider who does not maintain separate accounts and if such option is not exercised by the service provider, the provision does not contemplate that tax authorities can choose one of the options on behalf of the service provider. The above said decision is also followed by the Hon'ble High Court of Calcutta in the case of *Surya Vistacom Private Ltd.* [2022 (7) TMI 719].

30. The Commissioner in the impugned order had referred to the provisions of Rule 6(3AA) of Cenvat Credit Rules 2004 which reads as under: -

"3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, mutatis-mutandis in terms of clause (c) of sub-rule (3A), with Interest calculated at the rate of fifteen per cent. per annum from the due date for payment of amount for each of the month, till the date of payment thereof."

31. In terms of the above provision, the output service provider is entitled to reverse the proportionate credit in terms of Clause (ii) of sub rule (3). However, the

Commissioner has denied the benefit of the above provision for the mere reason the appellant has failed to work out the liability under clause (c) of sub rule (3A) on monthly basis and instead has worked out the liability on yearly basis but not provided month wise details to arrive at the quantum of amount as per sub rule 6(3AA). ON a perusal of the Rule 6(3A), though the assessee is required to pay provisionally on monthly basis, they have to finalize it by determining the reversal amount annually. As such, when on a post mortem basis, the above rule is applied, it would be proper to determine the reversal amount annually. Therefore, there is nothing wrong in working out the liability on an annual basis and the decision of the Commissioner to deny the benefit of the above rule to the appellant for trivial procedural reasons could not be upheld at all.

32. Following the ratio laid down by the aforesaid High Court decisions and the above rule 6(3AA), we hold that the option to reverse the credit proportionately is available to the appellant. The appellant has provided the details of common credit of Rs.7,75,471/-availed by them before the adjudicating authority in Para 10.10 of the reply with the connected workings and the Commissioner has not raised any objection with regard to the same. According to the appellant, the proportionate reversal to be made is only

Rs.2,05,639/- as put forth by them before the adjudicating authority in Para 11.2 of the reply and the Commissioner has not objected to this working also. On the other hand, the appellant has paid service tax of Rs. 22,97,828/- on the service charges added to the exempted purchase value in respect of such exempted advertising through print media. As already held by us in the earlier paragraphs, since the appellant has paid service tax on value addition, it cannot be construed as fully exempted at all calling for reversal of credit under Rule 6(3) or in the contrary, if the output service provided through print media is to be reckoned as exempted then, the service tax paid on the value addition in respect of such exempted services should be considered as reversal of credit made. Accordingly, the appellant has reversed a credit of Rs.22,97,828/-as against the proportionate reversal amount of Rs.2,05,639/- which would more than suffice for all requirements that are legally cast under Rule 6(3) of Cenvat Credit Rules.

33. It is settled in law that by application of Rule 6(3) what is sought to be reversed is the actual ineligible credit or proportionate ineligible credit and the said provision should not be construed as a mechanism for collecting more money than the ineligible credit in question, which is not supported by the law and not the intent of law.

34. From the above findings recorded by us it can be seen that the appellant has periodically reversed more than what is legally required to be done under Rule 6(3) by them by opting for proportionate reversal. As such, invocation of extended period of limitation with regard to this demand also is not sustainable as the appellant has not evaded any payment of amount and the issue happens to be a mere procedural issue and nothing more.

35. Therefore, we set aside the demand confirmed against the appellant in this regard under Rule 6(3)(i) of cenvat credit rules along with interest and mandatory penalty imposed.

36. In view of the foregoing, we have answered all the questions framed by us above in the negative against the revenue and in favour of the appellant. Accordingly, the demands confirmed in the impugned order along with interest and penalties are set aside and the appeal of the assessee is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 09.05.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)
MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)