IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 41059/2015

(Arising out of Order in Original No. CHN-SVTAX-003-COM-09/2014-15 dated 27.2.2015 passed by the Commissioner of Service Tax, Chennai – III)

Cambata Aviation Pvt. Ltd. **Appellant**
No.12A/14, II Floor, Anna International Terminal
Chennai Airport
Chennai – 600 027.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Smt. Radhika Chandrasekar, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41220/2025

Date of Hearing: 28.10.2025
Date of Decision: 31.10.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant Order in Original No. CHN-SVTAX-003-COM-09/2014-15 dated 27.2.2015 passed by the Commissioner of Service Tax, Chennai – III (impugned order).

2. Brief facts of the case are that during the course of audit of the accounts of the appellant-company by the officers of the Internal Audit Wing of the Service Tax Commissionerate, Chennai, it was noticed that the assessee was providing airport services to various airline companies which use the business premises of Airport Authority of

India (**AAI**) at Chennai Airport, for landing / take-off of their flights. The appellant collected license fees along with service tax for the service rendered, which was subsequently paid to the AAI. However, the appellant did not receive any invoice, bill or challan for these payments. Despite this, the appellant allegedly regularly claimed CENVAT credit on the service tax included in the license fees without proper documentation, violating Rule 9 of the CENVAT Credit Rules, 2004 and Rule 4A(1) of the Service Tax Rules, 1994. After due process the Commissioner confirmed the demand of Rs. 1,12,53,474/- with interest and penalty, which is now under appeal.

3. The learned Advocate Smt. Radhika Chandrasekar appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

3.1 Smt. Radhika Chandrasekar, Ld. Advocate for the appellant submitted that they provide ground handling services for the scheduled and non-scheduled flights of various airlines at the Airport, for which they charged 'License Fee' along with eligible Service Tax by the Airport Authority of India as per the License Agreement dated 11.10.2007. AAl as per their standard practice, stamps the said covering letter as formal acknowledgement of receipt of License Fee and Service Tax which is referred to as 'Acknowledged Remittance Advice’, and on the basis of which the Cenvat Credit in respect of Service Tax was availed. The ld. Counsel submitted that the department was aware of the facts of the credit being availed in this manner as they were audited for the period upto August, 2008. Subsequently, a draft audit report No. 1994/2008-09 was issued to the Appellant which had reference to the Cenvat

Credit taken on Service Tax paid on License Fee paid to AAI along with the remark that the Cenvat Credit documents have been verified and found correct. Therefore, when it is not disputed that the service provided by AAI is an input service for the Appellant and that the Appellant has made the payment of the taxable value along with the service tax, the credit on the same cannot be denied nor can the extended period be invoked. The 'Acknowledged Remittance Advice' duly stamped by AAI ought to be treated as invoice/bill/challan issued by AAI as the document has the details as required under Rule 4A of the Service Tax Rules, 1994 and is a valid tax paid document under Rule 9(f) of Cenvat Credit Rules, 2004 containing:

- Name and Address of Service Provider
- Name and Address of Service Receiver
- The description and value of taxable service
- Service Tax paid on the taxable value

The department has not disputed the fact that the services provided by AAI is an input service for the Ground Handling Service provided by the Appellant. The department has not disputed the fact that Service Tax has been discharged by the Appellant. Therefore, even assuming that the stamped Acknowledged Remittance Advice does not qualify as an invoice, it is merely a procedural irregularity for which substantial right of Cenvat Credit cannot be denied. She placed reliance on the following judgments:

- Commissioner of ST Vs. Hathway Cable & Datacom Pvt Ltd (2019) 369 ELT 714 (Tri-Chennai)

- Bharat Sanchar Nigam Ltd Vs. CCE & ST (2024) 24 Centax 131 (Tri-Chandigarh)

She hence prayed that the impugned order be set aside and the credit be allowed.

3.2 The Ld. A.R. stated that the Adjudicating Authority vide OIO No.09/2014-15 dated 27.02.2015 confirmed the demand along with interest and penalties on the ground that according to Rule 9(1), Rule 9(2) of the Cenvat Credit Rules, 2004 and Rule 4A of the Service Tax Rules, 1994, Credit can be taken only on the basis of serially numbered Invoices/bills/challans issued by the Service provider of the input service with signature of the authorized person and which contains details of service provider, receiver, including their address, description and value of taxable service and the service tax payable thereon. Since such a procedure was not followed credit was correctly denied. She prayed that the appeal may be rejected.

4. We have heard the rival parties and gone through the appeals and written submissions made. We find that the following issues have been raised;

i) The availing of credit was known to the department hence the extended period of demand cannot be invoked.

ii) Substantial right of Cenvat Credit cannot be denied for a procedural irregularity.

5. As regards the issue of time bar we find that the unit was audited for the period upto August, 2008. Subsequently, the draft audit report No. 1994/2008-09 referred to the Cenvat Credit taken on Service Tax paid on License Fee being verified. Hence the question of suppression

of facts would not arise. In **Pushpam pharmaceuticals company Vs Collector of Central Excise Mumbai** [1995 (78) E.L.T. 401 (S.C.)], the Supreme Court examined Section 11A of the Central Excise Act, 1944 which was worded similar to Section 73 of the Finance Act, 1994 and held as follows:

> " 4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, **one of it being suppression of facts**. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso.** Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. **In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression**."
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> (emphasis added)

Hence we are of the opinion that no suppression of facts have been established by revenue and the demand, if any needs, to be limited to the normal period. The question of a punitive penalty does not survive.

6. Secondly, the appellant has taken a plea that substantial right of Cenvat Credit cannot be denied for a procedural irregularity and hence the credit availed must be allowed. We proceed to examine the relevant legal provisions in this regard. Rule 4A of the Service Tax Rules (STR), 1994 deals with the manner in which invoice has to be issued by a service provider. Extract of the relevant rule is reproduced below:-

> "**Rule 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan-**

> (1) Every person providing taxable service shall, not later than thirty 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 authorized by him in respect of taxable service provided or agreed 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 and value of taxable service provided or agreed to be provided; and
>
> (iv) the service tax payable thereon: . . . ."
>
> (emphasis added)

Rule 9 of the CENVAT Credit Rules (CCR) 1994, states.

> RULE 9. Documents and accounts. –
>
> (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely : . . . .
>
> (2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:
>
> **Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit**.
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> (emphasis added)

7. We find that it is not the case of the department that the appellant has not paid service tax but has still taken Cenvat credit. Its revenue's allegation that credit was availed on a document not prescribed under Rule 4A of the STR, 1994. The appellant on the other hand claims that the essential information as required to be contained

in a invoice, bill or challan, is provided for in the 'Acknowledged Remittance Advice' and hence the credit should not be denied. We find favour with the submission made by the appellant since the proviso to Rule 9 of CCR, 1994 itself provides for such a facility and it cannot be denied, if applicable. The Hon'ble High Court of Gujarat in **Vimal Enterprises Vs UOI** [2006 (195) ELT 267 (Guj.), at para 18, held as under;

> 18. Last but not the least. As stated in the Affidavit-in-Reply underlying purpose of the provision, viz., amended Rules and the subsequent Notification and the Circular, is to ensure that the authority is in a position to cross check and verify as to whether inputs have actually borne duty or not. If on facts, it is possible to find out that the transaction is genuine and *bona fide* transaction, the identity of the supplier is established, the document showing duty paid inputs is supported by the facts, and the records of the supplier show that the supplier has purchased duty paid goods before resale and passed on the credit of duty, there is no reason why the benefit should be denied. **Once the object for which a provision is enacted is satisfied merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of Modvat has been framed**. The endeavour must be to ensure that the scheme is made effective and not frustrated. In other words, the goods, which have been subjected, to duty when used as inputs for manufacture of final product, should not be made to bear duty once again as that would have a cascading effect not intended by legislature in so far as the ultimate consumer is concerned. Therefore, even approaching from the view point of ensuring that the object with which the provision has been enacted is satisfied, if the facts of the present case are tested, the answer would be that the petitioner was entitled to of the Modvat credit, the petitioner having done all that was possible within its powers and nothing further remained to be done so far as the petitioner was concerned."
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> (emphasis added)

8. We are hence of the opinion that the ends of justice will be met if the matter is remanded for re-examination of the eligibility of the 'Acknowledged Remittance Advice' to be considered as a valid duty paying document in the light of the proviso to Rule 9 of CCR, 1994. In any case no demand can be sustained beyond the normal period nor is any penalty imposable.

9. We accordingly set aside the impugned order and remand the matter back to the Ld. Original Authority for a decision afresh. The lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the Ld. Commissioner Appeals in completing the process expeditiously and in any case within ninety days of receipt of this order. The appeals are disposed of accordingly.

(Order pronounced in open court on 31.10.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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