

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 52116 OF 2018

[Arising out of the Order-in-Original No. 12/COMMR./ST/BPL-II/2018 dated 24/05/2018 passed by The Principal Commissioner, Customs, Central Excise and Service Tax, Bhopal.]

**M/s Environment Planning &
Coordination Organization,**
Paryawaran Parisar, E-5, Arera Colony,
Bhopal.

.....Appellant

Versus

**The Principal Commissioner, Customs,
Central Excise and Service Tax, Bhopal,**
35-C, Administrative Area, Arera Hills,
Bhopal (M.P.).

....Respondent

APPEARANCE:

Shri Sandeep Mukherjee, Advocate for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the
Department

CORAM:

**HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50954/2025

DATE OF HEARING : 27.03.2025.
DATE OF DECISION : 02.07.2025.

P.V. SUBBA RAO

The order dated 24.5.2018 passed by the Principal Commissioner¹ in which he decided the proposals made in the show cause notice dated 16.5.2016² covering the period October 2012 to March 2015 is assailed in this appeal by Environment

1. impugned order
2. SCN

Planning & Coordination Organization³ in this appeal. In the impugned order, CENVAT credit of Rs. 2,25,22,846/- was denied and ordered to be recovered with interest and penalties. The facts which lead to the issue of the impugned order are as follows.

2. The appellant was providing taxable services such as "Architectural and Consulting Engineering Services" during the relevant period and were registered with the service tax and were paying service tax and availing CENVAT credit on the inputs and input services. It's records were audited and it was found that during the relevant period it availed CENVAT credit of Rs. 2,97,42,811/- of which it had proper documents as per Rule 9 of the CENVAT Credit Rules, 2004⁴ only to the extent of Rs. 72,19,965/- and no documents prescribed under Rule 9(2) were produced before audit in respect of Rs.2,97,42,811/-. All the appellant produced were sanction orders and note sheets to show that it had paid certain amounts to their contractors. CENVAT credit can be availed on the strength of the documents mentioned in Rule 9 of the CCR. Relevant portions of Rule 9 of CCR are reproduced below:

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 :-

(a) **an invoice issued by -**

3. appellant

4. CCR

(i) a manufacturer or a service provider for clearance of -
 (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) **a supplementary invoice**, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

(bb) **a supplementary invoice, bill or challan issued by a provider of output service**, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or

(c) **a bill of entry**; or

(d) **a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post**

Office; or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994:

.....

(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.

3. The appellant could not produce documents as per Rule 9 (1) of CCR on the strength of which it had taken CENVAT credit. The documents which the appellant had produced lacked the essential details specified in Rule 9(2) of CCR. Therefore, the SCN was issued which culminated in the issue of the impugned order.

4. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

Submissions of the appellant

5. Learned counsel for the appellant made the following submissions:

- (i) CENVAT credit was denied to the appellant on the ground that the documents did not contain the Service Tax Registration number of the service provider, the service tax amount was not shown in the documents and the invoices did not bear the name of the appellant.
- (ii) All these defects are curable and have been cured.
- (iii) In respect of the documents where the registration number was not mentioned, the appellant obtained the Service Tax Registration certificates of the service providers. Copies of such certificates are enclosed as Annexure V and VII to the appeal.
- (iv) The invoices which did not contain the name of the appellant were received with covering letters to the appellant and hence the defect has been cured and CENVAT credit should be allowed.
- (v) Where the service tax particulars were missing on the invoices, challans have been produced along with invoices to show that service tax was paid.
- (vi) Omission of the details in an invoice is a procedural lapse for which the substantive benefit cannot be denied.
- (vii) Extended period of limitation cannot be invoked.
- (viii) The appeal may be allowed and the impugned order may be set aside.

Submissions on behalf of Revenue

6. Learned authorized representative for the Revenue vehemently supported the impugned order and submitted as follows:

- (i) The requirements of the invoice or other document to be a valid duty paying document under Rule 9 is a substantive requirement and it cannot be said that the stipulations under Rule 9 are merely procedural.
- (ii) The appellant failed to submit valid duty paying documents during the audit and even thereafter and hence had an intention to avail ineligible CENVAT credit.
- (iii) Therefore, extended period of limitation was correctly invoked.

Findings

7. We have considered the submissions advanced by both sides and perused the records. The undisputed factual position is that the appellant was a registered service provider and was paying service tax and availing CENVAT credit. It has also been filing Service Tax Returns.

8. During audit, it was discovered that the appellant had availed CENVAT credit and when the documents on the strength of which the CENVAT credit was availed were called for, the appellant produced some documents like note sheets and Sanction orders which were obviously not duty paying documents.

9. CENVAT credit is a method by which the assessee can avail credit of duty paid by its suppliers and service providers and utilize it to pay its own service tax. Thus, every rupee of CENVAT credit availed is a rupee less paid in cash as Service Tax. Therefore, it is essential that CENVAT credit is properly taken and for this purpose, CENVAT Credit Rules were framed. They enable the assessee to avail CENVAT credit and also prescribe the

procedure and the conditions for availing CENVAT credit. One of the most important CCR is Rule 9 which stipulates which are the documents on the strength of which CENVAT credit can be taken. Rule 9(1) gives the list of documents on the strength of which CENVAT can be availed. This Rule does not include note sheets and sanction orders. It does include the invoices. Rule 9(2) prescribes the details which the invoice should have to be an eligible document to avail CENVAT credit. In case of service providers, it requires the invoice to be as per Service Tax Rules.

10. Rule 9(2) also considers the possibility that sometimes the invoices could be defective and builds in necessary flexibility in its proviso. It says that even if all the details are not in the invoice, it will still be an eligible duty paying document to take credit subject to two conditions:

- (a) 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 are indicated; and
- (b) the deputy commissioner or assistant commissioner is satisfied that the inputs or input services were received.

11. This Rule itself stipulates what details in the invoice are absolutely essential and the absence of what details can be ignored if the Deputy Commissioner or Assistant Commissioner is satisfied. Evidently, if the essential details are missing the document cannot be a valid duty paying document to take CENVAT credit.

12. The details missing in the disputed invoices were – (a) service tax registration; (b) service tax paid; and (c) name of the appellant as the service recipient. The first of these two are essential and their absence cannot be condoned to consider the invoice a valid document for availing CENVAT credit as per the proviso to Rule 9(2). In their absence, the invoices cannot be said to be valid duty paying documents to avail CENVAT credit. The third viz., the name of the service recipient is not indicated in the proviso to Rule 9(2).

13. The submission of the learned counsel with respect to absence of service tax registration is that the appellant had provided service tax registration certificates separately. His submission is that not mentioning the service tax registration is a curable defect and it has been cured by providing a copy of the service tax registration certificate of the supplier. We cannot agree with this submission because what is curable or condonable and what does not quantify as a duty paying document to avail CENVAT credit is clear and specific in the proviso to Rule 9(2) of the CCR. If the invoice lacks the essential details indicated in the proviso to Rule 9(2), then such a document is not a valid document for availing CENVAT credit. Just as a cheque without the account number cannot be taken as a valid cheque even if the person who signed it has, indeed, a bank account, even if the person who issued the invoice had a service tax registration, the invoice will not become a valid one in the absence of this essential details in it.

14. With respect to the invoices where the details of the service tax paid was missing, it is the submission of the learned counsel that challans showing payment of service tax have been enclosed. We find in the first place that the invoice itself must contain the details of service tax paid as per the proviso to Rule 9(2). The reason is evident. The assessee can only take credit of service tax paid or excise duty paid. If credit is taken on the strength of an invoice, that invoice must indicate how much is the service tax paid. The actual payment of service tax through challans is usually at the end of the month. The total service tax paid through challans and through CENVAT account, etc. are mentioned in the ST-3 returns of the service provider. We have also gone through copies of the challans produced by the appellant. They do not indicate the invoice number and date for which the service tax was paid. Therefore, there is no correlation between the challans evidencing payment of service tax and the invoices. The service provider may have paid some amount as service tax through the challan but whether it pertains to the same invoice is the question. We do not find the correlation. Clearly, the appellant was not entitled to CENVAT credit on invoices where the service tax amount is missing as per the proviso to Rule 9(2).

15. With respect to the invoices where the appellant's name was also not indicated, it is the submission of the learned counsel that the invoices were received with covering letters and the invoices must be read along with the covering letters and the

agreements which the appellant had entered into with the service providers. We find that this is not the scheme as per the CCR. The invoice itself should contain all necessary details for it to be a valid CENVAT invoice.

16. The CCR apply to the appellant as they apply to any other assessee. It is not open to the assessee to take CENVAT credit on the basis of note sheets or sanction orders or invoices which do not have the essential details. The appellant could take CENVAT credit only on the strength of proper and valid documents. It cannot take CENVAT credit on any document which it pleases and then expect the officers to examine its invoices with its agreements, covering letters sent by the service providers, challans which do not indicate the challan number and hence which have no correlation.

17. We therefore, find on merits in favour of the Revenue and against the appellant.

18. As far as the invocation of extended period of limitation is concerned, we find that this can be invoked only in case of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of the Act or Rules with an intent to evade. The appellant was registered and has been filing ST-3 Returns. All the discrepancies were discovered during audit from the appellant's records itself. Had the Range officer done his job and scrutinized the returns in time calling for details as required, the wrongful availment of CENVAT credit would have come to

notice. We, therefore, find that there are no grounds to invoke extended period of limitation. The essential ingredients to impose penalty under section 78 of the Act are the same as the ones for invoking extended period of limitation. We, therefore, also find that the penalty under section 78 of the Act cannot be sustained.

19. In view of the above, the appeal is partly allowed and the demand for extended period of limitation and the entire penalty under section 78 are set aside. Rest of the impugned order is upheld. The matter is remanded to the Principal Commissioner for the limited purpose of re-computing the demand of service tax and interest as above.

(Order pronounced in open court on 02/07/2025.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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