CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50879 of 2024

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM (AUDIT)/02/2022 dated 15.02.2022 passed by the Commissioner of Central Goods & Service Tax, Central Excise and Customs, Raipur]

M/s. Bharat Sanchar Nigam Limited **...Appellant**
Chhattisgarh Circle, Vidhan Sabha Road,
Khamardih, Raipur, Chattisgarh-492005

VERSUS

Commissioner of Central Excise
& CGST – Raipur **...Respondent**
Central GST Bhavan, Tikrapara,
Dhamtari Road, Raipur,
Chhattisgarh - 492001

APPEARANCE:
Shri Jatin Kumar Gaur, Advocate for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 01.10.2025
DATE OF DECISION: **12.11.2025**

FINAL ORDER NO. 51770/2025

DR. RACHNA GUPTA

The present appeal is filed to assail the Order-in-Original No. 02/2022 dated 15.02.2022 vide which the Cenvat credit of Rs. 14,15,497/- has been disallowed along with the proportionate interest and the penalty of the same amount. The facts in brief which culminated into the said order are as follows:

1.1 The appellant is engaged in providing Telecommunication Services. During the audit of the accounts of the appellant for the period April 2014 to June 2017 conducted by the departmental officers during 03/2019 to 11/2019), it was observed that the appellant has availed substantial amount of Cenvat credit on the

capital goods acquired during the said period. However, the appellant failed to furnish the bill/invoices on strength of which the Cenvat credit on capital goods was availed during the Year 2014-15 to 2017-18 (up to 2017).

1.2 Department alleged that the appellant was not eligible for the Cenvat credit availed by them during the said period which is amounting to Rs.19,63,34,447/-. The aforesaid amount of Cevat credit is proposed to be denied to the appellant and to be reversed vide Show Cause Notice No. 15-26/2582 dated 28.04.2020. While adjudicating the said show cause notice the original adjudicating authority observed that the requisite documents, as required in terms of Rule 9(1) of Cenvat Credit Rules, 2004 were being provided by the appellant for the Financial Year 2015-16 and 2016-17. However no such documents could be produced for the period 2014-15. Resultantly, while dropping the major demand for two Financial Years the aforesaid reversal of Rs.14,15,497/- was confirmed. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Jatin Kumar Gaur, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the impugned show cause notice is barred by the period of limitation as it has invoked the period even beyond five years. The impugned order confirming the reversal of Cenvat credit proposed in such show cause notice is liable to be set aside on this ground itself. In addition, it is submitted that the appellant is a PSU/the

governmental body. Hence, there can be no intent to commit any fraud or to suppress any fact. Section 73 (1) of Finance Act, 1994 is wrongly invoked for issuing the show cause notice for the extended period. Confirmation of proposal of such show cause notice is liable to be set aside on this ground also.

3.1 While submitting on merits, it is acknowledged by the learned counsel for the appellant that the appellant cannot produce relevant documents for availment of Cenvat credit for the Financial Year 2014-15. With these submissions, the impugned order is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative mentioned that the plea of limitation is not available to the appellant for the reason that the audit for the Financial Year 2014-15, for the first time, was conducted by the end of the year 2019 only and the show cause notice has been issued in the month of April 2020. It is also submitted that the relevant date is not the date of return of April 2014 to September 2014 i.e. 25.04.2015 as submitted by learned counsel for the appellant but it shall be six months later i.e. March 2015. Seen from that perspective, the show cause notice is wrongly alleged to be beyond the period of 5 years. The extended period of 5 years has rightly been invoked.

4.1 It is further submitted that subsequent to audit there was a situation of Covid Pandemic. However, department still had been prompt while proceeding with the matter. The show cause notice is denied to be barred by period of limitation.

4.2 While submitting on merits, it is mentioned that the appellant has admitted about having no documents of Financial Year 2014-15 based whereupon the Cenvat credit for the said Financial Year was availed by the appellant. This admission amounts to violation of Rule 9 of Cenvat credit Rules as has been appreciated by the adjudicating authority below. The reversal of Cenvat credit for Financial Year 2014-15 is purely based on the lack of admissions/evidence. Hence, there is no infirmity in the order. With these submissions, appeal is prayed to be dismissed.

5. Heard both the sides and perusing the records, I observe and hold as follows:

5.1 It is observed that the appellant has taken plea that the documents for the year 2014-15 got mis-placed by the employees of the appellant, a governmental authority. However, Rule 5 and 5A of Service Tax Rules, 1994 requires every assessee including the governmental authorities to preserve their records for at least five years period and to be produced before audit on demand. The admission of the appellant is apparent violation of the said provision.

5.2 Further, it is observed that the Rule 9 of Cenvat Credit Rules, 2004 uses word "shall". Hence this Rule mandates that 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 several documents as mentioned in sub-clause (a) of the said Rule including invoices as one of those documents. Sub-rule (2) of Rule 9 of Cenvat Credit Rules, 2004 clarifies that unless all the

particulars prescribed under Central Excise Rules, 2002 or service tax Rules, 1994 are contained in the documents of the assessee. The Cenvat credit shall not be allowed to such assessee. The proviso to this section clarifies that the documents mentioned under sub-clause (a) of Rule 9 (1) in strict sence may not be impressed upon provided that there are certain documents containing all such particulars as would have been mentioned in those documents. For the present case, it is an admitted fact that there is no single document with the appellant for the Financial year 2014-15. In light of the said admission and the discussion about the relevant statutory provisions, I hold that the adjudicating authority has committed no error while disallowing the availment of Cenvat credit for want of the documents/invoices/Bills for the relevant period.

5.3 Coming to the plea of limitation, it is observed to be an apparent fact that the audit of the Financial year 2014-15 was conducted for the first time by November 2019. The show cause notice served in April 2020 is well within the period of limitation. These observations are sufficient for me to hold that plea of limitation raised by the appellant does not support the appellant at all. The Show Cause notice cannot be held as barred by limitation.

5.4 Finally coming to the plea that the appellant is a PSU and cannot have the intent to misrepresent or suppress. It is held that the service tax law does not make a distinction between the private sector assessee and public sector assessee and the provisions are equally applicable to both categories of assessees. The law makers have not made any sub provision for one particular category. Hence public sector assessee cannot be held eligible for special

treatment in the matter of payment of tax. As it has already been held by this Tribunal in appellant's own case reported as **2011 (24) STR 435 (Tri.-Del.)** and **Commissioner of C.Ex. & S.T.-LTU, Delhi Vs. Gas Authority of India Ltd. reported as 2019 (366) ELT 941 (Tri-Del.)** wherein it is held that merely because of the fact that assessee is PSU, it is not sufficient to set aside the show cause notice as being barred by time.

6. In the totality of the discussion arrived at as above, I do not find any infirmity in the impugned order under challenge. Same is hereby upheld. Consequent thereto, the appeal is dismissed.

[Order pronounced in the open court on **12.11.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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