

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 3**

SERVICE TAX APPEAL NO. 51387 OF 2018

[Arising out of Order in Appeal No. 14(RK) ST/JPR/2017-18 dated 29.01.2018 passed by the Commissioner (Appeals), & ADG DGGSTI, Jaipur]

**M/S RAJASTHAN STATE ROAD
TRANSPORT CORPORATION**

....APPELLANT

Chomu House, Prithviraj Marg,
C-Scheme, Jaipur, Rajasthan

Vs.

**COMMISSIONER OF CENTRAL EXCISE
AND CUSTOMS, CENTRAL GOODS AND
SERVICE TAX-JAIPUR I**

....RESPONDENT

NCR Building, Statue Circle, C-Scheme
Jaipur, Rajasthan-302005

Appearance:

Shri Sameer Sood, Ms. Monica Choudhary and Ms. Sonali P. Nayak,
Advocates for the Appellant

Shri Aejaz Ahmad, Authorised Representative for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51775 /2025

DATE OF HEARING : 26/08/2025

DATE OF DECISION : 19/11/2025

P.V.SUBBA RAO

The Order in Appeal dated 29.1.2018¹ passed by the Commissioner (Appeals) upholding the order dated 1.3.2017 passed by the Assistant Commissioner in which he confirmed the proposals in the Show Cause Notice dated 29.1.2016² is assailed

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1. Impugned order
 2. SCN

in this appeal by M/s. Rajasthan State Road Transport Corporation³.

2. The appellant, a Government of Rajasthan undertaking, transports passengers in buses which is an exempted service and also provides some taxable services viz., Tour operator service, business auxiliary service, renting of space for advertisement and business support service. The appellant avails CENVAT credit of the inputs and input services under CENVAT Credit Rules, 2004⁴ and uses the credit so availed to pay service tax on the taxable services.

3. During audit of records of the appellant, it was found that the appellant had availed CENVAT credit of Rs. 21,46,127/- during the period April 2011 to March 2014 of the service tax paid on 'Third Party Insurance of the Buses' used for providing exempted service of transport of passengers and used it to pay service tax on its taxable services. Accordingly, the SCN was issued invoking extended period of limitation.

4. The Assistant Commissioner confirmed the recovery of the CENVAT credit under Rule 14 of CCR read with section 73(1) of the Finance Act with interest under Rule 14 read with section 75 of the Finance Act and imposed penalty under Rule 15(3) of the CCR read with section 78(1) of the Finance Act. This order was upheld by the Commissioner (Appeals) in the impugned order.

Submissions on behalf of the appellant

3. The appellant
4 CCR

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

- (i) The department had previously issued an SCN covering the period October 2006 to March 2009 on 22.12.2009 and therefore, the department could not allege that facts were suppressed in this SCN which was for the subsequent period. The department was aware of the fact that the appellant had been taking CENVAT credit of the service tax paid on third party insurance for buses. Reliance is placed on **Nizam Sugar Factory vs Collector of Central Excise, AP⁵**.
- (ii) Copies of the previous audit reports as well as the SCN previously issued were given to the audit. The department was well aware of all facts.
- (iii) The entire period of demand was beyond the normal period of limitation
- (iv) The appellant is a statutory body of the Government of Rajasthan and it cannot be alleged to have any intent to evade.
- (v) The appellant was entitled to the CENVAT credit on third party insurance of buses because it was rendering some taxable services viz., Sale of Time service, Space and Renting of Immovable Property Service and Business Auxiliary Service.
- (vi) The appeal may be allowed and the impugned order may be set aside.

Submissions on behalf of the Revenue

6. Learned authorized representative for the Revenue vehemently supported in the impugned order and asserted that it calls for no interference.

Findings

7. We have considered the submissions advanced by both sides and perused the records. The undisputed position is that the appellant had availed CENVAT credit of the Service tax paid on the third party insurance of buses and that these buses were used to render transport of passengers service which was exempted. The appellant had also rendered some other taxable services. The submission of the learned counsel for the appellant is that since the appellant was rendering some taxable services, it was entitled to take CENVAT credit of the service tax paid on the third party insurance of buses.

8. This submission of the learned counsel is due to complete misunderstanding of the law. As per Rule 3 of the CCR, a manufacturer or producer of final products or a provider of output service shall be allowed to take credit of any duty or service tax paid or paid on any input or capital goods received in the factory of manufacture of final product and any input service received by the manufacturer of final product or by the provider of output services. So, to take CENVAT credit, the amount must be duty paid on inputs or capital goods or service tax paid on input services. In this case, we are concerned with only the input service. According to Rule 2(I) of the CCR 'input service' means any service used by a provider of output service for providing an

output service (insofar as service providers are concerned). As per Rule 2 (p) of CCR output service is one on which service tax has to be paid.

9. Sometimes, the same person or entity may provide both taxable services (which qualify as output services) and exempted services (which do not qualify as output services). **Rule 6(1) of the CCR** clarifies that **CENVAT credit shall not be allowed on such quantity of** input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or **input service as is used** in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or **for provision of exempted services** and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service. The submission of the learned counsel that since the appellant was providing some taxable services, it was entitled to take CENVAT credit of the service tax paid on third party insurance of buses deserves to be rejected and is rejected. The buses were being used to provide transport of passenger service which was exempted. Therefore, in terms of Rule 6(1) of CCR, the third party insurance is an input service for this exempted service and therefore, no CENVAT credit was admissible on the service tax so paid.

10. As far as the limitation is concerned, the undisputed legal position is that in order to invoke extended period of limitation or to impose penalty under section 78 of the Finance Act, one of the following elements must be present:

a) Fraud;

- b) Collusion;
- c) Wilful mis-statement;
- d) Suppression of facts;
- e) violation of the Act or Rules with intent to evade.

11. The above provisions also apply *mutatis mutandis* to recovery of wrongful CENVAT credit taken. In this case, since all facts were known to the department and SCN had also been issued by the department for the previous period, there was no suppression of facts. The Range officer could have properly scrutinized the ST-3 returns, calling for information as required and issued SCNs within time.

12. The entire demand is hit by limitation. The impugned order cannot, therefore, be sustained on limitation and needs to be set aside.

13. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced on **19/11/2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

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