CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 1902 of 2012
(Arising out of **Order-in-Appeal** No.19,20,21,22,23/2012 (H-II) S.Tax dated 22.03.2012 passed by Commissioner of Customs & Central Excise & Service Tax (Appeals-II), Hyderabad)

AMD Research & Development Center India Pvt Ltd., .. **APPELLANT**
Mr. Nagendra K,
Plot No.2/A, 8-2-269/10,
Trendset Towers,
Road No. 2, Banjara Hills,
Hyderabad,
Telangana – 500 034.

VERSUS

Commissioner of Central Excise and Service Tax Hyderabad - II .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Deepak Kumar Jain, Chartered Accountant for the Appellant.
Shri V.R. Pavan Kumar, Authorized Representative for the Respondent.

CORAM: **HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30392/2026

Date of Hearing: 13.04.2026
Date of Decision: 23.07.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed by M/s AMD Research & Development Centre India Pvt Ltd., (hereinafter referred to as appellant) against the impugned order dated 22.03.2012, whereby, the Commissioner (Appeals), upheld the rejection of a part of the refund claim filed under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 5/2006 – CE (NT).

2. The fact, in brief, is that the appellant is engaged in providing information Technology Software Services, which are exported without payment of Service Tax. During the relevant period, namely January 2010 to March 2010, the appellant accumulated Cenvet Credit of input services and filed a refund claim of the unutilized credit. The Original Authority partly sanctions the refund while rejecting certain amounts. The Commissioner (Appeals), upheld the rejection. Hence, the present appeal.

3. Learned Chartered Accountant appearing for the appellant submitted that the rejection survives under 3 heads. Firstly, refund of Cenvat Credit amounting to Rs. 2,42,39,076/- pertaining Service Tax paid under Reverse Charge Mechanism has been denied. Secondly, the refund has been computed by applying the formula on the closing balance instead of the gross eligible Cenvat Credit, thereby resulting in excess rejection of Rs. 11,16,153/-. Thirdly, refund of Rs. 3,11,450/- has been rejected on procedural grounds relating two invoices.

4. It is submitted that Service Tax under Reverse Charge had been discharged in March, 2010 much prior to issuance of the Show Cause Notice. Credit was rightly availed on the basis of TR-6 challans under Rule 9(1)(e) of the Cenvat Credit rules, 2004. Rule 9(1)(bb), relied upon by the Department, was introduced only with effect from 01.04.2011 and is perspective in operation. Even otherwise, Rule 9(1)(bb) applies only to supplementary invoices issued by a provider of output. Service and not to Service Tax paid by a recipient under Reverse Charge.

5. Learned Chartered Accountant further submits that Rule 9(1)(e) specifically recognizes challan evidencing payment of Service Tax by the person liable to pay tax under Reverse Charge as a valid document for

availing credit. Therefore, denial of refund by invoking Rule 9(1)(bb) service legally not sustainable. In support of the above proposition, reliance has been placed on the decisions in A. Schulman Plastic India Pvt Ltd., Vs Commissioner of Central Excise & Service Tax, Vadodara II [(2025) 37 Centax 402 (Tri.-Ahmd)], Madura Micro Finance Ltd., Vs Commissioner of GST & Central Excise, Chennai [(2025) 37 Centax 401 (Tri.-Mad)], Pacific Harish Industries Ltd., Vs Commissioner of Central Excise & Service Tax, Surat [Final Order no.A/11904/2019] dated 10.10.2019 (CESTAT-AMD)], Nissan Motor India Pvt Ltd., Vs CST, Chennai [(Final Order No. 40344-40345/2019) dated 21.2.2019 – CESTAT Chennai], Polygenta Technologies Ltd., Vs Commissioner of Central Excise, Nasik – I [2018-TIOL-320-CESTAT-MUM], CCE, Salem Vs JSW Steels Ltd., [2018 (8) G.S.T.L. 153 (Mad)], CESTAT, Hyderabad-IV Vs Virtusa India Pvt Ltd., [2017-TIOL-1675-CESTAT-HYD], Hritik Exim Vs CCE, Hyderabad-IV [2017 TIOL-1256-CESTAT-HYD)], CCE, Chennai Vs Viki Industries Pvt Ltd., [2011 TIOL-769-CESTAT-MAD)], wherein, it has consistently been held that Service Tax paid under Reverse Charge is governed by Rule 9(1)(e) and not by Rule 9(1)(bb) of the Cenvat Credit Rules, 2004.

6. On the issue of computation, it is submitted that Notification NO. 5/2006 requires the export turnover ratio to be applied on the gross Cenvat Credit earned during the quarter and not merely on the closing balance. By applying the formula on the closing balance, the Adjudicating Authority has erroneously reduced the eligible refund by Rs. 11,16,153/-.

7. Regarding procedural rejection of invoices, it is submitted that all invoices have now been produced before the Tribunal as part of the paper

book. Therefore, no substantive benefit can be denied merely on technical or procedural grounds.

8. The Learned Authorized Representative reiterates the finding contained in the impugned order and submits that the rejection is proper in law.

9. We have carefully considered the revival submissions and perused the records.

10. The principle dispute concerns admissibility of Cenvat Credit of Service Tax paid under Reverse Charge. It is undisputed that the appellant had discharged Service Tax through TR-6 challans in March, 2010 and thereafter availed credit on the basis of those challans.

11. Rule 9(1)(e) of the Cenvat Credit Rules specifically recognises a challan evidencing payment of Service Tax by the person liable to pay tax under Reverse Charge as a prescribed document for availing credit. The language of the Rule leaves no ambiguity that such challans constitute valid document for availment of credit. The Department has denied the refund by invoking Rule 9(1)(bb). However, we find considerable force in the applicant's contention that Rule 9(1) (bb) was introduced only with effect from 01.04.2011. The refund period involved in the present appeal is January, 2010 to March, 2010. Consequently, the said provision is not applicable to the period in dispute. Even otherwise, Rule 9(1)(bb) deals with supplementary invoices, bills or challans issued by a provider of output service. In the present case, the appellant is not claiming credit on the basis of any supplementary invoices issued by a service provider on the basis of challans evidencing payment of Service Tax under Reverse Charge. Therefore, the very foundation of the Department's reasoning is legally

erroneous. The above interpretation stands consistently affirmed by the decisions in Polygenta Technologies Ltd., supra, Pacific Harish Industries Ltd., supra, Nissan Motor India Pvt Ltd., supra, Madura Micro Finance Ltd., supra, A Schulman Plastic India Pvt Ltd., supra, Virtusa India Pvt Ltd., supra, Viki Industries Pvt Ltd., supra, wherein, the Tribunal has uniformly held that the credit taken on the basis of TR-6 challans under Rule 9(1)(e) cannot be denied by invoking Rule 9(1)(bb) respectfully following above precedents, we hold that denial of refund relating to Cenvat Credit of Rs. 2,42,39,076/- on the ground that Rule 9 (1)(bb) applies is not sustainable in law. The relevant para of decision Polygenta Technologies Ltd., supra, as thus:

> "I have gone through the rival submissions. I find that the appellant had paid Service Tax on reverse charge basis on the service received from abroad. The credit was availed on the basis of the challan by which the Service Tax was paid. Rule 9 reads as follows:-
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> .....
>
> (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 willful 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.
>
> .....
>
> (e) achallan evidencing payment of Service Tax by the person liable to pay Service Tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) or rule 2 of the Service Tax Rules, 1994.
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> 5. From the above, it is apparent that Rule 9(i)(bb) is applicable to supplementary invoice, bill or challan issued by provider of output service and Rule 9(i)(e) is applicable, inter alia, to a person liable to pay Service Tax under Rule 291)(d) of Service Tax Rules, 1994. It is apparent that the appellant is not service provider and therefore Rule 9(i)(bb) would not be applicable to them. The appellant is paying Service Tax on reverse charge basis in terms of Rule 2(1)(d) of Service Tax. Rules, 1994 and therefore credit can be availed in terms of Rule 9(i)(e) of Cenvat Credit Rules. Since Rule 9(i)(bb) is not applicable to the appellant, the credit cannot be denied."

12. Coming to the second issue relating to computation of refund, we find that the appellant has demonstrated through the working sheet that the Adjudicating Authority services applied the export turnover ratio on the closing balance instead of the gross eligible credit earned during the quarter. The computation adopted by the authority is inconsistent with the formula prescribed under Notification No. 5/2006. Consequently, excess rejection of Rs. 11,61,530/- has resulted. We accordingly hold that the refund requires re-computation by applying the statutory formula correctly on the eligible credit earned during the relevant quarter.

13. With regard to rejection of Rs. 3,11,450/- on grounds of alleged non-submission of invoices, we note that the appellant has placed the invoices on record before this Tribunal. Refund cannot be denied merely on technical grounds when the substantive eligibility is otherwise established. The Original Authority shall verify the invoices and grant consequential relief if they satisfy the statutory requirements.

14. In view of the above discussions;

(i) The rejection of refund of Rs. 2,42,39,076/- relating to Service Tax paid under reverse charge is set aside;

(ii) The rejection of Rs. 11,16,153/- arising from incorrect computation is set aside, with a direction to re-compute the refund strictly in accordance with Notification No. 5/2006;

(iii) The rejection of Rs. 3,11,450/- on procedural grounds is remanded to the Adjudicating Authority solely for the verification of the invoices already produced by the appellant, and upon verification, the consequential refund shall be granted.

15. Therefore, the impugned order is accordingly set aside to the above extent. The appeal is allowed partly as mentioned above.

(Pronounced in the open court on 23.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha