

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

**Court No. 2**

**Excise Appeal No. 75679 of 2020**

(Arising out of Order-in-Appeal No. 11/HAL/CE/2020-21 dated 02.11.2020 passed by Commissioner of CGST & Central Excise (Appeals-II), Kolkata.)

**M/s. Uniglobal Papers Pvt. Ltd.**

(Mouza-Junglekhas, J. L. No.-395, P. O.-Jhargram, Dist. Paschim Medinipur,  
Pin-721507)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Haldia**

(7<sup>th</sup> Floor, M. S. Building, Customs House, Kolkata-700001)

**Respondent**

**APPEARANCE :**

Shri N. K. Chowdhury, Advocate for the Appellant

Shri S. K. Dikshit, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO.77963/2025**

Date of Hearing : 24 December 2025

Date of Decision : 24 December 2025

**PER DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

The present appeal is filed assailing the Order-in-Appeal No. 11/HAL/CE/2020-21 dated 02.11.2020 vide which the appellant is denied availment of Cenvat Credit on the amount of Service Tax paid by the appellant/recipient of Business Auxiliary Service by a commission agent.

2. The appellant herein is otherwise holder of Central Excise Registration for manufacture of excisable goods namely Duplex Paper. The appellant had engaged several sales agent/commission agents for order procurement and sale of their manufactured product. Those

service providers have raised the bills for commission charges. The department found that being the service provider that commission agent was required to pay Service Tax on the amount of commission charged for rendering Business Auxiliary Service (BAS) to the appellant, the service being not covered under the Notification No. 30/2012 dated 20<sup>th</sup> June 2012 (Reverse Charge Mechanism for Service Tax liability). In view of the said observations, department alleged that the appellant had knowingly and deliberately availed and utilized irregular import service credit of the Service Tax paid by them despite being a service recipient. With these observations, the Cenvat Credit total amounting to Rs. 2,37,115/-, as was availed and utilized regularly by the appellant during the financial year 2016-17, is proposed to be disallowed vide Show Cause Notice No.02/2018-19 dated 10/05/2018 along with the interest at appropriate rate and the proportionate penalties. The said proposal was initially confirmed vide Order-in-Original No.07/Demand/CE/KGP/CGST/19-20 dated 03.03.2020. The appeal against the said order has been rejected vide the impugned Order-in-Appeal dated 02/11/2020. Being aggrieved, the appellant is before this Tribunal.

3. I have heard Shri N. K. Chowdhury, Advocate for the appellant and Shri S. K. Dikshit, Authorized Representative for the Respondent.

4. The Learned Counsel for the appellant has made two fold submissions by challenging the impugned order first on the ground of limitation and secondly on the ground of merits. While submitting on limitation, the Show Cause Notice is alleged to be barred by time. The Learned Counsel submits that the service tax Returns were being regularly filed in time showing payment of 100% service tax by the appellant/ service recipient on the amount of commission being paid by the appellant to its commission agents. But the authorities had failed to scrutinize the same at the relevant time. The Cenvat Credit for the Financial Year 2016-17 was proposed to be denied by the Show Cause Notice in May 2018. Since the Show Cause Notice was not issued in the

requisite period of one year, the entire demand is hit by the grounds of limitation. The order under challenge is liable to be set aside on this technical ground.

5. While submitting on the merits, Id. Counsel mentions that since the appellant has discharged the 100% service tax liability, the appellant became eligible to avail and utilize the input credit tax/Cenvat Credit on the amount of Service Tax paid by the appellant. Hence the Adjudicating Authorities below have committed an error while denying the availment of credit to the taxpayer/ appellant. The decision in the case of **Riya Travel & Tours (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-2020 (40) G.S.T.L. 321 (Tri.-Mumbai)** is relied upon. Appeal is accordingly, prayed to be allowed.

6. While rebutting the above submissions, Id. AR has impressed upon the Cross Objections as have already been filed by the Department to counter the 'Grounds of Appeal' shut up of the present appeal memo. The Learned Counsel for the appellant acknowledges receiving the Cross Objections however, waived for filling any reply to the same. The Learned AR while impressing upon those Cross Objections submitted that the appellant admittedly was not liable to pay Service Tax, he being the service recipient and the Business Auxiliary Service being not covered under Reverse Charge Mechanism notification. In addition, it is submitted that admittedly, the appellant availed Cenvat Credit based on GAR-7 Challan. The said document is not the relevant document in terms of Rule 9(1)(f) of Cenvat Credit Rules, 2004. The bill/invoices issued by the provider of the BAS also do not mention anything in respect of service tax payable which was also must for the availment of credit on such documents as per the provision of Rule 9(2) of the Cenvat Credit Rules. Resultantly, the Adjudicating Authority have committed no error while denying the availment and utilization of the Cenvat Credit to the appellant. The Learned AR also brought to the notice that the period of limitation was enhanced to two years with effect from 14<sup>th</sup> May 2016. Thus the entire period shall not

be the extended period. Based on these submissions the appeal is prayed to be dismissed.

7. Having heard the rival contentions of both the parties and perusing record of appeal memo, findings on both the counts are as follows:-

(i) **Finding with respect to the Show Cause Notice whether it is barred by time or not:**

It is observed that the period for which the Cenvat Credit availment has been denied is with effect from April 2016 to September 2016. Apparently and admittedly, the appellant was filing regularly Monthly Returns after availing and utilizing the Cenvat Credit. Hence the question of any suppression and misrepresentation on part of appellant does not at all arise. It is settled position of law that the extended period of limitation is not invocable when the assessee declares complete facts by way of filling regular returns. In the present case, the department has not alleged about the incomplete facts to have been mentioned in the Service Tax Returns. Department can invoke extended period only in case of Suppression/ Misrepresentation of facts or fraud etc. But there is no evidence produced by the department to prove existence of any of such circumstances. As already observed above that the appellant was regularly filling the Returns, it is held that the extended period was not invocable. I draw support from the decision in case discharge of **Accurate Chemicals Industries Ltd. Vs. Union of Inda-2015 (324) ELT 453 (All.)**. It is further observed that the period of limitation was enhanced to two years with effect from 14<sup>th</sup> May 2016. The Show Cause Notice in the present case is dated 10<sup>th</sup> May 2018 issued for the period April 2016 to March 2017. It becomes clear that the demand with effect from May 2016 is well within the period of limitation. The extended period demand pertains only for the month of April 2016. In the light of the above discussion, the

demand for said month is held to be barred by time hence, is hereby set aside.

**(ii) Finding with respect to the demand covered under the normal period vis-à-vis merits of the case:**

It is observed to be the admitted fact that the appellant had paid the entire service tax on the amount of commission, paid for receiving the Business Auxiliary Service. No doubt, the appellant being the service recipient was not liable to pay the said Service Tax, BAS not being the service mentioned under Notification NO. 30/2012 demanding Tax by the service recipient under Reverse Charge Mechanism. However, it is apparent from the invoices raised by the service provider/commission agent of the appellant that the said service provider has not charged any Service Tax. But the service( BAS) is taxable, the appellant has undertaken the responsibility to pay to the Government exchequer the amount of Service tax on the amount of consideration/ commission paid for the said service. As per the Cenvat Credit Rules anyone who pays the Service Tax is eligible to avail Cenvat Credit of the tax paid. No doubt that the tax is to be paid by the proper person prescribed under the statute (section 68 of Finance Act) but it is also the statutory mandate that one who pays tax becomes eligible to avail and utilize the cenvat credit of the tax paid (Rule 3 of Cenvat Credit Rules). Apparently there has occurred no loss to the government exchequer. Hence I hold that appellant, being the tax payee, has rightly availed the credit of the tax paid.

8. I further observe that the Adjudicating Authorities have denied availment of cenvat credit also for the reason that same has been availed based on GAR-7 Challan. Apparently GAR-7 Challan is not the document mentioned in Rule 9 of the Cenvat Credit Rules, 2004, based whereupon Cenvat Credit can be availed. However, in terms of proviso to Rule 9(2) of the Rules, any other document, if suffice for all the contents of invoice, can entitle the tax payee to avail the Cenvat Credit.

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GAR-7 Challan is not on record and it is not the case of the department that said challan does not contain the complete particulars as are required under Rule 9 of the Rules. Hence I refrain myself to hold that the GAR -7 Challan was ineligible document for availing Cenvat Credit. Support is drawn from the decision of **Riya Travels & Tours (supra)** as is referred on behalf of the appellant. Hence it is held that the order denying availment of cenvat credit and utilization thereof by the appellant/ taxpayer, even for the normal period is not sustainable. The order under challenge is therefore liable to be set aside even for the normal period from May 2016 to March 2017

9. In the light of entire above discussion on both the counts, I do not find any loss to the government exchequer nor any irregularity in the modus operandi adopted by the appellant. Hence the order under challenge is hereby set aside and appeal is hereby ordered to be allowed.

(Dictated and pronounced in the open court.)

**Sd/-**  
**(Dr. Rachna Gupta)**  
**Member (Judicial)**

Pooja

