IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75964 of 2017

(Arising out of Order-in-Original No. 133/Commr/ST-II.Kol/2016-17 dated 27.02.2017 passed by the Commissioner of Service Tax-II Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. Computer Point Ltd. **: Appellant**
1/1A, Dr. Martin Luther King Sarani,Kolkata-700 017

VERSUS

The Commissioner of CGST & Central Excise, Kolkata **: Respondent**
Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107

APPEARANCE:

Shri S. K. Goyal, Chartered Accountant for the Appellant
Shri S. Dutta & MS. K. Kalpana, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75457/ 2026

DATE OF HEARING: 11.03.2026
DATE OF PRONOUNCEMENT: 30.03.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s Computer Point Ltd, 1/1A. Dr. Martin Luther King Sarani, Kolkata -700017 (herein after referred as the appellant) are registered with the Service Tax department for providing & quot; Business Auxiliary service & quot;.

1.1. On scrutiny of the ST-3 returns filed by the appellant, it was noticed that the appellant did not show any amount towards their service tax liability and they have not shown any payment particulars. The officers observed that the appellant have availed irregular Cenvat credit on input services, without receiving any input services. Accordingly, investigation was initiated against the appellant by way of issue of summons.

1.2. Scrutiny of the documents recovered during the investigations revealed the following:

- M/s Computer Point Ltd have availed input tax credit mainly on the basis of invoices issued by M/s Jayshree Trading Co(Reg No.- AAACC2187PSD002) & amp; M/s Shree Shyam Impex (Reg No.- BAIPS1968LSD001).

- M/s Jayshree Trading Co & M/s Shree Shyam Impex are registered with the Service Tax-I Commissionerate(erstwhile ST Divn-1)

- On verification from erstwhile Service Tax Division-I, it was noticed that both M/s Jayshree Trading Co & M/s Shree Shyam Impex have neither submitted ST-3 returns nor paid any service tax during the period 2010-11 to 2012-13.

- Search of the premises at 36, Maharshi Debendra Road, Kolkata 700 006, of M/s Jayshree Trading Co. revealed that there was no such firm in the name & style of M/s Jayshree Trading Co existed in that address. The caretaker, Shri Prithvi Nath Singh and Mr Jai Kishan Saraf, Secretary, Akash Ganga Flat Owner's Association of 36, Maharshi Debendra Road, Kolkata 700 006 have confirmed the non-existence of any firm in the name of M/s Jayshree Trading Co, in the said address.

- Search of the premises at 16, Balai Singhi Road, Kolkata-700009, revealed that there was no such firm in the name & style of M/s Shree Shyam Impex existed in that address. The proprietor Shri Satyajit Shaw of the said Firm could not be located. A copy of voter list of 16, Balai Singhi Lane, Kolkata 700 009 (RUD-5) obtained from the local KMC councilor Smt Sadhana Bose, showed that there was no existence of Shri Satyajit Shaw in that premise.

- Verification of the bank account bearing number 14000200009870 held by M/s Computer Point Limited, Room No. 1A & 1B, Ballygunge Park Road, Kolkata- 100019 in FEDERAL Bank revealed that crores of rupees have been debited in the account of M/s Computer Point Limited in the year 2012-13 by issuing Cheques to M/s Jay Shree Trading & M/s Shree Shyam Impex. Bank statements of M/s Computer Point also revealed that they made payment to both M/s Jayshree Trading Co & M/s Shree Shyam Impex in the said period.

- M/s Computer Point submitted copies of 34 invoices issued by M/s Jayshree Trading Co involving service tax of Rs.52,34,303/- & copies of 31 invoices issued by M/s Shree Shyam Impex involving Service Tax of Rs.85,65,471/- The said invoices were issued in 2010-11 & 2011-12. They did not submit any invoice for the year 2012-13.

- On verification from VCES cell of Service Tax Commissionerate, Kolkata, it was found that both M/s Jayshree Trading Co & M/s Shree Shyam Impex also did not avail the amnesty scheme

1.3. From the verifications conducted by the officers, it appeared that both the assessee M/s Jayshree Trading Co & M/s Shree Shyam Impex have issued only Invoices enabling the appellant to avail cenvat credit, without actually rendering any service to the appellant. Accordingly, it has been alleged that the appellant have contravened the provisions of Rule 3(1) of Cenvat Credit Rules, 2004 read with Rule 9(1) & Rule 9(6) of the said Credit Rules.

1.4. On the basis of the above said allegations, a Show Cause Notice No. V(15)38/ST-II/Adjn/Commr/16/459 dated 12.04.16 was issued to the appellant proposing recovery of the irregularly availed Cenvat credit amounting to Rs.2,18,59,482/ along with interest and penalty. The said notice was adjudicated by the Commissioner of Service Tax-II, Kolkata-700107, vide Order-in-Original No. 133/Commr/ST-II.Kol/2016-17 dated 27.02.2017, wherein the Ld. Commissioner has ordered for disallowance of the irregularly availed Cenvat credit on the basis of fake documents. The impugned order also demanded interest and imposed equal amount of the irregular credit availed as penalty under section 78 of the Finance act, 1994. Rs.70,500/- Late fee has also been confirmed under Rule 7C read with section 70(1) of the Finance Act. Aggrieved against the disallowance of the credit along with interest and imposition of penalties, the appellant has filed this appeal.

2. The Appellant submits that they have received input services from M/s. Jayshree Trading Co. and M/s. Shree Shyam Impex. On the basis of the invoices raised by these parties, they have availed credit to the tune of Rs. 2,18,59,482/-. However, the department alleges that there was no existence of the aforesaid two service providers at the declared addresses during the course of investigation. It has also been alleged that the said service providers have neither submitted any ST-3 Returns nor paid any service tax for the period in dispute. Therefore, the impugned order held that the documents issued by those entities cannot be considered as valid document in terms of Cenvat Credit Rules, 2004.

2.1. In this regard, the appellant submits that the department has not brought in any evidence to substantiate the allegation that the appellant has not received the service. The appellant submits that they have taken credit on the basis of the valid invoices and made payments to the service provider including Service Tax . The allegation of the department is that when the investigation officers visited the premises of the service providers in June 2014, the service providers were not in existence at their registered addresses. The appellant submits that they have received the services of supply of man power for the purpose of development of software required for them, during the period October 2010 to March 2013 and the service providers were in existence at that time. Later, if the officers found that they were not available in their registered addressed, it cannot be alleged that they have not received the services at all. The service providers have raised the invoices including service tax and they have paid the gross amount inclusive of service tax to the service providers through banking channels. Accordingly, the cenvat credit of Rs.2,18,59,482/- availed by them cannot be considered as irregular availment of credit. The appellant submits that the Cenvat credit legally availed by them cannot be denied on account of non-existence of the service providers in their registered office and non-payment of service tax so collected by the aforesaid input service providers.

2.2. The appellant cited the Notification No. 10/2007 – Central Excise (NT) dated 01.03.2007 whereby subrule 3(b) has been omitted from Rule 9 which meant that person availing Cenvat Credit was not responsible to ensure that service tax paid to provider of input taxable service has been deposited by such person with the service tax department. The Appellant submits that by no way they could detect the malafide intention of the service provider where the appellant has acted in good faith and has availed Cenvat Credit in accordance with the provision of the Act and Rules. Thus, the appellant prayed for setting aside the impugned order disallowing the cenvat credit along with interest and penalties.

2.3. In support of their contention that Cenvat credit cannot be denied on the ground that the dealer who supplied the goods are not available in the registered premised later, the appellant has relied on the following decisions:

(i) *COMMR. OF C.EX. & amp; CGST, UDAIPUR Vs PREMJAIN ISPAT UDYOG PVT. LTD. 2022 (381) E.L.T. 533 (Tri.-Del.)*

(ii) COMMISSIONER OF C.EX., BANGALORE-I Vs BHUWALKA ALLOYS PVT. LTD. 2012 (281) E.L.T. 213 (Kar.) [12-04-2011]

(iii) COMMISSIONER OF C.EX., PONDICHERRY Versus SPICPHARMACEUTICALS DIVISION 2006 (199) E.L.T. 686 (Tri.-Chennai)

2.4. The appellant has contested the demands confirmed in the impugned order on the ground of limitation also. The appellant submits that the SCN has been issued after more than 3 years of conduct of Enquiry by the officers of the Service Tax II Commissionerate. In this regard, the appellant submits that the entire demand has been calculated on the basis of documents submitted by them. They have declared all the figures in the ST-3 returns and same has been taken by the department for raising and confirming the demand. Thus, the appellant submits that extended period of limitation cannot be invokable in this case as per section 73(1) of the Finance Act 1994.

3. The Ld. A.R. reiterated the findings in the impugned order. He submits that the investigation conducted by the officers established that the service providers M/s. Jayshree Trading Co. and M/s. Shree Shyam Impex were not in existence. Thus, the investigation established that the service providers have only issued invoices without rendering any services. Thus, the Ld. A.R. submits that the credit availed by the appellant was irregular and hence the same was rightly disallowed by the adjudicating authority. Accordingly, he justified the demands confirmed in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We find that the allegation in the impugned order is that the appellant has availed Cenvat Credit on the basis invoices raised by M/s Jayshree Trading Co. & M/s Shree Shyam Impex during the period 2010-11 to 2012-13 and utilized the same towards discharged of their service tax liability of Rs.2,18,59,482/- for the said periods. However, the investigation conducted by the officers revealed that these invoices were fake as they were raised from the non-existing office premises of the aforesaid two input service providers who neither submitted ST-3 Returns nor paid service tax during the period under dispute. It was also verified and found that the said service providers have not availed the Amnesty scheme under VCES. Therefore, the Ld. adjudicating authority has concluded that the said invoices were not eligible documents for availing Cenvat credit in terms of Rule 3, 4 and 9 of the Cenvat Credit Rules 2004 as amended read with Section 68 of the said Act.

5.1. We find that the appellant has availed Cenvat Credit on basis of the invoices issued by the M/s. Jayshree Trading Co. & M/s. Shree Shyam Impex. We find that the department has not brought in any evidence to substantiate the allegation that the appellant has not received the service. We find that the appellant have taken credit on the basis of the valid invoices issued by the service providers. It is not disputed that the appellant has made payments for the amounts mentioned in the invoices raised by the service provider, which is inclusive of Service Tax. The allegation of the department is that when the investigation officers visited the premises of the service providers in June 2014, they were not in existence at their registered addresses. In this regard, we observe that the appellant have received the services of supply of man power for the purpose of development of software required for them, during the period October 2010 to March 2013 and the service providers were in existence at that time. The service providers were registered with the department and their service tax registration was active in the departmental portals during the period when the input services were received by the appellant. Later, if the officers found that they were not available in their registered addresses, the appellant cannot held responsible. Just because the service providers were not available in the addresses, it cannot be alleged that the appellant have not received the services at all from the input service providers. It is on record that the service providers have raised the invoices including service tax and the appellant have paid the gross amount inclusive of service tax to the service providers through banking channels. Accordingly, we observe that the cenvat credit of Rs.2,18,59,482/- availed by the appellant cannot be considered as irregular availment of credit, as the service recipient has complied with the mandatory provisions of the Cenvat Credit Rules. Thus, we observe that the Cenvat credit legally availed by the appellant on the basis of valid documents cannot be denied on account of non-existence of the service providers in their registered offices and non payment of service tax so collected by the aforesaid input service providers M/s Jayshree Trading Co & M/s Shree Shyam Impex.

5.2. In this regard, we also take note of the amendments brought in the Notification No. 10/2007 – Central Excise (NT) dated 01.03.2007 whereby Subrule 3(b) has been omitted from Rule 9 which meant that person availing Cenvat Credit was not responsible to ensure that service tax paid to provider of input taxable service has been deposited by such person with the service tax department. In this regard, we observe that if the service provider has intentionally not paid the service tax collected by them and vanished, the appellant who acted in good faith cannot be faulted for non-payment of service tax by the service providers. Thus, we hold that the Cenvat Credit availed by the appellant in accordance with the provision of the Cenvat Credit Rules cannot be denied on account of non-existence of the service providers in their addresses.

5.3. We find that this view has been held by the Tribunal, Delhi in the case of *COMMR. OF C.EX. & amp; CGST, UDAIPUR Vs PREMJAIN ISPAT UDYOG PVT. LTD. 2022(381)E.L.T.533(Tri.-Del.),* wherein it has been held that Cenvat credit cannot be denied on the ground that the dealer who supplied the goods are not available in the registered premised later. The relevant portion of the said decision is reproduced below:

13. Shree Prem Chand Jain, Director in his statement dated 2-2-2016 stated that he had no information as to from where the suppliers purchased the goods. Since the bills and bilties were received later, he did not know whether the said goods were manufactured/produced in their factories and central excise duty payment thereon had been made or not. When pointed out that the goods were

received without Invoice and bills/bilties had been arranged later, the Cenvat Credit in respect of those in voices/bills where in admissible, he accepted the fact and reversed the Cenvat credit amounting to Rs.55,24,141/- vide Entry Number 1, dated 2-2-2016.

14. Investigation carried out with the Transporters also revealed that they never transported any goods to the respondent and they had issued the bilties on the basis of details provided by M/s. Tirupati Associates, Jaipur to them without ensuring whether goods were transported or not. Thus, the same were not genuine and were prepared only to help in availing the Cenvat credit.

15. It has also been established that no vehicle mentioned in the invoices was used for the transportation of the goods and these vehicles were not engaged for the transportation of goods from the premises of supplier to the premises of assessee located in Kota.

16. The manufacture/dealers also deposed that they had issued only the invoices based on invoices which were received by them from the manufacturer/main dealer and thus the assessee had not received any input along-with the invoices and only invoices were procured in collusion with the dealers.

17. Further, the consignments shown to have been transported in trucks were actually never transported and the records establish that only paper transactions were made with commission amount exchanging hands.

18. Thus, it is established that the manufacturer /

dealers issued only the invoices and no goods were dispatched by the manufacturer/dealers with the invoices.

19. Under Rule 4(1) of the Credit Rules, Cenvat credit of inputs to be used in the manufacture of final product is allowable to the manufacturer only on receipt of the goods along with invoices in the factory of manufacturer. Rule 4(5) of the Credit Rules also casts a burden of proof regarding the admissibility of the Cenvat credit upon the manufacturer taking such credit. The respondent failed to comply with the above provisions of the Credit Rules. It was, therefore, not entitled to take Cenvat credit amounting to Rs. of Rs. 86,38,805/- on the strength of invoices which were not genuine.

20. The Commissioner (Appeals), as can be seen from the order, even after accepting that the invoices had been issued fraudulently still proceeded to grant relief to the respondent by holding that they were not bogus or fake and, therefore, Cenvat credit taken on the basis of such invoices are admissible. This finding is contrary to the factual position emerging from the records. M/s. Aditya Enterprises was not in existence; M/s. Shree Ram Engineering & Casting was not a manufacturing unit and in fact was engaged in construction of residential apartments; and M/s. Ganesh Udyog and M/s. L.S. Construction were not found on the mentioned address. It is clearly established that neither these firms were engaged in the manufacture of goods nor they had sold or cleared the goods but had generated invoices only for the purposeof passing Cenvat credit. It is also difficult to accept the finding of the Commissioner (Appeals)

that the respondent was not a party to the fake transactions. It is only the respondent who was to gain by adoption of such a mode and, therefore, the conclusion that even though onlyinvoices were received by the respondent without the goods, the respondent had no role to play is perverse. The respondent may have received the raw materials for manufacturing purposes, but there is nothing to link the said purchase of the raw material with the invoices against which Cenvat credit was taken by the respondent. It was imperative for the respondent to establish the purchase of such raw materials with the invoices issued by the aforesaid firms.

5.4. We find that the same view has been taken in the following decisions also.

> *(i) COMMISSIONER OF C.EX., BANGALORE-I Vs BHUWALKA ALLOYS PVT. LTD. 2012 (281) E.L.T. 213 (Kar.)[12-04-2011]*
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> *(ii) COMMISSIONER OF C.EX., PONDICHERRY Versus SPICPHARMACEUTICALS DIVISION 2006 (199) E.L.T. 686 (Tri.-Chennai)*

5.5. We find that the ratio of the decisions cited supra are squarely applicable to the facts and circumstances of the present case also. Thus, by relying on the decisions cited supra, we hold that the credit availed by the appellant is in order and accordingly, we set aside the disallowance of the cenvat credit in the impugned order.

5.6. As the Cenvat credit availed by the appellant is in order, the question of demanding interest or imposing penalty under section 78 of the finance act does not arise.

5.7. Regarding the Late Fee confirmed in the impugned order, we find that the appellant has filed the returns beyond the stipulated time. Thus, we observe that the appellant is liable to pay the late Fee amounting to Rs.70,500/- confirmed in the impugned order as per Rule 7C read with section 70(1) of the Finance Act.

5.8. We also find that the demands confirmed in the impugned order are time barred. We observe that the SCN in this case was issued after more than 3 years of conduct of Enquiry by the officers of the Service Tax II Commissionerate. We also find that the entire demand has been calculated on the basis of documents submitted by the appellant. It is on record that the appellant has declared all the figures in the ST-3 returns and same has been taken by the department for raising and confirming the demand. Thus, we observe that there is no suppression of facts with intention to evade the tax established in this case. Accordingly, we hold that extended period of limitation cannot be invokable in this case as per section 73(1) of the Finance Act 1994. Thus, we hold that the demands confirmed in the impugned order are liable to be set aside on the ground of limitation also.

6. In view of the above findings, we pass the following order:

(i) We hold that the credit availed by the appellant is in order and accordingly, we set aside the disallowance of the cenvat credit along with interest and penalty confirmed in the impugned order.

(ii) We uphold the confirmation of late Fee amounting to Rs.70,500/- in the impugned order as per Rule 7C read with section 70(1) of the Finance Act.

(iii) The appeal filed by the appellant is disposed of on the above terms, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 30.03.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP