

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 50169 OF 2016

[Arising out of the Order-in-Original No. DLI-SVTAX-001-COM-003/15-16 dated 29/10/2015 passed by The Principal Commissioner Service Tax, Delhi – I, New Delhi – 110 002.]

**M/s Indian Railway Catering and
Tourism Corporation Ltd.**

.....Appellant

11th Floor, A-Wing, Statesman House,
B-48, Bara Khamba Road,
New Delhi – 110 001.

Versus

**The Commissioner of Service Tax,
Delhi – I,**

....Respondent

17-B, I.A.E.A. House, I.P. Estate, M.G. Marg,
New Delhi – 110 002

APPEARANCE:

Shri S.C. Kamra, Advocate for the appellant.

Shri Manoj Kumar, Authorized Representative for the
Department

CORAM:

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

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

FINAL ORDER NO. 50511/2025

DATE OF HEARING : 19.02.2025.

DATE OF DECISION : 23.04.2025.

P.V. SUBBA RAO

M/s Indian Railway Catering and Tourism Corporation Ltd.¹ filed this appeal to assail the order-in-original dated 29.10.2015 passed by the Commissioner² whereby she confirmed the demand of Rs. 1,56,66,722/- on the appellant

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- 1. appellant**
 - 2. impugned order**

on account of alleged wrong availment of Cenvat credit as per Rule 6 read with Rule 14 of Cenvat Credit Rules, 2004³ read with the proviso to section 73 (1) of the Finance Act, 1994⁴. She also ordered recovery of interest under section 75 of the Finance Act and imposed penalties under Sections 76 and 78 of the Finance Act. She dropped the demand of Rs. 12,39,255/- towards service tax liability for the year 2006-2007.

2. No appeal has been filed by the Revenue on the demand of service tax dropped by the impugned order. The appellant is aggrieved by the confirmation and recovery of demand, interest and penalties. It contests the demand both on merits and on limitation. The relevant period is 2004-2005 to 2007-2008. Therefore, the last date for filing the return of the last period was 25.04.2008. During the relevant period, the show cause notice⁵ under Section 73 of the Finance Act had to be issued within a period of one year. The SCN in this case was issued beyond one year on 09.10.2009.

3. The question, therefore, which arises is whether the SCN was hit by limitation. Extended period of limitation of upto 5 years could be invoked, if the non-payment of service tax was on account of fraud or collusion or willful mis-statement or suppression of facts or violation of the provisions of the Act or

3. CCR, 2004
4. Finance Act
5. SCN

Rules with an intent to evade payment of service tax. This limit applies to recovery of Cenvat credit as well.

4. We first proceed to examine the question of limitation because if we find that the demand is hit by limitation, it will not be necessary for us to examine the merits of the case. The reason for invoking extended period of limitation given in the SCN is as follows :-

“Whereas, it further appears that the assessee, by not declaring the fact of providing exempted services and the fact as enumerated in the main body of show cause notice, had intentionally and willfully suppressed the facts of providing impugned taxable services and collection of impugned value of such taxable services and did not pay the service tax as applicable on such services and did not file prescribed ST-3 returns accordingly. Thus, by not disclosing the entire facts to the Department, the said value has escaped the assessment for service tax liability, resulting in contravention of various provisions of the said Act and the said Rules aforesaid with intention to evade payment of impugned service tax. But for audit conducted by the department, the same would not have come to the notice of department. All these actions of the assessee amount to non-disclosure of the facts to the department, resulting into contravening of various provisions of the said Act and the said Rules aforesaid with an intent to evade payment of service tax as applicable and Rule 14 of the Credit Rules. Thus, it appears that the provisions of the Section 73 (a) of the said act and now proviso to Section 73 (1) of the Act ibid can be invoked and thus, demand and recovery can be made for non-levy, short levy and non-payment and short payment of service tax for five years from relevant date”.

5. The reasons for invoking extended period of limitation given in the impugned order are as follows :-

“14. **Whether extended period is invocable under the provisions of Proviso to Section 73 (1) of the Finance Act, 1994 in the instant proceedings?**

I find that the extended time period of five years is invocable under the provisions contained in proviso to Section 73 (1) of the Finance Act, 1994 as amended in specified cases. I find from the perusal of the ST-3 returns that the noticee has not shown the value of exempted services, abatement services separately in the relevant columns/rows of the ST-3 which have been incorporated statutorily therein under the provisions of the Act and Rules for the purpose so that any assessing authority may verify the correctness of the tax calculations. The noticee has not taken care of the same as required under the provisions of the Act and Rules.

I also find that the noticee had not only availed but also utilized inadmissible Cenvat credit of Rs. 1,56,66,722/- during the period towards payment of service tax for output service without maintaining separate record as required under Rule 6 (2) of CCR, 2004. I also note from the records before me that the noticee did not exercise any option to maintain separate accounts/register for availment and utilization of CENVAT credit for taxable services, exempted services and services not liable to service tax. Further at no stage, they had informed the department that they were maintaining separate account under a declaration to be attached while submitting first half yearly ST-3 return under Rule 5 (2) of the Rules *ibid* nor had they filed any such list of records giving details of taxable and non taxable services.

I also find that with effect from 16.07.2001, due to the changes brought in the Finance Act, 2001, self-assessment of the service tax payable under the provisions of Section 70 of the Act *ibid* was introduced, wherein the Superintendent of Central Excise is empowered only to verify the correctness of the returns under the provisions of the Section 71 of the Act *ibid*. Under self-assessment procedure, the assessee is required to assess on its own the tax due on the services provided by him and furnish the details in the form of a return under the

provisions of Section 70 of the Act *ibid*. Thus, the onus is on the assessee that a correct Return be filed within the stipulated time which onus the noticee has failed to discharge. There is no evidence to the effect that they have ever sought any clarification from the department in this regard. Accordingly I am of the view that the noticee has willfully and deliberately suppressed the facts from the Department so as to avail the inadmissible CENVAT credit for the payment of due amount of service tax liability on their output services and accordingly the extended period is liable to be invoked in this case. I find that the amount demanded in SCN has been from April 2004 to March 2008 only for which SCN has been issued on 09.10.2009 and the same is within five years from the relevant date and has rightly been issued”.

6. We find from the SCN that the alleged regular availment of Cenvat credit was noticed during a detailed scrutiny by audit of the appellant’s records based on risk assessment.

7. We find that as per Section 70 of the Finance Act, the assessee is required to self-assess service tax due on the services provided by him and to furnish to the Superintendent of Central Excise a Return in ST-3 format. As per Section 72 of the Finance Act, if the assessee fails to furnish the Return under Section 70 or having made the Return or fails to assess the tax in accordance with the provisions of the Finance Act and Rules made thereunder, the Central Excise Officer may require the assessee to produce such accounts, documents or the evidence as he may deem necessary and after taking into all relevant material “he shall, by an order in writing” carry out the best judgment assessment under Section 72 of the Finance

Act. Evidently, once the Return is filed, it is the responsibility of the officer to scrutinize the return and it is his prerogative to call for any accounts, documents or other evidence from the assessee and make the best judgment assessment. This entire exercise can be completed and a notice for recovery of service tax short paid or Cenvat credit wrongly availed can be issued within the normal period of one year provided under Section 73 (1) of the Finance Act. If the officer fails to complete the scrutiny and raise a demand within the period and the demand gets barred by limitation, the responsibility for that rests squarely on the officer who failed in his duty.

8. Neither the fact that the assessee is operating the self-assessment procedure nor that it had failed to assess the tax liability etc. correctly means that the assessee had committed a fraud or colluded or willfully mis-stated or suppressed any fact or violated any provisions of the Act or Rules with an intent to evade. If any of these factors are alleged they should be established in the SCN and in the order.

9. All that is evident from the SCN and from the order is that the assessee furnished its returns on time as required and it is the officer who failed to scrutinize the returns in time and took too long to scrutinize the returns pertaining to 2004-2005 to 2007-2008 much beyond the period of limitation. Therefore, if there is any loss of revenue on this count, the responsibility for that rests clearly on the officer who failed to

scrutinize the returns in time and raise a demand. It does not rest on the appellant/assessee.

10. In view of the above, we find that entire demand is hit by limitation and on this ground alone, it needs to be set aside. It is not necessary for us to examine the merits of the case.

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

(Order pronounced in open court on 23/04/2025.)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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