

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 86765 of 2021

(Arising out of Order-in-Original No. PUN-CGST&CX-002-COM-001-21-22 dated 28.05.2021 passed by the Commissioner of CGST, Pune-II)

Bhima Riddhi Digital Services

4th Floor, Millennium Square,
Rly Lines, Near Garud Bungalow,
Solapur 413 003.

Appellant

Vs.

Commissioner of CGST & CE, Pune-II

ICE House, 41/A, Sassoon Road,
Pune 411 001.

Respondent

Appearance:

Shri V.M. Doiphode, Advocate, for Appellant
Shri A.P.S. Parihar, Superintendent, Authorised Representative for the
Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 14.05.2025

Date of Decision: 04.06.2025

FINAL ORDER No. 85837/2025

Brief facts of the case are that the appellant was engaged in providing multi system operator (MSO) of cable distribution who received programming services from its broadcasters or their agents and they transmitted the same for simultaneous reception either by multiple subscribers directly or through one or more cable operators or agents of cable operators. They were registered with Service Tax. Appellant filed application in VCES scheme for the period ending December 2012. Revenue initiated enquiries against the appellant. It was noticed by Revenue that the appellant booked turnover of Rs.10,18,10,105/- during the financial year 2012-13. Revenue noticed that turnover of the appellant for the period from 01.01.2013 to 31.03.2013 was Rs.6,66,50,205/- which was declared in ST-3 return filed on 27.01.2017. During the year 2013-14 appellant booked their turnover in their P&L account as Rs.11,73,62,203/- whereas they declared their turnover of Rs.9,65,80,347/- in ST-3 return and as a result, it appeared to Revenue that assessable value to the tune

of Rs.2,07,81,856/- skipped levy and payment of service tax to the tune of Rs.25,68,637/-. It was also noticed by Revenue that during the year 2014-15 appellant booked in their P&L account business turnover of Rs.15,78,21,960/- whereas the service tax was paid on assessable value of Rs.15,74,92,662/- thereby no service tax amounting to Rs.40,701/- was paid on difference of Rs.3,29,298/-. Therefore, it appeared to Revenue that the appellant had short paid service tax amounting to Rs.26,09,338/- during the period 2013-14 to 2014-15. It was also appeared to Revenue that the appellant had availed and utilized cenvat credit of Rs.5,77,58,121/- without having any prescribed documents for availing the same since they could not produce documents before the enquiry officers. Therefore, a show cause notice dated 07.09.2018 was issued to the appellant through which service tax of Rs.26,09,338/- was demanded by invoking proviso to sub-section (1) of Section 73 of Finance Act, 1994. Further there was a proposal to deny cenvat credit of Rs.5,77,58,121/-. Further there was a proposal to appropriate Rs.5,00,000/- paid by the appellant towards interest on delayed payment of service tax. On contest, the said show cause notice was adjudicated through impugned order-in-original. Learned original authority in para 33.2 of his impugned order-in-original has observed that there was a typographical mistake on the part of the appellant and, therefore, the demand raised in the show cause notice for disallowance of input service credit was to the extent of Rs.4,93,23,732/- whereas the same should be restricted to Rs.2,93,23,732/-. The said amount of Rs.4,93,23,732/- is a component of Rs.5,77,58,121/-. Appellant in the year 2020-21 produced available input service invoices for the period from January 2013 to March 2015 and on the basis of the same, the original authority has allowed cenvat credit to the appellant and held that the appellant could not produce invoices covering cenvat credit amounting to Rs.7,59,549/- and, therefore, disallowed the said cenvat credit through the impugned order by dropping the demand of Rs.5,69,98573/-. He has confirmed the demand of service tax of Rs.26,09,338/- and appropriated an amount of Rs.11,80,034/-. He has also ordered the appellant to pay interest and imposed penalty. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that service tax that was confirmed by the original authority to the tune of Rs.26,09,338/- was cum duty service tax and if cum duty benefit is extended, then the service tax payable would work out to Rs.23,22,302/-. He has further submitted that the original authority has appropriated an amount of Rs.11,80,034/-. Therefore, the net payable service tax as on date works out to Rs.11,42,268/-. In respect of denial of cenvat credit of Rs.7,59,548/- he has submitted that two invoices which could be located were produced before this Tribunal and on direction by the Bench the same were sent for verification by Field Formation and the Field Formation has submitted report dated 29.10.2024 stating that the cenvat credit involved in the said two invoices to the tune of Rs.2,86,052.45 and Rs.328.69 are found to be in order. He has further submitted that if those two amounts are deducted from the confirmed amount of denied cenvat credit, the balance amount is Rs.2,94,972.17. He has further submitted that the original authority has already recorded in his finding that ST-3 returns were filed. Therefore, there is no case for imposition of penalty since there is no case of invocation of extended period of limitation.

3. Heard the learned AR. Learned AR has submitted a copy of the report dated 29.10.2024 submitted by the Field Formation wherein it was stated that the cenvat credit involving Rs.2,86,052.45 and Rs.328.69 involved in two input service invoices submitted before the Bench was in order.

4. I have carefully gone through the record of the case and submissions made. Insofar as the demand of service tax is concerned, I find that the original authority has very clearly stated in para 14 of the order-in-original that the appellant had filed ST-3 returns wherein the assessable value was shown to the tune of Rs.9.65 crores and Rs.15.74 crores. I note that there was difference between the assessable value shown in the ST-3 return and the turnover in the P&L account, but I do not find that there was any intention not to pay service tax on the balance amount because balance amount involved service tax of merely Rs.11

lakhs. I, therefore, am of this opinion that there is no case for imposition of penalty in the present case. Insofar as the demand of service tax is concerned, ends of justice will meet once the appellant pays balance service tax of Rs.11,42,268/- with applicable rate of interest. Insofar as the denial of cenvat credit is concerned, I note that the input service invoices were pertaining to the years 2013, 2014 and 2015 and they were attempted to be produced in the year 2021 before the original authority and the appellant could establish a case of Rs.5.69 crores and could not produce invoices having service tax payment to the tune of Rs.2.94 lakhs. It appears to me that it is a genuine case where some invoices could not be traced out. I also note that Service Tax Law and Cenvat Credit Rules have nowhere specified the time limit for which input service invoices are to be maintained and kept on record of the appellant. I, therefore, do not find any merit in disallowing cenvat credit of Rs.2,94,972.17.

5. To sum up, I allow this appeal with the direction to the appellant to pay service tax of Rs.11,42,268 with applicable interest.

(Pronounced in the court on 04.06.2025)

(Anil G. Shakkarwar)
Member (Technical)

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