

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75522 of 2018

(Arising out of Order-in-Original No. 10/COMMR/CGST & CX/KOL/NORTH/2017-18 dated 30.10.2017 passed by the Commissioner of C.G.S.T. and C.X., Kolkata North, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Forum Retail Private Limited

: Appellant

4/1, Red Cross Place,
Kolkata – 700 001

VERSUS

Commissioner of C.G.S.T. and Central Excise

: Respondent

Kolkata North Commissionerate,
G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Tarun Chatterjee, Advocate,
Ms. Sneha Das, Consultant
For the Appellant

Shri S. Dutta, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75126 / 2026

DATE OF HEARING / DECISION: 21.01.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the demands confirmed in the impugned Order-in-Original No. 10/COMMR/CGST & CX/KOL/NORTH/2017-18 dated 30.10.2017 passed by the Ld. Commissioner of C.G.S.T. and C.X., Kolkata North, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata.

2. The facts of the case are that during the course of scrutiny of Balance Sheet, Ledger (Shop, Office, Advance), ST-3 returns and corresponding payment

challans of the appellant, the audit officers observed that there were short payments of Service Tax for the period from 2011-12 to 2015-16. It was also observed that the appellant had availed CENVAT Credit beyond the period of one year in violation of Rule 4 of CENVAT Credit Rules, 2004 read with Notification No.21/2014-CE(NT), dated 11.07.2014.

2.1. Accordingly, a Show Cause Notice dated 20.04.2017 was issued to the appellant demanding Service Tax allegedly short paid, along with interest and penalty. The notice also proposed disallowance of CENVAT Credit availed in violation of Rule 4 of CENVAT Credit Rules, 2004.

2.2. After due process, the said notice was adjudicated vide the impugned order wherein the Id. adjudicating authority has confirmed the demand on account of short payment of Service Tax and disallowed CENVAT Credit, to the extent as mentioned in the said impugned order.

2.3. Aggrieved by the confirmation of the demand of Service Tax and disallowance of CENVAT Credit, along with interest and penalty thereon, the appellant has filed the present appeal.

3. Regarding the demand of Service Tax amounting to Rs.9,08,617/- confirmed in the impugned order on import of service under 'Reverse Charge Mechanism' for the period 2011-12, the appellant's submission is that the demand is barred by limitation. They point out that the Show Cause Notice in this case was issued on 20.04.2017 by invoking the larger period of limitation. It is submitted by the appellant that they were regular in furnishing of returns and payment of tax during the impugned

period and therefore, demand beyond the normal period is not sustainable. Furthermore, the appellant also argues that as the demand is made under Reverse Charge Mechanism, if at all such amount is payable, the appellant shall be entitled to take CENVAT Credit on the very same amount on the very same day.

3.1. The appellant further submits that in view of a catena of decisions, it is a settled legal position that the allegation of suppression and demand beyond the normal period is not sustainable in case of the demand under Reverse Charge Mechanism. They plead that the issue is covered by the decision of the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. Versus Commissioner [2017 (7) G.S.T.L. 135 (S.C.)]*; furthermore, that this Bench in appellant's own group company case, on the very same issue, has allowed the appeal on limitation by way of *Final Order No. 75630 / 2024 dated 02.04.2024*.

4. The appellant's submission on the demand of Service Tax amounting to Rs.73,63,722/- on the advances received, is that such advance amount is not against provision of any service and such advances were short term refundable loans, which cannot be subjected to levy of Service Tax. The appellant therefore contends that the said demand has been made on erroneous premises of law, considering the refundable loan as 'advance' against provision of loan, and on the advance refunded to the customers against cancellation of the booking.

4.1. On this score, the appellant also submits that the advances were received from their Group companies and others, which were refunded along with interest. In support of their claim, the appellant submitted a

copy of the loan agreement, bank statement showing re-payment of the loan and CA certificate; thus, it is contended that as the advances received were not with respect to provision of any taxable, service, no Service Tax is payable on the same. In this connection, the appellant submits that the issue is settled in their favor by this Bench in appellants own group companies' case by *Final Order No. 77576 / 2025, dated 28.10.2025*. Accordingly, the appellant prays for setting aside the demand of Service Tax confirmed on the advances received.

5. Regarding the demand of Service Tax of Rs.86,69,562/- on account of alleged inadmissible CENVAT Credit on the ground of violation of Rule 4 of CENVAT Credit Rules, 2004 read with Notification No.21/2014-CE(NT), dated 11.07.2014, the appellant argues that during the period 2011-12 to 2014-15, the appellant has taken CENVAT Credit in the books of accounts. Furthermore, they submit that there is no dispute regarding eligibility of the CENVAT Credit, receipt of the input service and use towards provision of taxable service. It is their stand that claim of the CENVAT Credit in ST-3 return cannot be considered as a condition for availment of CENVAT Credit. It is stated in this regard that the Id. adjudicating authority has disallowed the credit on the basis of 3rd Proviso of Rule 4(1) of the CENVAT Credit Rules, 2004. To this extent, the appellant submits that the said proviso has been inserted in the CENVAT Credit Rules only w.e.f. 01-09-2014 and such proviso is prospective not retrospective. Thus, it is the appellant's contention that the restriction of availing the credit within one year from the date of receipt of the invoice was not in existence during the relevant period and thus the CENVAT Credit availed by them during the period

2011-12 to 2013-14 was not covered under this proviso. The appellant points out that CENVAT Credit amounting to Rs.23,62,960/- out of total CENVAT Credit Rs.23,75,756/- has therefore been allowed by the Id. adjudicating authority. As the remaining credit allowed had also been taken before coming into existence of the third proviso to Rule 4(1) of the CENVAT Credit Rules, the appellant prayed for allowing the impugned credit as well. In support of their claim, the appellant placed reliance upon the following decisions:

- *Indian Potash Ltd. Versus Commissioner of CGST, Meerut [2019 (369) E.L.T. 742 (Tri. - All.)]*
- *Essel Propack Ltd. Versus Commissioner of C. Ex. & S.T., Daman [2022 (379) E.L.T. 123 (Tri. - Ahmd.)]*
- *Voss Exotech Automotive Pvt. Ltd. Versus Commissioner of C. Ex., Pune-I [2018 (363) E.L.T. 1141 (Tri. - Mumbai)]*

6. Regarding imposition of penalty on them, the appellant takes the stand that during the impugned period, the appellant takes the stand that they were regular in payment of tax and furnishing returns; it is also contended that there is no allegation in the Show Cause Notice regarding suppression, fraud, willful misstatement. Furthermore, the appellant also points out that in the impugned order under challenge, there is no specific finding regarding suppression, fraud, etc., nor has any evidence been brought on record showing as to how the appellant could be guilty of suppression, to attract penalty under the said provisions. Accordingly, it is the case of the appellant that the provisions of Section 78 of the Finance Act, 1994 read with Rule 15(3) of the CENVAT Credit Rules, 2004 are not applicable in this case. Accordingly, the appellant prays for setting aside the penalties imposed on them vide the impugned order.

7. The Ld. Authorized Representative representing the Revenue reiterated the findings in the impugned order. He prayed for upholding the impugned order and rejecting the instant appeal.

8. Heard both sides and perused the appeal records.

9. We find that Service Tax demands amounting to Rs.9,08,617/- and Rs.73,63,722/- have been confirmed by way of the impugned order. Further, in the said order, CENVAT Credit amounting to Rs.86,69,562/- has also been disallowed on the ground of alleged violation of Rule 4 of CENVAT Credit Rules, 2004.

10. Regarding the demand of Service Tax amounting to Rs.9,08,617/- confirmed in the impugned order on 'import of service' under Reverse Charge Mechanism for the period 2011-12, we take note of the fact that the Show Cause Notice in this case was issued on 20.04.2017 by invoking the larger period of limitation. We also observe that the appellant have been paying Service Tax and filing returns regularly during the impugned period. The Show Cause Notice or the impugned order has failed to bring in any evidence to establish suppression of facts with the intention to evade the tax on the part of the appellant. Hence, we are of the view that the said demand confirmed, by invoking the extended period of limitation, is not sustainable. Further, we also find that this demand has been made under Reverse Charge Mechanism. Therefore, we agree with the submission of the appellant that they would be entitled to take CENVAT Credit on the very same amount on the very same day. In this context, we also note that it has been laid down in a catena of decisions

that the allegation of suppression and demand beyond the normal period cannot be sustained in cases of demands under Reverse Charge Mechanism. We rely upon the decision of the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. Versus Commissioner* [2017 (7) G.S.T.L. J35 (S.C.)]. Furthermore, it is also pertinent to refer to the decision rendered by this Bench in appellant's own group company case on the very same issue, which allowed the appeal on limitation, ref. *Forum Projects (P) Ltd. v. Commissioner of Service Tax-I, Kolkata* [Final Order No. 75630 of 2024 dated 02.04.2024 in Service Tax Appeal No. 75943 of 2015 – CESTAT, Kolkata]. The relevant portion of the said order is reproduced below:

"7. We find that in this case, although the appellant is liable to pay Service Tax under reverse charge mechanism, the appellant is also entitled to avail CENVAT Credit of the same, immediately. In these circumstances, we find that it is a revenue neutral situation. The Show Cause Notice in the present case has been issued to the appellant by invoking the extended period of limitation. However, we note that the extended period of limitation is not invocable in a case of revenue neutrality as held by the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. (supra)*. Hence, following the decision of the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. (supra)*, we hold that being a revenue neutral situation, in the facts and circumstances of the case, the extended period of limitation is not invocable. Accordingly, we hold that the whole of the demand is barred by limitation and the demand of Service Tax is not sustainable against the appellant."

10.1. It is observed that the entire demand of Rs.9,08,617/- has been confirmed by invoking the extended period of limitation. Thus, by relying on the ratio of the decisions cited supra, we hold that the demand confirmed on this count is not sustainable and hence, we set aside the same.

11. Regarding the demand of Service Tax amounting to Rs.73,63,722/- on the advances received, we find that that the Department has not brought in any corroborative evidence to substantiate their allegation that the said advances were received in relation to provision of any taxable service. On the other hand, the appellant is able to prove that such advances were short term refundable loans, which were refunded later along with interest. In support of their claim, the appellant has submitted a copy of the loan agreement, bank statement showing re-payment of the loan and CA certificate. The evidences submitted by the appellant clearly indicate that the advances received by the appellant from their Group companies and others were refunded along with interest. As it is clear that the advances received were not with respect provision of any taxable service, we hold that no Service Tax is payable on the same. In this context, we also observe that the said issue has already been settled in favour of the appellant by this Bench in appellants own group companies' case in *Forum Projects Pvt. Ltd. v. Commissioner of Service Tax, Audit, Kolkata [Final Order No. 77576 of 2025, dated 28.10.2025 in Service Tax Appeal No. 75611 of 2017 – CESTAT, Kolkata]*. The relevant observations of the Bench in the aforesaid case have been reproduced below for ease of reference: -

"8.1. Regarding the service tax demand of Rs.2,22,51,053/- confirmed against the 'advance received', we find that the appellant submission is that the same were not 'advances' received for provision of any taxable service, but refundable loan amounts received from various parties including its director and relatives of the director. It has been explained that the loans taken from the parties other than its director and relatives of the director were interest bearing loans. The appellant has also submitted that all such loans were short terms loans

and recognised in Books of Accounts as current liabilities under the heading 'advance'. We find that the appellant paid interest on such loans and deducted and deposited TDS on interest amount as per the provisions of the Income Tax Act. It is seen from the records that the appellant has submitted a Chartered Accountant's certificate certifying the loan taken by them during the period 2010-11 to 2012-13, year-wise statement of loans, TDS Certificates, bank statement regarding receipt and payment of the loans and loan agreements....

.
.
.

8.2. It is evident from the documents submitted by the appellant that the said amount has been recorded in the 'Advance Ledger' as refundable loan and not advances received against provision of any taxable service. Accordingly, we hold that the Ld. Adjudicating Authority has erred in holding such refundable advance as 'advance towards provision of the service' for confirming the said demand. Consequently, we set aside the demand of Service Tax confirmed on this issue."

11.1. Thus, in view of the above discussion and by applying the ratio of the decision cited supra, we hold that the demand of Service Tax amounting to Rs.73,63,722/- confirmed on the advances received is not sustainable. Accordingly, the said demand stands set aside.

12. We have also considered the submissions advanced in respect of the demand of Rs.86,69,562/- on account of alleged inadmissible CENVAT Credit on the ground of violation of Rule 4 of Cenvat Credit Rules, 2004 read with Notification No.21/2014-CE(NT), dated 11-07-2014. We take note of the submission made by the appellant that they had availed CENVAT Credit in the books of accounts,

during the period 2011-12 to 2014-15. In the impugned order, the Id. adjudicating authority has disallowed the credit on the basis of 3rd Proviso of Rule 4(1) of the CENVAT Credit Rules, 2004. In this regard, it is pertinent to note that the said proviso has been inserted in the CENVAT Credit Rules only w.e.f. 01.09.2014 and the said proviso can be made applicable only prospectively not retrospectively. Thus, we find that the restriction of availing the credit within one year from the date of receipt of the invoice was not in existence during the relevant period. Considering the above, we hold that the CENVAT Credit taken by the appellant during the period 2011-12 to 2013-14 was not covered under this proviso. Moreover, it is observed that there is no dispute regarding eligibility of the said CENVAT Credit, receipt of the input service or use of the same towards provision of taxable services. We also find that the CENVAT Credit amounting to Rs.23,62,960/- out of total Cenvat Credit Rs.23,75,756/- has been allowed by the Id. adjudicating authority. We find force in the appellant's stand that since the remaining credit has also been taken before coming into existence of the third proviso to Rule 4(1) of the CENVAT Credit rules, the denial of the said amount of CENVAT Credit is not justified. In view of the above discussions, we hold that the appellant is eligible for the above CENVAT Credit and accordingly, we set aside the disallowance of CENVAT Credit and recovery thereof as ordered vide in the impugned order.

13. The appellant has also contested the aspect of imposition of penalties vide the impugned order. From the findings in the preceding paragraphs of this order, we observe that the confirmation of the demands in the impugned order has not sustained on merits. Further, in this connection, it is relevant to note that the appellant was regular in payments of tax and furnishing of returns during the period under dispute. There is no allegation in the Show Cause Notice regarding suppression, fraud, willful misstatement, etc. Furthermore, even in the impugned order under challenge, there are no specific findings regarding suppression, fraud, etc., nor has any evidence been brought on record to prove that the appellant is guilty of suppression, to justify the invocation of the said penal provisions against them. In these set of facts, we find that the provisions of Section 78 of the Finance Act, 1994 read with Rule 15(3) of the CENVAT Credit Rules, 2004 are not applicable at all. Consequently, we hold that no penalty is imposable in this case and hence, we set aside the penalties imposed in the impugned order.

14. In the result, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)