

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**
REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75875 of 2017

(Arising out of Order-in-Original No.16/Commr./STA/Kol/16 dated 01.03.2017 passed by Commissioner of CGST & Central Excise, Kolkata)

M/s Shree Venkatesh Films Pvt. Limited
(6, Waterloo Street, Kolkata-700069)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri Arvind Behati, Chartered Accountant for the Appellant
Shri R.K.Agarwal, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75167/2026

DATE OF HEARING : 20 JANUARY 2026

DATE OF PRONOUNCEMENT : 05 FEBRUARY 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed under reverse charge mechanism and the cenvat credit has been denied on various issues and penalty was also imposed on the appellant.

2. The facts of the case are that the appellant is a media and entertainment production and distribution company headquartered in Kolkata, West Bengal. The appellant operates in 3 segments namely, film division, television division and digital cinema division for, inter alia, providing services, such as, copyright services, programme producer services, video tape production services and business auxiliary services.

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The nature of incomes booked under each of the segments along with their taxability under service tax is tabulated herein below :

Name of Segment	Nature of service	Taxability under Service Tax
TV Division	Upon the request of TV channels, the Appellant records the episode into a magnetic tape which is handed over to the TV Channels in physical form for telecasting the programme	Taxable under the category "Programme Producer Service"
Film Division	1. Appellant assigns satellite television broadcasting rights of its own movie/s to the TV channels for a fixed period for broadcasting the movie in television. The same is recorded as satellite telecast income in the profit and loss account	Taxable under the copyright services
	2. Temporary transfer of copyright of cinematographic films for exhibition in cinema hall or cinema theatre	Exempt from Service tax
	3. Permanent transfer of copyright of cinematographic films	Liable to VAT, excluded from Service Tax
Digital Cinema Division	1. Appellant earns a per show fees from the distributors/ producers who telecast the movie in the cinema halls wherein the projectors and other equipment of the Appellant are installed.	Taxable under the category "Video Tape Production service"
	2. Provides digital cinema mastering services to the local producers of West Bengal	

2.1 The appellant maintains separate records for each division. CENVAT credit pertaining to the Television Division and the Digital Cinema Division is availed in full, as the output services under the said divisions are entirely taxable. Whereas, in respect of the Film Division and common input services used across divisions, the appellant avails credit on a proportionate basis, applying the ratio of taxable to exempted services for the company as a whole, and duly reverses credit

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attributable to exempted services in terms of Rule 6 of the CENVAT Credit Rules, 2004.

2.3 During the course of audit, records for the period 2010-11 to 2013-14, were scrutinized and the appellant was served with a spot audit memo dated 27 April 2015 demanding tax on account of seven heads as set out in the table above. Out of the seven issues, the appellant paid tax along with interest on account of availment of credit of tax paid under reverse charge mechanism without any valid duty paying document as required under Rule 9 of the Cenvat Credit Rules, 2004 and excess availment of credit on the capital goods.

2.4 Thereafter, by invoking extended period of limitation, a show cause notice dated 16 October 2015 was issued to the appellant demanding tax to the tune of Rs.2,18,77,956/- under five heads as enlisted above along with interest and equivalent penalty. The show-cause-notice also sought to demand penalty under Section 78 of the Finance Act, 1994 in respect of the two issues for which tax had been paid by the appellant before the issuance of Notice. The appellant replied to the show-cause notice denying the allegations contained therein.

2.5 The matter was adjudicated by the Id.Adjudicating Authority. The demand of service tax was confirmed along with interest and penalty was also imposed on the appellant.

2.6 Being aggrieved with the said order, the appellant is before us.

3. The Id.Counsel appearing on behalf of the appellant submits that the demand of tax under Reverse Charge Mechanism (RCM) raised on the payments made in foreign currency is liable to set aside in toto in so

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far as the Revenue has raised the demand solely on the basis of figures appearing in the Balance Sheet of the Appellant without identifying/classifying the category of underlying services on which it is taxable.

3.1 He further submits that during the year 2010-11 to 2013-14, the appellant had incurred certain expenses in foreign currency for shooting of films outside India and other allied activities. The entire demand of Rs.1,24,73,378/- has been raised by the Ld. Adjudicating Authority solely on the basis of the figures reported in the balance sheet under the heading "expenditure in foreign currency", without specifying the nature of taxable service. In this regard, he submits that it is a settled law that the onus of determining taxability of a service and its classification is on the Department and demand cannot be raised merely on the basis of difference in figures between the Balance Sheet and the ST-3 returns without identifying the category of underlying service on which service tax is payable. In support his contention, he relies on the following judgements :

- (i) M/s. Outotec India Private Limited vs. Principal Commissioner of Service Tax-I, Kolkata [2026 (1) TMI 714 - CESTAT KOLKATA]
- (ii) M/s.Nirman Construction vs. Commissioner of CX, ST and Customs, Durgapur Commissionerate [2025 (8) TMI 6 – CESTAT KOLKATA]
- (iii) M/s R.K. Singh & Co. vs. Commissioner of Customs & CX [2023 (5) TMI 721 - CESTAT NEW DELHI]

3.2 He further submits that for the period prior to 01July 2012 (Positive List regime), the Department has failed to identify the specific

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sub clause of Section 65(105) of the Finance Act under which the said service is liable to be taxed. He submits that the Department has not even specified the sub-rule of Rule 3 of the Taxation of Services (Provided from outside India and received in India) Rules, 2006 under which the said services can be said to have been received in India. It is well settled principle of law that under the positive list regime, the onus to determine taxability and appropriate classification of a service was upon the Revenue. However, in the instant case, the said onus/burden has not been discharged by the Revenue. Thus, in the absence of identification/classification of the specific category under which the alleged service fell and the sub-rule under which the services could have been said to be received in India, no liability could be fastened upon the appellant. Thus, the demand is liable to be set aside. In support of his contention, he relies of the following judgements :

- (i) M/s. India Steamship Versus Commissioner of Service Tax Audit [2024 (6) TMI 448 - CESTAT KOLKATA]
- (ii) M/s Hindustan Zinc Ltd. Versus Commissioner, Central Excise, Udaipur [2021 (9) TMI 859 - CESTAT NEW DELHI]

3.3 Further, he submits that even for the period post 01.07.2012, tax demand cannot sustain as the Department has without appreciating and understanding the nature of the services received by the appellant, invoked Rule 3 of the Place of Provision of Services Rules, 2012 to demand tax under reverse charge. In this regard, the appellant submits that the Ld.Adjudicating Authority has not rebutted the contentions of the appellant and has arbitrarily confirmed the demand merely by imposing Rule 3 of POPS, without ascertaining as to what

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type of services were received by the appellant. It is a settled law that a vague Notice and/or Order which is devoid of any grounds or reasons in support of its claim violates the principles of natural justice and is bad in law. Thus, in the absence of any specific taxable service being pointed out in the Show Cause Notice and/or impugned Order, the demand raised against the Appellant cannot sustain. Reference in this regard is invited to the judgement of this Tribunal in the case of M/s. Outotec India Private Limited vs. Principal Commissioner of Service Tax-I, Kolkata (supra).

3.4 He submits that in any event and without prejudice to the submissions made hereinabove, it is submitted that the appellant is not liable to discharge taxes on the expenses incurred towards shooting and allied activities outside India. Without prejudice to the submissions made hereinabove, it is submitted that the expenses incurred by the Appellant are majorly for the services in relation to immovable property situated outside India, as clearly forthcoming from the Annexure-A to the Notice. Even otherwise, the payments made by the Appellant to overseas line producers for arranging shooting of films outside India would not be liable to service tax under RCM as such services are performed wholly outside India. The Appellant submits that for the period prior to 01.07.2012, under Rule 3(ii) of the Import Rules, 2006, only such services were taxable which were wholly or partly performed in India. Since, the activities relating to film shooting and allied arrangements were wholly performed outside India, the said services cannot be said to have been received in India for the purpose of charging tax under Section 66A of the said Act.

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3.5 He further submits that for the period post 01.07.2012, the said payments can at best be attributed to payment for provision of services relating to events and thus place of provision of such services would be governed by Rule 6 of the POPS Rules, 2012. The Appellant submits that in terms of Rule 6 of POPS Rules, 2012, place of provision of services provided for organization or admission of a cultural, artistic, entertainment event or similar events is the place where such event has been held. It is submitted that while the word "event" has not been defined under Service Tax Law, the same has been defined under the Cambridge Dictionary to mean as *"An activity that is planned for a special purpose and usually involves a lot of people, for example, a meeting, party, tradeshow, or conference"*. Thus, the term event is wide enough to include the activity of film shooting, being a planned activity carried out for a specific purpose. This is also evident from Regulation 2(c) of the Rajasthan Film Shooting Regulations, 2012, which defines film shooting as an event recorded by camera for the purpose of showing cinematographic films. Relevant extracts of the definition are as follows:

"(c) "Film shooting" means making of cinematographic films of motion pictures of a story or of an episode of a serial of motion picture or event recorded by a camera for the purpose of showing by cinematograph in a cinema, or on television or other electronic media whether that being for a commercial cinema venture or purely artistic creation for publicity and/or advertisement, intended for public viewing or showing or exhibiting whereof

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would be governed by the Cinematograph Act, 1952 (Central Act No. 37 of 1952) or any other law for the time being in force;

Thus, on a conjoint reading of the above stated definitions, it is amply clear that the shooting of film has to be construed as an event and the activities of line producers which are in the nature of organisation of shooting of the film at a foreign location would fall within the scope of Rule 6 of POPS Rules. Thus, the place of provision of such services would be the foreign location where the event takes place i.e. the shooting takes place and therefore, no service tax can be recovered from the appellant.

3.6 He submits that the demand of Rs.30,58,083/- for short reversal of cenvat credit suffers from inherent infirmities in as much as tax amount discharged on advances received during the year have not been considered in the value of output services and "permanent sale of copyrights" has been held as service. He submits that the appellant has pro rata reversed the credit of the input services used in relation to its film division by computing the value of exempted and output services on entity basis as a whole. The reversal for common credits has been computed by the Revenue by just considering the revenues of film division, which is objectionable, as it has to be a corporate/entity level. During the relevant period, service tax registration was a centralized registration at a corporate level, therefore, there was no basis for pro rata reversal of common credit by excluding the revenues attributable to TV and Digital Cinema division. On the basis of such, division level computation, the Department has alleged short reversal of tax to the tune of Rs.30,58,083/-.

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3.7 He submits that the said anomaly is on account of the following computational infirmities made by the Revenue:

- (i) Decreased the denominator (taxable + exempt services) by not considering the advances of Rs.105,01,19,356/- received during the FY 2013-14 on which tax has been discharged during 2013-14;
- (ii) Increased the numerator by including the value of permanent sale of copyrights amounting to Rs. 3,40,00,000/- in the value of exempt services provided.

It is pertinent to note that for the purposes of computation of reversal under Rule 6(3A) of the CCR, value of the "services provided during the financial year" has to be considered. In this regard, the Appellant submits that in terms of Point of Taxation Rules, 2011, the services are deemed to have been provided at the time the point of taxation it may be noted that 2004 Rule 3 of the Point of Taxation Rules, 2011, point of taxation is the point when the invoice for the service has been issued or when the payment has been received, whichever is earlier. Ld. Adjudicating Authority has rejected the inclusion of such advances in the value of output services on the ground that no taxable service has been provided by the Appellant during the FY 2013-14.

3.8 It is pertinent to note that Rule 6(3A) of the CCR, 2004 requires computation based on the "*value of services provided during the financial year.*" In terms of Rule 2(e) Point of Taxation Rules, 2011, a service is deemed to have been provided at the point of taxation. Further, as per Rule 3(b) of the POT Rules, where any advance payment

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is received prior to issuance of invoice, the point of taxation is the date of receipt of such payment. Since advance consideration of Rs.105,01,19,356/- was received during FY 2013-14, the point of taxation for such amount falls within the said financial year. Accordingly, the Appellant submits that the said amount of Rs. 105.01 crores is required to be included in the value of output services provided during the financial year for the purposes of computation under Rule 6(3A) of CCR. However, the Ld. Adjudicating Authority has rejected such inclusion on a whimsical ground that no taxable service has been provided by the Appellant in respect of such advance.

3.9 Further, it is submitted that the value of "permanent sale/transfer of copyrights" on which VAT has been discharged by the Appellant cannot be included in the value of exempt services in so far as it is a settled law that permanent transfer of copyright is outside the purview of service tax. Reference in this regard is invited to the following judgements:

- (i) M/s Narne Networks Pvt Ltd. Versus Commissioner of Central Excise and Service Tax Hyderabad [2025 (10) TMI 1132 - CESTAT HYDERABAD]
- (ii) Pr. Commissioner of CGST & Central Excise, Chennai Vs Wunderbar Films Private Ltd [2024 (3) TMI 17 - MADRAS HC].

However, the Ld. Adjudicating Authority has disregarded the appellant's contention on an erroneous ground that discharge of VAT on a service does not necessarily exclude its liability from service tax. In this regard, the Appellant submits that it is a settled principle of law that service tax cannot be levied on the same transaction on which VAT has been

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discharged as VAT and service tax are mutually exclusive.The said proposition has also been clarified by the CBIC vide Circular No. 334/1/2008-TRU dated 29.02.2008 (Para 4.4.3).Reliance in this regard is placed on the following judgements:

- (i) Imagic Creative Pvt Ltd. vs. Commissioner of Commercial Taxes [2008 (9) S.T.R. 337 (S.C.)]
- (ii) Commissioner of Service Tax-V, Mumbai vs. UFO Moviez India Ltd [2022 (61) G.S.T.L. 4 (S.C.)]

In light of the submissions made hereinabove, the revised ratio for reversal of CENVAT Credit would be computed as under:

- Total Value of exempted services (film division) provided during the financial year (i.e. M) as per the Notice = Rs. 28,88,44,244/-
- Total value of output and exempted services (for film division) provided during the financial year (i.e. N) is computed as under:

Particulars	Amount (Rs)
Total Value of output services provided as per Notice	33,27,68,723/-
Less: Value of output services provided during the previous years (i.e. advance amount on which tax paid during the last year and income recognised in the current year)	31,32,47,100/-
Add: Value of output services provided during the financial year 2013-14 (i.e. advance amount on which tax paid during 2013-14 and part of income to be recognised in the subsequent years)	1,05,01,19,356/-
Add: Value of export service (as per Notice)	33,83,844/-
Total Value of Output Service Provided during 2013-14	1,07,30,24,823/-
Add: Total Value of exempted services (as per Notice)	28,88,44,244/-
Total value of output and exempted services provided during the financial year (i.e. N)	1,36,18,69,067/-

- Total CENVAT credit taken on input services (for film division) during the financial year 2013-14 (i.e. P) as per the Notice – Rs.2,18,43,449/-

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- Therefore the ratio for reversal of CENVAT Credit pertaining to film division is coming to approximately 21.21% (i.e. $28,88,44,244/1,36,18,69,067 \times 100$)

Hence, the CENVAT reversal should have been Rs. 46,32,864/- (i.e. $2,18,43,449 \times 28,88,44,244/1,36,18,69,067$). However, the Appellant had inadvertently reversed a CENVAT credit of Rs. 76,45,207/- which is not in dispute basis their understanding that the ratio is to be applied for the entire company as a whole and not division wise.

3.10 Further, it is submitted that the demand of Rs.26,16,650/- is wholly unwarranted, as the input services availed from RIMT Pvt. Ltd. were exclusively used for rendering taxable output services and therefore no reversal of CENVAT credit is required. The Revenue seeks to recover Rs.26,16,650/- from the appellant against the cenvat credit amounting to Rs.30,84,840/- availed on input services (digital mastering services) received from RIMT Pvt. Ltd. on the purported ground that the said services have been used by the Appellant for rendering both taxable (video tape production services) as well as exempt services (advertisement services and services by way of temporary transfer of permitting the use or enjoyment of copyright of cinematographic film or exhibition in a cinema hall). In this regard it would be pertinent to note that "digital cinema mastering" refers to the technical process of converting a film's digital intermediate outputs (images) into a DCI/SMPTE-compliant Digital Cinema Package (DCP) by compressing, encrypting and synchronising image, audio and subtitle files for theatrical exhibition.

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3.11 He further submits that the findings of the Ld.Adjudicating Authority that the mastering services formed an integral part of exempted advertising services or temporary transfer of copyright for exhibition is based on mere assumptions and presumptions without any evidence of actual use. The Revenue has not adduced any evidence whatsoever to prove that the services received from RIMT were availed by the Appellant for rendering exempt services. Further, the allegation that that without receiving such services, the assesses would not be in a position to display their films or advertisement contents to the viewer is completely erroneous and without any basis in so far as the films can be exhibited even without receipt of the mastering services in cases where the Appellant receives digitally mastered reel from the producers. It is a settled law that the demand raised merely on the basis of presumptions and assumptions without any concrete evidence is liable to be dismissed and set aside. In support of his contention, he relies on the following judgements :

- (i) M/s DLF Project Limited Versus C.C.E & S. T- Gurgaon I [2020 (38) G.S.T.L. 56 (Tri. - Chan.)]
- (ii) M/s Bengal Beverages Private Limited vs. Commissioner of CGST & Excise, Howrah [2022 (2) TMI 1125 - CESTAT KOLKATA]

3.12 It is further submitted that the digital cinema mastering services availed from RIMT have been used exclusively for further providing digital cinema mastering services to the producers, on which tax has been discharged under the category "Video Tape Production services". In this regard, sample copies of the input service invoices issued by RIMT and the output service invoices raised by the appellant for provision of

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such services were also produced before the Ld. Adjudicating Authority. However, the Ld. Adjudicating Authority has rejected the contention of the Appellant on flimsy ground that all the cinemas were exhibited in digital form during the relevant period. Thus, the demand raised merely on assumptions and presumptions is liable to be set aside. He submits that in respect of the capital goods having been used for provision of both taxable and exempt services, no credit reversal is required in terms of Rule 6(4) of CCR.

3.13 He submits that out of the demand of Rs. 15,53,293/-, a sum of Rs.14,95,054/- pertains to cenvat credit availed on imports of projectors and parts thereof falling under Chapter 85 and 90, while the balance Rs.58,239/- pertains to the cenvat credit of input services availed in relation to maintenance of such projectors. The Revenue has demanded the reversal of the credit availed on said goods and services on the purported ground that they have been used by Appellant exclusively for effectuating exempt supplies. In this regard, the Appellant submits that the said allegation is unfounded and rendered without proper appreciation of facts in so far as it was used for provision of taxable services in the form of "distributor per show fees". The said projectors were used for exhibiting films in cinema theatres by the film distributor/exhibitor and the Appellant charged such distributor a pre-agreed share of the revenue on per show basis, on which tax was duly discharged by the Appellant under the category of "video tape production service". The Ld. Adjudicating Authority brushed aside the contentions of the Appellant by stating that video tape production services ceases its operation after transfer of digital films to distributor

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and that video production service (taxable) cannot be correlated with an exempt service of transfer or enjoyment of copyright of cinematographic film for exhibition in a cinema hall. In this regard, it is submitted that in terms of Section 66F(1) of the said Act, it is not necessary that a service used to provide an exempt service shall also be an exempt service. Thus, the finding of the Adjudicating Authority that there is no co-relation between a taxable service and exempt service is completely misplaced. Moreover, even if it is assumed but not admitted that the said services were not taxable under the category "video tape production service", the same would not result in any material change to the present proceedings. It is an undisputed fact that the Appellant has duly discharged service tax on the consideration received from distributor. Mere discharge of tax under an incorrect or alternative taxable category would neither alter the taxability of the transaction nor would render the payment otiose.

3.14 Further, he submits that in terms of Rule 6(4) of CCR, 2004, cenvat credit on capital goods is restricted only if used for supplying exclusive exempt services. Since, the projector and parts thereof have been used for providing both taxable and exempt services, no reversal is required. Thus, the demand of Rs.14,95,054/- is liable to be set aside. Reference in this regard is invited to the judgement of this Hon'ble Tribunal in the case of Commissioner of CX & ST, Kolkata vs. Electrosteel Castings Ltd. [Excise Appeal No. 75827 of 2015 – CESTAT KOLKATA]

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3.15 With regards to the balance demand of Rs.58,239/- pertaining to input services, he submits that the said services were used for rendering both taxable and exempt supplies and hence the Appellant had already reversed the proportionate credit amounting to Rs. 17653/- along with interest of Rs.6,354/-. However, the same has not been appropriated. Thus, he prays that an amount of Rs.17,653/- be appropriated and the balance demand of Rs.40,586/- be set aside.

3.16 It is further submitted that the demand of Rs.21,76,552/- is not sustainable as it has already been reversed by the appellant. The demand has been raised on the purported ground that the appellant has availed excess credit in ST-3 returns vis-à-vis the cenvat credit register. In this regard, he submits that the allegation of the Revenue is wholly erroneous and devoid of merits as the entire amount of Rs.21,76,552/- has been reversed by the appellant in its ST-3 returns for the period October 2013 to March 2014.

3.17 He further submits that the penalty under Section 78 is not imposable when tax has been paid even before the issuance of show-cause notice. It is well settled that penalty under Section 78 and/or under Rule 15 can only be imposed in a situation where Service Tax is not paid by reason of fraud, collusion or wilful mis-statement or suppression of facts or contravention of any provisions of the law, with the intent to evade payment of Service Tax. However, in the present case, the appellant has never suppressed any facts regarding the activities undertaken by them. In fact, the entire demand has been computed solely on the basis of the figures provided by the appellant, sourced from its audited annual accounts and S.T.-3 Returns filed

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during the relevant period. The Department has failed to adduce any evidence to establish suppression of facts on the part of the appellant with the intent to evade payment of Service Tax and hence penalty under Section 78 is not imposable. In this regard, he relies on the decision of this Tribunal in the case of M/s Outotec India Private Limited vs. Principal Commissioner of Service Tax-I,Kolkata (supra). Further, he submits that it is a well settled principle in law that penalty cannot be demanded under Section 78 of the Act, when tax has been paid even before the issuance of show cause notice. In this regard, he also relies on the judgement of this Tribunal in case of M/s Reliable Industries Versus Commissioner of CGST & Central Excise,Bhubaneswar [2023 (12) TMI 1065 - CESTAT KOLKATA].

3.18 Finally, he submits that the demand is barred by limitation. In this case, he points out that the demand for the entire period (2010-11 to 2013-14) except for the period October 2013 to March 2014 is barred by limitation. He further submits that it is a settled law that extended period of limitation cannot be invoked in cases where the entire demand has been raised solely on the basis of balance sheet and ST-3 returns of the Company, which are public documents. Thus, the entire demand for the period till September 2014 is liable to be set aside on this short ground alone.

4. The Id.A.R. for the Revenue has justified the impugned order.
5. Heard both sides and considered the submissions.
6. We find that in this case, the following issues emerge :

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(a) whether the appellant is liable to pay service tax under reverse charge mechanism on the expenses incurred in foreign currency towards shooting of films and other related expenses or not ?

(b) Whether an amount of Rs.30,58,083/-, is required to be reversed on account of alleged short reversal of cenvat credit on input services used commonly for making both taxable and exempt supply or not ?

(c) Whether an amount of Rs.26,16,650/- is required to be reversed on cenvat credit used on input services received from RIMT Pvt. Ltd. used for providing both taxable and exempt supply or not ?

(d) Whether an amount of Rs.15,53,293/- is required to be reversed to cenvat credit availed on projectors and its maintenance related services purported used exclusively for providing exempt services or not ?

(e) Whether an amount of Rs.21,76,552/- is required to be reversed for excess availment of cenvat credit in ST-3 Returns Vis-à-vis the cenvat credit register or not ?

(f) Whether penalty can be imposed under Section 78 of the Finance Act, 1994 on the appellant, or not ?

7. It is undisputed facts that the appellant is providing taxable as well as exempted services and on taxable services, the appellant is paying service tax. Some services are exempted services, on which, the appellant is not paying service tax. The appellant is not paying service tax on permanent transfer of copyright of cinematographic films and on that transfer of copyright, the appellant has paid VAT, therefore, no service tax is payable.

Service Tax Appeal No.75875 of 2017**Issue (a)**

Whether the appellant is liable to pay service tax under reverse charge mechanism on the expenses incurred in foreign currency towards shooting of films and other related expenses or not ?

8. The demand of service tax has been confirmed under reverse charge mechanism on the expenses incurred in foreign currency towards shooting of films and other related expenses for the period 2010-11 to 2013-14. In fact, the appellant incurred certain expenses in foreign currency for shooting of films outside India and other allied activities. The demand has been raised on the basis of figures shown in the balance sheet under the Heading "expenditure in foreign currency" without specifying the nature of the taxable service. It is not mentioned in the show-cause notice. The contention of the appellant is that the onus of determining taxability of a service and its classification is on the department and the demand cannot be raised merely on the basis of difference in figures between the Balance Sheet and the ST-3 Returns without identifying the category of underlying service, on which service tax is payable. Admittedly, no description of service has been identified by the Revenue while issuing the show-cause notice. The demand has been raised merely on the basis of difference in figures between the Balance Sheet and the ST-3 Returns. In that circumstances itself, the demand is not sustainable as held by this Tribunal in the case of Outotec India Private Ltd. (supra), wherein this Tribunal has observed as under :

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"6.1. From the above table, we find that this demand has been raised simply on the basis of the difference between Profit & Loss Accounts, Trial Balance and S.T.-3 Returns.

6.2. For the period prior to 01st July, 2012, the charge of Service Tax under Section 66 of the Finance Act was on services falling under the various sub-clauses of Section 65(105). It was therefore necessary for the Department to establish that the alleged differential income pertained to rendering of taxable services falling under one of the sub-clauses of Section 65(105) of the Act. The burden is cast upon the Department to prove that Service Tax is leviable under the charging provision, which the Department has failed to do in the instant case. Hence, the demand of Service Tax confirmed cannot be sustained. In support of this view, we rely upon the decision in the case of M/s Hindustan Zinc Ltd. Versus Commissioner, Central Excise, Udaipur [2021 (9) TMI 859]. The relevant portion of the said decision is reproduced below: –

"10. To appreciate the aforesaid contention, it would be necessary to examine the relevant provisions of section 66 and 66A of the Finance Act. Section 66 is the charging section and it provides that there shall be levied service tax at the rate of 12 per cent of the value of taxable services referred to in various clauses of section 65(105). Section 66A of the Finance Act relates to charge of service tax on services received from outside India.

11. Neither is there any allegation in the two show cause notices nor any finding has been recorded in the impugned order to demonstrate how the provisions of 66 read with 66A of the Finance Act and the Import Rules are attracted. In fact, neither the show cause notices nor the impugned order specify the category of service under which the demand has been confirmed against the Appellant. The demand has been proposed and confirmed merely because of difference between the figures in the balance sheet of the Appellant and the ST-3 Returns."

6.3.A similar view has also been taken by this Bench in the case of M/s. Nirman Construction Versus Commissioner of Central Excise, Service Tax and Customs, Durgapur Commissionerate,

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Burdwan (West Bengal) [2025 (8) TMI 6 – CESTAT Kolkata] wherein it has been held that no Service Tax can be demanded merely on the basis of difference between Balance Sheet and S.T.-3 Returns. The relevant observation made by the Bench in the aforesaid decision reads as under: -

"10.1. From the above, it is evident that Service Tax has been demanded on the basis of the value of taxable services as observed from the balance sheet / Profit & Loss Account of the appellant and the value declared in their S.T.-3 Returns. No separate category-wise Service Tax has been demanded. Therefore, we find force in the contention of the Ld. Counsel for the appellant that the Show Cause Notice, issued merely on the basis of difference observed between the figures furnished in the balance-sheet and S.T.-3 Returns without specifying any particular category of service for levy of Service Tax, is not sustainable."

6.4. Even for the period after 01st July, 2012, Service Tax can be levied only when there is a clear identification of service provider, service rendered, service recipient and consideration paid for the same, to analyse the nature of service rendered and the liability to Service Tax on the part of the appellant thereon. Since no such exercise has been done in the Show Cause Notice, we agree with the submission made by the appellant that the demand confirmed in the impugned order cannot sustain. We observe that the same view has been expressed by the CESTAT, Chandigarh in the case of M/s. Indian Machine Tools Manufacturers Association vs The Commissioner of Central Excise, Panchkula [2023 (9) TMI 815] wherein it has been held as under: -

"11. Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to

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raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets without proving that such service has been rendered by the assessee and consideration thereof has been received. Similarly, no service tax demand can be raised and confirmed on the basis of notional income."

6.5. *Similar views have also been taken in the following decisions: -*

- (i) *M/s. Sajma Enterprises Versus Commissioner of CGST & CX, Kolkata [2025 (9) TMI 873 – CESTAT Kolkata]*
- (ii) *M/s.GopiChenna and M/s SIS Teleservices Pvt Ltd vs Commissioner of Central TaxMedchal - GST and Commissioner of Central Tax Secunderabad – GST [2024 (3) TMI 11 – CESTAT Hyderabad]*
- (iii) *M/s.Rishu Enterprise Versus Commissioner of CGST & Excise, Dibrugarh [2024 (2) TMI 566 – CESTAT Kolkata]*

6.6. *Thus, we find merit in the submission made by the appellant that the demand of Rs.4,28,99,373/- confirmed in the impugned order merely on the basis of difference between Profit & Loss Accounts, Balance Sheets and S.T.-3 Returns, is not sustainable. Accordingly, the demand of Rs.4,28,99,373/- confirmed in the impugned order is set aside.*

7. *Regarding the demand of Rs.1,65,03,949/- confirmed in the impugned order, we find that the said demand has been raised on the advances received, by taking into account the balance of advances received as mentioned in the trial balance sheet of the appellant for the respective Financial Years. However, we find that the Id. adjudicating authority has not adduced any reasons to justify the demand of Service Tax confirmed in this regard. For levy of Service Tax, identification of the underlying service is the mandatory requirement, which has not been done in the present case. It was incumbent upon the Department to specify the taxable service being provided by the appellant and in the*

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absence of any specific taxable service being pointed out in the impugned Show Cause Notice, the demand raised against the appellant cannot sustain.

7.1. We find that the same issue came up for consideration before the Tribunal in the case of Commr. of Service Tax, Kolkata Versus M/s. Haldia Logistics Pvt. Ltd and vice-versa [2025 (5) TMI 2187 – CESTAT Kolkata], wherein the appeal filed by the Revenue has been dismissed, as service wise quantification was not done in that case. The relevant paragraphs of the above decision are reproduced below, for ease of reference: -

"7. In respect of the quantification of amounts realized given under Page 49 of the Appeal Paper, it is seen that there is no Service Tax reference. Coming to the Annexure-III, there is reference of Cargo Handling Service and Storage warehouse service without specific service-wise quantification of Service Tax. On the other hand, we find that the Adjudicating authority in the Discussions and Findings portion of the impugned Order, has bifurcated the demand under four different categories of services and has dealt with the documentary evidence submitted in respect of these services and he has come to a conclusion to drop and confirm the demand under various categories.

8. We find that the Show Cause Notice has been issued in a very casual manner without proper quantification of Service Tax under various headings. This being so, we do not find any error with the Adjudicating Authority who has bifurcated the demand and come to conclusion. We do not find any reason to interfere with the detailed findings of the Adjudicating Authority. Since the matter pertains to the year 2004-05 and 2005-06, we do not find any reason as to why it should be remanded once again to the Adjudicating Authority to undertake the entire exercise once again after two decades. Accordingly, we dismiss the appeal filed by the Revenue."

7.2. A similar issue has also been examined in the case of Star Freight Pvt. Ltd. versus C.S.T. - Service Tax – Ahmedabad [2023 (9) TMI 71] wherein it has been held that it is imperative for the department to specify the specific taxable service which is being provided by the appellant for levy of Service Tax.

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7.3. We find that the ratio of the decisions cited supra are squarely applicable to the facts and circumstances of this case. thus, by relying on the decisions cited supra, we set aside the demand of Rs.1,65,03,949/- confirmed in the impugned order."

In view of this, for the period prior to 1st July, 2012, the demand is not sustainable as there is no specific clause of Section 65(105) of the Finance Act, 1994, under which, the said service is liable to be taxed. Even it is specified the sub-rule of Rule 3 of the Taxation of Services (Provided from outside India and received in India) Rules, 2006, under which the said services can be said to have been received in India. As it is settled law that prior to 1st July, 2012, the onus to determine the taxability and classification, was on the Revenue, which the Revenue has failed to discharge. Therefore, the demand of service tax is not sustainable for the period prior to 1st July, 2012. The said view has been affirmed by this Tribunal in the case of M/s India Streamship (supra), wherein this Tribunal has observed as under :

"8.1. in the case of United Telecoms Limited Vs. Commissioner of Service Tax [2011 (22) S.T.R. 571 (Tri. -Bang), it has been observed as under:

"6. We find that no demand can be confirmed against any person towards service tax liability unless held is put on notice as to its exact liability under the statute. In the show-cause notice basic to the proceedings, the impugned activities were proposed to be classified under BAS and BSS This proposal was confirmed by the Original Authority. We find that this order is not in accordance with the law. The impugned order held that UTL provided services on behalf of the client le Director, e-Seva and sustained the demand. We find that under BAS, there are seven sub-clauses. Demand under sub-clause (vii) could be on activities relatable to either one of the preceding six sub-clauses. Therefore, if a notice

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issued proposing demand under BAS, the noticee will not be aware as to the precise ground on which tax is proposed to be demanded from him unless the sub-clause is specified. In the instant case, service tax was proposed to be demanded for an activity under BAS and BSS. Under BSS also several activities are listed as exigible under that head. In the absence of proposal in the show-cause notice as to the liability of the assessee under the precise provision in the Act, we find the demand to be not sustainable."

8.2. In the present case, we observe that the Notice failed to classify the specific category under which service tax is to be paid by the appellant. Accordingly, we hold that the demands of service tax confirmed in the impugned order is not sustainable on this count alone."

9. We further take note of the fact that for the period post 01.07.2012, the demand has been raised by invoking Rule 3 of the Place of Provision of Services Rules, 2012, under reverse charge mechanism. The contention of the appellant is that the said demand has been confirmed without ascertaining as to what type of service has been received by the appellant as the show cause notice is vague. Therefore, the said demand is not sustainable.

10. We further take note of the fact that the show-cause notice does not specify for what purpose the demand has been raised under reverse charge mechanism by invoking Rule 3 of the Place of Provision of Services Rules, 2012.

11. We further take note of the fact that the expenses which have been incurred by the appellant, are majority for the services in relation to immovable property situated outside India and the payments were made by the appellant to overseas line producers for arranging

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shooting of films outside India, therefore, the same are not liable to pay service tax under reverse charge mechanism. As such, such services are performed wholly outside in India. For better appreciation, the provisions of law of Place of Provision of Services Rules, 2012, are extracted herein below :

"4. Place of provision of performance based services

The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

PROVIDED that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

PROVIDED FURTHER that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or re-engineering for re-export, subject to conditions as may be specified in this regard.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

5. Place of provision of services relating to immovable property

The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for

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carrying out or coordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

6. Place of provision of services relating to events

The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment, event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.”

On going through the said provisions, we find that Rule 6 of Place of Provision of Services Rules, 2012, is more appropriate as the said provision provides that the place of provision of services for entertainment event or similar events and of services ancillary to such admission, shall be the place where the event is actually held. Admittedly, the shooting films were held outside India and whether the shooting films is an event that has been dealing by the Regulation 2(c) of The Rajasthan Film Shooting Regulations, 2012, which is extracted below :

“THE RAJASTHAN FILM SHOOTING REGULATIONS, 2012

.
.
.

Regulation 2. Definitions

....

(c) "Film shooting" means making of cinematographic films of motion pictures of a story or of an episode of a serial of motion picture or event recorded by a camera for the purpose of showing by cinematograph in a cinema, or on television or other electronic media whether that being for al commercial cinema venture or purely artistic creation for publicity and/or advertisement,

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intended for public viewing or showing or exhibiting whereof would be governed by the Cinematograph Act. 1952 (Central Act No.37 of 1952) or any other law for the time being in force;”

Therefore, shooting of films outside India do qualify under Rule 6 of Place of Provision of Services Rules, 2012 and the place of service is to be held where the service has been performed. In this case, the shooting of films have performed outside in India. In that circumstances, no service tax is payable by the appellant.

12. Further, we take note of the fact that the services are in the nature of services relating to immovable property location selection, which are outside India. For better appreciation of facts, the details are extracted below :

ANNEXURE - A

Details of Service Tax payable by M/s Shree Venkatesh Films Pvt. Ltd. on services received from outside India during the period 2010-11 to 2013-14

Sl. No.	Nature of services received	Amount involved (Rs.)			
		2010-11	2011-12	2012-13	2013-14
1	Services relating to immovable property- Location Selection	825000	1519976	5906231	18913188
2	Accommodation charges	803685	1350140	1857705	2782744
3	Car & Van hire with fuel reimbursement	15385	724991	1858980	2576336
4	Local travelling & Accommodation charges	105795	840468	2721817	0
5	Senior Technicians & Artist remuneration	0	0	0	223860
6	Local Technicians & Crew wages	0	589666	11070885	6569326
7	Set expenses	736515	0	0	10579494
8	Equipment hire charges	0	736285	3334552	5844300
9	Co-ordinator fees with asst.	0	445000	786532	5721419
10	Publicity expenses	0	1887500	0	1555992
11	Casting remuneration	0	0	3169077	2771198
12	Junior Artist wages	0	526500	1280120	1093050
13	Print Cost (Digitisation cost to foreign party)	0	0	0	284973
14	Negative Development charges	0	0	211118	453561
15	Telephone charges	0	40900	60999	0
	Total taxable value	2486380	8661426	32258016	59369441
	Rate of Service Tax payable	10.30%	10.30%	12.36%	12.36%
	Amount of Service Tax payable	256097	892127	3987091	7338063
	Total amount of Service Tax payable			12473378	

(GOUTAM CHATTERJEE)
Superintendent (Audit)
Group - XIV
Service Tax Audit Commissionerate
Kolkata

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Admittedly, all these expenses have been incurred by the appellant outside India for reference of services relating to immovable property-location or shooting services, which are performed based on the services relating to immovable property-location and the same shall be place of providing services. Admittedly, all the services have been performed by the appellant outside India. Therefore, the same will be treated as availed outside India. Therefore, no service tax is payable by the appellant. In view of this, the demand of Rs.1,24,73,378/- is set aside.

Issue (b)

Whether an amount of Rs.30,58,083/-, is required to be reversed on account of alleged short reversal of cenvat credit on input services used commonly for making both taxable and exempt supply or not ?

13. We find that the appellant has pro rata reversed the cenvat credit of the input services used in relation to its film division by computing the value of exempted and output services on entity basis as a whole and the Revenue is seeking reversal by considering the revenues of film division, which is not correct proposition. In terms of Rule 6(3A) of the Cenvat Credit Rules, 2004, the value of the services provided during the financial year, is required to be considered and the appellant has reversed the cenvat credit proportionately. If the same is taken up as service during the financial year, then, there is no shortage of reversal of cenvat credit by the appellant. In view of this, the said demand of Rs.30,58,083/- is set aside.

Issue (c)

Whether an amount of Rs.26,16,650/- is required to be reversed on cenvat credit used on input services received from RIMT Pvt. Ltd. used for providing both taxable and exempt supply or not ?

14. The Revenue is seeking to recover the said amount against the cenvat credit amounting to Rs.30,84,840/- availed on input services received from RIMT Pvt. Ltd. on the ground that the said service has been used for rendering both taxable as well as exempted services. In fact, the said services received by the appellant, were exclusively used for rendering taxable output services. Further, the Revenue has failed to prove that the services received from RIMT Pvt. Ltd., have been used for providing exempted services. It is evident from the invoices used by RIMT Pvt. Ltd. and the corresponding invoices issued by the appellant, for better appreciation of facts, the said invoices are extracted below :

	Real Image Media Technologies Pvt.Ltd 78, Third Street, Balaji Nagar, Royapettah, Chennai-600014, Tamilnadu			
INVOICE				
To: Shree Venkatesh Films (P) Ltd 5th Floor, No.8, Waterloo Street, Kolkata Kolkata WEST BENGAL India	Invoice No : THMC/000188/13-14 Invoice Date : 11/07/2013 Cust Code : QC80093			
Comments : Content Mastering Charges for the month of May 2013				
Item	Description	Base Value	Discount	Net Value
MASTERING FEE	Content Mastering Services			541700 *
	*.(Annexure Enclosed)	Sub Total		541700
		Service Tax	12%	65004
		Primary Education Cess	2%	1300
		Secondary Education Cess	1%	550
Total				608654
Amount in words: (RUPEES SIX LAKHS EIGHT THOUSAND SIX HUNDRED FIFTY-FOUR ONLY)				
Payment Terms : Immediate				
Payment should be made by way of crossed A/c Payee cheque /Draft in the name of "Real Image Media Technologies Pvt.Ltd"				
PAN Based Service Tax Registration Number - AAACM2150N ST091 TIN No 33880781185/ CST No 0699266 dated 30-04-2009				
E& OE				
For Real Image Media Technologies Pvt Ltd				
Authorised Signatory				
Corporate Office : 78, Third Street, Balaji Nagar Royapettah Chennai - 600 014 India Tel :+91 (84) 4204-1505 Fax :+91 (84) 42046710				



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SHREE VENKATESH FILMS PVT LTD
6 WATERLOO STREET
5TH FLOOR ROOM NO 508
KOLKATA-700 069
CIN - Ugn12WB1995PTC074345
E-Mail : info@venkateshfilms.com

Buyer
Greentouch Entertainment Pvt.Ltd.
P16411 2nd Floor CIT Road, Near Sony World
Ultadanga Kolkata-700054

Invoice No.	Dated
SVP-TU/13-14/000083	18-Feb-2014
Delivery Note	Mode/Terms of Payment
Supplier's Ref.	Other Reference(s)
Buyer's Order No.	Dated
Despatch Document No.	Dated
Despatched through	Destination

Sl No.	Description of Goods	Quantity	Rate	per	Amount
	D5 Processing & Digitisation Charges(D.C) Service Tax 12.36% Payable Video Tape(D.C)				75,000.00 9,270.00
Total					₹ 84,270.00 E & O.E

Amount Chargeable (in words)
Indian Rupees Eighty Four Thousand Two Hundred Seventy Only

Remarks:
Being Dpx and Mastering chargers for the movie of "JODI LOVE DILE NA PRAANEE"

Company's VAT TIN : 19452504064
Company's CST No. : 19452504258
Company's Service Tax No. : AAEC88975PSD002
Company's PAN : AAEC88975P

Declaration
In terms of Notification no.102/2007. No Credit of Additional duty of Customs/CENVAT levied under section 3(5) of the customs tariff Act 1975 is admissible

for SHREE VENKATESH FILMS PVT LTD

Authorized Signatory

SUBJECT TO KOLKATA JURISDICTION

This is a Computer Generated Invoice



From the invoices produced before us, we find that the invoice raised by RIMT Pvt.Limited on the appellant, is for content mastering charges

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and the appellant has raised invoices for D5 processing and digitisation charges. The digital cinema refers to the technical process of converting a film's digital intermediate outputs into a DCI/SMPTE-Complaint Digital Cinema Package by compressing, encrypting and synchronising image, audio and subtitle files for theatrical exhibition. As the appellant is engaged a sub-contractor by providing services i.e. RIMT Pvt. Ltd. and provided the service to the service recipient. As the appellant paid service tax on the said service, in that circumstances, the appellant is entitled to take the cenvat credit in full for the services received from RIMT Pvt. Ltd..

Issue (d)

Whether an amount of Rs.15,53,293/- is required to be reversed to cenvat credit availed on projectors and its maintenance related services purported used exclusively for providing exempt services or not ?

15. The cenvat credit sought to be denied on projector and the related services to the projector for their maintenance etc. on the ground that the said projector has been used for providing exempted services. In fact, the said capital goods have been used by the appellant for providing exempted as well as taxable services. In that circumstances, the cenvat credit on the capital goods cannot be denied to the appellant as in respect of the said capital goods have been used by the appellant for providing taxable as well as exempted services, this

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Tribunal in the case of Electro Casting Ltd. vide Final Order No.77612/2024 dated 21.11.2024, has observed as under :

"6. We find that in this case it is a fact on record that Respondent is manufacturing captively consume goods i.e. coke which have been ultimately used in manufacturing of final dutiable goods. In that circumstances, the provision of Rules 6(4) are not applicable to the facts of this case. As these capital goods received have not been used exclusively for fabrication for manufacturing of final exempted goods.

7. In that circumstances, we do not find any infirmative with the impugned order. The same is upheld and the appeal filed by the Revenue is dismissed."

Therefore, the denial of cenvat credit of Rs.15,53,293/-, is not sustainable.

Issue (e)

Whether an amount of Rs.21,76,552/- is required to be reversed for excess availment of cenvat credit in ST-3 Returns Vis-à-vis the cenvat credit register or not ?

16. The cenvat credit of Rs.21,76,552/- sought to be denied to the appellant on account of the appellants have availed excess cenvat credit in their ST-3 Returns as compared to cenvat credit register. The contention of the appellant is that the said amount has already been reversed by the appellant, which has been shown in their ST-3 Returns for the period October, 2013 to March, 2014. For better appreciation of facts, the reversal of the said amount is extracted herein below :

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products excluding exempted goods and for the provision of output services excluding exempted services) and paying an amount equivalent to CENVAT Credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (refer to Rule 6(3)(iii) of CENVAT Credit Rules, 2004) ('YTN')							
12 AMOUNT PAYABLE UNDER RULE 6 (3) OF THE CENVAT CREDIT RULES, 2004							
Sl No	Month	Oct	Nov	Dec	Jan	Feb	Mar
12.1	Value of Exempted good cleared	0	0	0	0	0	0
12.2	Value of exempted services provided	0	0	0	0	0	0
12.3	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 by debiting CENVAT Credit account	0	0	0	0	0	0
12.4	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 by cash	0	0	0	0	0	0
12.5	Total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 (2.5+ (12.3+12.4))	0	0	0	0	0	0
13 CENVAT CREDIT TAKEN AND UTILISED							
13.1 DETAILS OF CENVAT CREDIT OF SERVICE TAX AND CENTRAL EXCISE DUTY TAKEN AND UTILISATION THEREOF-							
Sl.No	Details of Credit	Oct	Nov	Dec	Jan	Feb	Mar
13.1.1	Opening Balance	0	72098	112313	549413	318487	229733
13.1.2	Credit taken						
13.1.2.1	on inputs	46727	0	0	0	0	0
13.1.2.2	on capital goods	0	0	69412	0	0	179616
13.1.2.3	on input services received directly	1851920	3293289	740999	786325	4307916	8852550
13.1.2.4	as received from Input Service Distributor	0	0	0	0	0	0
13.1.2.5	from inter unit transfer by a LTU	0	0	0	0	0	0
13.1.2.6	any other credit taken (please specify)	0	0	0	0	0	0
13.1.2.7	TOTAL CREDIT TAKEN (13.1.2.1+13.1.2.2+13.1.2.3+13.1.2.4+13.1.2.5+13.1.2.6)	1898547	3293289	810411	786325	4307916	9032166
13.1.3	Credit Utilised						
13.1.3.1	for payment of Service Tax	1826549	3253074	373311	1017251	4396670	4631983
13.1.3.2	for payment of Education Cess on taxable services	0	0	0	0	0	0
13.1.3.3	for payment of Secondary and Higher Education Cess on taxable services	0	0	0	0	0	0
13.1.3.4	for payment of excise or any other duty	0	0	0	0	0	0
13.1.3.5	towards clearance of Input goods and capital goods removed as such or after use	0	0	0	0	0	0
13.1.3.6	towards inter unit transfer to LTU	0	0	0	0	0	0
13.1.3.7	for Payment of amount under Rule 6(3) of the Cenvat Credit Rules, 2004	0	0	0	0	0	2113156
13.1.3.8	for any other payments/ adjustments/reversal (please specify)	0	0	0	0	0	0
13.1.3.9	TOTAL CREDIT UTILISED (13.1.3.1+13.1.3.2+13.1.3.3+13.1.3.4+13.1.3.5+13.1.3.6+13.1.3.7+13.1.3.8)	1826549	3253074	373311	1017251	4396670	6745139
13.1.4	Closing Balance of CENVAT credit (13.1.1 + 13.1.2.7 - 13.1.3.9)	72098	112313	549413	318487	229733	2516760
13.2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN AND UTILIZATION THEREOF-							

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	Details of Credit	Oct	Nov	Dec	Jan	Feb	Mar
I 3.2.1	Opening Balance of Education Cess	0	1440	2244	10966	6367	4591
I 3.2.2	Credit of Education Cess taken						
I 3.2.2.1	on inputs	935	0	0	0	0	0
I 3.2.2.2	on capital goods	0	0	1388	0	0	3592
I 3.2.2.3	on input services received directly	37036	65866	14820	15726	86158	177051
I 3.2.2.4	as received from Input Service Distributor	0	0	0	0	0	0
I 3.2.2.5	from inter unit transfer by a LTU	0	0	0	0	0	0
I 3.2.2.6	any other credit taken (please specify)	0	0	0	0	0	0
I 3.2.2.7	Total credit of Education Cess taken I 3.2.2.7=(I 3.2.2.1+I 3.2.2.2+I 3.2.2.3+I 3.2.2.4+I 3.2.2.5+I 3.2.2.6)	37973	65866	16208	15726	86158	180643
I 3.2.3	Credit of Education Cess Utilised						
I 3.2.3.1	for payment of Education Cess on goods and services	36533	65062	7466	20345	87934	92937
I 3.2.3.2	towards payment of education cess on clearance of input goods and capital goods removed as such or after use	0	0	0	0	0	0
I 3.2.3.3	towards inter unit transfer to LTU	0	0	0	0	0	0
I 3.2.3.4	for any other payments/ adjustments/reversal (please specify)	0	0	0	0	0	42253
I 3.2.3.5	Total credit of Education cess utilised I 3.2.3.5=(I 3.2.3.1+I 3.2.3.2+I 3.2.3.3+I 3.2.3.4)	36533	65062	7466	20345	87934	135200
I 3.2.4	Closing Balance of Education cess I 3.2.4= ((I 3.2.1 +I 3.2.2.7) - I 3.2.3.5)	1440	2244	10966	6367	4591	50034
I 3.3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS (SHEC) TAKEN AND UTILIZATION THERE-OF-							
	Details of Credit	Oct	Nov	Dec	Jan	Feb	Mar
I 3.3.1	Opening Balance of SHEC	0	722	1124	5495	3187	2299
I 3.3.2	Credit of SHEC taken						
I 3.3.2.1	on inputs	467	0	0	0	0	0
I 3.3.2.2	on capital goods	0	0	694	0	0	1796
I 3.3.2.3	on input services received directly	18520	32933	7410	7864	43060	88526
I 3.3.2.4	as received from Input Service Distributor	0	0	0	0	0	0
I 3.3.2.5	from inter unit transfer by a LTU	0	0	0	0	0	0
I 3.3.2.6	any other credit taken (please specify)	0	0	0	0	0	0
I 3.3.2.7	Total credit of SHEC taken I 3.3.2.7=(I 3.3.2.1+I 3.3.2.2+I 3.3.2.3+I 3.3.2.4+I 3.3.2.5+I 3.3.2.6)	18987	32933	8104	7864	43060	90322
I 3.3.3	Credit of SHEC Utilised						
I 3.3.3.1	for payment of SHEC on goods and services	18265	32531	3733	10172	43968	46469
I 3.3.3.2	towards payment of SHEC on clearance of input goods and capital goods removed as such or after use	0	0	0	0	0	0
I 3.3.3.3	towards inter unit transfer to LTU	0	0	0	0	0	0
I 3.3.3.4	for any other payments/ adjustments/reversal (please specify)	0	0	0	0	0	21132
I 3.3.3.5	Total credit of SHEC utilised I 3.3.3.5=(I 3.3.3.1+I 3.3.3.2+I 3.3.3.3+I 3.3.3.4)	18265	32531	3733	10172	43968	67601

which clearly shows that the appellant has reversed the said amount during the period October, 2013 to March, 2014. As the appellant has

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already reversed the said amount, therefore, the said demand is set aside.

Issue (f)**Whether penalty can be imposed under Section 78 of the Finance Act, 1994 on the appellant, or not ?**

17. The penalties have been imposed on the appellant for availment of cenvat credit paid under reverse charge mechanism without any duty paying documents in terms of Rule 8 & 9 of the Cenvat Credit Rules, 2004. As there is no evidence brought on record that the appellant has availed cenvat credit by way of fraud, collusion or willful mis-statement or suppression of facts or contravention of any provisions of law with intent to evade payment of service tax, therefore, no penalties can be imposed on the appellant under Section 78 of the Finance Act, 1994 on account of availment of cenvat credit paid under reverse charge mechanism without any valid documents and excess availment of cenvat credit on the capital goods. Therefore, the penalties imposed on the appellant under Section 78 of the Finance Act, 1994, are set aside.

18. In view of the above observations, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on **05.02.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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