

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.60306 of 2022 [SM]**

[Arising out of OIA No.CHD-EXCUS-001-APP-33/2022-23 dated 30.05.2022 passed by the Commissioner of CGST (Appeals), Chandigarh]

**M/s Antares Services Pvt. Ltd.**

**: Appellant**

#3019, Sector 35-D,  
Chandigarh-160022

Vs

**The Commissioner of Central Excise,  
Chandigarh**

**: Respondent**

Plot No. 19, Central Revenue Building,  
Sector-17C, Chandigarh-160017

APPEARANCE:

Shri Om Parkash, Advocate for the Appellant

Shri Ravinder Jangu, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60023/2024**

Date of Hearing: 24.01.2024

Date of Decision: 25.01.2024

**Per: P. ANJANI KUMAR**

The appellants, M/s Antares Services Private Limited, have registered themselves for provision of services like "Manpower Recruitment/ Supply Agency Service" and "Commercial Training or Coaching Service"; however, during the impugned period i.e. 2014-15 to 2016-17, they provided only Manpower Recruitment/ Supply Agency Service; A.G, Audit conducted an audit of the records of the appellants and noticed that the appellants have not filed ST-3 Returns for the period April 2014; Department issued a show-cause notice

dated 13.11.2019 to the appellant, *inter alia*, relying on the data supplied by the Income Tax Department; it was alleged that service tax of Rs.6,72,669/- should be recovered from them along with interest; the appellants contented that they have enough credit to pay the demanded service tax and have discharged the same whereas Department contended that the appellants have taken credit on the invoices beyond the permissible period of one year and therefore, credit is not admissible; the demand raised in the said show-cause notice was confirmed by the Original Authority and upheld by the Appellate Authority. Hence, this appeal.

2. Shri Om Prakash, learned Counsel for the appellants, submits that the appellants have availed input services like Renting of Property, CA Services, Service from Monster.Com etc. and utilized the same for provision of output services; they have paid discharged duty on the cum-tax value in terms of Section 67(2) of the Finance Act, 1994 and have in effect paid service tax excess by Rs.6,781; it was not correct for the Commissioner (Appeals) to deny the credit on the ground that it was taken beyond a period of six months; in terms of Rules 3 & 4, the appellants can avail CENVAT credit on the input services availed and the same shall be utilized only to the extent such credit is available on the last day of the month or quarter as the case may be for payment of duty or tax relating to that month or the quarter as the case may be. He submits, moreover, that the demand is raised on third-party information and therefore, cannot be sustained. He relies on the following:

- Sapanda Spoorthy Financial Ltd. – 2016 (06) LCX 0169.
- J.R. Herbal Care India Ltd. – 2010 (03) LCX 0058.
- M/s Origin Learning Solutions Pvt. Ltd. – 2021-TIOL-417-CESTAT-MADRAS.
- Balaji Machinery – 2022-TIOL-778-CESTAT-KOLKATTA.

3. Learned Counsel further submits that the demands pertain to the period 2014 to 2017 and the show-cause notice was issued on 31.11.2019; there is no suppression of material facts on the part of the appellants; therefore, the demand is time barred. He relies on the following cases:

- Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC).
- Padmini Products – 1989 (43) ELT 195 (SC).
- Pushpam Pharmaceuticals Company – 1995 (78) ELT 401 (SC).
- Uniworth Textiles Ltd. – 2013-TIOL-13-SC-CUS.
- Continental Foundation Jt. Venture – TIOL-1312-CESTAT-MUM.

4. Shri Ravinder Jangu, learned Authorized Representative for the Department, reiterates the findings of the impugned order and submits that the ST-3 Returns submitted by the appellants for the period April to September 2014, CENVAT credit was not shown under Heading D-1 whereas payment in cash was shown in D-1.

5. Heard both sides and perused the records of the case. The brief issue to be considered in this case is as to whether the appellant will not be eligible for CENVAT credit for the reason that the same was not mentioned in the ST-3 Returns filed and for the reason that credit has been taken after the prescribed period of six months or one year (from 01.03.2015). Learned Counsel for the appellants submits that

the Department has not disputed the availment of input services and has not raised the issue of eligibility of the CENVAT credit. The only contention of the impugned order is that the credit is availed after the prescribed period. He submits that Tribunal has been holding consistently that CENVAT credit can be availed even if the registration is not taken; the case of the appellant is on a better footing.

6. I find that learned Commissioner finds that CENVAT credit on input and input services can only be availed within a period of six month or one year (w.e.f. 01.03.2015) from the date of invoice and in the instant case, time period of one year has already elapsed and moreover, the appellants have not claimed the CENVAT credit in the ST-3 Returns. I find that the Tribunal in the case of Origin Learning Solutions Pvt. Ltd. (supra) held that CENVAT credit cannot be denied for the reason that such availment was not reflected in ST-3 Returns. I also find that Tribunal and High Courts have been consistently holding that a substantial rate of eligibility to CENVAT credit cannot be denied on the basis of procedural violations. In the instant case, it is not disputed that the appellants have availed the services; paid the service tax on the same and are in possession of documents indicating such availment. Under the circumstances, I am of the considered opinion that credit cannot be denied only because it has been utilized late. Moreover, I find that the show-cause notice has been issued on the basis of third-party information. I find that though extended period has been invoked, no evidence of suppression, mis-statement, fraud, collusion etc., has been put forth. In the absence of the same, extended period cannot be invoked. I find that the Tribunal in the

case of Balaji Machinery (supra) held that where the demand is merely on the basis of data obtained from Income Tax Department, it cannot be alleged that there was suppression etc. to justify the invocation of extended period. Therefore, I find that the impugned order is not legally sustainable.

7. In view of the above, the appeal is allowed both on merits and limitation.

*(Pronounced on 25/01/2024)*

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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