

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

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60364 of 2019**

[Arising out of Order-in-Original No. LUD-EXCUS-000-COM-05-18-19 dated 09.01.2019 passed by the Pr. Commissioner, CGST, Ludhiana]

**M/s Fastway Aerospace Private Limited**  
5<sup>th</sup> Floor, Grand Walk, H Block, BRS Nagar,  
Ferozepur Road, Ludhiana 152001

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise, Goods &  
Service Tax, Ludhiana**  
GST Bhawan, F Block, Rishi Nagar,  
Ludhiana, Punjab 141001

**.....Respondent**

**APPEARANCE:**

Mr. Naveen Bindal, Advocate for the Appellant

Ms. Amita Gupta, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 61722/2025**

DATE OF HEARING: 28.07.2025

DATE OF DECISION: 27.11.2025

**S. S. GARG :**

The present appeal is directed against impugned order dated 09.01.2019 passed by the Pr. Commissioner, CGST, Ludhiana, whereby the learned Commissioner has confirmed the demand of Rs.8,28,713/- raised on account of inadmissible Cenvat Credit along with interest and penalty and has also confirmed the demand of

Rs.64,534/- raised on account of short payment of service tax along with interest and penalty, by invoking the extended period of limitation.

2. Briefly stated facts of the present case are that the Appellant was a multi system operator which was receiving signals from the broadcasters and transmitting signals to local cable operators who were transmitting signals to ultimate customers. The Appellant was registered with the Service Tax department and was paying service tax on their output service and was availing Cenvat Credit on input services in terms of the Cenvat Credit Rules, 2004.

2.1 Records of the Appellant were audited between August to October 2015 and it was observed that the Appellant had taken credit on the basis of printouts of invoices received through email without any signature of issuing authority and address on invoices was other than the Registered Office Ludhiana. The Appellant was asked to clarify the said discrepancy vide letter 12.04.2016 which was replied by the Appellant vide letter dated 14.04.2016 (as recorded in para 5 of the SCN). The department entertained the view that the Appellant had availed Cenvat Credit which was not admissible in terms of Rule 9(1) & (2) read with Rule 4A of the Service Tax Rules, 1994. Besides this, the department also found that the Appellant had short paid the service tax amounting to Rs.64,534/- on the basis of difference of value shown in balance sheet vis-a-vis ST-3 returns. On these allegations, a show cause notice was issued to the Appellant to show cause as to why:

(i) Inadmissible Cenvat Credit of Rs.2,90,33,678/- should not be demanded and recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(1) of the Act.

(ii) Interest should not be demanded and recovered under Rule 14 of the Rules read with Section 75 of the Act.

(iii) Penalty should not be imposed under Rule 15(3) of the Rules read with Section 78 of the Act.

(iv) Short payment of service tax amounting to Rs.64,534/- should not be demanded and recovered along with interest and penalty under Section 73(1) of the Act read with Sections 75 and 78 of the Act.

2.2 The Appellant filed detailed reply to the show cause notice citing various provisions of Cenvat Credit Rules as well as decisions of various benches of the Tribunal to prove that they have rightly availed the Cenvat Credit.

2.3 After following the due process, the learned Commissioner, vide the impugned order, dropped the demand of Rs.2,82,04,965/- raised on account of inadmissible Cenvat Credit but confirmed the demand of Rs.8,28,713/-/- on account of inadmissible Cenvat Credit along with interest and penalty; further, the learned Commissioner also confirmed the demand of Rs.64,534/- on account of short payment of service tax along with interest and penalty, by invoking extended period of limitation. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 The learned Counsel further submits that the Respondent has travelled beyond the show cause notice by denying the Cenvat Credit on the ground which is not alleged in the show cause notice; the ground taken for rejection of Cenvat Credit raised in the show cause notice has been dropped by the Respondent and once the ground raised in the show cause notice has been dropped then the Respondent has no authority to reject the Cenvat Credit on a new ground; the same is not sustainable in law and is liable to be dropped.

4.2 He further submits that the Respondent has denied the Cenvat Credit on the ground that the Appellant has failed to make the payment to the service provider, which is specifically denied because the Appellant has actually made the payments to the service provider.

4.3 He further submits that the Respondent has failed to provide provision under which Cenvat Credit can be denied when payment was not made to the service provider; thus, in the absence of any specific provision, Cenvat Credit cannot be denied.

4.4 He further submits that there is no dispute with regard to rendition of service and availment of service and the transaction with regard to said service is also duly recorded in the books of

account which was verified by the audit team during the audit. He further submits that the Appellant has taken Cenvat Credit within time on the basis of valid invoices in terms of Rule 9(1) of the Rules, therefore, the denial of credit is not sustainable.

4.5 He further submits that the Appellant has duly discharged burden of proof and non-making of payment to service provider would not amount to non-discharge of burden.

4.6 As regards the short payment of service tax amounting to Rs.64,534/-, the learned Counsel submits that same could not be deposited in time due to non-preparation of audited balance sheet and the appellant had already furnished revised ST-3 returns for the relevant period and as per revised returns, there was no cash payment of service tax required, therefore, interest liability was also not attracted.

4.7 As regards the invocation of extended period, the learned Counsel submits that the Respondent has wrongly invoked the extended period of limitation in the absence of suppression of any facts on the part of the Appellant with intent to evade payment of tax. He also submits that extended period of limitation cannot be invoked on the basis of audit conducted by the department.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on records, I find that the main

allegation of the department in the show cause notice is that the Appellant has availed Cenvat Credit on the basis of invoices which are not as per Rule 9(1) of the Rules and therefore, the Appellant has taken inadmissible Cenvat Credit. The other allegation of the department is that the appellant has short paid the service tax amounting to Rs.64,534/- which has been raised on account of difference of value shown in the balance sheet and the ST-3 returns.

7. I find that the Appellant has satisfied the learned Commissioner on the basis of Cenvat Credit Rules, 2004 as well as on the decisions relied upon in the impugned order that the Appellant has rightly taken Cenvat Credit in accordance with the Cenvat Credit Rules, 2004. Further, I find that after considering the submissions of the Appellant, the learned Commissioner dropped the demand of Rs.2,82,04,965/- and confirmed the demand of only Rs.8,28,713/- but the ground on which the learned Commissioner has confirmed the demand, is beyond the show cause notice. Further, I find that the ground of rejection of Cenvat Credit in show cause notice has been dropped by the learned Commissioner but he has confirmed the remaining demand on the ground that the Appellant has failed to pay to service provider, which of course has been denied by the Appellant, but this cannot be a ground to reject the Cenvat Credit when the same does not appear in the show cause notice. Further, I find that there is no dispute with regard to rendition of service and availment of service and all the transactions are recorded in the books of account. Therefore, I am of the view that the learned Commissioner has travelled beyond the show cause

notice to confirm the demand of Rs.8,28,713/- which needs to be dropped and I do so.

8. As regard the demand of Rs.64,534/-, I find that the same was raised on the basis of difference between the balance sheet and the ST-3 returns filed by the Appellant, which was rectified by filing the revised returns by the Appellant which was not considered by the learned Commissioner. Once the revised returns have been filed, there is no discrepancy between the balance sheet and the ST-3 returns and accordingly, there is no need to confirm the demand under this except also.

9. As regards the invocation of extended period, I find that the show cause notice was issued on the basis of audit conducted by the department and it is a settled law that extended period cannot be invoked on the basis of audit as held in the following cases:

- **Maruti Suzuki India Ltd – 2024 (4) TMI 724 CESTAT Chandigarh**
- **Hoshiarpur Automobiles – 2024 (4) TMI 432 CESTAT Chandigarh**
- **Sunshine Steel Authorities - (2023) 8 Centax 209 (Tri. Del.) - affirmed by Hon'ble Supreme Court (2023) 8 Centax 210 (SC)**

10. As regards the interest and penalty, I hold that when the demand itself is not sustainable, the question of interest and penalty does not arise.

11. In view of my discussion above, I am of the considered opinion that the impugned order is not sustainable in law and

accordingly, I set aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 27.11.2025)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

RA\_Saifi