

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

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.51692 of 2015

(Arising out of Order-in-Original No.30/Commr./LKO/ST/2014-15 dated 24/12/2014 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Amrit Bottlers Pvt. Ltd.,Appellant

(119-A, Faizabad Road, Near Indira Bridge, Lucknow)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow

....Respondent

(7A, Ashok Marg, Lucknow)

APPEARANCE:

None, for the Appellant

Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70743/2025

DATE OF HEARING : 14 July, 2025
DATE OF PRONOUNCEMENT : 16 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.30/Commr./LKO/ST/2014-15 dated 24/12/2014 passed by Commissioner of Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

"ORDER

- 1. Service Tax of Rs. 1,42,43 376/- including Ed. Cess and SHE. Cess; not paid by the party, the Jetails of which are given in the Tables above is hereby confirmed under Section 73(1) of the Finance Act. 1994, end the rest of the demand, proposed in SCN, is dropped as per detailed discussion of this order in preceeding paras.*

I appropriate Rs 35.44.872/ deposited by the party against the above referred demand.

- 2. The party is hereby required to pay Interest on the unpaid service tax amount of Rs.1,42,43,376/- under Section 75 of the Finance Act, 1994.*
- 3. I hereby impose a Penalty of Rs.1,42,43,376/- under Section 78 of the Finance Act, 1994 for suppressing the facts with intent to evade payment of service tax.*
- 4. I hereby impose a Penalty of Rs. 10,000/-under Section 77(1)(b) of the Finance Act, 1994 for not maintaining proper records relating to service tax.*
- 5. I hereby impose penalty Rs.2,000 under section 70(1) of Finance Act 1994."*

2.1 Appellant is engaged in providing (i) Management, Maintenance or Repair Services (ii) Renting of Immovable Property Services and (iii) Cleaning Activity, which are taxable service in terms of Section 65 (64) read with 65(105)(zzg). Section 65(90a) read with 65(105)(zzzz) and Section 65 (24b) read with 65 (105) (zzzd) of the Finance Act 1994. They are registered with the department for payment of service tax in respect of services provided.

2.2 Acting on the information that the party was being legal owner of 'Riverside Mall' Vipin Khand, Gomti Nagar, Lucknow were engaged in rendering Management, Maintenance or Repair Services, Renting of Immovable Property Services and Cleaning Activity but they were not discharging service tax properly on the rent received from their tenants including the Future Group, the owner of Big Bazaar. The premises of appellant was visited on 09.01.2013, at the time of visit Shri Dinesh Chand Katiyar, Authorized Signatory of appellant was present and stated that the said mall is in operation since Nov'2007 and there are seven tenants as follows:-

1. Inox Leisure
2. Future Group (Big Bazaar)
3. Barbeque Nation Hospitality
4. MV Entertainment (Zero Degree)

5. Main Land China (Suryans Farming)
6. Noushijan Restaurant (P) Ltd
7. Barista Coffee Company Ltd.

2.3 It was also informed that they receive rent as per lease agreement entered with their tenants and they had submitted ST-3 regularly, as some of tenants have not provided them the amount leviable on the rental charges and the same have not been paid the tax to the department. It was assured that whatever short payment of service tax the party had made the same will be discharged alongwith interest soon to the department.

2.4 Shri Katiyar furnished some documents like balance sheet Profit & Loss A/c of the party for the F.Y. 2010-11, ST-3 returns for the FY 2008-09, 2009-10 and 2010-11, Agreement copy between the party and its tenants Barista coffee, Sanchi Hotel Pvt Ltd., sample rental bill issued by the party, ledger account of water tax and house tax S. tax calculation chart of the party and seizure report of Income Tax Department dated 18-12-2012. The other documents required for investigation were subsequently procured by the department through a letter dated 13-03-2013.

2.5 Appellant informed vide letter dated 05.04.2013 that their tenants are members of Retail Association of India which is litigating the matter regarding taxability of rental of immovable property services under Finance Act 1994 before Hon'ble Supreme Court and Hon'ble Supreme Court of India has clarified that liability of service tax till 30th Sept 2011 had to be discharged by the tenants in 50% in three equal installments and remaining 50% in the form of surety.

2.6 Shri Katiyar vide his letter dated 14-10-2013 has stated that M/s MV. entertainment, one of their tenants at the said mall, are neither a member of the Retailers Association of India nor a party to the dispute. With regard to M/s Future, he stated that Future group have not provided them with any information regarding the outstanding s. tax dues till 30-09-2011 which stands at Rs 56,18,215/-. However, he stated that M/s Inox

Leisure Ltd had deposited the entire service tax due till 30-09-2011 but Shri Katiyar didn't provide this office with the payment particulars in relation to the payment made by M/s Inox Leisure Ltd in accordance with the Hon'ble Supreme Court's direction in Civil Appeal No. 8390 of 2011.

2.7 After completion of the investigation from the ST-3 return filed for the period 2007-08 to 2011-12 following has been observed:-

Financial year	Management, maintenance or repair service	Renting of immovable property	Cleaning services	Gross receipt	Service tax paid		
					In cash	Through CENVAT	Total S. Tax paid
2007-08 (Oct'07-Mar'08)	0	5332584	0	5332584	3795	655313	659108
2008-09	0	22683084	0	22683084	8276	2098563	2106839
2009-10	0	13269852	0	13269852	0	1407594	1407594
2010-11	10134534	23827136	7249284	41210954	0	1440203	1440203
2011-12	0	0	0	0	0	0	0

2.8 As per the Rental income ledger account submitted by the party for the Financial Year 2007-08 to 2011-12 received from tenants is detailed in table below:- (Amount in Rs)

F.Y.	Rental income received from tenants	Parking charges	Electricity reimbursement	Rent for hoarding	Gross amount received
2007-08	5332584	0	4500	0	5337084
2008-09	26710381	636690	275034	115500	27737605
2009-10	33525177	638608	958059	750000	35871844
2010-11	32129898	2571993	1631140	2225600	38558631
2011-12	34619300	2645581	2142067	2250000	41656948

2.9 From Cenvat credit ledger following is observed:-

(Amount in Rs)

Financial Year	Total Credit availed as per ledgers	Credit as per	Total credit availed/taken as per ST-3 returns	Credit utilized (as per ST-3 returns)
	(1)	(2)	(2)	(3)
2007-08	1593823		1593823	655313
2008-09	2104480		2105118	2098563
2009-10	358023		1881179	1407596
2010-11	260656		18277	1440200
2011-12	47488		0	0
Gross Total	4364470		5598397	5601672

2.10 From perusal of the above, it is observed that appellant has utilized the credit in excess of Rs.12,37,202/- over and above the amount in the credit ledger.

2.11 Further, it is observed that from the balance Sheet following is observed:-

F.Y.	Revenue from operation		Other Income		Total Income
	Rent received /business income	Amenity Fees received	CAM Charges	Misc receipt	
2007-08	5337084	--	1821559	270992	7429635
2008-09	27727955	6756360	5116282	80800	39681397
2009-10	35871844	8445450	6727446	73773	51118513
2010-11	38558631	10134540	6938645	38000	55669816
2011-12	41656949	10134540	7213131	8000	59012620

2.12 On the basis of above, revenue authorities found that appellant have short paid service tax as follows:-

F.Y.	Gross income as per Balance sheet	Rate of S. Tax (incl Ed cess & SHEd cess)	S. Tax payable	S. Tax paid (as per ST- 3)	Short payment/ Excess payment (-/+)
	(a)	(d)	(e)	(f)	(g)
2007-08	7429635	12.36%	9,18,303	6,59,108	-2,59,195
2008-09 (April 08 to Feb. 09)	35744205	12.36%	44,17,984	21,06,839	-27,16,676
2008-09 (March 09)	3937192*	10.30%	4,05,531		
2009-10	51118513	10.30%	52,65,207	14,07,594	-38,57,613
2010-11	55669816	10.30%	5733991	14,40,203	-4293788
2011-12	59012620	10.30%	6078300	0	-6078300
Total	212911981		22819316	5613744	-17205572

2.13 Accordingly, show cause notice dated 23.10.2013 was issued to the appellant, asking them to show cause as to why-

"i. Service tax of Rs. 1,84,42,774/- [Rupees One Crore Eighty Four Lakhs Fourty Two thousands Seven hundred and Seventy Four only) including Ed. Cess and S.H. Ed. Cess, not paid by the party, the details of which are given at para 17 & 18 to this show cause notice above, should not be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 read with the proviso thereto;

- ii. Interest should not be demanded and recovered from them on the service tax not paid, as mentioned in (i) above, under section 75 of the Finance Act, 1994;*
- iii. Penalty should not be imposed upon them under section 76 of the Act (as applicable prior to 10.05.2008) for non-payment of service tax within stipulated time as prescribed under Section 68 of the Act read with Rule 6 of Service Tax Rules, 1994;*
- iv. Penalty should not be imposed upon them under Sections 77 (1) (b) and 78 of the Finance Act, 1994.*
- v. Late fee should not be demanded and recovered from them under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.”*

2.14 The said show cause notice was adjudicated as per the impugned Order-in-Original dated 24.12.2014 referred in para 1 above.

2.15 Aggrieved appellant have filed this appeal.

3.1 The matter was earlier heard on 28.11.2023 and order was reserved. Subsequently, the matter was released for re-hearing. At the time of hearing on 28.11.2023 appeal was heard in presence of the Counsel, he made his submissions and also filed a written submission.

3.2 After re-listing, this matter was listed for hearing on 28.02.2025, 23.04.2025 and today i.e. 14.07.2025. We find that after relisting, the matter has been adjourned maximum time as prescribed under Section 35C(1A) of the Central Excise Act, read with Section 83 of Finance Act, 1994. Section 35C (1A) of the Central Excise Act, 1944 provides as follows-

“35C. Orders of Appellate Tribunal.-

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal."

RULE 20 of CESTAT Procedure Rules, 1982 provide as follows:-

Action on appeal for appellant's default. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

Accordingly, this matter has been taken up for consideration on the basis of written submissions made by the Counsel for the appellant during the hearing on 28.11.2023 and after hearing Smt Chitra Srivastava, learned Authorized Representative appearing for the revenue.

3.2 In the written submission dated 28.11.2023 following has been submitted on behalf of the appellant:-

- **Demand of Service Tax on Renting of Immovable Property Services**- As the Noticee has already informed to the department that short payment of service tax on renting of immovable property service is due to due to dispute of the members of Retailers Association of India with the Union of India and Future Group & Inox Leisure are the major tenants of our shopping complex. The total amount of service tax due to these two tenants as per Annexure -1 submitted is Rs 1,05,27,986/. As per Supreme Court order in SLP bearing No 8390 of 2011, has held the following "all members of the appellant

association, namely, Retailers (i) Association of India, who are before us, shall deposit with the concerned department 50% of the arrears towards the said tax within six months in three equated installments, on or before 1st November, 2011; 1st January 2012 and 1st March, 2012; (ii) for the balance 50% all the members shall furnish a solvent surety, to the satisfaction of the jurisdictional Commissioner; (iii) they shall file individual affidavits in this Court, within four weeks from today undertaking to pay the balance arrears of service tax, stayed in terms of this order, as may be directed by this Court at the time of final disposal of the appeal; and (iv) the successful party in this appeal shall be entitled to interest on the amount stayed by this Court at such rate as may be directed at the time of final disposal of the appeal

- From facts on record as per direction of the court the Inox Leisure Ltd has made the compliance and report the same to the Assistant Commissioner Service Tax-1 Division-111 Mumbai through letter dated 28th December 2011 & 1 March 2012 duly acknowledged by the office of Assistant Commissioner.
- As per Annexure D-1& B of the letter, Inox Leisure Ltd had informed to the department about particulars of the landlord, service tax due till 30th September 2011 and 50% deposit particulars.
- From the letter of the Inox Leisure Ltd it is clear that they had deposited 50% of service tax due which is Rs 21,39,702/ and for balance 50% amount, the Inox had submitted the bond with the department in compliance of the order.
- Likewise the Future Group has also informed through letter dated 23/11/2012 about payment of 50% service tax of Amrit Bottlers Pvt Ltd amounting to Rs.22,93,964/-for the rest amount they had also submitted the bond to the Central Excise department.

1	2	3	4	5	6=2-(3+4+5)	7	8	9	10
2007-8	7429635	0	4500	1821559	5603576	12.36	692602	659108	33494
2008-09 (upto Feb 09)	35744205	493602	177436	4753474	30319693	12.36	3747514	2106839	1984046
2008-09 (Mar 09)*	3937192	143088	97598	362808	3333698	10.30	343371		
2009-10	51118513	638608	958059	6727446	42794400	10.30	4407823	1407594	3000229
2010-11	55669816	2571993	1631140	6938645	44528038	10.30	4586388	1440203	3146185
2011-12	59012620	2645581	2142067	7213131	47011841	10.30	4842220	0	4842220
Total	212911981	6492872	5010800	27817063	173591246		18619918		13006174

*Figures chalked out on the basis of party's ledger for March. 2009

4.3 The basic issue involved in the present case is in respect of levy of service tax on renting of immovable property services. The said issue is decided by Hon'ble Supreme Court in the case of Retailers Association of India Vs Union of India 2012 (26) STR J96 (SC) by observing as follows:-

"The learned Additional Solicitor General prays for time to file counter affidavit on behalf of the respondents. Let the needful be done within four weeks. Rejoinder affidavit, if necessary, may be filed within two weeks thereafter.

Having regard to the issue and revenue involved, we expedite the hearing of the appeals.

C.A. No. 8390/2011 M/s. Retailers Association of India v. Union of India & Ors.

Having heard learned counsel for the parties on the question of stay with regard to the arrears of service tax due from the members of the appellant association prior to 30th September, 2011, we direct as follows :

all members of the appellant association, namely, Retailers (i) Association of India, who are before us, shall deposit with the concerned department 50% of the arrears towards the said tax within six months in three equated instalments, on or before 1st November, 2011; 1st January 2012 and 1st March, 2012; (ii) for the balance 50% all the members shall furnish a solvent surety to the satisfaction of the jurisdictional Commissioner; (iii) they shall file individual affidavits in this Court, within four weeks from today undertaking to pay the balance arrears of service

tax, stayed in terms of this order, as may be directed by this Court at the time of final disposal of the appeal; and (iv) the successful party in this appeal shall be entitled to interest on the amount stayed by this Court at such rate as may be directed at the time of final disposal of the appeal.

It is clarified that this interim order shall apply only in the case of those members of the association who were petitioners before the High Court in the writ petition giving rise to this appeal and who shall file the requisite affidavits within the aforesaid period of four weeks from today. We further direct that any default in deposit of any one of the instalments by the dates fixed above, would result in vacation of this stay order and it will be open to the department to recover the balance amount in accordance with law.

I.A. No. 3 for impleadment

Learned counsel for the applicant seeks leave to withdraw the application stating that the applicant would file a substantive petition. Accordingly, the application is dismissed as not pressed.

C.A. Nos. 8391-8393/2011

Shoppers Stop Ltd. Etc. Etc. v. Union of India & Ors Etc. Etc.

Being a member of the appellant-association in C.A. No. 8390/2011, no separate orders are called for in this appeal.

C.A. No. 8397/2011 M/s. Metro Shoes Ltd. & Anr. v. Union of India & Ors.

C.A. No. 8398/2011 M/s. Major Brands (India) Pvt. Ltd. v. Union of India & Ors.

C.A. No. 8428/2011 - Cinemax India Ltd. v. Union of India & Ors.

Having heard learned counsel for the parties on the question of stay with regard to the arrears of service tax due from the appellants prior to 30th September, 2011, we direct as follows :

(i) all the appellants in each of the appeals, who are before us, shall deposit with the concerned department 50% of the arrears towards the said tax within six months in three equated instalments, on or before 1st November, 2011; 1st January 2012 and 1st March, 2012; (ii) for the balance 50% each of the appellant in these appeals shall furnish a solvent surety to the satisfaction of the jurisdictional Commissioner; (iii) they shall file affidavits in this Court, within four weeks from today undertaking to pay the balance arrears of service tax, stayed in terms of this order, as may be directed by this Court at the time of final disposal of the appeals and (iv) the successful party in these appeals shall be entitled to interest on the amount stayed by this Court at such rate as may be directed at the time of final disposal of the appeals.

It is clarified that this interim order shall apply only in the case of the appellants who shall file the requisite affidavits within the aforesaid period of four weeks from today. We further direct that any default in deposit of any one of the instalments by the dates fixed above, would result in vacation of this stay order and it will be open to the department to recover the balance amount in accordance with law."

4.4 Appellant do not dispute the leviability of the service tax on the services under the category of renting of immovable property, but claimed that they have in case of tenants who are part of the Retailer Association of India not deposited the service tax as per the above order of Hon'ble Supreme Court as those tenants have not paid the service tax to them. They have also produced copy of the challans etc., showing the deposit made by the said tenants, for compliance with the above order. The matter in respect of levy of service tax in respect of these clients of the appellant is stayed as per the above order. Thus on the basis of the amounts deposited by these two clients, appellant have claimed that demand should be reduced by Rs. 88,67,332/- , and should be kept in abeyance till the time the issue is decided by the Hon'ble Apex Court.

4.5 As the issue with regards to leviability of service tax on Renting of Immovable property is decided by the Hon'ble Supreme Court in respect of these clients, we find that the

matter should be remanded back to the Original Authority for fresh decision in the matter after decision of Hon'ble Supreme Court.

4.6 On the issue of miscellaneous income and demand of CENVAT Credit impugned order observes as follows:

"26. On miscellaneous income. party has submitted that the said income is related with sale of scrap & interest that is not a taxable event under the Finance Act 1994.

On this issue, I have noticed that neither during investigation the party was able to produce any documentary evidence regarding the nature of such receipts nor produce any supportive documents' before undersigned to validate their claim that the said miscellaneous income does not fall under ambit of Finance Act 1994. Thus the claim of party on this issue is not sustainable.

27. As for as availment and utilization of excess Cenvat credit is concerned, it has been alleged in S.C.N. that as per Cenvat credit ledger of party only Rs 43,64,470/- was available to therein, however they have they have utilized Cenvat credit to the tune of Rs 56,01,672/-. Thus they have availed excess Cenvat credit amounting to Rs 12,37,202/- than what might have been available to them.

On this, issue party has submitted that that during investigation they have submitted all the invoices on which CENVAT credit was availed. In the books of accounts CENVAT Credit was not properly booked. This is the reason for difference between CENVAT Credit as per ST-3 Return and books of accounts.

I find that the claim of the party that they have submitted all the invoices related to Cenvat credit availed by them during disputed period is not supported by documentary evidences. Further party has also failed by this time to furnish records/ documents before undersigned in support of the excess amount of CENVAT credit amounting to Rs.12,37,202/- availed by them. Therefore, I am of the view that in absence

of genuine Cenvat Credit taking document, available with the party, the amount of Rs. 12,37,202/- is recoverable from them."

4.7 On the above two issues the demand has been confirmed against the appellant, only for the reason that the appellant were not in position to substantiate their claim made in respect of the Miscellaneous income.

4.8 In respect of the miscellaneous income appellant had claimed that this income was on account of sale of scrap & interest, which is not taxable under Finance Act, 1994. However they were not able to substantiate their claim before the adjudicating authority. IN our view this claim, could have been very easily be substantiated by production of the profit and loss account by the appellant along with the note on accounts, which are essentially the part of the balance sheet. In absence of any such document, being produced at any stage we do not find any reason to agree with the said claim made and agree with the findings recorded by the adjudicating authority and uphold the confirmation of demand along with interest and penalty imposed under Section 78 of the Finance Act, 1994, on this account. However there is no separate bifurcation indicated in the impugned order to show the amount of demand that is made on this account. For the purpose of computing the demand on this account we remit the matter back to the original authority.

4.9 The demand in respect of the CENVAT credit of Rs 12,37,202/- has been made for the reason that there was difference in the amount of CENVAT Credit as per the CENVAT Credit register and the ST-3 return. We find that CENVAT Credit register is the private record of the appellant and is declared by them for maintaining the record of CENVAT Credit availed and utilized. The CENVAT Credit Register maintains the details of the documents against which the appellant claims the credit. It is only the extract of this register which is reflected in the ST-3 return. In any case the entries made in the register or on the ST-3 are to be backed by the duty/ tax paying documents, which could be verified during the audit. Impugned order records that

appellant failed to provide the said tax paying documents, against which they had claimed credit in their ST-3 return and have not entered in the CENVAT Credit Register. In absence of any documents evidencing the payment of tax against which the appellant have claimed this credit we do not find any merits in the submissions made by the appellant. The demand made in this respect is upheld along with the interest and penalties imposed under Section 78 of the Finance Act, 1994.

4.10 Thus we summarize our findings as follows:

- a. Demand in respect of the Renting of Immovable Property Services, is remanded to original authority for consideration in accordance with the final decision that would be rendered by the Hon'ble Supreme Court in case of Retailer Associations of India case referred in the preceding paras.
- b. Demand of service tax on Miscellaneous income along with interest and penalty imposed under Section 78 of the Finance Act, 1994 is upheld, but the matter is remanded to original authority for quantification.
- c. Demand in respect of the CENVAT credit of Rs.12,37,202/- along with interest and penalty imposed under Section 78 of the Finance Act, 1994 is upheld.

5.1 Appeal is partly allowed and the matter is remanded back to the Original Authority as indicated in para 4.10 above.

(Order pronounced in open court on-16 October, 2025)

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

**(ANGAD PRASAD)
MEMBER (JUDICIAL)**