

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 1

SERVICE TAX Appeal No. 10521 of 2019-DB
[ST/CROSS/10362/2019]

(Arising out of OIO-RAJ-EXCUS-000-COM-06-18-19 dated 03/10/2018 passed by the Commissioner of CGST & Central Excise -Rajkot)

**COMMISSIONER OF CENTRAL GST
AND CENTRAL EXCISE-RAJKOT**

..... Appellant

6th Floor, CENTRAL GST BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT- 360001

VERSUS

RELIANCE INDUSTRIES LTD

.....Respondent

MOTIKHAVDI, MEGHPAR PADANA GAGVA
JAMNAGAR, GUJARAT- 361142

APPEARANCE:

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Appellant
Shri Vishal Agarwal with Shri Abhishek Deodhar & Ms. Dimple Gohil, Advocate(s) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 11434/2025

DATE OF HEARING: 28.08.2025
DATE OF DECISION: 18.12.2025

SATENDRA VIKRAM SINGH

The present appeal has been filed by the Commissioner, CGST & Central Excise, Rajkot against order-in-original No. RAJ-EXCUS-000-COM-06-18-19 dated 03/10/2018 vide which the Adjudicating Authority had dropped the proposal made in the show cause notice dated 28th October, 2008 for recovery of Cenvat credit of Rs. 8,24,58,703/- along with interest and penalty.

2. In appeal, Revenue has challenged a portion of the demand amounting to Rs. 1,15,30,018/- on following grounds and prayed to set aside the impugned order to this extent and allow their prayer:-

- Prior to 01.07.2003, Business Auxiliary Service being provided by the respondent was not taxable. Therefore, for insurance services received by the respondent, prior to 01.07.2003, no taxable output service was

being provided as per Rule 2(b) of the Service Tax Credit Rules, 2002. Thus, the adjudicating authority has erred in holding that such insurance service is qualified as an input service as per Rule 2 (c) of the said rules.

- The adjudicating authority also erred in granting pro rata benefit of Cenvat credit on insurance premium paid by the respondent from 01.07.2003 without citing any legal provision as there is no transitional provision for taking Cenvat credit of service tax paid on input service on pro rata basis in Service Tax Credit Rules, 2002 or in Service Tax Rules, 1994 or in Cenvat Credit Rules, 2004.
- The show cause notice also alleged that the respondent had taken above Cenvat credit on insurance service for which bills/ documents were raised prior to 01.07.2003 and credit was not admissible in terms of Rule 3(3) of the Service Tax Credit Rules, 1994 which states that “no service tax credit shall be allowed on input services received and consumed in relation to rendering of such output service which is exempt from whole of the service tax leviable thereon”.
- The adjudicating authority has taken a reference to amended Rule 3(1) of the Service Tax Credit Rules, 2002 vide Notification No. 05/2003-ST dated 14.05.2003. After this amendment, an output service provider was permitted to take credit of service tax paid on those input services which were not falling under the same category as that of output service for which invoice or bill or challan is issued on or after 14.05.2003 (emphasis supplied).
- The decision of the tribunal in the case of Doshion Ltd Vs, CCE Ahmedabad reported at 2013 (30) STR 240 (Tri.-Ahmd.) and Idea Mobile Communication Ltd Vs. CCE, Meerut reported 2012 (277) ELT 92(Tri.-Del.) differ with the facts of the present case as in the referred cases when input services were received, their output service was taxable. Hence, reliance by the learned Adjudicating authority on above two cases is erroneous. Likewise, decision of CCE, Bangalore Vs. Godrej &

Boyce Manufacturing Co. Ltd reported at 2007 (8) STR 255 (Tri. Bang.) is not applicable in this case.

3. During hearing, learned AR mentioned that the respondent M/s Reliance Industries Ltd (RIL) entered into an agreement dated 26.12.2002 with M/s Reliance Infocomm Ltd (RIC) for rendering Business Auxiliary Services. In terms of this agreement, respondent was obliged to take insurance as directed by RIC from time to time and in accordance to that, they had taken two insurance policies on 28.05.2003 & 25.06.2003. These insurance policies issued by National Insurance Company Ltd (herein after called 'Insurer') were to cover risk of default in payment by telecom subscriber of RIC and mobile hand sets given to such subscribers and were valid for three years. He states that business auxiliary services so provided by the respondent to M/s RIC became taxable w.e.f. 01.07.2003 and therefore, insurance services received from the insurer prior to 01.07.2003 were not input services as defined under Rule 2(c) of the Service Credit Rules, 2002. He therefore pleads that when output service i.e. Business auxiliary service itself was brought under tax net under Section 65(105) (zzb) w.e.f. 01.07.2003, credit availed on input service prior to this date is not admissible. In support of his say, he submits a copy of relevant Notifications and the decision of the Tribunal in the case of Idea Mobile Communications Ltd Vs. Commissioner of C. Ex. Cochin reported at 2008(9) STR 41 (Tri. - Bang.), Marmagoa Shipping & Stevedoring Co. P Ltd Vs. Commr. of C. Ex., Goa reported at 2007 (6) STR 239 (Tri.-Mumbai) and copy of Circular No. 65/14/2003-ST dated 05.11.2003 issued by CBIC. He pleads that the impugned order passed by the Commissioner, CGST & Central Excise Rajkot is not legally sustainable to the above extent which may be set aside and the department's appeal may be allowed.

4. Countering the argument of the department, learned Advocate mentioned that a lump sump premium was paid for the insurance policies which were valid for a period of three years and since, insurance premium was

paid prior to 01.07.2003, they had availed Cenvat credit of service tax paid on such insurance premium on proportionate basis. He explains with the help of a table provided in their synopsis that invoice No. 1200301395 dated 16.05.2003 shows premium amount of Rs.1,49,62,500/- involving service tax of Rs. 7,48,125/-. Period of insurance in respect of this policy was from 28.05.2003 to 19.05.2006. They have availed credit of Rs.7,19,430/- on a proportionate value of Rs. 1,43,88,596/- corresponding to 1053 days. He submits that the learned adjudicating authority has rightly allowed them the Cenvat credit which is legally allowable to the respondent and therefore, the appeal filed by revenue is not sustainable if correct computation/calculation is applied. He cites the decision of Hon'ble Tribunal in the case of GHCL Ltd Vs. Commissioner of Central Excise Bhavnagar reported at 2009 (242) ELT 468 (Tri.- Ahmd.) wherein Cenvat credit has been permitted on proportionate basis. He also mentions that the appeal nowhere asserts that the service was also consumed prior to 01.07.2003 as it only alleges that service was received prior to 01.07.2003. The respondent also relied on following other case laws:-

- Punjab Bearing INDS. (P) Ltd Vs. CCE., Chandigarh [2001 (138) E.L.T 1208 (Tri. - Del.)]
- International Merchandising Company, LLC Vs. Commissioner of Service Tax, New Delhi [2022 (67) V. G.S.T.L 129].
- Commissioner of Central Excise & Customs Vs. Alicon Pharma P. Ltd [2015 (322) E.L.T. 47 (Guj.)]

5. We have heard the rival submissions. The issue to be decided in this case is whether Cenvat credit is admissible on insurance services received during the period when output service (i.e. Business Auxiliary Service) was out of tax net? From the submissions, we find that the respondent (RIL) had entered into a Service Agreement dated 26.12.2002 with M/s Reliance Infocomm Ltd (RIC) under which RIL has expressed desire to provide an entire range of services including comprehensive surveillance and maintenance support services for RIC's telecom networks, including maintenance of associated utilities such as air conditioners, diesel generator sets, security

systems, fire alarm systems, etc. in telecom installations and that it has the necessary expertise, resource and technical manpower for providing the services required by RIC. Further, RIL has a large marketing network set up spread throughout the territory of India and it is desirous of using its distribution network to market the services that are being offered by RIC.

5.1 As per Section 2 of this agreement, scope of services is as under :-

"2.1. RIC hereby grants RIL. marketing rights on the terms and conditions set forth in this Agreement.

2.2. While marketing the Telecom Services, RIL shall be free to bundle the Tariff Plans of RIC with other products or Telecom Services as it deems fit and offer composite schemes to Customers.

2.3. RIL shall, if required enter into agreements with distributors, retailers or any other person for promotion and marketing of the Schemes and Telecom Services. RIL may enter into agreements/understanding with banks or other financial institutions for the purpose of arranging customer financing in respect of the Telecom Services.

2.4. RII shall conduct customer satisfaction surveys from time to time as advised by RIC. RIL, shall investigate and handle all complaints received from any customers

2.5. RII shall conduct sales, maintain accounts, records of transactions in accordance with as otherwise, stipulated by RIC. RII shall prepare and forward any accounts. records or other documents as requested by RIC in physical or electronic format, or as direct input in one or more of RIC's information systems, as RIC deems necessary.

2.6. RII shall, on behalf of RIC, bill and collect the amounts due from RIC's subscribers. For this purpose, RIL. shall procure and install all billing and other software and necessary infrastructure as directed by RIC from time to time.

2.7. RIL shall raise bills on behalf of RIC and send the same to the subscribers either electronically or the printed bills through courier or other means as agreed to between the parties. RIL may raise consolidated statement of charges ("statement of charges") to the subscribers including amounts due if any, to RIL or to any other company to which RIL is an agent.

2.8. RIL shall not bill any amounts from Subscribers for Telecom Services other than as per the respective Tariff Plans of RIC as approved by TRAI.

2.9. RIL shall also undertake the responsibility of collecting on behalf of RIC from the Subscribers

(a) all amounts including deposits under the Tariff Plan at the time of Subscriber enrolment.

(b) amount due from the Subscriber from time to time against bills raised for the Telecom Services rendered by RIC.

2.10. RIL shall remit to RIC all amounts collected on behalf of RIC.

2.11. RIL shall not be entitled to set off any dues from RIC except to the extent of compensation due to RII, under this Agreement.

2.12. In the event a Subscriber makes only partial payment of any statement of charges. the collected amounts shall be apportioned among RIL, RIC and any other company as mutually agreed between the Parties

2.13. RIL shall also appoint reputed banks for collection of the monies due by the subscribers against the tariff plans as well as the bills raised from time to time and enter into agreement with them for this purpose.

2.14. RIL shall be responsible for taking all necessary insurances in respect of its employees as well as any other insurance directed by RIC from time to time

2.15. RIL shall bear all expenses in respect of marketing of the Services.

2.16. There is no Service and/or territorial exclusivity granted to RIL as part of this Agreement by RIC. RIC may give such right or a similar right to Persons other than RIL to sell RIC's Services anywhere.

2.17. Nothing contained in this Agreement shall deem RIL to be a telecom service provider and in no circumstances shall RIL be a reseller of RIC's Telecom Services.

2.18. RIL shall, based on details furnished by RIC in terms of the electronics and utilities installed, list and location of maintenance offices and stores, etc., inventory of hardware, prepare the basic surveillance and maintenance plan and submit the same for approval to RIC.

2.19. For the provision of Maintenance Services under this Agreement, RIL shall deploy sufficient number of trained manpower, well versed and experienced in the job of providing Maintenance Services

2.20. RIL shall maintain ail utilities associated with the Media Conversion Nodes (MCNs), Intermediate Stations (IS), BAN/BTS locations, Fiber Distribution Panel, Fire Suppression System, air-conditioning, power supply (AC, DC and UPS) and related infrastructure.

2.21. RII. shall set up sufficient number of maintenance centers along with necessary infrastructure at various sites throughout the country as required by RIC.

2.22. RIL shall also attend to any maintenance requirement, from time to time on the specific reference by RIC or on its own arising out of specific finding during its routine surveillance operations, after prior confirmation from RIC.

2.23. RIL shall be responsible to discharge all such actions to ensure that RIC provided uninterrupted Telecom Services.

2.24. RIL shall arrange sufficient resources to attend to any maintenance call from RIC on 24 hours a day, 7 days a week basis.

2.25. RIL shall be responsible for providing adequate security at all sites where network elements, electronics of RIC are situated and shall ensure that adequate security systems including, without limitation, burglar and fire alarms, where ever required.

2.26. RIL shall provide the general purpose maintenance tools, instruments as may be required by its staff deputed on these jobs.

2.27. RIL shall provide the required warehousing facilities for Spares, maintenance tools and other items required for the Maintenance Services under this Agreement.

2.28. RIL shall also be responsible for undertaking all preventive maintenance to ensure the optimum working of all the network elements of RIC

2.29. As part of the Maintenance Services, RIL shall be responsible for ensuring the availability of all consumables including without limitation, diesel, petrol, lubricants.

2.30. In respect of any specialized tools provided by RIC, RIL shall give periodic Inventory status of such material, tools, equipment, and instruments.

2.31. RIL shall be responsible for maintaining all documents and reports pertaining to the Maintenance Services. RIC reserves the right to access and make copies of such documents at any time and RIL shall promptly provide access as required by RIC

2.32. RIL shall facilitate negotiations with vendors of the electronics as well as the software to ensure that adequate maintenance agreements remain in place at all times RIL shall also co ordinate the performance of the various vendors under their respective maintenance agreements

2.33. RIL shall be responsible for obtaining all governmental approvals and permits connected with the Services rendered by RIL under this Agreement.

2.34. RIL shall maintain worker's compensation insurance coverage, commercial liability insurance coverage, medical insurance coverage and any other insurance as required by relevant laws and regulations.

2.35 RIL shall be responsible performing all such maintenance and surveillance services as are generally required for a world class telecom network and shall

specifically perform such services as RIC requires it to perform from time to time.

2.36 On happening of any event, where the electronics or any network element is damaged, by the action of natural forces or by action of any third party, RIL, shall forthwith intimate the local circle/city RIC office. It shall take all such preliminary steps as may be necessary, which shall include, provide for the assessment of the damage, make first information report, where applicable, arrange for the completion of insurance survey and complete all necessary documentation relevant for filing of damage claims to third party or to insurance company.

2.37. While attending to any emergency, arising out of such eventuality, it shall render all assistance to RIC in the matter of dealing with local agencies for all types of approvals.

2.38. The Parties agree that that may commence providing full fledged Maintenance services under this Agreement on a date mutually agreed between the Parties after RIL has established the necessary systems, processes to comply with its obligations under this Agreement. The Parties agree that RIC shall during such interim period make arrangement for payment of maintenance expenses which shall be reimbursed by RIC.”

5.3 For payment, Section 7 of the said agreement provides as under:-

"SECTION 7: PAYEMENTS AND TAX

MARKETING SERVICES

7.1. In respect of the Standard Tariff Plan, RIL shall be entitled to a compensation of Rs 1440 per subscriber enrolled by it.

7.2. In respect of the Alternate Tariff Plan 1, marketed by RIL, RIL shall market the plan as per the tariff filed by RIC with TRAI and after retaining an amount of Rs 1440 towards its compensation, shall pay back to RIC an amount of Rs 12,960 per subscriber enrolled by it.

7.3. In respect of other plans, the compensation shall be determined as mutually agreed between the Parties.

7.4. Notwithstanding the above, the amounts payable to RIL shall accrue only upon the commencement of commercial services by RIC.”

MAINTENANCE SERVICES

7.5 In the event RIC has to arrange for any Maintenance Services on its own under Section 2.38, prior to commencement of full fledged Maintenance Services under this Agreement by RIL, RIL shall reimburse RIC for expenses incurred by RIC, upon submission by RIC of true and accurate documents supporting such reimbursement.

7.6 RIC and RIL shall agree on compensation to RIL for Maintenance Services before RIC starts providing full fledged Maintenance Services.

7.7 RIL shall raise the bills on a monthly basis, which shall be paid by RIC within two weeks from date of submission of bills along with all necessary supporting documentation.

7.8 All payments shall be exclusive of all current and future levies, taxes and duties. Any payments and dues receivable by RIC from RIL may be offset by RIC against any sums, fees or deposit due to RIL by RIC. All such payment shall be subject to deduction of tax at source.

7.9 Each Party shall be responsible for paying taxes, if any, liable to be paid by it in respect of carrying on its obligations under this Agreement

OTHER PAYMENTS

7.10. Notwithstanding anything else contained in this Agreement, in the event RIL breaches any of its obligations under this agreement which results in the disruption of the Telecom Services of RIC, RIL shall pay to RIC liquidated damages of 1% of the total compensation payable to RIL by RIC, for each such instance of disruption of Telecom Service.

5.4 M/s RIL also entered into an MOU with insurer (M/s National Insurance Company Ltd) for providing insurance service. The relevant paras of the said MOU are as under :-

2. The insurance shall be valid for a period of 36 months from the respective date of activation of the Subscribers Terminal Equipment (Handset connection) as advised by the Insured, in their monthly statements.

4. It is agreed that the Insured shall submit to the Insurers, a statement of Handsets sold under various schemes where full money has not been collected in advance, every month, before 15th of the succeeding month.

5. It is agreed that the Insured shall place with the Insurer, an initial sum as deposit. equivalent to the premium payable for one month's sale and agree to replenish the deposit periodically, so that the premium outstanding to be paid on the sales, is always within the deposit amount.

6. It is specifically agreed to by the Insurers that, all claims preferred by the Insured with full documentation, shall be settled by the Insurers within a maximum time-frame of 15 days from the date of lodgement.

Conditions:-

1. In the event of disconnection of Services by RIL/RIC/RCIL of any connection giving rise to a claim, the insured shall:

i) GIVE IMMEDIATE NOTIFICAION TO the insurer

ii) Provide the Insurer with the disconnection certificate and copy of the legal notice served on the defaulting Subscriber with proof of dispatch.

2. The Insurer shall be entitled to take over and conduct in the name of insured, at the Insurer's own expense, the defense of any claim or to prosecute for its own benefit, any claims for indemnity or damages.

The Insurer shall have full rights under this Policy to make recoveries from any Defaulting Subscriber to facilitate which, the insured shall provide the insurer with letters of subrogation and indemnity:

5. The insured shall submit the statement of Subscriber (phone/MDN nos) details enrolled during any given month within 15 days after each month to the insurer along with payment of requisite premium and service tax. Notwithstanding this, the insured shall ensure that adequate premium to cover every Subscriber enrolled is available with the insurer prior to such enrollment.

5.5 In terms of above MOU, RIL has handed over a cheque for Rs. 12Cr. on 25.06.2003 being the amount of premium for the above cover. The said premium is in respect of 12 Lakhs hand sets @ Rs. 100/- per hand set.

5.6 During hearing before this Tribunal on 26.06.2025, the respondents were directed to produce copy of insurance policy to show as to for what items, on whose account these insurance services have been received and how service pertaining to invoices issued prior to 01.07.2003 were consumed in relation to provision of Business auxiliary service brought into tax net w.e.f. 01.07.2003. They did not produce copy of the Insurance Policies and instead, submitted a copy of the MOU dated 25.06.2003 entered into between M/s Reliance Industries Ltd/ their group companies and the insurer National Insurance Company Ltd on default insurance cover for telecom services along with copy of service agreement dated 26.12.2002 between the appellant and RIC.

5.7 From the service agreement between M/s RIC and M/s RIL, it appears to us that the respondent was granted marketing right of the entire range of services including comprehending surveillance and maintenance support services of RIC's Telecom networks including maintenance of associated utilities such as Air conditioners, Diesel Generator Sets, Security systems, fire

alarm system, etc. in telecom installation. It is not forthcoming from the agreement as to who was the owner of Mobile hand sets and under what terms and conditions were these provided to the subscribers. What relation of the service provider has with these handsets in terms of service agreement dated 26.12.2002 for which insurance service has been availed and claimed to be consumed for providing output services. We find that the credit availer (RIL) is obliged to satisfy jurisdictional authorities as to how insurance services were related to the output services provided by RIL and were indeed consumed on or after 01.07.2003. These aspects need to be verified by the adjudicating authority to take decision on allowability of disputed Cenvat credit and for this limited purpose, we remit the matter back.

5.8 We find that the issue of non-production of documents and insurance policies on the basis of which credit had been availed by the appellant was also raised in para-2 of the show cause notice. The Adjudicating Authority had relied on verification report dated 26.06.2018 of the Deputy Commissioner, CGST, Division I Jamnagar, but the said report mentions:- *"the service tax invoice on that service tax credit availed for the disputed period are binded in files & are voluminous and therefore, 100% verification of each and every invoice is not feasible. Therefore, random checks were carried out by the Superintendent. However, all the insurance policies on which M/s. RIL has availed credit of service tax were verified."* The report also mentions that *invoices issued in the name of Reliance Info-Com were later amended by striking out the name of Reliance Info-Com were noticed in all 154 invoices of different input service categories.*

5.9 We find that the department has relied on two decisions, one in the case of Idea Mobile Communication Ltd (cited supra) and the other one in the case of Marmagoa Shipping & Stevedoring Co. P Ltd. Both the decisions are not relevant in this case as they deal with Rule 3(1) of the Service Tax Credit Rules, 2002 which provided that *"An output service provider shall be allowed*

to take credit of the service tax paid on such input services, which fall in the same category of taxable service as that of output services, for which invoice/bill is issued on or after 16.08.2022". On the other hand, respondent has relied on the decision in the case of GHCL Ltd Vs. Commissioner of Central Excise Bhavnagar reported at 2009 (242) ELT 468 (Tri.- Ahmd.) wherein, the dispute pertained to Cenvat Credit Rules, 2004, Rule 3 of which contains a stipulation that credit could be availed only on those input services received on or after 10.09.2004. In these circumstances, this Tribunal held that in case the service covered the period before as well as after 10.09.2004, credit was permitted proportionately for the period after 10.09.2004. Agreeing with the above findings, we hold that Cenvat credit on input services in this case is allowable on proportionate basis for the portion that pertains to period on or after 01.07.2003.

6. With above observations, we remand the matter to the adjudicating authority for limited purpose as indicated in para 5.7 above with direction to take decision within a period of 4 months from the date of this order. Needless to say, respondent shall provide all necessary documents to enable the Adjudicating Authority to take expeditious decision.

7. The appeal is disposed of by way of remand.

(Pronounced in the open court on 18.12.2025)

**(MR. SOMESH ARORA)
MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)**