**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

**SERVICE TAX APPEAL NO. 50632 OF 2017**

[Arising out of the Order-in-Original No. Commissioner/LTU (Audit)/05/ 2016 dated 18/01/2017 passed by The Commissioner, Central Excise and Service Tax, New Delhi – 110 017.]

**M/s Gail Training Institute** **......Appellant**
Plot No. 24, Sector 16-A,
Noida, Uttar Pradesh.

**Versus**

**Commissioner, Central Excise and Service Tax, LTU,** **....Respondent**
N.B.C.C. Plaza, Pushp vihar, Saket,
New Delhi – 110 017

**APPEARANCE:**

Ms. Shagun Arora and Shri Kunal Agarwal, Advocates for the appellant.
Shri Rajeev Kapoor, Authorized Representative for the Department

**CORAM:**
**HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50471/2025**

**DATE OF HEARING : 17.01.2025**
**DATE OF DECISION: 09.04.2025**

**P.V. SUBBA RAO**

The Order dated 18.1.2017[1] passed by the Commissioner deciding the proposals made in the show cause notice dated 22.10.2014[2] is assailed by M/s. GAIL Training Institute[3] in this appeal. By the impugned order, the Commissioner denied

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1. **impugned order**
2. **SCN**
3. **appellant**

CENVAT credit of Rs. 2,01,27,433/- taken by the appellant between April 2009 to March 2014 and ordered its recovery under Section 73 (1) of the Finance Act, 1994[4] along with interest under section 75 of the Finance Act invoking extended period of limitation and imposed an equal amount as penalty under Section 78 of the Finance Act. He, however, dropped part of the demand proposed in the SCN for the reason that it pertained to even beyond the extended period of five years.

2. The appellant is an institute of the Gas Authority of India Ltd.[5] and is responsible for providing training to the employees of GAIL. It also provides training to other persons for which it charges a fee and such training is "commercial coaching and training". The appellant was registered with the Service tax department and has been paying service tax on such service. It has also been availing CENVAT credit on the inputs and input services.

3. Sometimes, employees of GAIL need to be trained at other institutes and those institutes raise invoices in the name of the appellant along with service tax. The appellant had availed CENVAT credit of the service tax paid on such invoices. Undisputedly, the employees who were trained were not the employees of the appellant but of GAIL and after training, they go back to their respective jobs in GAIL.

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**4. the Finance Act**
**5. GAIL**

4. The case of the Revenue is that since the service provided by the other training institutes in training employees of GAIL is not an "input service" for the output services (commercial training and coaching services) provided by the appellant, the appellant had wrongly taken CENVAT credit of the service tax so paid. The case of the appellant is that it was entitled to such CENVAT credit. While this amount formed a large portion of the disputed CENVAT credit, there were also some other services on which the appellant had availed CENVAT credit which are disputed by the Revenue.

5. The appellant also contests the demand on the ground that a major part of the disputed CENVAT credit pertains to beyond the normal period of limitation and none of the factors required to invoke extended period of limitation was present in the case. Therefore, according to the appellants, the demand cannot sustain for the extended period of limitation for that reason as well.

6. Thus, the issues to be decided are:

a) Admissibility of CENVAT credit on each of the disputed services;

b) Invocation of extended period of limitation; and

c) Imposition of penalty under section 78.

**Admissibility of CENVAT Credit on the disputed services**

7. According to the Revenue, the appellant was not entitled to CENVAT Credit on fourteen services and accordingly, the

CENVAT credit taken on them is sought to be recovered. These are as follows:

7.1 **Training Service provided by other institutions to employees of GAIL (Rs. 98,86,532/-)** The other institutions which provided training to employees of GAIL raised invoices in the name of the appellant who took CENVAT credit of the service tax paid by those institutions. According to the Revenue, this credit is not admissible as the persons who were trained were not employees of the appellant but were employees of GAIL. After completing the training, they went back to their respective positions at various places in GAIL. The output service of the appellant is "commercial training and coaching service" for which the training service provided by other institutions to the employees of GAIL was not an input service. The appellant's first submission on this issue is that the definition of 'input service' specifically includes coaching and training and therefore, it was entitled to take CENVAT credit. It's second submission is that service tax is to be construed on basis of the entire legal entity and the appellant was not a separate legal entity. It is part of GAIL and therefore it was entitled to take credit of the service tax paid on training employees of GAIL. It's third submission is that the employees of GAIL so trained can also be called to provide training to others in GAIL institute- the appellant.

7.2 We have considered the submissions.

7.3 The definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004[6] is as follows:

> (l) 'input service' means any service, -
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> **(i) used by a provider of output service for providing an output service**; or
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> (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, **coaching and training**, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;
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> but excludes, -
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> (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -
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> (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
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> (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
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> (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or
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> (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

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**6. CCR**

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person;

or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Explanation.- For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

7.4 It is evident from the above definition, that not every invoice on which an assessee pays service tax qualifies as 'input service'; it must be a service used to provide output service. The inclusive part of the definition enlarged it's scope to some extent including coaching and training. However, what needs to be noted is that these must be the services used by the assessee - the service provider. It is not sufficient if the bill is paid by the assessee if the service is not used by the assessee either in providing the output service or otherwise. The term "coaching and training" must be "coaching and training" of the employees of the assessee. Merely because the bills were paid by the assessee, the services provided by way of coaching and training of employees of GAIL do not become input services of the assessee. The submission of the appellant that the entire legal entity should be considered to determine eligibility of CENVAT credit and that the appellant was not distinct from GAIL deserves to be rejected. Unlike income tax, where the tax is assessed on the corporate entity combining all the incomes and expenses across all its units across the country, in Service Tax, every individual service providing entity is an assessee by itself. It has to pay service tax on the output services which it provides and it has no responsibility to pay service tax if some other unit of the same company had provided services. Similarly, every unit is entitled to take CENVAT credit on the inputs and input services which it uses in providing output services but it cannot take CENVAT credit of some input services used by some other unit of the same corporate entity. Simply because the bills are paid by the appellant, the training service will not become an input service for its output service which is commercial coaching and training. For all these reasons, the submissions by the appellant deserve to be rejected. Revenue was correct in denying CENVAT credit of the service tax on the training provided to the employees of GAIL because it was, quite clearly not the input service for the appellant.

7.5 **Cable service (Rs. 78,013/-) –** According to the appellant, cable service was provided in the accommodation of the trainees and therefore it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, it is clear that the appellant is entitled to CENVAT credit of the service tax paid on cable service.

7.6 **Housekeeping service (Rs. 22,26,620/-) –** According to the appellant, these services were availed for upkeep of the accommodation provided to the trainees and, therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on housekeeping service.

7.7 **Pest control service (Rs.1,01,777/-) –** According to the appellant, these services were availed for pest control in the business premises as well as the accommodation provided to the trainees and, therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant that it is clear that the appellant is entitled to CENVAT credit of the service tax paid on pest control service.

7.8 **Courier service (Rs.47,975/-) –** According to the appellant, these services were availed for sending various documents to different offices and to trainees in connection with the training programmes which it had provided and, therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on courier service.

7.9 **Insurance service (Rs.40,687/-) –** According to the appellant, these services were availed to insure office building and equipment in connection with the training programmes which it had provided and therefore it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on insurance service.

7.10 **Manpower recruitment service (Rs.18,00,277/-) –** According to the appellant, it had procured manpower on contract basis to run its day to day business. Therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant would be entitled to CENVAT credit of the service tax paid on manpower recruitment service.

7.11 **Photocopying service (Rs.73,094/–)** According to the appellant, it had rented a photocopy machine to meet its copying requirements related to training and therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on photocopying service.

7.12 **Security service (Rs.19,84,272/-) –** According to the appellant, it had hired services of a security agency and this service is in the inclusive part of the definition of 'input service' under Rule 2(l). No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Security services are included in the inclusive part of the definition and, therefore, the appellant is entitled to CENVAT credit of the service tax paid on security service.

7.13 **Telecommunication service (Rs.2,90,499/-) –** According to the appellant, this is the service tax paid to telephone operators on the telephone services. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to

CENVAT credit of the service tax paid on telecommunication service.

7.14 **Ticket booking service (Rs.19,153/-) –** According to the appellant, it had to book tickets to sent employees for training. Therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on ticket booking service.

7.15 **Works contract/maintenance and repair service (Rs.35,57,104/-) –** According to the appellant, it had used these services for maintenance and repair of building, equipment, furniture and fixtures which are used to provide commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on works contract/maintenance and repair service.

7.16 **Catering service (Rs.2,48,898/–)** According to the appellant, it had hired the caterer to provide food to trainees and faculty during training. Therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on catering service.

7.17 **Hiring of vehicles service (Rs.72,479/-) –** According to the appellant, the vehicles were hired for conveyance of trainees and the faculty. Therefore, it is an input service for its output service viz., commercial coaching, and training service. No reason has been given in the SCN or in the impugned order to deny CENVAT credit on this service. Considering the nature of the service provided by the appellant, the appellant is entitled to CENVAT credit of the service tax paid on this service.

8. The next question is if extended period of limitation was correctly invoked in the present case. As per section 73 of the Finance Act, demand of service tax invoking extended period of limitation can be raised if the non-payment of service tax is by reason of fraud or collusion or wilful misstatement or suppression of facts or violation of the provisions of the Act or Rules with an intent to evade service tax. This provision is also applicable for recovery of CENVAT credit. Therefore, what needs to be seen if one of these elements was present in the case to enable the Revenue to invoke extended period of

limitation. The submission of the appellant is none of these elements were present in this case.

9. The reason for invoking extended period of limitation given in paragraph 12 of the SCN is '*it further appears that the Noticee has suppressed the facts regarding availment of CENVAT credit on output service as input services are not related with output service. Since the said amount of CENVAT credit has been availed by the Noticee without supplying any information relating to availment of CENVAT credit on outward Commercial coaching or training service and the facts came to the notice of the department only when the audit of the records of the notice was conducted by the audit party of this office, the notices has thus suppressed the facts ….".*

10. The reasons given in paragraph 31 of the impugned order are on similar lines and it is stated *"I find that the Noticee had suppressed the facts regarding availment of CENVAT credit on input services when they were mainly engaged in providing Exempted services without quantifying them. …."*

11. Thus, according to the Revenue the appellant had availed inadmissible CENVAT credit and the fact that it had so availed was suppressed and was never disclosed to the department and it came to light only during audit. The very fact that audit discovered the availment of CENVAT credit means that the appellant had recorded and reported the

CENVAT credit in its Returns. The Returns do not require invoice-wise details of CENVAT credit nor any justification or explanation about the credit availed on each of the invoices. Once the Return is filed, it is the responsibility of the Range Officer to scrutinize it and for this purpose, he can call for any records and accounts of the assessee. Had this been done, the officer would have found out on which services CENVAT was availed and could have acted on it. Apparently, the officer did not scrutinize the Returns as the audit did much later and found the alleged irregularities. All that this proves is that the Range officer had not done his job properly and it does not show that the appellant had suppressed anything. Therefore, there is no ground to invoke extended period of limitation at all.

12. The next question is that of interest. If some CENVAT credit is recoverable, interest, at the appropriate rates also must be paid as per section 75.

13. The last question is of penalty. The Commissioner imposed a penalty under section 78 of the Finance Act which can be imposed only if the service tax was not paid by reason of fraud or collusion or willful mis-statement or suppression of facts or violation of the Act or Rules made thereunder with an intent to evade payment of service tax. In other words, the same elements which are required to invoke extended period of limitation are also required to impose penalty under this

section. Since none of these elements were present, the penalty needs to be set aside as well.

14. In view of the above, the appeal is partly allowed by upholding the denial and recovery of CENVAT credit availed on training services within the normal period of limitation with appropriate interest and setting aside the rest of the demand and penalties. The matter is remanded to the Commissioner for the limited purpose of calculation of the CENVAT credit and interest to be recovered.

(Order pronounced in open court on 09/04/2025.)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P.V. SUBBA RAO)**
**MEMBER (TECHNICAL)**

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