CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

ALLAHABAD

(E-HEARING)

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70216 of 2021

(Arising out of Order-In-Original - 44-Pr.COMMR-ST-NOIDA-2020-21, dated - 10/03/2021 passed by Principal Commissioner, CGST, Noida)

M/s HCL Infosystems Limited, ...Appellant
(E-4, 5 & 6, Sector-11, Noida)

VERSUS

Commissioner, CGST, Noida ....Respondent

(C-56/42, Renu Tower, Sector-62, Noida-201301)

APPEARANCE:

Shri B. L. Narasimhan, Advocate &
Shri Atul Gupta Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70714/2025

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 17.07.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Original No.44/Pr.Commr./ST/Noida/2020-21 dated 10.03.2021 passed by the Principal Commissioner, CGST, Noida. By the impugned order following has been held:-

ORDER

(i) I confirm the demand of Rs.312,34,10,295/- (Rs. Three Hundred Twelve Crores Thirty Four Lakhs Ten Thousand

Two Hundred Ninety Five only) upon M/s HCL Infosystems Limited, E-4, 5 & 6, Sector-11, Noida under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(2) of the Finance Act, 1994 as discussed supra.

(ii) I confirm the demand of Interest upon M/s HCL Infosystems Limited, E-4, 5 & 6, Sector-11, Noida at applicable rates during the relevant period, on the confirmed demand as in the para (i) above, under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994 as discussed supra.

(iii) I impose the penalty of Rs.312,34,10,295/- (Rs. Three Hundred Twelve Crores Thirty Four Lakhs Ten Thousand Two Hundred Ninety Five only) upon M/s HCL Infosystems Limited, E-4, 5 & 6, Sector-11, Noida, under Rule (15)(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for the aforesaid contraventions.

2.1 The Appellant is registered with the Service Tax Department and is engaged in providing the taxable services under the categories of 'Commercial Training & Coaching, 'Maintenance and Repair Service', 'Erection and Commissioning and Installation', 'Business Auxiliary Services', 'Goods Transport Agency Service', 'Information Technology Software Service, 'Works Contract Service', 'Banking and other Financial Services', Renting of Immovable Property Service, etc.

2.2 The Appellant is primarily engaged in the manufacture and sale of computer system, and as activities allied there to they are also rendering services and trading activities. Apart from this, they are also providing Office Automation-Telecom and AVSI Solutions, Office Automation-Imaging and Printing, Office Automation-Document Management Solutions, Networking products, Digital lifestyle products and solutions, Storage solutions, Software licenses, Racks and Enclosures, POS, KIOSK Counter products etc.

2.3 The Appellant registered themselves under Rule 4(2) of the Service Tax Rules, 1994, and are holding centralized Registration for all of their locations from where they conducted their business activity across the country.

2.4 During the course of verification of their books of accounts by the Audit Officers consequent to Audit conducted under Section 14 AA of the Central Excise Act, 1944 covering the period from April, 2011 to March, 2012, it was observed that the Appellant had availed huge amount of CENVAT credit against input services and utilized the said credit for payment of Service Tax on the taxable services provided by them.

2.5 On verifying the correctness of availment of input service credit and its utilization, it was observed that the Appellant was availing certain credit on input services viz. Insurance Service, Outbound Courier Service /Transportation Charges used in respect of the traded goods, Bank charges of import/export transactions, Charted Accountant Service (certificate for issuance of Form 15CB-Outward remittance Certificate), Telephone Charges, Rent-a-Cab service and on Security Services, which are commonly used in relation to trading of the goods (exempted service) as well as to taxable services.

2.6 As per Rule 3 of the CENVAT Credit Rules, 2004, CENVAT Credit on inputs or input services can be availed by a manufacturer of excisable goods or the Service provider of Taxable Output Service, subject to the conditions/ procedures as prescribed in the CENVAT Credit Rules, 2004. The input services used by the Appellant for providing output taxable services are common services used for providing both taxable and exempted services.

2.7 The Appellant who has availed such input service credit used for providing both taxable and exempted services, are governed by the provisions of Rule 6(2) of the CENVAT Credit Rules, 2004 and are required to maintain separate accounts for the receipt, consumption and inventory of Input and input services meant for use in the taxable and exempted services.

2.8 As the Appellant has not maintained separate accounts used for providing taxable output services as well as for providing exempted services, they are governed by provisions of Rule 6(2)(b)(iii) and (iv) of the CENVAT Credit Rules, 2004.

2.9 From what have been stated above Revenue was of the view that the Appellant had contravened the provisions of Rule 6(2) of the CENVAT Credit Rules, 2004, inasmuch as no separate accounts were maintained for consumption of input services for the exempted and taxable output services and Rule 6(3) or 6(3A) of the CENVAT Credit Rules, 2004 inasmuch as they had not followed any procedures contemplated therein.

2.10 It was also observed that the Appellant never disclosed the above fact to the Department and this fact came to notice of the Department only when the Audit of the accounts/records were conducted by the Department under Section 14AA of the Central Excise Act, 1944.

2.11 The Appellant also evaded payment of tax by way of non reversal of the said amount deliberately and intentionally as well as by suppressing/concealing taxable value of exempted services from the Department and availing the CENVAT credit even when they knew that they were not eligible to avail the credit on input services, therefore, the extended period of limitation for making the demand was available to the Revenue and the Appellant was liable for penal action under Section 15(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for contravention of the above Rules.

2.12 The Show Cause Notice dated 19.04.2016 was issued to the Appellant asking them to show cause as to why:-

(i) An amount of Rs. 312,34,10,295-/- (Rs. 270,44,35,295+ Rs. 41,89,75,000) (Rupees Three Hundred Twelve Crores Thirty Four Lakhs Ten Thousand Two Hundred Ninety Five only) should not be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with the Proviso to Section 73(1) of the Finance Act, 1994.

(ii) Interest at the appropriate rate should not be charged from them on the above amount of Rs.

312,34,10,295/-, under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed on them under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for the aforesaid contraventions.

2.13 The Show Cause Notice was adjudicated as per the Order-In-Original No. 12/Commissioner/ST/Noida/2017-18 dated 30.10.2017 confirming the demand alongwith the applicable interest and equal penalty upon the Appellant.

2.14 Appellant filed appeal before the Tribunal who vide Final Order No.ST/A/71762/2019-CU [DB] dated 03.09.2019 set aside the Order-In-Original and remanded the matter to the Original Authority observing as follows:-

"Having gone through the allegations in the show cause, notice, we note tha primarily the allegation against the appellant, was in respect of seven services detailed in the preceding paragraphs and the appellant's plea before the adjudicating authority also revolved around the said seven services only. As such, we are in agreement with leamed Counsel that the dispute should revolve only around the disputed seven services which were subject matter of the show cause notice. However, the fact that the entire credit availed in respect of the said seven services stands reversed by appellant, is required to be verified by the lower authority, for which purpose we set aside the impugned order and remand the matter to the original adjudicating authority for doing the needful. As we have remanded the matter for verification of the said factual position, the issue of limitation is also kept open for original adjudicating authority to re decide during the remand proceedings. We make it clear that the appellants would be given sufficient opportunity to contest their case."

2.15 In the remand proceedings the matter has been adjudicated as per the impugned order referred in Para 1 above.

2.16 Aggrieved Appellant have filed this appeal.

3.1 We have heard Shri B. L. Narasimhan, Advocate & Shri Atul Gupta, Advocate for the Appellant and Shri Santosh Kumar, Departmental Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- The perverse impugned order has violated the rule of judicial discipline by not following the specific direction in the remand order.
- Tule 6 of the Credit Rules has no application once the entire credit pertaining to seven disputed input services has been reversed. Reversal of credit tantamount to credit not availed.
- Without prejudice, the Appellant has followed Rule 6(2) of the Credit Rules as it availed credit only of such services which were used for the provision of taxable output services and manufacturer of the excisable goods and reversed the amount which was availed inadvertently.
- The Appellant has reversed the entire credit pertaining to the 07 disputed services and by reversal of the entire credit tentamounts to credit not paid hence Rule 6 of the CENVAT Credit Rules would not be applicable. Once the entire-credit pertaining to common input services has been reversed, demand of Rs.312,34,10,295/- is unwarranted, reliance placed on the following decisions:
    - Mercedes Benz India (P) Ltd. [2015-TIOL-1550-CESTAT-MUM]
    - Nitcon Valve Inds. Ltd. [2016-TIOL-72-CESTAT-MUM]
    - Tata Technologies Ltd. [2016 (42) S.T.R. 290 (Tri.-Mumbai)]
    - Sahyadri Starch & Industrial Pvt. Ltd. [2016-TIOL-615-CESTAT-MUM]

- Demand is not sustainable as trading is not an exempted services. Reliance is placed on following decision:-
  - Orion Appliances Ltd. [2010 (19) S.T.R 205 (Tri. – Ahmd.)]
- Rule 14 cannot be invoked in the present case and hence in absence of a recovery provision, the impugned order has incorrectly confirmed the demand. Reliance is placed on following decisions:-
  - LG Electronics India Pvt Ltd [2017-VIL-283-CESTAT-ALH-ST]
  - HCL Comnet Ltd. [2017-TIOL-3077-CESTAT-ALL]
- Show cause notice was itself illegal as no hearing was given pursuant to special audit as held in Berger Paints India Limited [2017 (245) ELT 88 (Calcutta)]
- Extended period is not invokable. Partial demand is time barred.
- The demand of interest is unsustainable and no penalty can be imposed. Reliance placed on the following decisions:
  - Sangrur Agro Ltd.[2010 (254) E.L.T. 25 (P & H)]
  - Eastern Medikit Ltd. [2009 (242) E.L.T. 51 (Tri. - Del)]
- Impugned order went beyond the directions contained in the Final Order of the Tribunal whereby the matter was remanded only for the verification of the amounts reversed by the Appellant against the 07 specific services which were the common services for providing both taxable and non-taxable services. Doing so the Adjudicating Authority has failed to comply with the directions and such act is unsustainable and shows administrative/judicial discipline. Reliance is placed on following decisions:-
  - Kamlakshi Finance Corporation Ltd. [1990 (47) E.L.T. 231 (Bom.)] upheld in [1991 (55) E.L.T. 433 (S.C.)]

- Kaumudi Kargh Audyogic Utpadan Sahkari Samiti Ltd. [1999 (108) E.L.T. 20 (All.)]
- Triveni Chemicals Ltd. [2007 (207) E.L.T. 324 (S.C.)]
- RBF RIG Corporation [(2011) 264 E.L.T. 486 (S.C.)]

3.3 Learned Authorized Representative for the Revenue has reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 The matter was remanded by the Tribunal with specific directions after observing that the dispute was only in respect of 07 services which were subject matter of the Show Cause Notice and the fact that the entire credit availed in respect of the said services has been reversed by the Appellant which was required to be verified by the Adjudicating Authority. The impugned order after noting the above directions have observed in Para 5.16 as under:-

> *5.16. I would like to go through the para 4 of the Final Order 71762/2019 dated 03.09.2019 of the Hon'ble Tribunal reproduce as below:-*
>
> *"4. Learned Senior Advocate Shri N. Venkataraman appearing for the appellant has drawn our attention to the pleadings made by the appellant before the Original Adjudicating Authority. He submits that to avoid any litigation with the revenue, the appellant has decided to reverse the entire credit availed by them in respect of the seven disputed services, in respective of the fact that they were also used for providing taxable services. He submits that they had enough credit in their account and the introduction of GST, the same could not be usable and accordingly, in such a scenario, they have decided to reverse the complete credit including interest availed in respect of the seven disputed services. Learned Advocate has drawn our attention to the allegations made in the show cause notice which are only in respect of the seven services*

which are Insurance Service, Outbound Courier Service/ Transportation Charges used in respect of the traded goods, Bank Charges of import/export transactions, Charted Accountant Service (Certificate for issuance of Form 15CB-Outward Remittance Certificate), Telephone charges, Rent-a-Cab Service and on Security Services. He further draws our attention to the submissions made before the Original Adjudicating Authority along with the chart placed before him indicating that irrespective of the said service being partially used for providing taxable output services, the appellant has reversed the complete credit availed in respect of said disputed services, even though the appellant was entitled to the credit on proportionate basis, used for taxable output services. He also draws out attention to the findings of Original Adjudicating Authority to the effect that though he accepts the reversal of the said credit of Rs.5.30 crores approximately but the adjudicating authority has observed that their contention which pertains to reversal of credit on mere seven services and not in all the services on which credit has been availed, is not sustainable. The contention of the learned Senior Advocate is that the dispute in the show cause notice revolves around only these seven services and the appellant having reversed the credit in respect of the said seven services, the observations made by the Original Adjudicating Authority are outside the scope of the dispute. He explains that apart from the said seven services which were being used by the appellant for providing taxable as well as exempted output services, they were also availing the credit in respect of various input services, which were being used by them exclusively for providing taxable output services. As such, in the absence of any dispute about the availability of Cenvat credit in respect of input services, used exclusively for providing taxable output services and the dispute being restricted to only common input services used for providing both types of output services, it was not open to the Original Adjudicating

Authority to refer to the credit availed in respect of the other services. Having accepted that the appellant has reversed the entire credit in respect of disputed output services, he should have vacated the demand."

From the above para, it is observed that the party has not placed the complete facts before the Hon'ble Tribunal by submitting that they had already reversed the credit as required under Rule 6(3) of the CENVAT Credit Rules, 2004 whereas as per debit entry in ST-3 Returns for the month of June, 2017 the same is mentioned as deposit under protest against the demand of Show Cause Notice dated 19.04.2016. The claim before Hon'ble Tribunal about debit of Rs. 10 crore that too 'under protest' against the total demand of Rs. 312,34, 10,295/- a mere 3% of total demand mischievously claimed as reversal against the demand.

4.3 With regards to the observations made in this Para we would observe that Revenue has not challenged the said order of the Tribunal in appeal or have filed any Rectification of Mistake Application. In absence of any such action, the observations made with regards to the order of the higher Appellate Authority only amounts to judicial indiscipline and such an act is not acceptable. This has been held in the following decisions:-

- Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)]
- Kaumudi Kargha Audyogic Utpadan Sahkari Samiti Ltd. [1999 (108) E.L.T. 20 (All.)]
- Triveni Chemicals Ltd. [(2007) 2 SCC 503]
- RBF RIG Corporation [(2011) 264 E.L.T. 486 (S.C.)]
- M/s Akshar Precision Tubes Pvt Ltd & Anr. [2025 (393) ELT 16 (Guj)]

4.4 We would specifically like to emphasise on the decision of the Hon'ble Gujarat High Court in the case of M/s Akshar Precision & Tubes Pvt. Ltd. 2025 (393) E.L.T. 16 (Guj.)] wherein following has been observed :-

*"**13.** Considering such submissions, the CESTAT allowed the appeal of the Revenue by order dated 8-2-2024 by setting aside the order of dropping the proceedings and remanded the matter to the adjudicating authority with a direction to the said authority to verify whether principal manufacturer has paid duty on the total value of the final products including the value of the free material supplied by the principal manufacturer to the petitioners for job work for applying the ratio of decision of Hon'ble Apex Court in case of International Auto Ltd. (supra).*

***14.** It appears that based upon the direction issued by the CESTAT, the petitioners made submissions on 30-7-2024 before the adjudicating authority contending inter-alia that the free issue materials have been received under the challan under Rule 4(5)(a) of the Rules, the end product at the end of the principal manufacturer is dutiable and hence the show cause notice issued against the petitioners is not sustainable proposing the demand of duty on free supply made by the principal manufacturer for job work. The petitioners also submitted that the Revenue authority can verify the requisite details through the jurisdictional authorities of the customers who were duly registered under the Central Excise Act, 1944 and the petitioners in any case was not required to pay the excise duty on the free issue material merely because it undertook the job work on the said material which was used by the principal manufacturer to manufacture the final product which was cleared as a dutiable product including free supply of material sent to the petitioners for job work.*

***15.** It is shocking and surprising that inspite of the directions issued by CESTAT, respondent Commissioner of CGST & CE, Vadodara-II keeping aside all the norms of judicial propriety and judicial hierarchy has fortitude to observe in the impugned order as under :*

> *"In my humble appreciation of facts of the case, I am of the opinion that Hon'ble Tribunal failed to take cognizance of the Apex Court's Judgment in UJAGAR Prints case from where the stream of judicial discipline follows. That without prejudice, I am of bona fide belief to hold independent view considering that the findings of the Commissioner were founded on the premise that the value of goods cleared by the assessee qua Job worker was included in the value of final goods cleared from the factory premises of the principal manufacturer as against the judgments of the Hon'ble Supreme Court of India in the case of UJAGAR Prints as well as Pawan Biscuits. That process of adjudication is quasi-Judicial, where I am required to follow principle of judicial discipline on the question of law decided against the Revenue in which case it is open on the part of the authority to review the propriety of the judicial order and take a decision as to acceptance on merit or monetary grounds or to file an appeal before the higher appellate forum. In other words, I am not required to acquiesce to the reasoning by the previous authority contrary to the question of law unless it is ratio decidendi. That said, I find that the question of verification at this juncture will not serve any purpose if the judicial discipline is followed and judgment of the Apex Court is followed."*

16. *CESTAT while remanding the matter allowing the appeal filed by the Revenue observed as under :*

> *"On careful consideration of the submission made by both sides and perusal of records, we find that the Revenue's appeal is for limited purpose that even for applying the ratio of the judgment in the case of International Auto Limited, the facts whether the Principal manufacturer has paid the duty on the total value of the final product which includes the value of the goods supplied to the job worker under Rule 4(5)(a) of Cenvat Credit Rules was not considered. However, on the close scrutiny of the order we*

find that the learned Adjudicating Authority has assumed that the principal manufacturer has discharged the duty on the total value of the finished product cleared by the principal manufacturer. However, no verification in this regard was made by the Adjudicating Authority. We find that since the International Auto Ltd case is solely based on the fact that the principal manufacturer has adjusted the duty while clearing the final product but in absence of said fact on record in the present case, reliance placed on International Auto Ltd only would not be proper. Accordingly, in our view for applying the ratio of International Auto Ltd the fact needs to be verified that whether the principal manufacturer has paid the duty on the total value of the final product including the value of the material supplied by. the principal manufacturer to the job worker in the present case. Therefore, we are of the view that the matter needs to be remanded back to the Adjudicating Authority for passing a fresh order on the basis of our observation made herein above."

17. *On conjoint reading of the above, it is clear that the respondent in utter disregard to the directions issued by CESTAT ventured to adjudicate the show cause notice contrary to the directions issued by the CESTAT to verify as to whether the principal manufacturer has adjusted the duty while clearing the final product in absence of such facts on record so as to apply the ratio of decision of Hon'ble Apex Court rendered in case of International Auto Ltd. (supra).*

18. *Respondent was therefore, only required to verify that whether the principal manufacturer has paid the duty on the total value of final product including the value of material supplied by the principal manufacturer to the petitioners for job work in the facts of the case. However, the respondent for reasons best known to him has tried to overreach the directions issued by the CESTAT.*

19. *We are therefore, of the opinion that impugned order-in-original is without jurisdiction, contrary to the directions issued by the CESTAT.*

20. *In similar situation, Hon'ble Supreme Court in case of Bhopal Sugar Industries Ltd. v. Income-tax Officer, Bhopal reported in (1960) 40 ITR 618], had held as under :*

> *"In these circumstances, the appellant company moved the Judicial Commissioner, Bhopal, then exercising the powers of a High Court for that area, for the issue of a writ to compel the respondent to carry out the directions given by the Tribunal. The learned Judicial Commissioner found in express terms that the respondent had acted arbitrarily and in clear violation of the directions given by the Tribunal; in other words, he found that the respondent had disregarded the order of the Tribunal, failed to carry out his duty according to law and had acted illegally. Having found this, the learned Judicial Commissioner went on to examine the correctness or otherwise of the order of the Tribunal and found that the Tribunal went wrong in not treating the centers as 'markets' within the meaning of Rule 23 of the Income-tax Rules. He then came to the conclusion that in view of the error committed by the Tribunal, there was no manifest injustice as a result of the order of the respondent; accordingly, he dismissed the application for the issue of a writ made by the appellant company.*
>
> *We think that the learned Judicial Commissioner was clearly in error in holding that no manifest injustice resulted from the order of the respondent conveyed in his letter dated March 24, 1955. By that order the respondent virtually refused to carry out the directions which a superior tribunal had given to him in exercise of its appellate powers in respect of an order of assessment made by him. Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic*

principles in the administration of justice based as it is in this country on a hierarchy of courts. If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior tribunal, yet held that no manifest injustice resulted from such refusal.

It must be remembered that the order of the Tribunal dated April 22, 1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of Income-tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that in the circumstances of this case it was open to him to say that the order of the Tribunal was wrong and, therefore, there was no injustice in disregarding that order. As we have said earlier, such view is destructive of one of the basic principles of the administration of justice."

21. *Learned advocate Mr. Desai for the petitioners has also referred to and relied upon the decision of Apex Court in case of Union of India v. Kamlakshi Finance Corporation Ltd. reported in 1992 Supp (1) Supreme Court Cases 648 = 1991 (55) E.L.T. 433 (S.C.) wherein in similar situation the Hon'ble Bombay High Court quashed the orders of the Assistant Collector and directed the department to allocate the matter to the competent officer to pass an order after passing severe strictures against the two Assistant Collectors who had dealt with the matter. The Union of India* *being aggrieved by the strictures passed by the High Court preferred SLP before the Hon'ble Apex Court and learned Additional Solicitor General appearing for the Union submitted that so far as merits are concerned, department can have no grievance however, so far as strictures passed against two Assistant Collectors who had dealt with the matter, grievance was raised and it was submitted that they acted bona fide in the interests of Revenue in not accepting the claim which they felt was not tenable. In such circumstances, the Hon'ble Apex Court held as under :*

> *"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching in their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate heirarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed*

unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35-E confers adequate powers on the department in this regard. Under Sub-section (1), where the Central Board of Direct Taxes come across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under Sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with this legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate

Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.

8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."

22. *In the facts of the case also, Learned Advocate Mr. C.B. Gupta appearing for the respondent is not able to justify the stand of the respondent in not following the directions of the CESTAT and deciding the matter on merits. It is true that the respondent has passed the impugned order without understanding the difference between the* *manufacture of the final product by the principal manufacturer using the free goods supplied by the end user which were the facts before the Hon'ble Apex Court in case of Ujagar Prints v. Union of India reported in (1989) 3 Supreme Court Cases 488 = 1989 (39) E.L.T. 493 (S.C.) and the job work done on the intermediate products as in the facts of the present case done by the petitioners and final product manufactured by the principal manufactures using such intermediate product."*

4.5 The issue on merits have been considered and settled by various decisions in the past. Undisputedly in respect of trading services which are considered as exempted services, the CENVAT Credit was required to be reversed. However, the reversal of the credit should have been limited to the extent of proportionate reversal or in terms of Rule 6 as been time and again decided in various decisions and it has been held even if procedure of Rule 6(3) was not followed, the reversal of the proportionate credit should have been permitted.

4.6 However, we are not concerned with that aspect. The matter was remanded for verification of the amount reversed. In Para 5.19 of the impugned order following has been observed:-

"5.19. Another submission of the party is that the department in the order dated 30.10.2017 has not disputed the computation of CENVAT Credit claimed by them during the relevant period in respect of alleged seven services and referred para 5.1.9. of the order dated 30.10.2017. In this regard the party quoted only the lines which suited them, while the said para reads as under-

'on the issue is that if all the allegations in the Show Cause Notice are held to be true then also the demand should be restricted to the total credit avalled. As per their submission, the total credit availed on seven input services mentioned in Audit Report and show cause notice comes to Rs. 5,30,83,058/- only. The submission of the party is not acceptable as they have provided details of the CENVAT

Credit availed in respect of seven services only while in terms of Rule 6(3) they were required to reverse the amount at the prescribed percentage of the value of exempted services provided. It is apparent from their reply that they have not provided the details of total credit availed during the period under dispute, and have restricted their reply to only to the seven services but not all the services. Thus, their submission which pertains to reversal of credit on mere seven services and not to all the services on which credit has been availed, is not acceptable.

Following the judgment of the jurisdictional Hon'ble High Court of Allahabad as discussed supra, it is plain that the reversal must be in accordance to Rule 6(3) of the CENVAT Credit rules 2004, which the party has not followed."

4.7 From the report of the audit conducted under Section 14AA the relevant paragraph is reproduced below:-

*"**3. Non Reversal of 5% under Rule 6(3) of the Ceuvat Credit Rules, 2004 against the availment of Cenvat credit on common services used for trading purposes -Amount of Service Tax to be reversed-Rs. 41.90 crores***

As already stated, the assessee has trading, manufacturing units and service units. It may noted here that 'trading activities carried out by the assessee will be deemed to be exempted services provided by the assessee. During the audit, it was observed that the assessce was availing credit of input services on the following items which are common to trading (ie, exempted activity) and taxable services

- *Insurance Charges*
- *Outbound Courier/Transportation Charges on Traded Products*
- *Bank Charges on Import/Export transactions*
- *Chartered Accountant certificate for issuance of Form 15CB (Outward Remittance certificate)*
- *Telephone Charges*

- *Staff Transport*
- *Security Charges, etc.,*

The quantum of data in respect of the Outbound Courier / Transportation Charges on Traded Products is voluminous and is incapable of segregation from the face of the invoices raised by the transporter as the invoices were raised for several DC's in a single invoice. Besides, the Invoices of the transporter also do not carry the Invoice Reference of the assessee to distinguish Trading and Manufacturing Invoices (they only carry the Delivery Order reference). Hence, the quantum of such common credit availed has not been quantified. However, it is suffice to conclude that the assessee has availed credit on common input services used for trading, manufacturing and service activities.

The assessee has not maintained separate accounts of receipt & consumption of such common input services.

Accordingly, the assessee will be liable to pay an amount equal to 5% of the value of the exempted goods. In the case of trading activity, Explanation I(c) to Rule 6(3D) of the Cenvat Credit Rules, 2004 has clarified that in case of trading activities, the value shall the difference between the sale price and the cost of goods sold or ten percent of the cost of goods sold, whichever is more.

We have perused the Annual report for the year ended 30 June 2011 and have arrived at the 5% value to be reversed based on the information available. As per the workings, a sum of Rs. 41.21 Crores is to be paid by the assessee as required under Rule 6(3) of the Cenvat Credit Rules, 2004 Computation details is enclosed as Annexure C.

Since the annual report for the year ending 30th June 2012 is not yet available. similar amounts may also be recovered from the assessee for the year ended 30th June 2012 on finalisation of its accounts and receipt of annual report."

4.8 From the fact as recorded in the Audit Report itself, the issue is in relation to 07 services which are mentioned there in and we have constantly taken a view that on reversal of the CENVAT Credit availed in respect of these services, the demand made in terms of Rule 6(2) & Rule 6(3) could not have been sustained. We refer to the order of this Bench in the case of M/s Central UP Gas Ltd. [Excise Appeal No.51953 of 2015, Final Order No.70307 of 2024 dated 04.06.2024] wherein following has been observed:-

> *4.3 In case of Indraprasth Gas Limited [Final Order No 57931/2017 dated 14.11.2017] Delhi Bench in identical case while dismissing the appeal filed by the revenue, observed as follows:*
>
> > *"2. The brief facts of the case are that the respondent-assessee is engaged in the activity of manufacture of compressed natural gas (CNG) falling under Tariff Item 2711 21 00 of the First Schedule to the Central Excise Tariff Act, 1985 and clears the same on payment of duty. Respondent also purchases Piped Natural Gas (PNG) from various manufacturers like Gas Authority of India Ltd. (GAIL) and sells the same as it is. Thus, the respondent is engaged in the manufacture of dutiable goods (CNG) as well as in trading activity of the dutiable goods (PNG). During the period under consideration, the credit was availed by the respondent on various input services exclusively used for manufacturing activity and common input services used for manufacturing as well as trading activity. The department opined that the respondent has not maintained separate accounts in respect of the common input services utilised by them nor had they opted for the option under Rule 6(3)(ii) of the Credit Rules, by following the procedure in that regard. Accordingly, the audit was of the view that the respondent is liable to pay amount @ 6% of the exempted service, in terms of Rule 6(3)(i) of the Credit Rules.*

3. With this background, we heard Sh. H.C. Saini, ld. AR for the Revenue who submits that Revenue has relied on the show cause notice. He submits that the respondent – assessee has neither intimated the department regarding its value in their ER-1 and ST-3 return.

4. On the other hand, Sh. Amit Jain, ld. Advocate for respondent-assessee submits that the respondent has reversed the proportionate credit pertaining to the common input services, for all the years. The same was informed to the department vide several correspondences. He further submitted that since the respondent-assessee has reversed the proportionate credit of common input services availed towards manufacturing as well as trading activity, demand of 5%/ 6% under Rule 6(3)(i) is not sustainable. Further, vide letter dated 29.02.2016, respondent-assessee informed the Department that it had reversed the total common input services credit taken by it for financial year 2013-14 & 2014-15, on a suo motu basis. Vide their letter dt. 06.04.2016, respondent – assessee intimated the department of further reversal of an amount for Rs. 11,44,422/- for financial year 2014-15. Lastly, he made a request to dismiss the appeal filed by the Revenue.

5. After hearing both the parties and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of CST vs. Machine Tools (I) Pvt. Ltd. – 2017 (8) TMI 833-CESTAT New Delhi where it was observed that-

> *"6. We find that the Cenvat Credit Scheme is available only in respect of an assessee, who is either manufacturing dutiable final products or providing taxable output service. Admittedly, during the relevant time, trading is not categorised as service at all. It is only in 2011, the explanation was inserted under Rule 2(e) of CCR, 2004 to the effect*

that "exempted service" includes "trading". Prior to that date, trading is not even considered as "exempted service". Going by this fact, it is clear that no credit is available on any "input service" attributable to "trading" during the material time. When no such credit is eligible, the respondent cannot avail the benefit of cenvat credit scheme. Having availed the credit on common input services, without maintaining separate accounts, it is not open to the respondent to claim that there is no need for reversal of proportionate credit attributable to their activity of trading. If trading is not to be considered as an "exempted service" (or service at all) then the cenvat credit scheme itself is not available to a trader. The respondent, being a trader as well as output service provider, has availed credit on common input services. Their failure to maintain separate accounts cannot give them an advantage of taking full credit on all common input services. This will have effect of nullifying the very principle that no credit is available when there is no taxable output service. In other words, it is very clear that the respondent is eligible to take credit on only such input services, which are attributable to taxable output services. If there are common input services, without separate accounts, it is necessary for the respondent to avail so much of credit only, which are attributable to the taxable output service. This can be enforced by way of reversal of credit attributable to trading activities. We find that the legal position has been examined and decided by the Tribunal in Mercedes Benz India Pvt. Ltd. – 2014 (36) STR 704 (Tri. Mum.). The said decision was affirmed by the Hon'ble Bombay High Court reported in 2016 (41) STR 577 (Bom.) and SKF India Ltd. (ISD) - 2016 (44) STR 61 (Bom.)".

6. Similarly, the issue was dealt with by the Tribunal in the case of Dalmia Bharat Sugar & Industries Ltd., vs. CCE - 2017-TIOL-113-CESTAT-DEL where it was observed that-

> *"8. We find that the coordinate Bench of this Tribunal in the case of Mercedes Benz India Pvt. Ltd. v. C.C.E., Pune I 2015 (40) STR 381 (TriMum.) has held that the condition given in Rule 6(3A) to intimate the Department is only procedural matter and the delay of such procedural matter is condonable and therefore, substantive right given in the said Rule cannot be denied for such procedural lapse. The Tribunal has also held that Commissioner cannot insist that assessee should reverse only as per Rule 6(3)(i) but it is the option of the assessee. Tribunal in that case held that as follows: 5.3 As regard the contention of the adjudicating authority that this option should be given in beginning and before exercising such option, we are of the view that though there is no such time limit provided for exercising such option in the rules but it is a common sense that intention of any option should be expressed before exercising the option, however the delay can be taken as procedural lapse. We also note that trading of goods was considered as exempted service from 2011 only, thus it was initial period. We are also of the view that there is no condition provided in the rule that if a particular option, out of three options are not opted, then only option of payment of 5% provided under Rule 6(3)(i) shall be compulsorily made applicable, therefore we are of the view that Revenue could not insist the appellant to avail a particular option. In the present case admittedly it is appellant who have on their own opted for option provided under Rule 6(3)(ii). The meaning of the option as argued by the Ld. Sr. Counsel is that option of right of choosing, something that may be or is chosen, choice, the act of choosing. From the said meaning of the term option, it is clear that it is the appellant who have liberty to decide*

which option to be exercised and not the Revenue to decide the same.

9. In the light of the above decision of the coordinate Bench we find that the Commissioner is not justified in insisting that appellant reverse cenvat credit in terms of Rule 6(3)(i) of Cenvat Credit Rules. The claim of the appellant is that they have already reversed on proportionate basis, the cenvat credit along with interest amount payable in terms of Rule 6(3A). However, the Department is entitled to verify whether reversal of the amount already made by the appellant satisfies the requirement of Rule 6(3)(ii) notwithstanding the fact that the procedural formalities have not been satisfied. For this purpose, we remand the matter to the original authority to carry out verification."

7. By following our earlier orders (supra), we find no reason to interfere with the impugned order, the same is hereby sustained alongwith the reasons mentioned therein."

4.4 Appellant counsel have during course of argument cited number of decisions which we do not find necessary to deal with as the issue involved in the present appeal is squarely covered by the above decision of Delhi Bench. We do not find any merits in the impugned order.

4.9 In the case of **Mercedes Benz India (P) Ltd. V/s CCE, Pune** reported at **2016 (42) S.T.R. 290 (Tri.-Mumbai)** following has been held:-

"***5.*** *We have considered the submissions made by both sides. From the facts and circumstances of the case and arguments put forth by rivals, we find that the issue to be decided by us is whether appellant is required to pay 5% of total sale value of the goods traded by them in terms of Rule 6(3)(i) when the appellant paid the actual credit attributed to the quantum trading sale in terms of Rule 6(3A) alongwith interest following the option available under Rule 6(3)(ii). Provisions for payment of 5% of the sale value* *of exempted goods is provided as one of the option given in Rule 6(3) of Cenvat credit Rules which is reproduced below :-*

> ***RULE 6. Obligation of a manufacturer or producer of final products and a [provider of output service.*** *- (1) The CENVAT credit shall not be allowed on such quantity of [input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services], except in the circumstances mentioned in sub-rule (2) :*
>
> *Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.*
>
> *Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory.*
>
> *Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.*
>
> *(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -*

(a) the receipt, consumption and inventory of inputs used –

(i) in or in relation to the manufacture of exempted goods;

(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;

(iii) for the provision of exempted services;

(iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services -

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow [any one] of the following options, as applicable to him, namely :-

(i) pay an amount equal to five percent of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in

clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be [six per cent.] of the value so exempted.

Provided also that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent. of value of the exempted services.

Explanation I. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Ld. Adjudicating Authority demanded 5% of the total sale of the trading turnover of goods on the ground that option provided under Rule 6(3)(i) is applicable on the ground that claim of the appellant on the option provided under Rule 6(3)(ii) is not available for the reason that appellant has not complied with condition provided under sub Rule (3A) of Rule 6 which provides that manufacturers of the goods shall follow certain procedure and conditions as provided under sub-rule (3A)(a)(i) to (iv) inasmuch as the appellant have *not given said information in writing to the Jurisdictional Superintendent of Central Excise. Secondly the appellant, as provided under Claus (b) of sub-rule (3A) have not paid the amount of Cenvat on monthly basis and paid after almost 11 months.*

5.1 *We have observed that in Rule 6(3) prevalent at the relevant time, two options have been provided :-*

(i) Payment of 5% on value of exempted services.

(ii) Payment of an amount equal to the Cenvat Credit amount attributed to input services used in or in relation to manufacture of exempted goods or provision of exempted services as provided under sub rule (3A)(b).

It is observed that the appellant has availed the option provided under sub-rule (3)(ii) of Rule 6 and paid an amount as per sub-rule (3A) along with interest and intimated the same to the jurisdictional superintendent in writing vide letter dated 14-3-2012. From the perusal of the said letter, we observed that the appellant categorically stated in the said letter that payment of Cenvat Credit, which they have made alongwith interest is in accordance with Rule 6 (3A) of Cenvat Credit Rules. With this act of the appellant, it is clear that the appellant opted for the option as provided under Rule 6(3)(ii) of the Cenvat Credit Rules, 2004, in accordance to which, the appellant are supposed to an amount equivalent to Cenvat Credit on input service attributed to the exempted service in terms of Rue 6(3A). In the present case, the appellant has availed Cenvat credit in respect of common input services, which has been used in relation to the manufacture of the final product as well as for trading of bought out cars. Therefore they are supposed to pay an amount equivalent to Cenvat credit which is attributed to the input service used for exempted service i.e. sale of car. In our view, three options have been provided under Rule 6(3) and it is up to the assessee that which option has to be availed. Revenue could not insist the *appellant to avail a particular option. In the present case the appellant have admittedly availed option as provided under Rule 6(3)(ii) and paid an amount as required under sub-rule (3A) of Rule 6. As regard the compliance of the procedure and conditions as laid down for availing option as provided under sub-rule (3)(ii), we find that foremost condition is that the appellant is required to pay an amount as per the formula provided under sub-rule (3A) on monthly basis. However, we find that as per the provision, payment on monthly basis is provisional basis, therefore it is not mandatory that whole amount or part of the amount was required to be paid on every month. The appellant though belatedly calculated the amount required to be paid in terms provided under sub-rule (3A) of Rule 6, therefore to fulfill the condition, assessee should pay the said amount, which has been complied by the appellant.*

5.2 *As regard the delay in payment, if any, the appellant have discharged the interest liability on such delay. Regarding the compliance as provided under Clause (a) of sub-rule (3A) of Rule 6 the appellant while exercising this option is required to intimate in writing to the Jurisdictional Superintendent, Central Excise, the following particulars namely :*

(i) Name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) Date from which the option under this clause is exercised or proposed to be exercised;

(iii) Description of dutiable goods or taxable services;

(iv) Description of exempted goods or exempted services;

(v) Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

As per the submission of the appellant and perusal of their letter along with enclosed details, it is found that more or less all these particulars were intimated to the Jurisdictional Superintendent. The appellant has been filing their returns regularly on monthly basis to the department. On perusal of the copies of the such return submitted along with appeal papers, it is observed that the particulars, as required under clause (a) of sub-rule (3A) of Rule 6 has been produced to the range superintendent. Therefore all the particulars which are required to be intimated to the Jurisdictional superintendent while exercising option stand produced. Though these particulars have not been submitted specifically under a particular letter, but since these particulars otherwise by way of return and some of the information under their letters has admittedly been submitted, we are of the view, as regard this compliance of Rule 6(3A), it stood made.

5.3 *As regard the contention of the adjudicating authority that this option should be given in beginning and before exercising such option, we are of the view that though there is no such time limit provided for exercising such option in the rules but it is a common sense that intention of any option should be expressed before exercising the option, however the delay can be taken as procedural lapse. We also note that trading of goods was considered as exempted service from 2011 only, thus it was initial period. We are also of the view that there is no condition provided in the rule that if a particular option, out of three options are not opted, then only option of payment of 5% provided under Rule 6(3)(i) shall be compulsorily made applicable, therefore we are of the view that Revenue could not insist the appellant to avail a particular option. In the present case admittedly it is appellant who have on their own opted for option provided under Rule 6(3)(ii). The meaning of the option as argued by the Ld. Sr. Counsel is that "option of right of choosing, something that may be or is chosen,* *choice, the act of choosing". From the said meaning of the term 'option', it is clear that it is the appellant who have liberty to decide which option to be exercised and not the Revenue to decide the same.*

5.4 *We find that the appellant admittedly paid an amount of Rs. 4,06,785/- plus interest, this is not under dispute. Therefore in our view, the appellant have complied with the condition prescribed under Rule 6(3)(ii) read with sub-rule (3A) of Rule 6 of Cenvat Credit Rules, therefore demand of huge amount of Rs. 24,71,93,529/- of the total value of the vehicle amounting to. Rs. 494,38,70,577/- sold in the market cannot be demanded. We are also of the view that Rule 6 of the Cenvat Credit Rules is not enacted to extract illegal amount from the assessee. The main objective of the Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods. It is also observed that in either of the three options given in sub-rule (3) of Rule 6, there is no provisions that if the assessee does not opt any of the option at a particular time, then option of payment of 5% will automatically be applied. Therefore we do not understand that when the appellant have categorically by way of their intimation opted for option provided under sub-rule (3)(ii), how Revenue can insist that option (3)(i) under Rule 6 should be followed by the assessee.*

5.5 *As discussed above and in the facts of the case that actual Cenvat credit attributed to the exempted services used towards sale of the bought out cars in terms of Rule 6(3A) comes to Rs. 4,06,785/- where as adjudicating authority demanded an amount of Rs. 24,71,93,529/-. In* *our view, any amount, over and above Rs. 4,06,785/- is not the part of the Cenvat Credit, which required to be reversed. The legislator has not enacted any provision by which Cenvat credit, which is other than the credit attributed to input services used in exempted goods or services; can be recovered from the assessee."*

4.10 In the case of **Bhingar Urban Co-OP. Bank Ltd. V/s C.C.E., Cus. & S.T., Aurangabad reported at 2016 (41) S.T.R. 673 (Tri.-Mumbai)** following has been held:-

*"**6.** As regard the submission of ld. Counsel on the issue whether the interest earned by the bank on loans and advances, whether it is exempted service or taxable service, I read Board Circular DOF No. 334/1/2012/TRU, dated 16 March, 2012 and the relevant paras are reproduced below :*

Point 20. Rule 6 of Valuation Rules prescribed inclusions and exclusions to the taxable value. Following changes are being made here -

i. ---------

ii. In sub-rule (2) clause (iv) regarding exclusion of 'interest on loans' is proposed for substitution with "interest on (a) deposits; and (b) delayed payment of any consideration for the provisions made (service/goods)". This will keep such amounts outside the value and thus not be relevant for reversal of credit under Rule 6(3) of Cenvat Credit Rules, 2004. Interest on loans will now be an exempt income rather than an exclusion from value."

iii. --------

Point 26. "Interest on loans, advances will now be an exempt service. This will require reversal of credit used for earning such income. For the banking and financial sector, provisions are available to reverse credit up to 50% in Rule 6(3D). It is being proposed to change this formula to actual basis, the value of service being net interest earned less interest paid on deposits, subject to a minimum of 50% of *interest paid on deposits. For the non-financial sector it is being proposed that they may reverse credits on gross interest basis."*

From the above clarification and I also read amendment Notification No. 11/2012-S.T., dated 17-3-2012, interest, prior to 17-3-3012 was excluded from the taxable value and thereafter it was explicitly made exempted. Therefore the Board has clarified that after 17-3-2012 the interest of bank loan become exempted and Rule 6(3) was applied. However the Board has clarified that prior to 17-3-2012 the value of interest was not be relevant for the reversal of credit under Rule 6(3) of Cenvat Credit Rules. Moreover for the banking and financial institution under Rule 6(3)(D) the provision was available for straight 50% reversal of interest. In the present case the disputed value is of interest and Cenvat credit up to 50% of credit was required to be reversed. However the appellant admittedly paid the entire Service Tax credit availed by them during the 2008-09 along with interest @ 24% (18% + 6% subsequently) therefore even in view of provisions under Rule 6(3), the appellant could not be asked to pay 8% of the interest amount in terms of Rule 6(3)(ii). I found that during the period involved 2008-09, apart from provisions of Rule 6(3)(i) another option under Rule 6(3)(ii) was available to the appellant according to which the appellant was under obligation to pay an amount equal to Cenvat credit attributable to exempted service subject to certain condition and procedure. I find that appellant has paid entire Service Tax credit along with interest, therefore procedure as prescribed under sub-rule (3A) of Rule 6 is not relevant for the reason that the said procedure is relevant only when the appellant undertake to pay proportionate credit attributable to the exempted service. Therefore in my considered view the appellant, since paid entire Service Tax along with interest under Rule 6(3)(ii), appellant could not be asked to pay any further additional amount. I also find that there were nationwide *cases against many assessees on this issue and it was observed that as against petty amount of Cenvat credit huge amount of lacs and crores were demanded from the assessee invoking provisions of Rule 6(3). After realizing serious anomaly in the provisions the Government brought retrospective amendment in Rule 57CC of Central Excise Rules, 1944 and Rule 6 of Cenvat Credit Rules, 2002/2004. According to said retrospective amendment in all such cases option was given to the assesee that if the asesssee opt for payment of an amount of Cenvat credit attributable to the exempted goods/services along with interest @ 24% all the proceedings shall stand concluded and no further demand shall be made. In the present case appellant not only paid the amount required under the retrospective amendment but they paid entire Cenvat credit and also paid 24% interest. As regard the procedure prescribed under retrospective amendment provisions, I am of the view that substantial requirement of the amendment is that assessee should pay an amount of Cenvat credit attributable to the exempted services along with 24% interest. Procedure such an application to the Commissioner, is only for the purpose of intimating to the Commissioner regarding the payment. The department has to only ensure the calculation of such credit and payment thereof along with 24% interest. No any further disposal was required at the department's end. Since the appellant discharged the payment of entire services tax credit along with 24% interest their case is squarely covered by the provisions of Retrospective amendment of Rule 6 made under Finance Act, 2010. As regard, reliance placed by the ld. AR in case of Nicholas Piramal (supra) of Hon'ble Bombay High Court, I am of the view that judgment was given during the previous period when neither option was available under Rule 6(3)(i) nor retrospective amendment of Finance Act, 2010 were considered. Moreover the fact of this case that so called exempted service i.e. interest on loans and advances was* *not exempted services during the relevant period is also altogether different facts in the present case. For this reason also Hon'ble Bombay High Court judgment in the case of Nicholas Piramal (supra) is not applicable in the present case, hence distinguished. In view of my above discussion, I am of the view that demand raised under Rule 6(3)(i), CCR, 2004 is not sustainable. Therefore the impugned order is set aside. Appeal is allowed."*

4.11 The impugned order with regards to the reversal of the CENVAT Credit in respect of the 07 services records as follows:-

"5.3. To verify the facts as directed by the Hon'ble CESTAT in the order dated 03.09.2020, the Assistant Commissioner, Central GST, Div-IV, Noida was requested vide letter C. No. V(15)Adj/Noida/HCL/53/2014/796 dated 17.02.2020 & even C. No. 1024 dated 29.10.2020 to verify the entire credit availed in respect of seven services as directed by the Hon'ble CESTAT, Allahabad vide their order dated 03.09.2019 and to submit the report so that the case may be decided accordingly. The Assistant Commissioner, Div-IV, CGST, Noida vide his office letter C. No. 20STR-06/Div-II/HCL/Pudducherry/2014-15/38 dated 16.02.2021 has informed that, the party has provided soft coples in pen drive and a CA Certificate dated 19.01.2021 to prove that the CENVAT credit claimed in respect of seven services during the relevant period was restricted to Rs. 5.30 Crores. The data provided in pen drive was neither digitally signed nor technically defined to enable uniform reading by all as how to read the same. Vide letter dated 09.02.2021, the party has submitted copies of ST-3 return for Apr, 2017 to June, 2017 and Chartered Accountant's Certificate (CA) dated 21.01.2021. The CA vide certificate dated 21.01.2021 has certified that they have deposited CENVAT credit of Rs. 10 Crores under protest during the month of June, 2017 against the Show Cause Notice C. No. V (15)Adj/ST/Noida/HCL/53/14 dt. 19.04.2016. As per the

certificate, the said amount disclosed in the Service Tax return for the period April, 2017 to June, 2017 in the Mlo June, 2017 in 'table 13.1.3.8 Credit utilized for any other payment/adjustments/reversals' a total amount of Rs. 17,27,61,319/- details as below -

1. *Rs. 100,000,000/- Deposit under protest Show Cause Notice C. No. V(15)Adj/ST/Noida/HCL/53/14 dtd. 19.04.2016;*
2. *Rs.20,000,000/- Deposit under protest Show Cause Notice C. No. V (15)Adj/ST/Noida/HCL/52/14/5178 dtd. 23.10.2015;*
3. *Rs.50,000,000/- Deposit under protest Show Cause Notice C. No. V (15)Adj/ST/Noida/HCL/65/14/5174 dtd. 23.10.2015;*
4. *Rs. 2,761,319/-Reversal under second proviso Rule 4(7) of CCR, 2004*

It has further been submitted by the Assistant Commissioner, CGST, Div-IV, Noida that, on going through the ST-3 Returns for the m/o June, 2017 it was observed that as per the remark in the ST-3 returns in the table 13.1.3.8-Credit utilized for any other payment/adjustments/reversals specifically for deposit under protest vide letter dated 29.06.2017 for 2 SCNs dated 23.10.2015 and 19.4.2016 under proviso to Rule 4(7) CCR. 2004. The party vide letter dated 29.06.2017 had also submitted that they were partially depositing Rs. 10 Crores against the demand dated 19.04.2016. The party's letter dated 29.06.2017 is as under –

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9 JUN 2017

Date: 29.06.2017

Without prejudice

The Commissioner,
Service Tax
Office of the Commissioner, Service Tax Commissionerate
C-56/42, Renu Tower
Sector-62
Noida

Subject: Deposit under protest against demand under Show Cause Notice dated 19.04.2016, issued under C. No. V(15)Adj/ST/Noida/HCL/53/14

Dear Sir,

The captioned show cause notice was issued by your good office and vide this notice we were asked to show cause as to why CENVAT Credit to the tune of Rs. 312,34,10,295/- should not be recovered under Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to section 73(1) of the Finance Act, 1994 along with interest under Rule 14 of the CENVAT Credit Rules, 2004 and penalty under Rule 15(3) of the CENVAT Credit Rules, 2004 read with section 78 of the Finance Act.

In aforesaid matter, we have submitted our detailed reply against aforesaid impugned show cause notice dated 19.04.2016 and matter was heard by your goodself on 07.04.2017 and after hearing the matter at length, your goodself has reversed the order and we have not received till date the copy of the order passed against aforesaid impugned show cause notice dated 19.04.2016.

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Meanwhile, we are partially depositing Rs. 10,00,00,000/- (Ten crores only) against the demand proposed under the captioned notice by reversing the Cenvat Credit available in our books vide SAP document vide no. 1500006596 (Extract of the same is enclosed herewith). It is for your kind information that this deposit is <u>under protest and without prejudice</u> to the pending proceedings, our rights and contentions including our right to contest the demand proposed under the captioned notice and we request you to take note of the deposit made.

Yours Sincerely
For HCL Infosystems Ltd.

Authorised Signatory

5.5. I have perused the above verification done by the Range Officer and the ST-3 Returns for the month of June, 2017 as submitted by the party for the period April, 2017 to June, 2017 in the month of June, 2017. I observed that in 'table 13.1.3.8-the remark "Credit utilized for any other payment/adjustments/reversals' is given in the ST-3 returns and the total four entries of different amounts have been made. One of the entries of Rs. 10 Crores is mentioned against the demand for the instant show cause notice dated 19.04.2016. I find that Rs. 10 Crores have been debited from the accumulated CENVAT Credit available with them and not separately deposited as claimed by them. The party has submitted that -

"Meanwhile, we are partially depositing Rs. 10 Crores against the demand proposed under the captioned notice by reversing the CENVAT credit available in our book vide SAP

document vide No. 1500006596. It is for your kind information that this deposit is under protest and without prejudice to the pending proceedings, our rights and contentions including our right to contest the demand proposed under the captioned notice and we request you to take note of the deposit made."

The said deposit was under protest for the demand against the Show Cause Notices dated 19.04.2016 i.e. against demand of Rs. 312.34 Crores and I find that the same was not a reversal or duty deposit but partial deposit against the said demand. Thus, the contention of the party is farfetched and devoid of any real intent in the instant case.

5.6. I find that said demand has been raised on the ground that the party utilized the credit of service tax which was attributable to the exempted services I.e. trading in the present case. The SCN alleged that the party did not maintain separate records for receipt and consumption of input services for exempted and taxable output services, and that the party did not follow the procedure as contemplated in Rule 6(3) and 6(3A) of the CENVAT Credit Rules, 2004 during the period from June 2010.to June 2015. The issue revolves around the applicability of Rule 6 for the purpose of the availing of the admissible CENVAT credit. The party however disputed the liability on various grounds as also submitted in their defense at the time of passing of Order in Original dated 30.10.2017.

4.12 The show cause notice itself records as follows:

"3 ……. While verifying the correctness of availment of input service credit and its utilization, in accordance with the provisions of the CENVAT Credit Rules, 2004, it was noticed that The Party have availed CENVAT Credit of input services on the input services viz, Insurance Service, Outbound Courier Service / transportation Charges used in respect of the traded goods, Bank charges of import/ export transactions, Chartered Accountant Service

(certificate for issuance of Form 15CB- Outward remittance Certificate), Telephone Charges, Rent-a-Cab service and on Security Services, which are commonly used in relation to trading of the goods exempted service) as well as to taxable services."

Thus the show cause notice itself lists down the services which were common services for providing both taxable and exempted services. From the perusal of the above paras of the impugned order it is evident that it was duly certified by the Chartered Accountant vide Certificate dated 21.01.2021 to show that the CENVAT Credit claimed in respect of the 07 services during the relevant period was only Rs.5.30 Crores. The Certificate of Chartered Accountant dated 21.10.2021 is reproduced below:

JMM

JMM & Co.
Chartered Accountants

~~Annexure-3~~

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April 03, 2017

To Whomsoever It may Concern

On the basis of the books of accounts, service tax returns and CENVAT CREDIT register along with sample underlying invoices, this is to certify that M/s HCL Infosystems Limited has availed cenvat credit in respect of specified services as per attached annexure during the period July 2010 to March 2015.

Further, this certificate is issued only for the purpose of submission before service tax department for the purpose of reconciliation of revenue between books and service tax returns.

For and on behalf of JMM & Co.

Mahima Jain
(Partner)

JMM & CO. CHARTERED ACCOUNTANTS NOIDA

Sum of Tax Amount	Purpose of utilization	Year					
Nature of Service		2010-11	2011-12	2012-13	2013-14	2014-15	Grand Total
Bank Charges	Services		1,126				1,126
	Manufacturing	803,579	4,143,556	625	336,809	86	5,284,655
	Common	5,551	14,367	218,139	1,157		239,215
	Exempted Manufacturing	19,539	-				19,539
Bank Charges Total		828,669	4,159,049	218,765	337,966	86	5,544,534
Charted accountant service	Services	2,163		361			2,524
	Trading	154					154
	Manufacturing	15,914	434,145	8,652	330,484		789,195
	Common	976	94,719	77,140	73,882		246,717
	Exempted Manufacturing		10,043				10,043
Charted accountant service Total		19,207	538,907	86,152	404,366		1,048,632
GTA/Courier	Services	649,686	819,092	1,240,418	747,591		3,456,787
	Trading	645,083	1,151,060	333,454	217,695	258,488	2,605,780
	Manufacturing	5,937,197	18,066,105	191,893	1,684,445	775	25,880,415
	Common	848,976	563,865	914,560	558,306	35,972	2,921,680
	Exempted Manufacturing	170,899	148,660		753		320,312
GTA/Courier Total		8,251,841	20,748,782	2,680,326	3,208,790	295,235	35,184,974
Insurance	Manufacturing	202,171	59,484				261,655
	Common	85,282	349		65,182		150,814
	Exempted Manufacturing	29,968	4,775				34,742
Insurance Total		317,421	64,608		65,182		447,211
RENT A CAB	Services		29,700	3,355			33,054
	Trading			4,725			4,725
	Manufacturing	19,685	12,783				32,469
	Common	3,003	47,181	72,693			122,878
	Exempted Manufacturing	4,600	1,571				6,171
RENT A CAB Total		27,288	91,235	80,773			199,297
Security Service	Services	171,084	165,577	44,822	65,290		446,773
	Trading	2,910					2,910
	Manufacturing	182,705	265,895	50,886	78,434		577,921
	Common	396,886	550,592	1,249,916	1,651,013	11,877	3,860,283
	Exempted Manufacturing	65,723	134,940				200,663
Security Service Total		819,309	1,117,004	1,345,623	1,794,737	11,877	5,088,551
TELEPHONE	Services	49,562	328,696	1,877,878	24,114		2,280,250
	Manufacturing	68,183	27,034	485			95,702
	Common	42,705	622,342	2,099,826	395,062		3,159,934
	Exempted Manufacturing	2,613	32,751				35,364
TELEPHONE Total		163,063	1,010,823	3,978,190	419,176		5,571,251
Grand Total		10,426,796	27,730,408	8,389,829	6,230,219	307,198	53,084,450

If this certificate was to be disputed it should have been done on the basis of proper evidence and documents. However, it has been rejected in a very perfunctory manner in the impugned order. Against this amount of credit which was in respect of 07 services the order records that Appellant have made payment/ adjustment/ reversals of Rs.17,27,61,319/-. Thus the Appellant has reversed the amount much more than the amount of credit claimed against these 07 services. In view of the above judgments referred by the counsel of appellant this should be taken note of and it should be treated that Appellant never claimed any credit against these services. In case of Chandrapur Magnet Wires [1996 (81) E.L.T. 3 (S.C.)] Hon'ble Supreme Court has observed as follows:

> ***"7.*** *In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted*

product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods."

4.13 As we find that Appellant have not claimed any credit against these 07 services or have subsequently reversed the same, the demand made by invoking the provisions of Rule 6(2) & 6(3) needs to be set aside.

4.14 We do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

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