

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

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No. 40996-40997 of 2015**

(Arising out of Order-in-Appeal Nos.55/2015 dated 10.02.2015  
passed by Commissioner of Service Tax (Appeals-II), Chennai)

**M/s. SHV LPG India Pvt. Ltd.**

**.... Appellant**

(formerly known as Caltex Gas India Pvt Ltd.),  
Alpha Centre, 7<sup>th</sup> Floor, No.150 & 151,  
North Usman Road, T. Nagar,  
Chennai – 600 017.

**Versus**

**Commissioner of GST & Central Excise,**

**.... Respondent**

Chennai South Commissionerate,  
MHU Complex, No.692, Anna Salai,  
Nandanam, Chennai – 600 035.

**And**

**Service Tax Appeal No. 41741 of 2015**

(Arising out of Order-in-Appeal Nos.120/2015 dated 18.05.2015  
passed by Commissioner of Service Tax (Appeals-II), Chennai)

**M/s. SHV LPG India Pvt. Ltd.**

**.... Appellant**

(formerly known as Caltex Gas India Pvt Ltd.),  
Alpha Centre, 7<sup>th</sup> Floor, No.150 & 151,  
North Usman Road, T. Nagar,  
Chennai – 600 017.

**Versus**

**Commissioner of GST & Central Excise,**

**.... Respondent**

Chennai South Commissionerate,  
MHU Complex, No.692, Anna Salai,  
Nandanam, Chennai – 600 035.

**APPEARANCE:**

Shri Rajaram R., Consultant, for the Appellant

Shri. Sanjay Kakkar, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)**

**FINAL ORDER Nos. 40291-40293 / 2025**

DATE OF HEARING : 20.01.2025

DATE OF DECISION : 28.02.2025

**Per AJAYAN T.V.**

The issue involved in these appeals being disallowance of wrongly availed and utilized input service credit and its consequent demand along with interest and penalties imposed, these appeals were heard together and are being disposed of by this common order. The appellants have assailed the impugned Order in Appeal (OIA) No.55/2015 dated 10.02.2015 and OIA No.120/2015 dated 18.05.2015, whereby the appellate authority had upheld the impugned common Order in Original (OIO) No.86 and 87/2011 dated 14.09.2011 and OIO No.221/2012 dated 30.11.2012, respectively, of the adjudicating authority disallowing wrongly availed and utilized input service credit and ordering its recovery along with interest and penalties imposed as indicated therein. Three Show Cause Notices (SCNs), all put together spanning the period from April 2008 to March 2011 stood adjudicated in the three impugned OIOs upheld in the aforementioned two OIAs.

2. The facts in brief are that during the period in dispute the appellants (formerly M/s. Caltex Gas India Private Limited), made bulk import of LPG and stored the same in their storage terminal located at Tuticorin. Thereafter they bottled the LPG in cylinders of varying capacities and marketed the same under the brand name 'CALTEX' in the domestic market. As bottling of LPG is not a manufacturing activity, no excise duty was paid by the Appellant. Apart from the above, the appellant also provided storage facilities for the LPG imported by M/s. Bharat Petroleum Corporation Ltd (BPCL) and discharged service tax for providing such storage service under the category "Storage and Warehousing Service". The appellants also

undertook bottling of LPG for BPCL for which services they collected bottling charges and remitted service tax under the category "Packaging Service". The appellant availed various input services such as manpower supply, maintenance and repair service etc., during the course of their activities of import storage and bottling of entire quantity of LPG and while discharging their service tax liability, utilized the credit of service tax paid on the various input services. The Department was of the view that such input services were availed by the appellant not only for rendering the services to BPCL but also for the sale of their own LPG on which no excise duty or service tax was paid. The Department was also of the view that the activity of the appellants of bottling of LPG is neither a manufacturing activity nor providing an output service, the various services on which the appellants have availed credit are not covered within the scope of 'input service' as defined in Rule 2(I) of Cenvat Credit Rules, 2004 (CCR Rules) and hence the taking of credit appeared to be not correct. The Department further held the view that taking of credit on common input services under Rule 6(2) and 6(3) of the CCR is applicable only to a manufacturer who manufactures excisable goods and exempted goods or a service provider who provided taxable service and exempted services and in the instant case the appellants are neither manufacturing exempted goods nor providing exempted services and therefore the appellants cannot take shelter under Rule 6(3) for taking credit on input services used for sale of LPG. The Department was of the view that as no central excise duty was paid on clearance of CALTEX LPG cylinders and service tax was also not paid (since they are not

providing any output service in the bottling and sale of their own LPG cylinders), the appellants were not entitled to take credit of service tax paid on input services used for storage and bottling of LPG sold under the Brand Name 'CALTEX' and the ineligible cenvat credit taken is liable to be recovered.

3. Three SCNs came to be issued covering the period from April 2008 to March 2011 for the reasons stated therein and pursuant to the appellant's reply and hearing granted, the impugned OIOs came to be issued disallowing wrongly availed and utilized input service credit and proposing its recovery along with interest and proposals for imposing penalties as indicated therein. Aggrieved by the impugned OIOs the appellants preferred appeals which came to be rejected by the aforementioned impugned OIAs upholding the said OIOs. Assailing the impugned OIAs the appellants are before this Tribunal having preferred the subject appeals.
4. We have heard learned consultant Shri. Rajaram R. who appeared and argued for the appellants and learned authorised representative Shri. Sanjay Kakkar who appeared and argued for the respondent in these matters. We have also perused the records of both the appeals and the case laws produced as relied upon.
5. The learned consultant submits that the CCR 2004 came to be amended by Notification No.3/2011-C.E.(N.T) dated 01-03-2011 with effect from 01-04-2011 providing an explanation that the term "exempted services" includes trading and since there is no indication that it is to be applied retrospectively, during the period

in dispute the CCR 2004 did not specifically designate trading as an exempted service and thus it would be unjust to impose a reversal of credit for transactions that are not explicitly covered under the exempted services during the relevant period under dispute. Without prejudice to the above, the learned consultant submits that even if for the sake of argument it is considered that trading activities are subject to reversal of CENVAT Credit, then the credits in question would still be saved from reversal due to the express provisions of Rule 6(5) of the CCR that specified that notwithstanding anything contained in sub-rules (1), (2) and (3), credit of whole of service tax paid on taxable services as specified in the sub-clauses of clause (105) of Section 65 of the Finance Act as listed in the said rule shall be allowed unless such service is used exclusively in or in relation to manufacture of exempted goods or providing exempted services. That in any event, the penalties imposed on the appellants are unwarranted due to the interpretational ambiguities surrounding the law during the disputed period which came to be addressed by the Government through an amendment effective from 01-04-2011. That given these uncertainties, the appellants acted under a bonafide belief that the credit was correctly availed, with no malafide intent. The learned consultant relied on various tribunal decisions to bolster the contentions, which are as under:

- a. Sew Eurodrive India Pvt Ltd v. Commissioner of C. Ex & ST-Vadodara-II, 2024 (10) TMI 1055- CESTAT Ahmedabad*

- b. Ingersoll-Rand Technologies and Services Private Limited v. Commissioner of Central Excise, Ghaziabad, 2022(8) TMI 877- CESTAT Allahabad*
- c. Infinium Motors Guj Pvt Ltd v. C.S.T-Service Tax, Ahmedabad, 2022 (11) TMI 948- CESTAT Ahmedabad*
- d. Adani Energy Ltd v. C.S.T-Service Tax, Ahmedabad, 2022 (3) TMI 696- CESTAT Ahmedabad*
- e. Commissioner of Central Excise & Service Tax, Ghaziabad v. M/s. Balson Paint Industries (India), 2018(6) TMI 1336- CESTAT Allahabad*
- f. Emitec Emission Control Technologies (I) Pvt Ltd v Commissioner of Central Excise, Pune-I, 2017 (12) TMI 1298-CESTAT Mumbai.*
- g. Commissioner of Central Excise, Ghaziabad v. Avon International Pvt. Ltd (Vice Versa), 2017 (5) TMI 1289- CESTAT Allahabad.*

6. The learned authorized representative, Shri. Sanjay Kakkar emphatically contended that the identical issues have come up for consideration before the Hon'ble High Court of Madras in the case of M/s. FL Smidth Pvt Ltd v. The Commissioner of Central Excise [2014 (12) TMI 699-Madras High Court) wherein it was inter-alia held that there is no dispute that the appellant (therein) had availed credit on commission in respect of trading goods, which are not in or in relation to manufacture of final products and therefore there are not eligible to avail credit on the commission paid on trading goods. It was submitted that the issue again came up for elaborate

discussion before the Hon'ble High Court of Madras in M/s. Ruchika Global Interlinks v The CESTAT, Chennai, [2017 (6) TMI 635-Madras High Court]: 2017 (5) GSTL 225 (Mad.), wherein it was held that the inclusion in Explanation to Rule 2(e) "trading" was, without doubt, only clarificatory. It was thereafter held that since the appellant therein had not been paying service tax on trading activity during the relevant period the apportionment as provided in Rule 6(3)(c) would get triggered and given the admitted fact that no separate accounts were maintained by the appellant therein, with regard to taxable and non-taxable services, clause (c) of sub rule 3 of rule 6 of 2004 Rules would apply. As regards the imposition of penalty, it is the submission of the learned A.R. that multiple SCNs have been issued to the Appellants for the previous period from Sept 2004 to March 2009 which were adjudicated in the year 2010 and finally confirmed by this Tribunal vide Final Order No.41930/2018 dated 27.06.2018 in the case of SHV LPG India Pvt. Ltd v. Commissioner of Service Tax [2018 (7) TMI 273-CESTAT-Chennai] and the appellants have continued their defiance. It is therefore prayed that the appeal be dismissed.

7. We have heard both sides, perused the appeal records and the decisions submitted as relied upon.
8. We find that the issue whether the input service tax credit taken on taxable services availed while providing taxable output services as well as engaging in the activity of trading is no more res-integra as it has now been consistently held by High Courts of different jurisdictions that credit cannot be taken of entire service tax paid

on taxable services availed while providing taxable output services or manufacturing taxable goods as well as simultaneously engaging in the activity of trading. It is seen that the Honourable High Court of Madras in its decision in ***M/s. Ruchika Global Interlinks v The CESTAT, Chennai, [2017 (6) TMI 635- Madras High Court]: 2017 (5) GSTL 225 (Mad.)*** has held as under:

*"9. Clearly, during the period in issue, which we are told, i.e., 2006-2007 and 2007-2008, trading activity, which was one of the businesses, carried out by the appellant was not amenable to Service Tax. The amendment to Rule 2(e), as correctly argued by Mr. A.P. Srinivas, only stated the obvious that there was no liability to pay Service Tax of trading activity, during the relevant period has been accepted by Mr. Jayachandran. The argument, though, of Mr. Jayachandran is that, since, the formula of apportionment provided in Rule 6(3)(c) is applicable to exempted service, the same can only apply post 1-4-2011, as a clarification was made only on that day onwards.*

*10. To our minds, such a submission cannot be accepted. If, the appellant has accepted before us that he was not paying Service Tax on an activity, then the credit of services vis-a-vis input services could only be taken on a pro rata basis, as per the formula stipulated in Rule 6(3)(c), as it then obtained at the relevant point in time.*

*10.1 In this context, it may also be relevant to note, how exempted services was defined in Rule 2(e) of the 2004 Rules till 31-3-2011 and thereafter.*

***Rule position till 31-3-2011***

*Rule 2(e): "exempted services" means taxable services which are exempt from the whole of the Service Tax leviable thereon, and includes services on which no Service Tax is leviable under Section 66 of the Finance Act*

***Rule position with effect from 31-3-2011***

*Rule 2(e): "Exempted services" means taxable services which are exempt from the whole of the Service Tax leviable thereon, and includes services on which no Service Tax is leviable under Sec. 66 of the Finance Act; and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.*

*Explanation. - For the removal of doubts, it is hereby clarified that "exempted services" includes trading.*

*10.2 Clearly, both before and after amendment, "exempted services" meant those taxable services, which were exempt from whole of Service Tax and, included those services on which Service Tax was not leviable, under Section 66 of the Finance Act. The inclusion in Explanation to Rule 2(e) "trading" was, without doubt, only clarificatory. As accepted by Mr. Jayachandran, the appellant had not been paying Service Tax on trading activity during the relevant period.*

*10.3 Therefore, given the rule position, what would govern the matter would be the determination of the issue as to whether or not, a particular service is amenable to Service Tax under Section 66 of the Finance Act.*

*10.4 Since, the trading activity was not amenable to Service Tax at the relevant period, surely, the apportionment as provided in Rule 6(3)(c) would get triggered. This is apparent, upon a bare perusal of Rule 6(3)(c) the relevant part of which is as follows.*

*RULE 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted*

*services. -*

*(1) xxxx*

*(2) xxxx*

*(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain*

*separate accounts, shall follow either of the following conditions, as applicable to him, namely: -*

*(a) xxxx*

*(b) xxxx*

*(c) The provider of output service shall utilize credit only to extent of an amount not exceeding twenty per cent of the amount of Service Tax payable on taxable output service*

*11. Having regard to the rule, position and given the admitted fact that no separate accounts were maintained by the appellant, with regard to the taxable and non-taxable services, clause (c) of sub-rule (3) of Rule 6 of 2004 Rules would apply.*

*12. For the foregoing reasons, we feel no interference is called for with the order of the Tribunal. Accordingly, the questions of law framed are answered in favour of the Revenue and against the assessee."*

9. Decisions have been taken on similar lines as can be seen from the Judgement of the Honourable High Court of Delhi in ***Lally Automobiles Pvt Ltd v Commissioner (Adjudication), C.Ex, 2018 (17) GSTL 422 (Del)*** which has since been affirmed by the Honourable Supreme Court in ***Lally Automobiles Private Limited v. Commissioner - 2019 (24) G.S.T.L. J115 (S.C.)*** Moreover, by the Final Order No.41930/2018 dated 27.06.2018 in the case of ***SHV LPG India Pvt. Ltd v. Commissioner of Service Tax reported in 2018 (7) TMI 273-CESTAT-Chennai***, for the prior period from September 2004 to March 2009, during which period also the appellants have taken the credit on common input services for the trading activity of LPG cylinders sold in their brand name as well as for providing output services of packing and storing LPG for

BPCL, this Tribunal while setting aside the demand for the extended period on the ground of limitation, has however sustained the demand for the normal period. The appellants have not shown that the aforementioned Final Order has been set aside and thus, inter se the parties, the same has attained finality. In such circumstances, in the light of the decisions of the Honourable High Courts of Madras and Delhi as well as the Tribunal decisions cited above, we find that the Tribunal decisions relied on by the appellants for seeking relief, cannot come to the aid of the appellants in this case.

10. Be that as it may, the appellants have sought for extending the benefit of Rule 6(5) of the CCR as was prevalent during the relevant period. We find that the said Rule 6(5) has been omitted vide Notification No. 3/2011-C.E. (N.T.), dated 1-3-2011 with effect from 01-04-2011.
11. The effect of the omission of a provision of statute came up for discussion in the decision of the Honourable Supreme Court in ***Shree Bhagawati Steel Rolling Mills v. CCE, 2015 (326) ELT 209 (SC)*** and the relevant paragraphs are reproduced below:

*"13. From this it is clear that when Section 6 speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in the Fibre Board's judgment, that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate*

*an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Deluxe Edition) by William C. Burton, 1979 Edition. The expression "delete" is defined by the Thesaurus as follows:*

*"Delete :- Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, efface, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave out, modify by excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike off, take out, weed wipe out."*

*Likewise, the expression "omit" is also defined by this Thesaurus as follows: -*

*"Omit: - Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop exclude, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss, neglect, omittere, pass over, praetermittere, skip, slight, transire."*

*And the expression "repeal" is defined as follows: -*

*"Repeal: - Abolish, abrogare, abrogate, annul, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, rescindere, retract, reverse, revoke, set aside, vacate, void, withdraw."*

**14. On a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its ken an omission as well. This being the case, we do not find any substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro. If the expression "delete" would amount to a "repeal", which the appellant's counsel does not deny, it is clear**

***that a conjoint reading of Halsbury's Laws of England and the Legal Thesaurus cited hereinabove both lead to the same result, namely that an "omission" being tantamount to a "deletion" is a form of repeal. (emphasis supplied).***

The Hon'ble Supreme Court thereafter in para 24 held as under:

***24. Fibre Board's case is a recent judgment which, as has correctly been argued by Shri Radhakrishnan, learned senior counsel on behalf of the revenue, clarifies the law in holding that an omission would amount to a repeal. The converse view of the law has led to an omitted provision being treated as if it never existed, as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. In the vast majority of cases, this would cause great public mischief, and the decision of Fibre Board's case is therefore, clearly delivered by this Court for the public good, being, at the very least a reasonably possible view. Also, no aspect of the question at hand has remained unnoticed. For this reason also we decline to accept Shri Aggarwal's persuasive plea to reconsider the judgment in Fibre Board's case. This being the case, it is clear that on point one the present appeal would have to be dismissed as being concluded by the decision in the Fibre Board's case. (emphasis supplied)***

12. However, the omission has to be examined in the light of Section 38 A of the Central Excise Act, 1944 and the effect of Section 38A has been stated by a larger bench of the Tribunal in ***Kisan Sahakari Chini Mills Ltd v. CCE, Kanpur, (2001) 131 ELT 370 (Tri-LB)*** and the relevant paragraphs are as below:

*2. When the matter came up for hearing, both the sides duly represented by Shri Bipin Garg, learned Advocate and Shri Rajeev Tandon, learned SDR agreed that the Finance Bill, 2001 has become the Finance Act, 2001 on 11-5-2001. As per Section 131 of the Act, a new Section 38A has been introduced with the provision that the same shall be deemed to have been inserted on or from 28th day of February, 1944. **The effect of insertion of the said section is to the effect that repeal of Modvat provisions w.e.f. 1-4-2000 will not affect the previous operation of the rules and the right, privilege, obligation or liability acquired, accrued or incurred or incurred under the said repealed rules.** For better appreciation the said section is reproduced below: -*

*"38A. Effect of amendments, etc., of rules, notifications or orders, - Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not --*

*(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or*

*(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or*

*(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or*

*(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed at if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.”*

*3. In view of the foregoing the question referred to the Larger Bench has to be answered in the affirmative. The appeals relating to Modvat and pending before the Tribunal are required to be disposed of on merits. Accordingly, we send the matter back to the regular Bench for hearing of the appeal.” (emphasis supplied)*

13. Again, in ***CCE Thane II v. Milton Polyplas (I) Pvt Ltd, 2019 (365) ELT 962 (Bom)***, the Honourable High Court of Bombay was deciding whether the notice issued invoking the erstwhile Rule 57 I of the MODVAT rules demanding fraudulently availed credit during the period 1995 to 1999 would abate as contended by the Respondent-assessee therein, since the MODVAT rules were omitted and/or substituted by CENVAT Rules w.e.f 1<sup>st</sup> April 2000. The Honourable High Court negated the contention and the relevant paragraphs are as under:

*5. Re. Question (a): -*

(i)xxx

xxxx

(iv) Mr. Sridharan, Learned Senior Counsel for the Assessee very fairly concedes that this issue, is no longer *res integra*. **In fact, it stands concluded in favour of the Appellant-Revenue and against Respondent-Assessee by the decision of the Supreme Court in *Fibre Boards Pvt. Ltd. v. CIT* (2015) 10 SCC 333 and *Shree Bhagawati Steel Rolling Mills v. CCE*, 2015 (326) E.L.T. 209. In both the aforesaid decisions, the Apex Court held that omission/substitution would fall within the ken of a repeal of a provision. It further held that the earlier decision of the Apex Court in this aspect by *M/s. Rayala Corporation (P) Ltd. (supra)* and *Kolhapur Canesugar Mills Pvt. Ltd., (supra)* were in the nature of *obiter dicta* and therefore, not binding. In particular, it was noted in *Fibre Boards Pvt. Ltd., (supra)*, that the earlier decisions in case of *M/s. Rayala Corporation (P) Ltd.,* and *Kolhapur Canesugar Mills Pvt. Ltd., (supra)* had not made reference to Section 6A of the General Clauses Act, 1897 and the earlier decision of the Constitution Bench in case of *State of Orissa v. M. A. Tulloch & Co., AIR 1964 (SC) 1284*. It thus held that omission would be included in the meaning of repeal. In the light of the above, Section 38A of the Act (inserted in 2001 with retrospective effect from 1944) will make the notice dated 17th January, 2000 valid even post 1st April, 2000. This is in view of Section 38A (c) of the Act which states that any amendment, repeal, supersession or rescinding shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule so amended, repealed, superseded or rescinded.** This is further qualified by providing that any investigation, legal proceedings may be continued, as if the Rule had not been amended,

*rescinded, repealed or superseded. In fact, the above provision is an amalgamation of Sections 6 & 6A of the General Clauses Act, 1897 which applies to Acts, while Section 38A of the Act is specifically in relation to Rules under the Act. Thus, the view of the CESTAT cannot be upheld.*

*(v) In the above view, this substantial question of law is answered in the affirmative i.e. in favour of the Appellant- Revenue and against the Respondent-Assessee. (emphasis supplied)*

14. The effect of Section 38A, namely that it will not affect the previous operation of the rules and the right, privilege, obligation or liability acquired, accrued or incurred or incurred under the said repealed rules is subject to the caveat "unless a different intention appears", stipulated therein. However, while the Cenvat Credit Amendment Rules, 2011, notified by Notification No.3/2011-CE (NT) dated 01-03-2011, which came into effect from 01.04.2011, effected sweeping changes, we could not glean or discern a different intention to curb *any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded*, so as to deny the benefit under Rule 6(5) of the CCR that is being claimed by the appellant.
15. So, to our mind, the effect is that legal proceeding in respect of any right or liability can be instituted, continued, or enforced in respect of rights and liabilities acquired or incurred under the said Rule 6(5) of CCR, which stood omitted with effect from 01-04-2011. In sum, when we are called upon to decide such a benefit claimed for the

period when the Rule 6(5) *ibid* was prevailing in the statute, despite the aforesaid omission, we are required to determine the same as if Rule 6(5) has not been repealed. Therefore, we do find merit in the appellants' contention that the credits in question would still be saved from reversal due to the provisions of Rule 6(5) and ought to have been considered by the lower authorities when the matter arose for adjudication.

16. Rule 6(5) begins with a *non obstante* clause and stipulates **"Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services."** Therefore, if the appellants were availing any of the aforementioned specified taxable services and had taken credit of service tax paid on the same and have not used such specified taxable services exclusively in or in relation to providing exempted services, then irrespective of the stipulations in sub-rules (1), (2) and (3) of Rule 6 of the Cenvat Credit Rules, 2004, credit of the whole of service tax paid on such specified taxable services shall be allowed and such taking of credit is correct and legal. The jurisdictional High Court in the case of M/s. Ruchika Global Interlinks has held that the explanation to Rule 2(e) stipulating that "exempted services" includes trading is clarificatory. Thus, for the relevant period, trading is to be treated as "exempted services".

17. In view of the foregoing facts borne out from the records and the discussions and findings stated above and in the light of the aforecited judicial precedents, we find that the matter needs to be remanded to the jurisdictional adjudicating authority in order to determine the extent to which the cenvat credit has been taken on the services which the appellants have claimed would be taxable services as specified in the sub-clauses of clause (105) of Section 65 of the Finance Act as listed in Rule 6(5), and credit of whole of service tax of which shall be allowed unless such service is used exclusively in or in relation to manufacture of exempted goods or providing exempted services. Upon such determination, the adjudicating authority is directed to allow such credit taken as they would be licit credit. Save for such credit, if any, the finding of the appellate authority with respect to the remaining availed and utilized input service credit; which has been found to be wrongly availed and utilized and which has been ordered to be recovered by the adjudicating authority along with the consequential interest thereon, and which stands upheld by the appellate authority; is correct, and stands undisturbed.
  
18. However, we find that during the relevant period the issue was debatable and was being agitated in multiple judicial forums. That the dispute was on interpretational issues, is also evident from the conflicting decisions relied upon by both sides. The Honourable High Court of Madras in its decision in *Asst Commr of GST & C. EX, Chennai v. Shriram Value Services Pvt Ltd, 2019 (368) ELT 928 (Mad)*, has acknowledged that it is possible for an assessee to

entertain a bonafide belief regarding its entitlement to credit on input services used for trading activity. In these circumstances, we are of the view that the penalties imposed on the appellants vide the impugned orders in original as has been upheld in the impugned orders in appeal, cannot sustain and are liable to be set aside. We accordingly set aside the penalties imposed on the appellants.

19. Hence, the impugned orders in appeal of the respective appeals upholding the impugned orders in original, are sustained on merits to the qualified extent stated above; given the direction for denovo adjudication proceedings for the limited purpose of determination of the amount of credit in terms of Rule 6(5) of Cenvat Credit Rules, 2004, the benefit of which is to be extended to the appellants; and also stand modified to the extent of deletion of penalties imposed. The adjudicating authority is directed to adhere to the principles of natural justice and provide the appellants the necessary opportunity of personal hearing during the denovo adjudication proceedings. Given that the dispute pertains to the period from April 2008 to March 2011, the adjudicating authority is directed to conduct the denovo adjudication proceedings as expeditiously as possible and preferably within three months of the date of receipt of this order. The appellants are allowed to submit all evidences that they choose to rely on to substantiate their claim with respect to the benefit of Rule 6(5) of the Cenvat Credit Rules, 2004, sought and are directed to cooperate with the denovo adjudication proceedings.

20. The appeal is disposed on the above terms and by way of remand for denovo adjudication proceedings as per the directions above. The appellants are entitled to consequential benefits, as per law, if any.

(Order pronounced in the open court on 28.02.2025)

Sd/-

**(AJAYAN T.V.)**  
Member (Judicial)

Sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

psd