

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

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos.40856-40857 of 2017

(Arising out of Order-in-Appeal No.241,242/2016 (STA-II) dated 28.11.2016 passed by Commissioner of Service Tax (Appeals-II), Chennai)

**M/s. Hofincons Infotech and
Industrial Services**

.... Appellant

(Previously known as M/s. Hofincon Infotech and Industrial Services Pvt. Ltd.)
8th Floor, Khivraj Building,
480, Anna Salai, Nandanam,
Chennai-600 035.

VERSUS

Commissioner of GST & Central Excise ... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar. Chennai-600 040.

And

Service Tax Appeal No.40930 of 2017

(Arising out of Order-in-Appeal No.241,242/2016 (STA-II) dated 28.11.2016 passed by Commissioner of Service Tax (Appeals-II), Chennai)

Commissioner of GST & Central Excise ... Appellant

Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar. Chennai-600 040.

VERSUS

**M/s. Hofincons Infotech & Industrial
Services Pvt. Ltd.,**

... Respondent

JVL Plaza, 6th Floor, Gee Gee Universal
2, Mc. Nicholas Road, Chetpet,
Chennai-600 031.

APPEARANCE :

Ms. Radhika Chandrasekar, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

FINAL ORDER Nos.40545-40547/2026**DATE OF HEARING : 22.01.2026****DATE OF DECISION : 28.04.2026****Per: Shri Ajayan T.V.**

These three appeals being interconnected and arising out of the same impugned orders involving connected issues are taken up for hearing together and are disposed of by this common order.

2. Hofincons Infotech and Industrial Services, the Appellant herein, is a registered service provider of Management, Maintenance or Repair Services, Technical Inspection and Certification Services, Consulting Engineer Services, Erection Commissioning and Installation Services etc. During the scrutiny of the Appellant's records, by the officers conducting audit, it was noticed that the Appellant was availing input service credit on rent a cab service and insurance service. It was also noticed that the Appellant had availed cenvat credit on common input services used for providing taxable output service as well as services provided to SEZ in respect of which the Appellant was not maintaining separate accounts as per Rule 6 (2) of cenvat credit Rules, 2004 (CCR). The Department, was of the view that the aforesaid services cannot be deemed to have been used for providing output services, and therefore, the Appellant was not entitled to the credit of input service taken thereon and thus, is required to be disallowed and recovered along with interest in terms of Rule 14 of CCR. The Department was also of the view that the provider of output service who opts not to maintain separate account is required to pay an amount equal to the specified percentage of value of exempted service in terms of sub-rule 3 of Rule 6 of CCR, and that this has not been done by the Appellant. The Department therefore issued two Show Cause Notices covering the period from April 2009 to September 2011, demanding the wrongly availed Cenvat Credit as well as the

amounts payable as per the Rule 6(3) of the CCR alongwith applicable interest as well as proposing penalties. After due process of law, the Adjudicating Authority passed Order-in-Original No.3/2013 dated 10.01.2013 confirming the demands as proposed and imposing penalties under Section 76, 77 and 78 of the Act as more particularly specified therein. Aggrieved by the same, the Appellant preferred an appeal before the Commissioner of Service Tax (Appeals-II). The Appellate Authority *vide* the common OIA No.241, 242/2016 (STA-II) dated 28.11.2016 (impugned orders) confirmed the denial of Cenvat Credit along with appropriate interest. However, noticing that *vide* Section 144 of the Finance Act, 2012 read with Eighth Schedule thereto, sub Rule (1)(2)(3)(4) of Rule 6 of the CCR are made applicable in respect of the taxable services provided without payment of Service Tax to a unit in a Special Economic Zone or to a Developer of Special Economic Zone for their authorized operations with retrospective effect from 10.02.2006 to 28.02.2011; and further that with effect from 01.03.2011 sub rule (6A) of Rule 6 of the CCR, inserted *vide* Notification No.3/2011-CE(NT) dated 01.03.2011 provided for the non-application of the sub Rule (1) (2) (3) (4) of the Rule 6 of the CCR to the service provider to the SEZ; the Appellate Authority held that the demand of amount required to be made under Rule 6(3) of the CCR in respect of the services provider to SEZ is not sustainable. The Appellate Authority therefore set aside the demand pertaining to the service provider to SEZ. Upon noticing that the Apex Court in ***Maruti Suzuki Ltd. vs CCE, 2009 (240) ELT 641*** has held that on account of the repeated amendment to Cenvat Credit Rules huge litigation stands generated and in large number of case, conflict of views were expressed by various Tribunals/High Court, penalty is not available; the Appellate Authority also set aside, penalties imposed under Section 76, 77 and 78 of the Act. The Appellant has preferred two appeals as captioned above, aggrieved by the upholding of the demand of Cenvat Credit along with appropriate interest on the ineligible services, while the Department has

preferred the captioned appeal against setting aside of the penalties and also contending that a portion of the demand of services from March 2011 to September 2011 rendered to SEZ falls outside the purview of sub-rule 6A of Rule 6 of Cenvat Credit Rules of CCR and hence setting aside of the demand to that extent was incorrect.

3. Ms. Radhika Chandrasekhar, Ld. Advocate contended that the denial of Cenvat Credit on input services was untenable and argued that the Appellant had to provide pick-up and drop facilities to the employees since the factories are located in remote areas and hence the services are used for providing the Appellant's output services. Reliance was place on the decision in ***CCE vs. Ultratech Cement Ltd. 2010 (260) ELT 369***, Order dated 08.12.2016 of Hon'ble High Court of Madras in the case of ***Commissioner of Central Excise vs. M/s. Visteon Automotive Systems India (P) Ltd. in CMA No.2586 of 2016, CCE, Bangalore vs. Stanzen Toyotetsu India (P) Ltd., 2011 (23) S.T.R. 444 (Kar.)*** and ***Commissioner of CGST, Mumbai v Sony Picture Networks India Pvt Ltd, (2024) 20 Centax 473 (Bom)***. Ld. Counsel contents that the contract with the clients mandated for providing insurance cover and power involved under Employee State Insurance Scheme and the contract provides for inclusion of charges for compliance of statutory requirements like ESI. Reliance is placed on decision in ***Hindustan Petroleum Corporation Ltd v CCE, Mumbai, (2025) 35 Centax 183 (Tri-Bom)*** and ***M/s. HEG Ltd. vs. CCE, Raipur, 2011-TIOL-177-CESTAT-Del.*** Ld. Counsel further argues that the service render to SEZ cannot be considered as exempted services. It is her submission that the Central Government vide Section 144 of the Finance Act 2012 has amended Rule 6 of the CCR retrospectively with effect from 10.02.2006 to 28.02.2011 whereby sub rule (1)(2)(3)(4) of Rule 6 has been made inapplicable in respect of the taxable service provided without payment of Service Tax to a unit in SEZ or to a developer of SEZ. Further, with effect from 01.03.2011, Rule

6 (6A) inserted vide Notification No.3/2011-CE(NT) dated 01.03.2011 has stipulated the inapplicability of the said sub rules. Reliance is placed on the Final Order No.61462/2025, dated 06.10.2025 in the case of **M/sapient Consulting Pvt. Ltd. vs. Commissioner of Service Tax-Delhi-I**. She prays that the appeal may be allowed.

4. Shri N. Satyanarayana, Authorised Representative, appearing on behalf of the responded reiterated the findings in the impugned order to the extent the Cenvat Credit was denied to the appellants. As regards the appeal preferred by the Department, he reiterated the grounds of appeal stated therein with respect to the setting aside of the penalty and the contention that a portion of the demand of services from March 2011 to September 2011 rendered to SEZ falls outside the purview of sub-rule 6A of Rule 6 of Cenvat Credit Rules of CCR and hence setting aside of the demand to that extent was incorrect.

5. We have heard the rival submissions, perused the appeal records and citations submitted.

6. The issues that arise for our determination are whether as a consequence of having rendered services to SEZ, the appellant was required to pay an amount equal to the specified percentage of value of exempted service in terms of sub-rule 3 of Rule 6 of the Cenvat Credit Rules 2004 for the period from March 2011 to September 2011, which according to the Department fell outside the purview of Rule 6 (6A) as it was applicable for the period from 10-02-2006 to 28-02-2011 only, whether the credit of service tax paid on rent a cab service and insurance service by the appellant, availed as input cenvat credit, is tenable and whether the appellant was to be visited with penalties.

7. We find that vide Notification No.3/2011-CE (NT) dated 01.03.2011, the Central Government notified the Cenvat Credit (Amendment) Rules 2011 to amend the Cenvat Credit Rules 2004. The rules provided that, save as otherwise provided in these rules, they shall come into force with effect

from 01.04.2011. clause (ix) of Rule 5 of these rules, provided as under:

“(ix) after sub-rule (6), the following shall be inserted with effect from the 1st day of March, 2011, namely :-

“(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.”.

8. We note that Section 144(1) of the Finance Act, 2012, stipulates inter-alia that sub-rule (6A) of rule 6 of the Cenvat Credit Rules, 2004 shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Eighth Schedule, on and from the date specified in column (3) of the Schedule, against the rule specified in column (1) of the Schedule. Thus, the period of effect of amendment shown in column (3), of the said Eighth Schedule, namely, from 10th February 2006 to 28th February, 2011, refers to the period for which the sub-rule (6A) of rule 6 would apply retrospectively. In other words, apart from the said retrospective amendment effective from the period so stated as per the said Section 144 of the Finance Act, *ibid*, the sub-rule 6A of rule 6 as inserted vide the Notification No.3/2011-CE (NT) dated 01.03.2011 continued to remain effective from 01.04.2011 as notified. Our finding is also fortified by the ***Final Order No.61462/2025 dated 06.10.2025 in the case of M/s. Sapient Consulting Pvt Ltd v. CST***, by the Chandigarh Bench of this Tribunal, wherein it has been held as under:

“5. Heard both sides and perused the records of the case. On going through the changes in the provisions of the Rules over the period of time, it is seen that the applicability of Rule 6(3) has been excluded by the amendments made by Notification No.03/2011-CX (NT) dated 01.03.2001, inasmuch as supply of excisable goods to SEZ units for their authorized operations; by virtue of introduction of Rule 6A, the provisions were also made applicable to supply services to

SEZ units; in terms of Section 144 of Finance Act, 2012, the provisions have been made applicable retrospectively. Therefore, we find that the appellants are not required to reverse any amount in terms of Rule 6(3) for the reason that the services provided by them to SEZ units are exempted. We also find support in the CBEC letter no. 334/1/2012-TRU dated 16.03.2012.

6. We find that this Bench in the case of M/s Mercer Consulting India Pvt. Ltd., vide Final Order No. 60162/2024 dated 05.04.2024, involving identical issue, found as follows:

7. We find that the first demand is confirmed on the allegation that the appellants have availed Cenvat Credit in excess of 20% of the amount payable on taxable output service in respect of services provided by them to SEZ, in terms of Rule 6 of CCR, 2002/2004 during the relevant period. We find that the issue is no longer res integra in view of the retrospective amendment, vide Finance Act 2012, to the effect that Rules 6 (1), (2) and (3) do not apply to Services provided to SEZ. Tribunal held in the case of Tata Consulting Engineers Ltd. (Supra)

6. There is no dispute in this case that during the period April, 2008 to March, 2010, the appellant had rendered services to SEZ unit/SEZ Developers and had also taken Cenvat credit on the inputs/input services used in the provisions of output services. These details of such services rendered to SEZ units/developers were reflected in the half yearly ST-3 returns filed by the appellants. Vide Notification No. 3/2011, dated 1-3 2011, the Cenvat Credit Rules, 2004, were amended so as to provide that there is no need to reverse any Cenvat credit taken on inputs/input services if such inputs/input services were used in rendering of output services to SEZ unit/SEZ developer. Further, vide Section 144 of the Finance Act, 2012, the said amendment was given retrospective effect from 10-2 2006 to 20-2-2011. In other words, during the impugned period, there was no need for the assessee to reverse any credit taken on the inputs/input services in respect of which credit was availed for rendering of output services to SEZ units/SEZ developer. The adjudicating authority has completely failed to examine the claim of the appellant, the details of which were provided to him at the time of adjudication. Therefore, we hold that the impugned order is not sustainable in law. 6.1 Further, the Hon'ble High Court of Bombay, in the case of Repro India Ltd., reported in 2009 (235) E.L.T. 614 (Bom.) held that the provisions of Rule 6(3)(b) of the Cenvat Credit Rules are not attracted in the case of exports as Rule 6(6)(v) provides an exception in the case of clearances for

export. As per Section 2(m) of Special Economic Zones Act, 2005, supplying goods, or providing services, from a unit in DTA to a SEZ unit or SEZ developer is deemed as "export" and vide Section 50 of the said Act, the provisions of SEZ Act shall prevail over the provisions of other enactments. Thus supplies made to SEZ or SEZ developer amounts to "export". Viewed from this perspective also, the appellants are rightly entitled to Cenvat credit on the inputs and input services used in or in relation to rendering of output services to a unit in SEZ or to a SEZ developer.

7. In view of the above that the Revenue has not made out any case against the appellants and the impugned order is set aside by allowing the appeal of the appellant."

9 We therefore find that the Department's appeal on the ground that the applicability of the said sub rule (6A) was confined only upto the period 28-02-2011 is wholly misconceived. We uphold the finding of the Ld. Appellate Authority that the demand of amount required to be made under Rule 6(3) of the CCR in respect of service provided to SEZ is not sustainable and reject the appeal preferred by the Department on the ground that the applicability of the said sub rule (6A) was confined only upto the period 28-02-2011.

10. As regards the cenvat credit availed on input services of rent a cab services it is the contention of the Appellant that the Appellant had to provide pick-up and drop facilities to the employees since the factories are located in remote areas and hence the services are used for providing the Appellant's output services. Ld. Counsel draws attention to the decision in **Commissioner of CGST, Mumbai v Sony Picture Networks India Pvt Ltd, (2024) 20 Centax 473 (Bom)**. Regarding insurance services, it is the contention of the Appellant that the contract with their clients mandate for providing insurance cover for the manpower involved under the Employees State Insurance Scheme and that a coordinate benches of this Tribunal in the case of **Hindustan Petroleum Corporation Ltd v CCE, Mumbai, (2025) 35 Centax 183 (Tri-Bom)** and **M/s. HEG Ltd. vs. CCE, Raipur, 2011-TIOL-177-CESTAT-Del.**

11. We find that the period of dispute is from April 2009 to September 2011. Under these circumstances, considering the justification given above by the Appellant detailing the input service on which the credit was availed and explaining the purpose for which it was availed, and upon perusing the decisions submitted in support of the appellant's contention, which are apposite and seen to be that of the Hon'ble Bombay High Court and coordinate benches of this Tribunal respectively, this Tribunal is bound by judicial discipline to follow the same. Moreover, in the absence of any allegation in the SCNs, much less evidence, that the said services have been availed primarily for personal use or the consumption of the employees, or that they form part of the CTC of the employees, the Appellant is entitled to the credit taken in the peculiar facts and circumstances of this case.

12. We also find that the Appellate Authority has rightly set aside the penalties in the given facts and circumstances noticing the decision in ***Maruti Suzuki Ltd. vs CCE, 2009 (240) ELT 641 (SC)***. In any event, we have found in favour of the appellant on merits of the matter and therefore the question of imposition of penalties on any count does not arise.

12. In light of the aforesaid discussions, the impugned order to the extent it has been contested by the Appellant, cannot sustain and is liable to be set aside. Ordered accordingly.

13. Resultantly, the appeals preferred by the Appellant is allowed with consequential relief(s) in law if any and the appeal preferred by the Department is dismissed as devoid of merits.

(Order pronounced in the open court on 28.04.2026)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)