

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No.42309 of 2016

(Arising out of Order-in-Original No. LTUC/519/2016-C, dated 31.08.2016 passed by the Commissioner, Large Tax Payer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101)

M/s. Sundaram Finance Ltd.,
No.21, Patullos Road
Chennai 600 002.

...Appellant

Versus

Commissioner of GST & Central Excise
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

Ms. Vardini Karthick, Advocate for the Appellant
Mr. M. Selvakumar, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER No.40659/2026

DATE OF HEARING:06.02.2026
DATE OF DECISION :29.05.2026

Per Mr. AJAYAN T.V.

Sundaram Finance Ltd., the appellant herein, has taken exception to the Order in Original No. LTUC/519/2016-C, dated 31.08.2016 passed by the Adjudicating Authority (impugned Order) confirming a demand of service tax for the period 2011-12 to September 2014 along with applicable interest and a penalty imposed under Section 78 of the Finance Act, 1994, (the Act).

2. The brief facts are that the appellant is registered with the department for providing banking and other financial services. The officers of the internal audit group, upon verification of the appellant's records, noticed that the appellant, apart from its regular business, acted as corporate agents for various insurance /mutual fund companies and were

providing insurance auxiliary / mutual fund distribution services to them. For this purpose, they were availing man power services provided by two firms, namely, M/s. Aparajitha Corporate Services Pvt. Ltd. and M/s. Aparajitha Dynamic Synergies (P) Ltd. and were also availing credit of the service tax paid by them on the said services under the Cenvat Credit Rules, 2004 (CCR). It was alleged that the appellant was using these man power services not for the regular business, but exclusively in the provision of mutual fund distribution services / insurance auxiliary services rendered by them on which the service tax was paid by the service recipient Insurance Companies under reverse charge mechanism.

3. The Department was of the view that on a plain reading of the definition of input service as defined under Rule 2 (I) of the CCR, for a service to qualify as an eligible input service, it should be used by a provider of output service (taxable service) for providing their main output service. Since it appeared that the appellant is not using the impugned manpower services for providing their regular taxable output services of banking and financial services, but are only using them for in providing insurance auxiliary services to various insurance companies for which the tax liability is discharged by the insurance companies under reverse charge mechanism as per Rule 2(1)(d)(iii) of the Service tax Rules read with Section 68 (2) of the Act, the Department was of the view that the impugned services do not fall under the ambit of definition of 'input services' under Rule 2(I) of the CCR in so far as the appellant was concerned as the appellant was not discharging any service tax on the insurance auxiliary service. Further, Explanation III under Rule 6(3) of the CCR clearly states that no cenvat credit shall be taken on the tax paid on any services that are not input services. Further, from 01.07.2012, the liability for payment of service tax on the impugned services were fastened on the insurance companies in terms of Sl.No.1 of Notification No. 30/2012-ST dated 20.06.2012. From 01-07-2012 the term 'output service' was also amended to exclude the services for which service tax is paid by the recipient of service under reverse charge mechanism from the purview of the definition of 'output service'. As the liability was on the insurance companies to pay service tax on the impugned manpower services provided by the appellant, the Department was of the view that they did not fall within the ambit of definition of 'input services' and that therefore the appellant was not

eligible to avail the input service credit on the said services used for providing agency services to the insurance companies. Such credit availed was therefore recoverable under Rule 14 of the CCR, 2004 read with Section 73(1) of the Act.

4. The Department also noticed that the appellant was acting as mutual fund distributors to Sundaram Asset Management Company, for which it received brokerage for the business procured by them and the said services provided was Business Auxiliary Services (BAS) for which the liability to pay service tax was on the mutual fund or asset management company as per as per Rule 2(1)(d)(vi) read with Section 68 (2) of the Act under reverse charge mechanism. The appellant was utilizing the manpower services received from the aforesaid agencies for providing the mutual fund distribution services. The Department was of the view that the impugned services do not fall under the ambit of definition of 'input services' under Rule 2(l) of the CCR in so far as the appellant was concerned as the appellant was not discharging any service tax on the insurance auxiliary service. Further, Explanation III under Rule 6(3) of the CCR clearly states that no cenvat credit shall be taken on the tax paid on any services that are not input services. Further, from 01-07-2012, the services rendered by mutual fund distributors / agents to a mutual fund company or asset management Company were exempted from payment of service tax vide sl.no.29 of Notification No.25/2012 service tax, dated 20.06.2012. The Department was also of the view that as per Rule 6(1) of the CCR read with explanation II to the said Rule, credit shall not be allowed on input services used exclusively in relation to exempted services and therefore in the instant case since the man power services were used by the appellant exclusively for providing mutual fund distribution services that were fully exempted in terms of Notification No.25/2012, the credit of input service availed on the man power services was hit by the bar as per Rule 6 (1) of the CCR read with explanation II of the said Rule. Such credit availed was therefore recoverable under Rule 14 of the CCR, 2004 read with Section 73(1) of the Act. It also appeared that the appellant had suppressed the fact of availing service tax credit on the said man power services which came to light only during audit. The fact that they had exclusively used the services received towards the services provided to the Insurance/Mutual Fund companies on which no tax was paid by them had not been declared in the ST 3 returns and they had not sought any clarification

from the Department in this regard. Therefore, extended period of limitation was invokable. Thus, on the aforesaid allegations a Show Cause Notice was issued to the appellant proposing demand of ineligible credit along with appropriate interest and proposing imposition of penalties under Rule 15(3) of the CCR read with Section 78 of the Act.

5. The appellant in its reply contested the allegations, inter-alia, contending that the manpower services provided are utilised by them in the business verticals of General Insurance, Home Loans, Mutual Funds/investments/wealth advisory services, Life Insurance and customer care services. The agencies that supply manpower raise a consolidated bill towards supply of manpower and the manpower services are rotated by the appellant to all its business activities and thus the input services are commonly used for providing the output services across all its verticals. It was contended that since the input services cannot be directly correlated with the taxable output services, they have opted not to maintain separate accounts and hitherto followed Rule 6(3A) of the CCR and have paid the service tax amount equivalent to the cenvat credit attributable to the input services used for providing exempted services by adopting the formulae prescribed by sub-rule (3A)(c)(iii). For the period 2010-11, in order to expunge the input credit relatable to exempted services, the appellant had thus followed the erstwhile Rule 6(3) of the CCR. It was contended that the input tax credit that they had expunged following the said rule included the credit on the manpower supply services and had also been reflected in their half yearly returns for the year 2010-11. It was further contended that the credit availment under Rule 6(3A) was under dispute and the issue for the periods 2008-09, 2009-10 and 2010-11 is pending in appeal before the Tribunal at Chennai and thus the reversal in respect of the manpower services for the period 2010-11 is sub-judice. It was further contended that from 01.04.2011 Rule 6(3B) came into play which began with a non-obstante clause stipulating "Notwithstanding anything contained in sub-rules (1)(2)(3)", and according to which in the case of Banks and NBFCs could reverse a flat 50% of the credit availed on input services irrespective of their use for exempted or non-taxable output services. Placing reliance on the TRU Circular D.O.F.No.334/3/2011-TRU dated 28th February 2011, and case laws on the meaning of non-obstante clause, in *Brij Rai Krishna v. S.K. Shaw and Brothers*, AIR 1951 SC 115 and *K. Parasuramiah v. Pokurl*

Lakshmamma, AIR 1965 AP 220, it was contended that the appellant had rightly availed the credit. After due process of law, the Adjudicating authority after causing verification from the jurisdictional Superintendent as regards the appellant's contention that the demand pertaining to the period 2010-11 for which SCN was issued included the credit taken on the manpower services availed from the aforementioned agencies, accepted the appellant's contention and confined the demand to the period from 2011-12 to September 2014 and imposed penalty under Section 78 of the Act as stated in the impugned order. Aggrieved, the appellant has preferred this appeal.

6. Ms. Vardini Karthick, Ld. advocate appearing for the appellant submitted that the appellant is a non-banking financial company in corporate in 1954. The two service providers aforementioned provided man power that was commonly used for all divisions of the appellant. The manpower services are rotated by the appellant for all the business activities performed by the appellant and the services providers also raised consolidated bills towards supply of man power and there is no demarcation in the bill as to which business vertical their services are utilised. The manpower services are thus availed as a whole for all the business activities performed by the appellant and since the input services could not be directly correlated with the taxable of services, and the appellant having not opted to maintain separate accounts, the appellant follow Rule 6 (3A) of the CCR until 31.03.2011 and Rule 6 (3B) of CCR from 01 April 2011.
7. The Ld. Counsel emphasised that the issue pertaining to the disallowance of availment of input tax credit pertaining to manpower supplies was already under dispute for the period 2008-09 to 2010-11. The department was therefore well aware at the time of issuance of Show Cause Notice that the issue was pending before CESTAT, Chennai. This fact has been recorded in the impugned order in original. It is therefore submitted that extended period of limitation cannot be invoked. Reliance is placed on the orders of the Tribunal in ST/00784/2010, ST/00100/2012 and ST/00645/2012. The appellant has contended that extended period of limitation cannot be invoked, reliance is placed on the decision in **Commissioner of Central Excise, Jalandhar Vs. Royal Enterprises – 2016 (337) ELT 482 (SC)**, **Commissioner of Central Excise, Surat I Vs. Neminath Fabrics Pvt. Ltd. 2010 (256) ELT 369 (Guj)**, **Nizam Sugar Factory Vs.**

Collector of Central Excise, A.P. – 2006 (197) ELT 465 (SC), Sri Vasavi Polymers Pvt. Ltd. Vs. Commr. of C.Ex., Visakhapatnam 2007 (213) ELT 226 (Bang. Tribunal) and Rasi Travels and Cargo Pvt. Ltd. Vs. Commissioner of C.Ex., Trichy 2018 (9) GSTR 123 (Chennai Tribunal).

8. Ld. Counsel contended that as per legislative wisdom, the legislature has deemed it fit to introduce a lump sum reversal of CENVAT credit of 50% of the total credit in Rule 6(3B) of the CCR for NBFCs/Banks and thus there is a permissible inference that legislature has deemed to have included all the CENVAT credit attributable to the not-taxable and exempted output service and also the taxable service on which the recipient of service of the NBFC/Bank are liable to pay the tax wholly, within the fold of the 50% reversal of cenvat credit. It is contended that Rule 6 (3B) of CCR overrides the provisions of Rule 6 (1), (2) and (3) of CCR as well as the explanation II and III of Rule 6 (3). Reliance is placed on the decisions in Union ***of India Vs. G.M. Kokil 1984 (Supp) SC 196 / AIR 1984 SC 1022, Emcure Pharmaceuticals Ltd. Vs. Commissioner of C.Ex. Pune 2008 (225) ELT 513 (Tri.-Bom), and Das and Company vs. Collector of Central Excise, Bombay 2000 (121) ELT 275 (LB – Tri.)***.
9. It is also submitted that for the subsequent period April 2016 to June 2017, the Adjudicating Authority vide Order No.14 / 2022 dated 04.03.2022 had decided the issue in the appellant's favour and since Revenue has not filed any appeal, the Rule of consistency ensures that this fact that the legal position is accepted by the department. It is therefore prayed that the appeal be allowed.
10. Shri M. Selvakumar, Ld. Authorised Representative appearing for the Respondent contended that the appellant has mainly contested on limitation and invoking of suppression. However, once the appellant availed Cenvat credit under Rule 2 (I) of CCR without entitlement, it amounts to contravention of the Rule and the extended period of limitation was rightly invoked. Under the self-assessment regime, it is the tax payer responsibility to avail credit only on eligible services. Reliance is placed on in the decisions in ***Sree Rayalaseema Hi-Strength Hypo Ltd. v. Commr. of Cus. & C.Ex. Tirupathi, 2012 (278) ELT 167 (A.P.)***.

11. We have heard both sides and perused the material available on record.
12. The issues that arise for determination are:
 - A. Whether the demand of ineligible credit on the allegation that the appellant was availing the manpower services rendered by the aforementioned agencies exclusively for providing insurance auxiliary services to the insurance companies and for providing mutual fund distribution services to Sundaram Asset Management Company during the disputed period is tenable.
 - B. Whether the invoking of extended period of limitation was tenable.
13. We notice from the SCN that the demand of ineligible credit was on the allegation that the manpower services rendered by the aforementioned agencies were not used for rendering their regular output (taxable service) but were used exclusively by the appellant for providing insurance auxiliary services and mutual fund distribution services. Such alleged exclusive utilisation of the manpower services forms the basis in the SCN for the consequent allegation that for the period upto 01-07-2012, since the service recipients of the insurance auxiliary services and mutual fund distribution services being rendered by the appellant are discharging service tax on such services by virtue of Section 68 (2) read with Rule 2(1)(d)(iii) and Rule 2(1)(d)(vi) respectively under reverse charge mechanism, they do not fall under the definition of 'input services' under Rule 2(l) of the CCR. Further Explanation III to Rule 6(3) of the CCR is relied upon as it stipulates that no cenvat credit shall be taken for the tax paid on any services that are not input services.
14. For the period from 01-07-2012, in so far as the manpower services used for providing insurance auxiliary services to the insurance companies were concerned, the SCN has alleged that the definition of output service as provided under Rule 2(p) of the CCR excludes from its purview the services for which service tax is paid by the recipient of service under reverse charge mechanism and since the insurance companies were discharging the service tax as recipient of services in terms of Section 68 (2) read with Sl.No.1 of notification No.30/2012-ST the manpower services used to render such insurance auxiliary services do not fall under the ambit of the definition of 'input services'. As

regards the mutual fund distribution services provided post 01-07-2012, the allegation is that the appellant is disentitled to claim cenvat credit on the manpower services used for rendering the mutual fund distribution services since the impugned manpower services are not used in the regular taxable service and further such mutual fund distribution services are exempt from payment of service tax under Sl.No.29 of Notfn. No. 25/2012-ST dated 20.06.2012. The SCN invokes Explanation II to Rule 6(1) alleging that as per the said provision the credit shall not be allowed on input services used exclusively in relation to provision of exempted services and hence the said credit taken on manpower services for rendering mutual fund distribution services is ineligible.

15. On a perusal of the impugned order, it is seen that the Ld. Adjudicating Authority has in paragraph 13 stated that to verify the appellant's contention that the manpower services sources are not used in the services relating to Insurance and Mutual Fund services, the appellant was asked to produce supporting documents and that the appellant has not produced the same. When admittedly, as has also been recorded in the impugned order, the stand of the appellant was precisely to the contrary, namely that the appellant being an NBFC they utilize the impugned manpower services not only for Insurance & Mutual Fund verticals but also for other business verticals like Home Loan and Customer Care Services, it is unclear why the appellant's contention is recorded contra and ostensibly asked to produce supporting documents in support of a purported contention that never was. We find it unsurprising that the appellant then reiterated its reply. Further, on verification of the agreement entered into by the appellant with the agency providing the manpower, the Adjudicator has found that the manpower services provided was for activities/work relating to sales canvassing activity, customer relations management, data entry and back up support and clerical activities related to personal and life insurance products also. Thereafter, the adjudicator has clearly recorded that the manpower supply services provided were used by the appellant in providing Insurance Auxiliary Services to various Insurance Companies and Business Auxiliary Services to Mutual Funds also. Furthermore, the adjudicator in para 17.2 of the impugned order, has acknowledged the existence of earlier proceedings for 2010-11 wherein for the purposes of reversal of cenvat credit utilized for taxable and

exempted services as per Rule 6(3A) of CCR, the entire amount of cenvat credit taken included the credit taken on such impugned manpower services used by the appellant on the basis of invoices of Aparajitha Dynamic Synergies P Ltd and Aparajitha Corporate Services Ltd. Thus, evidently the stand of the appellant of having used the input services commonly for all its business verticals, namely General Insurance, Home Loans, Mutual Funds/investments/wealth advisory services, Life Insurance and customer care services is clearly vindicated. Therefore, given that the allegation in the SCN was only seeking to deny the cenvat credit alleging that the said manpower services were used exclusively for providing insurance auxiliary services to the insurance companies and for providing mutual fund distribution services, which admittedly has been found to be otherwise, it was incumbent upon the Ld. Adjudicating Authority to examine whether the very basis of the allegation in the SCN has stood up to scrutiny. In such circumstances, the adjudicator ought to have held that the very basis of the allegation having been thus disproved, given that the impugned manpower services are being commonly used by the appellant across all its business verticals, the demand of alleged ineligible cenvat credit on this count would not sustain.

16. Pertinently, we find that while the SCN concededly states that the appellant is rendering apart from its regular business, Insurance Auxiliary Services to insurance companies and mutual fund services to Sundaram Asset Management Company, appellant has not been asked to show cause as to why the said services cannot be considered as output services being rendered by the appellant. Only to deny the input service credit on the manpower services used for providing input auxiliary services to insurance companies from 01.07.2012, a contention is made that the definition of 'output service' excludes services on which service tax is paid by the recipient of the services, which concededly has come into effect only from 01-07-2012. Even for the said purpose such an exclusion cannot be read in for the period prior, more so when the notification bringing about such an amendment has not expressly stated it to have any retrospective effect. Further, the fact that the SCN, in the context of indicting that the services rendered by the appellant for mutual fund distribution are exempt, has referred to the services rendered being taxable under the category of Business Auxiliary Services, while the SCN itself does not reflect any proposal to

change the classification of the said services from other than that being rendered by the appellant.

17. We do not find any proposal questioning the tenability of the said services as output services of the appellant in the SCN. Hence, absent a proposal questioning the tenability of the said services as output services of the appellant, when the adjudicator has admittedly found that the appellant is indeed using the aforesaid manpower services for rendering the said Insurance Auxiliary Services to insurance companies and mutual fund services to Sundaram Asset Management Company, and further, when the appellant was utilising the very same manpower on rotating basis for all its business verticals, and further more when there is no dispute that the appellant is discharging its service tax liability on its Banking and Other Financial Services, and indisputably for which reason, there did exist a prior litigation on the correct discharge of liability under Rule 6(3A) for the earlier period in respect of the taxable and exempted services, there cannot be a wholesale denial of the benefit of input credit availed on the said manpower services. When such elementary facts evidencing the lacunae jump at us from the contemporaneous appeal records, we cannot ignore the fundamental constitutional tenet that no tax shall be levied or collected without the authority of law and also the settled principle that there cannot be taxation by inference or implication. Therefore, we are of the considered view that there cannot be a blanket denial of the benefit of the CENVAT credit on such manpower services availed, except to the extent it can be licitly curbed under provisions of Rule 6 of the CCR that details the obligation of a provider of output service and stipulates the manner in which CENVAT credit entitlement is to be determined.
18. When we examine Rule 6 of the CCR, it can be seen that Rule 6(1), inter-alia, stipulates that CENVAT credit shall not be allowed on input service used for provision of exempted services, except in the circumstances mentioned in sub-rule (2). Rule 6(2), inter-alia, mandates that where a provider of output service avails of CENVAT credit in respect of any input services and provides such output service which are chargeable to tax as well as exempted services, then the provider of output service shall maintain separate accounts for receipt and consumption of inputs and receipt and use of input services separately for the provision of exempted services and for provision of

output services excluding exempted services and shall take CENVAT credit only on input services used for provision of output services excluding exempted services. Rule 6(3) provides that notwithstanding anything contained in sub-rules (1) and (2), the provider of output service opting not to maintain separate accounts shall follow any one of the following options, as applicable to him, namely, pay an amount equal to six percent of the value of exempted services or pay an amount as determined under Rule 6(3A). Explanation II to Rule 6(3) stated that for removal of doubts, inter-alia, it is clarified that credit shall not be allowed on input services used exclusively for provision of exempted services. Explanation III to Rule 6(3), inter-alia, mandated that no CENVAT credit shall be taken on the duty paid on any services that are not input services. Rule 6(3A) provided for proportionate amount of CENVAT credit attributable to the exempted service to be reversed based upon a prescribed formula as provided therein.

19. It is pertinent to note that Rule 6(3B), inserted vide Notification No.3/2011-CE (N.T) dated 01-03-2011 with effect from 01-04-2011, provided as under:

"Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, [engaged in providing services by way of extending deposits, loans or advances] (substituted for "providing taxable service specified in sub-clause (zm) of clause (105) of Section 65 of the Finance Act" by Notification No.28/2012-CE (N.T) dated 20-06-2012, w.e.f 01.07.2012) shall pay for every month an amount equal to fifty percent of the CENVAT credit availed on inputs and input services in that month." (emphasis supplied)

20. The appellant had contended that for the period from 01-04-2011, they are governed by Rule 6(3B). They had also placed reliance on the TRU Circular D.O.F.No.334/3/2011-TRU dated 28th February 2011, and case laws on the meaning of non-obstante clause, in ***Brij Rai Krishna v. S.K. Shaw and Brothers, AIR 1951 SC 115*** and ***K. Parasuramiah v. Pokurl Lakshmamma, AIR 1965 AP 220***, to contend that they had rightly availed the credit. Reliance has also been placed on ***Union of India Vs. G.M. Kokil 1984 (Supp) SC 196 / AIR 1984 SC 1022, Emcure Pharmaceuticals Ltd. Vs. Commissioner of C.Ex. Pune***

2008 (225) ELT 513 (Tri.-Bom), and Das and Company vs. Collector of Central Excise, Bombay 2000 (121) ELT 275 (LB – Tri.) in support of the said contention.

21. It is seen that the **Central Board of Excise and Customs in the letter F.No.334/3/2011-TRU dated 28th February 2011**, in Annexure C thereto, while detailing the important changes in Cenvat Rules, 2004 has in para 3 under heading “obligation of manufacturer and provider of services”, stated as under:

“1.16 A substantial part of the income of a bank or a life insurance company is from investments or by way of interest in which a number of inputs and input services are used. There have been difficulties in ascertaining the amount of credit flowing into earning these amounts. **Thus a banking company or a financial institution, including NBFC, providing banking and financial services are being obligated to pay an amount equal to 50% of the credit availed. In case of services relating to life insurance or management of ULIPs such amount will be equal to 20% of credit availed. Other options of payment of amount under Rule 6 shall not be available for these taxpayers.**”
(emphasis supplied)

22. The adjudicating authority has held that the said contention is unacceptable as it has been held that part of the manpower supply used in relation to insurance and mutual fund services do not qualify as an input service as per Rule 2(I) of the CCR for the appellant. We are unable to concur with the aforesaid finding for the reasons infra.
23. When we examine the Cenvat Credit Rules 2004, given that the underlying purpose is to reduce the cascading effect of tax, while it allows taking of credit on the input services received, nevertheless, it is by the mandate imposed under Rule 6 that certain obligations are cast on the service provider. Rule 6 stipulates the manner in which, inter-alia, a service provider is obligated not to take cenvat credit that shall not be allowed. As elucidated supra, Rule 6(1), inter-alia, stipulates that CENVAT credit shall not be allowed on input service used for provision of exempted services. While Rule 6(2) stipulates the obligations cast when the provider of output service maintains separate accounts, and which emphasises that CENVAT Credit can be taken only, inter-alia, on input services used for the provision of output services excluding

exempted services. Rule 6(3) states the options available when the provider of output service opts not to maintain separate accounts, namely, pay an amount equal to six percent of the value of exempted services or pay an amount as determined under Rule 6(3A). Further, by way of Explanation II to Rule 6(3) it is clarified that credit shall not be allowed on input services used exclusively for provision of exempted services and furthermore, Explanation III to Rule 6(3), mandates that no CENVAT credit shall be taken on the duty paid on any services that are not input services. Thus, the input service to the extent it is used for providing insurance auxiliary service is hit by the said Explanation III for the period from 01-07-2012, by virtue of the very definition of output service as provided under Rule 2(p) excluding from its ambit the services on which the recipient pays service tax.

24. However, Rule 6(3B), begins with a non-obstante clause. The Hon'ble Apex Court in the decision in ***Union of India v G.M. Kokil, 1984 (Supp) SCC 196***, has held that " It is well known that a non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."
25. Rule 6(3B) begins with "Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services." Thus, the intention of the legislature is clear, the said rule is specific to particular businesses, namely, a banking company and a financial institution including a non-banking financial company engaged in providing services as stipulated therein. Pertinently, it does not state that such companies are required to engage only in the specified services or that if they were to engage in any other services the rule is inapplicable. That is there is no intent to impose any such limitation that is manifest in the text of the Rule. Thus, the Rule would continue to be applicable to these institutions, even if they were to engage in other services so long as they continue to be a banking company and a financial institution, including a non-banking financial company. It is settled that a prohibition explicitly not stated, cannot be read in by applying the theory of implied limitations particularly when the words

are clear and do not lend themselves to any such interpretation. Further, by virtue of the non-obstante clause, Rule 6(3B) overrides all the prohibitions imposed under sub-rules (1), (2) and (3) of Rule 6, including that provided in the Explanations II and III to Rule 6(3), pertaining to disallowance of cenvat credit used exclusively for provision of exempted services as well as the prohibition to avail CENVAT credit on the duty paid on any services that are not input services.

26. In our considered view, the reason is not far to seek. The legislature in its wisdom, understanding the difficulties in ascertaining the quantum of input CENVAT credit of services and inputs that are utilised by a banking company and a financial institution including a non-banking financial company, for providing the services that they render, has deemed it fit to provide that they mandatorily pay an amount equal to fifty per cent of the CENVAT credit availed on inputs and input services in that specific mandate made applicable to them under Rule 6(3B), thus making a presumptive denial of the balance 50% without getting into the nitty gritty or intricacies of determining their specific entitlements. In the instant case, as the appellant is utilising the manpower services for provision of output services including exempt services rendered in respect of Sundaram Asset Management Company and also the insurance auxiliary service that is out of the ambit of output service post 01-07-2012, by virtue of the amendment to the definition of 'output service' as per Rule 2(p), there cannot be a blanket denial of the cenvat credit on the said services, as evidently the said services are being used for provision of output services on which the appellant is discharging service tax that entitle the service tax paid on these services to be treated as licit credit. However, in the absence of any other machinery provision to determine and apportion the quantum of cenvat credit attributable towards provision of output services, and the exempt services as well as the services that are not input services; particularly in light of the non-obstante clause prohibiting the appellant from other options of payment under sub-rules (1), (2) and (3) of Rule 6; the only recourse left to the appellant to fulfil its obligations as per Rule 6 of the CCR, is to follow Rule 6 (3B). The Central Board of Excise and Customs in the letter F.No.334/3/2011-TRU dated 28th February 2011, as has been noticed by us supra, is also to this effect. It is pertinent that the Adjudicating Authority, despite noticing the appellant's reliance on the said letter, has chosen not to controvert the same. It is settled that the

Department cannot argue against its own circular. The decision in ***Union of India v. Arviva Industries (I) Ltd, 2007 (209) ELT 5 (SC)*** refers in this regard. This to our mind, is the harmonious construction to which the CCR lend themselves in the scenario such as that of the appellant in the instant case. It is fundamental that, an interpretation by which the beneficial right to avail cenvat credit that is available is upheld to its fullest, is an interpretation that is preferable to an interpretation that attenuates, diminishes, or worse, abrogates the said right.

27. Our aforesaid view, is also fortified by the decision of the Larger Bench of this Tribunal in ***South Indian Bank v. Commissioner of Customs, C.Ex & ST, Calicut, 2020 (41) G.S.T.L 609 (Tri-LB)***, wherein it has been held as under:

"56. It has also been submitted by Learned Counsel appearing for banks that even if it is assumed that some part of the deposit is not used for providing "output service", then too the banks are still entitled for the credit availed on the insurance service provided by the Deposit Insurance Corporation as the banks have reversed 50% of the total Cenvat credit taken in terms of Rule 6(3B) of the 2004 Rules. **This Rule 6(3B) provides that notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to 50% of the Cenvat credit availed on inputs and input services in that month. The Circular dated 28 February, 2011 issued by the Central Board of Excise and Customs explains the reason behind the abovementioned amendment. It has been stated that since substantial part of the income of a bank is from investments or by way of interest in which a number of inputs and input services are used and as there have been difficulties in ascertaining the amount of credit flowing into earning these amount, a banking company providing banking and financial services is obligated to pay an amount equal to 50% of the credit availed in terms of Rule 6(3B). This subrule (3B) has, therefore, been introduced with a view to disallow the credit of input and input services attributable to interest/investment income earned by banking companies. Having regard to the fact that it is difficult to ascertain the actual amount of input and input services used in earning interest income, sub-rule (3B) provides for reversal of 50% of input and input services.**

57. Thus, the reversal has been made, banks are entitled for credit of the entire amount of service tax paid on input service having nexus with the provisions of output service and it is irrelevant as to which part of the input service is used for provision of taxable output service and which part has been used for provisions of exempted service. Having made reversal under Rule 6(3B), the banks have duly complied with the 2004 Rules and hence they are entitled to avail Cenvat credit on the insurance service received from the Deposit Insurance Corporation.” (emphasis supplied)

28. In yet another decision, ***Bank of America, National Association v. Principal Commissioner, CGST & Central Excise, (2025) 26 Centax 50 (Tri-LB)***, while deciding a reference, the Larger Bench of this Tribunal has concluded as under:

“59. In view of the aforesaid discussion, it has to be held that the Division Bench of the Tribunal was not justified in itself framing three questions to be referred to a Larger Bench of five Members of the Tribunal after disagreeing with the views expressed by the Larger Bench of the Tribunal of three Members in South Indian Bank. The Larger Bench decision of the Tribunal of three Members in South Indian Bank does not require re-consideration by a Bench of five Members of the Tribunal. **In any view of the matter, there is no requirement of referring the matter to a Larger Bench of five Members of the Tribunal as the decision of the Larger Bench of the Tribunal in South Indian Bank has been upheld by the Kerala High Court and the Bombay High Court.” (emphasis supplied)**

29. Thus indisputably, the opinion expressed by the Larger Bench in the decision in South Indian Bank as observed supra, holds the field and bolsters our findings as elaborated above. Therefore, we are of the considered view that the impugned order holding to the contrary, namely that the appellant is not entitled to the benefit of Rule 6(3B) cannot be sustained and is liable to be set aside.
30. As regards the issue of whether invoking the extended period of limitation was tenable, it is seen that the annexure to the SCN providing the quantification of ineligible cenvat credit paid on manpower services has given the details of the service tax credit taken on the services provided to insurance companies and to the mutual fund companies for

the year 2010-11. Concededly, the SCN issued for the earlier period encompassed these cenvat credit amounts and the dispute pertaining to availment of cenvat credit on exempted services have been agitated in the past and has culminated in orders of the Tribunal in ST/00784/2010, ST/00100/2012 and ST/00645/2012. Acknowledging this fact, the Adjudicator has also since dropped the amount pertaining to the said period while adjudicating the matter. Thus, when the earlier SCN was issued all the relevant facts were in the knowledge of the authorities, later on while issuing subsequent SCN, the same/similar facts could not be taken as suppression of facts on the part of the appellant. The reliance placed on the decision in **Nizam Sugar Factory v CCE, A.P., 2006 (197) ELT 465 (SC)** in this regard is apposite. The decision in **ECE Industries Ltd v. CCE, 2004 (164) ELT 236** is also in similar vein. Therefore, we find merits in the Ld. Counsel's submission that the Department could not have invoked the extended period of limitation in the instant case.

31. Further, it is a settled position in law that something positive other than mere inaction or failure on the part of the service provider or conscious or deliberate withholding of information when the service provider knew otherwise, is required before it is saddled with any liability. The ingredients required to invoke the extended period of limitation postulate a positive act and, therefore, mere failure to pay duty which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation. In the absence of any deliberate act on the part of the appellant with an intention to evade being established by the revenue, the essential precondition of wilful suppression with intent to evade duty is not satisfied. The decisions in, **Uniworth Textiles v CCE, Raipur, 2013 (288) ELT 161 (SC)**, **CCE v Northern Operating Systems, 2022 (61) GSTL 129 (SC)** and **Lipi Boilers v The Commissioner of C.Ex, Aurangabad, 2025 INSC 1297** refer in this regard.
32. The appellant has stated their bonafide belief in adopting the course of action as they did. Evidently the issue involves interpretational disputes. Thus, when there was scope for entertaining doubt and taking a particular stand as the appellant has done, that in itself rules out invoking the extended period of limitation. The decision in **Continental Foundation Jt. Venture v. CCE, Chandigarh I, 2007 (216) ELT 177**

(SC) and International Merchandising Company, LLC v. CST, New Delhi refers in this regard. Furthermore, it is evident that the dispute pertains to interpretation of cenvat credit rules, and the Apex Court itself **CCE v. Gujarat Narmada Fertilizers Co Ltd v. CCE, 2009(240) ELT 661 (SC)**, has held that in such circumstances penalty is not to be imposed. Therefore, we are of the firm opinion that Department has erred in invoking the extended period of limitation and the demand beyond the normal period of limitation is thus, in any event, wholly barred by limitation too. We have perused the decision cited by the Ld. A.R and find that it pertains to the cenvat credit of duty paid on welding electrodes used for repairs and whether it would qualify as an input under rule 2 (k) of the CCR. Contextually, the High Court negated the contention of the appellant that since penalty has been dropped the extended period of limitation could not have been invoked, holding that merely because the ingredients for imposition of penalty and invoking extended period of limitation are the same, it would not mean that in case penalty is not imposed, the duty also cannot be recovered. We find that the facts obtaining in that case are entirely different from the facts and circumstances of the appellant's case and the reliance placed on the said decision is misplaced as it is inapplicable.

33. In view of our discussions and analysis above, we are of the considered view that the impugned order is unsustainable and liable to be set aside. Ordered accordingly.

The Appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 29.05.2026)

AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)