CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Service Tax Appeal No. 41001 of 2017

(Arising out of Order-in-Original No.01/2017-ST dated 09.02.2017 passed by Commissioner of Central Excise, Chennai-III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.)

M/s. BASF Catalysts India Pvt. Ltd. **.... Appellant**
No.E-17, Industrial Estate,
Maraimalai Nagar 603 209
Kancheepuram District.

VERSUS

The Commissioner of GST &
Central Excise **... Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

WITH

(2) Service Tax Appeal No. 40212 of 2019

(Arising out of Order-in-Appeal No.507/2018 (CTA-II) dated 25.10.2018 passed by Commissioner of GST & Central Excise (Appeals-II), Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040)

M/s. BASF Catalysts India Pvt. Ltd. **.... Appellant**
No.E-17, Industrial Estate,
Maraimalai Nagar 603 209
Kancheepuram District.

VERSUS

The Commissioner of GST &
Central Excise **... Respondent**
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri Raghav Rajeev, Advocate for the Appellant
Smt. G. Krupa, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40970-40971/2026

DATE OF HEARING : 24.04.2026
DATE OF DECISION : 31.08.2026

Per: Shri P. Dinesha

These Appeals arise against different impugned orders, but since issue in these Appeals is common hence, they are taken up for common disposal.

2. Heard Shri Raghav Rajeev, ld. Advocate for the Appellant and Smt. G. Krupa, Ld. Departmental Representative; perused the orders of lower authorities and we have also considered the decisions relied upon by both the sides during the course of arguments. Upon

considering the rival contentions, the only issue that arises for our consideration is, 'whether the Appellant was correct in utilizing the advance tax paid during 2012-13, and 2013-14, 2014-15 and 2015-16 for adjustments of their tax liability?'.

3. Facts are not in dispute; The Appellant who is engaged in the manufacture of Catalysts and Catalysts convertor, Metal convertors under Chapter Heading 85 and Ceramic catalysts under Chapter Heading 38 of Central Excise Tariff Act (CETA), 1985, is also a Registered service provider under 'Business Support Service' (BSS), 'Intellectual Property Service' (IPRS), 'Manpower Recruitment Agency Service' (MRAS) and 'Transport of Goods by Road Service' (TGRS). During internal audit, it appears that the Audit Wing of the Central Excise Commissionerate observed that the Appellant had availed cenvat credit of Rs.2,85,63,386/- in respect of service tax paid on 'BSS' and 'IPRS' received from their foreign service provider under Reverse Charge Mechanism (RCM) under Rule 4 (1) (d) of Service Tax Rules, 2004 and the same indicated that the advance tax payment made in 2011-12 and 2012-13 were utilized in their liability during 2012-13 and 2013-14 and similar adjustments were made

in the years 2014-15 and 2015-16. The above adjustment appears to have been not accepted by the Revenue, since, according to the Revenue, in terms of Rule 6 (1A) and 6 (4A) of the Service Tax Rules such adjustments of excess payment made could be made only during the succeeding month/quarter, which resulted in the issuance of SCN No. 11/2016-CE dt. 29.02.1016 for the period 2012-13 to 2014-15 (upto September 2015) proposing *inter alia* to deny the adjustment made under Rule 6 (4A) of the Service Tax Rules, apart from demanding the same under proviso to Section 73 of the Finance Act, 1994 along with appropriate interest and various penalties.

4. It appears that the Appellant filed its detailed reply however, not accepting the explanation, the Adjudicating Authority i.e. Commissioner of Central Excise, Chennai-III confirmed the proposals as made in the SCN dt. 29.02.2016 *vide* Order-in-Original No.01/2017-ST dt. 09.02.2017 which has been assailed by Appellant in **Appeal No.ST/41001/2017.**

5. Similarly, for the subsequent period, i.e. from October 2015 to June 2017, a Statement of Demand

No.04/2017 dated 18.09.2017 was issued to the Appellant. Upon adjudication, the Adjudicating Authority confirmed the demands with applicable interest and imposed penalty *vide* Order-in-Original No.02/2018-ST dated 11.04.2018. Aggrieved by this Order-in-Original, the Appellant filed its first Appeal before the First Appellate Authority who *vide* Order-in-Appeal No. 507/2018 (CTA-I) dated 25.10.2018 upheld the order of the Adjudicating Authority which has been impugned before us in **Appeal No.ST/40212/2019**.

6. Shri Raghav Rajeev, Ld. Advocate contended at the outset that the issue involved in these Appeals has been considered and laid to rest by this Chennai Bench in the case of **South India Aluminium Company Vs CGST & Central Excise, Chennai** *vide* Final Order No.40926/2023 dated 12.10.2023 in Service Tax Appeal No.41378/2014 [2023-VIL-1041-CESTAT-CHE-ST]. He would also submit that the Appellant had made provisions in its books in relation to services received from its associate enterprises located outside India, which amount was equal to the provision made, which was also declared in their ST-3 returns on which the service tax was also paid under RCM; when the actual invoice was received,

the entire value shown in the invoice was again reflected in the ST-3 returns inadvertently and the service tax computed on such value was added to output tax liability. Hence, the service tax paid at the time of making the provision was adjusted against the service tax paid on the receipt of invoice even though there was strictly no liability to pay service tax on the same transaction once again in terms of Rule 7 of the Point of Taxation of Rules, 2011. In the light of the above factual background, Rule 6 (4A) of Service Tax Rules has no role strictly, since the present case involves double accounting and not *suo motu* adjustment of excess service tax paid against subsequent liability, but however even if it is assumed for the sake of argument that Rule 6 (4A) *ibid* applies, then this Bench in **South India Aluminium Company** (*supra*) has held that the adjustment could be made not only in subsequent month / quarter but also in subsequent months / quarters. He would also contend that going by the findings in the impugned orders that the Appellant had wrongly adjusted excess service tax paid under Rule 6 (4A) *ibid* then adjustment should be allowed subject to fulfilment of conditions in Rule 6 (4B) *ibid.*

7. *Per contra*, Smt. G. Krupa, Ld. Departmental Representative defending the impugned orders, seriously contended that the Appellant has chosen to adjust the advance tax paid in succeeding months / quarters which is against the provisions of Rule 6 (4A), which is not permissible. She would also take us through the relevant findings in the impugned orders to contend that the Appellant has clearly violated condition of Rule 6 (4A) and therefore, the impugned orders may be upheld. She would also rely on the following decisions :-

(i) **JCT Electronics Ltd. Vs CCE & ST, Vadodara** [2014 (34) STR 778 (Tri.-Ahmd.)]

(ii) **Pr. Commissioner of GST & Central Excise, Raipur Vs Spectrum Coal & Power Ltd**. [2020 (34) GSTL 209 (Chhattisgarh)]

8. We have considered the rival contentions and also gone through the orders of this Bench in **South India Aluminium Company** (*supra*) heavily relied upon by the Ld. Advocate. From a perusal of the above Final Order, we find that the following observations are relevant and hence are reproduced for convenience :

> "5.The issue is whether the adjustment of excess amount of service tax paid by the appellant to subsequent quarter of March 2009 is legal and proper. Rule 6 (4A) of Service Tax Rules, 1944 reads as under :

… … ….

6. Similar issue was considered by the Tribunal in the case of *Arun Exello Foundation* (supra). Relevant part of the order reads as under :

> **"5.** For better appreciation, Rule 6(4A) of Service Tax Rules, 1994 is reproduced as under :-
>
> > "Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be."
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> > **6.** From the above provision, it can be seen that the word 'immediate' is absent in the Rule. The Rule says that the assessee can adjust the excess amount paid by him against the service tax liability for the succeeding month or quarter, as the case may be. The department is of the view that since the word 'quarter' is used after the word 'month', the only meaning that can be inferred from the Rule is that adjustment of excess amount paid can be made only in the immediate succeeding month or quarter. Needless to say that when the language in a statute is plain and unambiguous and admits of only one meaning, effect must be given to it, irrespective of the consequences. On understanding the plain and natural sense of the Rule, an assessee is allowed to adjust the excess amount paid by him to the service tax liability for succeeding month or quarter.
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> > **7.** In September, 2016, appellant realized the excess payment made during April, 2015 to June, 2016 and adjusted it in September, 2016 while filing returns. The excess amount paid by appellant during April, 2016 to June, 2016 has been allowed by department to be adjusted in September, 2016, holding the view that it is adjusted in the immediate succeeding quarter. However, the excess payments made by appellant from April, 2015 till March, 2016 was not allowed to be adjusted for which the present demand has been made. The demand therefore does not arise out of short-payment of tax. It arises out of a situation where appellant adjusted his excess payment towards the liability that incurred later. The Ld. AR has much stressed that since the word 'month' is followed by the

word ‘quarter’, the Rule has to be interpreted in such a way that the adjustment can be made only in the *immediate* succeeding month or quarter.

8. In a hypothetical situation, if an assessee does not have any service tax liability for the immediate succeeding month or quarter, the question arises how can he utilize this provision for adjustment of excess service tax paid. So also when the excess paid is higher than the service tax liability in the immediate succeeding month or quarter, the Rule does not say that only part of the excess can be adjusted towards the immediate succeeding month or quarter and that assessee has to file refund for the balance excess amount. The Ld. AR contended that the assessee then has to avail the option of refund. It can be reasonably understood that the Rule intends an assessee to adjust excess payment to his liability that is accrued later. This is to avoid hassles of a refund claim. When there is already excess amount in the hands of the Revenue, while making such adjustment, there is no revenue loss. In fact, the Revenue is enriched by the interest on the excess amount till the adjustment.”

7. After appreciating the facts and evidence and following the decisions as above, we are of the considered view that the demand cannot sustain and requires to be set aside. The impugned order is set aside the appeal is allowed with consequential relief, if any, as per law.”

9. In the case of **JCT Electronics** (*supra*), the decision was rendered by Single Member whereas in the case of **South India Aluminium Company** (*supra*) the order was rendered by the Division Bench. In the case of **Spectrum Coal & Power Ltd**. (*supra*), the Hon’ble High Court of Chhattisgarh has only remanded the matter back

to the file of the Tribunal for fresh consideration after hearing the both sides.

10. We are therefore of the view that the Division Bench of Chennai CESTAT in the case of **South India Aluminium Company** (*supra*) has decided an identical issue with which we are also convinced and hence, we agree with the contention of Ld. Advocate that the issue in the present Appeal is no more *res integra*.

11. Following the ratio laid down in the above Final Order in the case of **South India Aluminium Company** (*supra*), we set aside the impugned orders and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 31.08.2026)

sd/-	sd/-
(M. AJIT KUMAR)	**(P. DINESHA)**
Member (Technical)	Member (Judicial)

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