CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO. III

EXCISE APPEAL NO.50080 OF 2025

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-252-24-25 dated 29.07.2024 passed by the Commissioner (Appeals), CGST and Central Excise, Raipur (C.G.)]

M/s. MSP Steel and Power Ltd., **...APPELLANT**
Village –Jamgaon,
Distt.-Raigarh (C.G.)-496 001.

Versus

Commissioner of Central Excise
And Customs, **...RESPONDENT**
Central Excise Building, Tikrapara,
Raipur (C.G.).

APPEARANCE:
Shri Jitin Singhal, Advocate for the appellant
Shri Unmesh Kumar , Authorised Representative for the Revenue.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51626/2025

DATE OF HEARING: 13.10.2025
DATE OF DECISION: 29.10.2025

BINU TAMTA:

1. M/s. MSP Steel & Power Ltd.[1] has assailed the Order-in-Appeal[2] dated 29.07.2024 confirming the demand of reversal of cenvat credit amount along with interest and penalty under Section 11A(1)(a) of the Central Excise Act, 1944[3].

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[1] The Appellant
[2] No.RPR-EXCUS-000-APP-252-24-25
[3] The Act

2. The appellant availed cenvat credit of Central Excise Duty paid on the inputs and service tax on input services used in or in relation to manufacture of final products. The appellant had installed a captive power plant within its factory premises for generation of electricity. The electricity so generated is used captively for manufacture of final product and some portion is wheeled out to the Chhattisgarh State Electricity Board (CSEB). Treating the sale of electricity as an 'exempted goods', the Department was of the view that Rule 6 of CENVAT Credit Rules, 2004[4] is attracted.

3. It has been observed by the Department that during the period January, 2016 to June, 2017, the appellant has made short reversal of CENVAT Credit in terms of Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004 against input services used for dutiable and exempted goods. It has been alleged that the appellant has availed CENVAT credit on input services which has been used both for manufacture of dutiable goods and generation of power, part of which is used for manufacture of excisable goods and partly sold in market. The case of the department is that, in terms of provisions of Rule 6(3A)(c)(iii) of CENVAT Credit Rules, 2004, the amount equivalent to CENVAT credit attributed to input services used in or in relation to manufacture of exempted goods as per the formula prescribed under Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004 which is as under-

> Total Input Service Credit x (Exempted goods (power) sale +
> 10% of Trade sale Sale value (Excisable Sale + Power sale +
> 10% of Trade Sale)

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[4] CC Rules,2004

For the purpose of computation of cenvat credit to be reversed, the department has taken 'total input service credit' instead of taking 'Common credit' in the said formula and calculated that the appellant was required to reverse Rs.46,14,241/- and they have reversed only Rs.10,40,424/- thus there is a shortfall of Rs.35,73,817/-. Show cause notice was issued to the appellant as to why inadmissible cenvat credit of Rs.46,14,241/- should not be recovered along with interest and penalty.

4. The learned Adjudicating Authority confirmed the demand of Rs.46,14,241/- (with appropriation of cenvat already reversed of Rs. 10,40,424/-) along with interest and penalty of Rs. 35,73,817/ under Section 11A(1)(a) of the Central Excise Act, 1944. The appeal filed before the Commissioner (Appeals) has been rejected by the impugned order. The appellant has filed the present appeal before this Tribunal.

5. Heard Shri Jitin Singhal, learned counsel for the appellant and Shri Unmesh Kumar, Authorised Representative for the Department and perused the records of the case.

6. Shri Jitin Singhal, learned counsel for the appellant has mainly argued on the point that the Department has taken total input service credit instead of common input service credit. The appellant submitted that the show cause notice and the impugned order are bad as though the period from April, 2016 to June, 2017 was covered by the amended provisions w.e.f. 01.04.2016. Under Rule 6(3A)(c)(iii) of CC Rules, the

authorities decided the issue relying on the unamended provisions. During the earlier period from Jan. 2016 to March, 2016, the Department while calculating the reversal amount as per Rule 6(3A)(c)(iii) of the CCR has taken 'total cenvat credit' instead of 'common input' whereas the provisions of Notification no.13/2016-CE(NT) dated 1.4.2016 has been held to be retrospective in nature by earlier decisions of the Tribunal in the case of **E-connect Solutions (P) Ltd. Vs. CCE & CGST, Udaipur[5], CCE & St, Rajkot Vs. Reliance Industries Ltd.[6]** and **In Re: Chennai Petroleum Corporation Ltd.[7].** The appellant has also challenged the levy of interest and the penalty under Section 11AA and 11 AC of the Act respectively.

7. Learned Authorised Representative for the Department reiterated the findings of the authorities below and prayed for dismissal of the appeal.

8. At the outset, we agree with the contention of the learned counsel for the appellant that in so far as the period from April, 2016 to June, 2017 is covered, it is covered by the amended provisions of Rule 6(3A)(c)(iii)of the CCR as per Notification No.13/2016-CE(NT) dated 1.4.2016. The show cause notice and the impugned orders have failed to appreciate the amended provisions covering the period in question and for that simple reason the same are un-sustainable. The authorities have seriously erred in applying the pre-amended provisions to the

[5] 2021(376) ELT 678 (Tri-Delhi)
[6] 2019 (28) GSTL 96
[7] 2012 (286) ELT 467 (Commr.Appl)

post-amended period. The demand for the said period is not maintainable and is hereby set aside.

9. In so far as the period pertaining to Jan. 2016 to March, 2017 is concerned, the issue is no longer *res integra* and has been decided by the Tribunal in **Reliance Industries** holding that the term 'total cenvat credit' taken on input services in the pre-amended rule is only total cenvat credit of common service and will not include the cenvat credit on input/input services exclusively used for the manufacture of dutiable goods. The Bench has taken note of the clarification issued by the Circular observing that the legislature has consciously substituted the rule with intention to give a clarificatory nature to the provisions of sub-rule(3A) so as to make it retrospective. Keeping in view the intention of the Government was not to deny cenvat credit on the input/input services even though used in the dutiable goods, the substituted provisions of sub-rule(3A) shall have retrospective effect, being clarificatory. Following the said decisions, the Principal Bench in **E-connect Solutions (P) Ltd.** reiterated the findings. The relevant observations are as under:-

> "**16.** Rule 6(1) of the Rules curtails the service provider from availing Cenvat credit on input services used for exempted services. This clearly means that credit is allowed to be taken only on input services pertaining to taxable services. In other words, wherever exempted services are rendered, the credit pertaining to such exempted service is not admissible and is required to be reversed. Rule 6(2) provides that wherever exempted service is rendered, then such service provider has to maintain separate accounts for receipt, consumption and inventory of various input services used for rendering such service and that Cenvat credit should be availed only in respect of input services used in rendering taxable service. Rule 6(3) provides an elaborate procedure for reversal of credit on a proportionate basis in respect of those service providers opting not to maintain separate accounts. Rule 6(3A) provides for a procedure for calculating proportionate credit admissible to an assessee. A service provider can avail the entire

credit of input services and at the end of every month reverse a provisional amount of credit based on the preceding financial year's turnover for different services, but at the end of the year, the service provider is required to calculate final credit based on the current year's actual turnover figures and make the adjustments. What transpires, therefore, is that in terms of Rule 6(3A), a provider of output service can take only proportionate credit that is attributable to the taxable service.

17. The dispute in the appeal is regarding the interpretation of the term *total Cenvat credit* provided in the formula in Rule 6(3A)(b)(ii). According to the Department, the *total Cenvat credit* should include even those services used exclusively in taxable services, including the common service while according to the appellant it should include only common input services and services used in exempted services and not the services used exclusively in rendering taxable output service.

18. It would be clear from a conjoint reading of sub-rules 6(1), (2) and (3) of Rule 6 that the *total Cenvat credit* for the purpose of formula under Rule 6(3A) is only *total Cenvat credit* of common input service and cannot include Cenvat credit on input service exclusively used for the manufacture of dutiable goods.

19. This position is also clear from the underlying object of the amendment made in Rule 6(3A) of the Rules by Notification dated March 1, 2016, to consider only common input services and not total input service credit, for the purpose of computing the amount of reversal.

20. Such amendment was also clarified by the Tax Research Unit Circular dated February 29, 2016 to apply retrospectively inasmuch as the clarification clearly mentions that the provisions of Rule 6 providing for reversal of credit in respect of input services used in exempted services, is being redrafted with the objective to simplify and rationalize the same without altering the established principles of reversal of such credit. It has been further clarified at paragraph (iv) of the Circular that the purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted services and under no circumstances this part can be greater than the whole credit."

10. The principle ennunciated by the Division Bench is that the provisions of Rule 6(3A)(c)(iii)of the CC Rules deals with only the common inputs and input services used in dutiable and exempted goods and do not apply in respect of all the input services used entirely into the dutiable goods. In view thereof, the Department was not right in considering all the input services mentioned in the ER-I Returns. The appellant is engaged in the manufacture of sponge iron, billets, which are dutiable goods and, therefore, the calculation for reversal made by

the Revenue by taking the cenvat credit related to the input services, which are used in these dutiable goods, is not correct. The Revenue has wrongly applied the formula for calculating the credit amount. The present case is squarely covered by the earlier decisions of the Tribunal referred to above and the appellant is entitled to the relief thereunder.

11. The appellant has filed post hearing, additional written submissions clarifying as under:-

> “That, as far as contention of the department that no details qua common input have been given by the appellant by relying upon letter written by the appellant asking for specific details by mentioning as below:-
>
> "To,
>
> M/s MSP Steel & Power Ltd,
> Village Jangaon, Raigarh (C.G.)
>
> Dear Sir,
>
> Subject: Submission of information/document in respect of Service Tax Credit availed etc. regarding....
>
> Please refer to the above cited subject. In this context, you are requested to furnish the information/document month wise for the period of January, 2016 to June, 2017 in the prescribed format as mentioned below:-

S.No.	Month	Total Service Tax Credit availed	Excisable Goods	Trade Sale	Power Sale	Service Tax Credit reversed, if any

Yours Sincerely,
Sd/-S.Mandal,
Superintendent,
Service Tax, Range-II"

> The details have been asked in prescribed format which have been provided by the appellant.
>
> The Department has never asked for common cenvat credit and always asked for Total Cenvat Credit and by relying upon the same applied unamended provision for the whole of the period of dispute, which is impermissible in law."

12. From the facts of the case, we find that the appellant has reversed the amount of Rs.10,40,424/- on the basis of the formula accepted by the Tribunal and as we have held that, *prima facie,* the revenue applied the wrong principle, the impugned demand is set aside.

13. We, therefore, do not find any merit in the impugned order and the same is hereby quashed. The appeal is, accordingly allowed.

[Order pronounced on 29^{th} October , 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Ckp.