

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 1**

**EXCISE APPEAL NO. 51375 OF 2018**

[Arising out of Order in Original No. JAI-EXCUS-000-COM-24-17 dated 30.11.2017 passed by the Commissioner of CGST & Central Excise, Jaipur]

**M/S DINESH IRRIGATION PVT LTD** .....**APPELLANT**  
86-B and 86-B-II  
Industrial Area, Jhotwara, Jaipur

Vs.

**COMMISSIONER OF CENTRAL EXCISE  
AND CUSTOMS, CENTRAL GOODS AND  
SERVICE TAX,-JAIPUR** .....**RESPONDENT**  
NCR Building, Statue Circle, C-Scheme  
Jaipur, Rajasthan-302005

**Appearance:**

Shri Jatin Mahajan, Advocate for the Appellant

Shri Rakesh Agarwal, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P.V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 51862 /2025**

**DATE OF HEARING : 22/08/2025  
DATE OF DECISION : 12/12/2025**

**P.V.SUBBA RAO**

1. M/s Dinesh Irrigation Pvt Ltd.<sup>1</sup> filed this appeal to assail the order dated 30.11.2017 passed by the Commissioner of Central Excise, Jaipur<sup>2</sup> whereby he confirmed demand of an amount of Rs. 1,21,20,085/- from the appellant under rule 6 (3) of the Central Excise Rules, 2004<sup>3</sup> covering the period from April 2007 to March, 2009.

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**1** the appellant  
**2** impugned order  
**3** CCR

2. We have heard Shri Jatin Mahajan, learned counsel for the appellant and Shri Rakesh Agarwal, learned authorized representative appearing for the Revenue and perused the records.

3. The appellant is engaged in the manufacture of PVC pipes, HDPE Coil and sprinkling systems. During audit, it was noticed that the appellant was manufacturing both dutiable and exempted goods but were not maintaining separate accounts for the inputs/ input services so used in the final products. The total amount of CENVAT credit used on the common inputs/ input services was Rs. 1,74,190/- which was the service paid on insurance services which the appellant could not vivisection into services towards dutiable and exempted products. Accordingly, a show cause notice dated 30.04.2012 was issued to the appellant demanding an amount equal to 10% of the value of exempted goods in terms of Rule 6(3) of CCR which was proposed to be recovered under Rule 14 of CCR. The amount proposed to be so recovered was Rs. 1,21,20,085/- along with an equal amount as penalty. The demand was initially confirmed by the Commissioner by order dated 30.01.2014 and on appeal, this Tribunal, by Order dated 26.05.2017, remanded the matter to the Commissioner directing him to provide a copy of the report of the Assistant Commissioner and other documents relied upon by him. After providing the documents, the Commissioner passed the Order dated 30.11.2017 which is impugned in this appeal.

**Submissions of the appellant**

4. The entire demand is based on the audit report dated 15.07.2011. The appellant's records were audited before this

date on 08.09.2009 and Internal Audit Report No. 305/2009 dated 08.09.2009 was issued in which no objection was raised by the audit that the appellant was not maintaining separate records. Therefore, the second audit report with such an allegation and the consequential Show Cause Notice dated 30.04.2012 issued by the Revenue invoking extended period of limitation cannot be sustained.

5. The appellant had, indeed, maintained separate records for the inputs used in the manufacture of exempted and dutiable goods.

6. Even otherwise, the appellant has reversed the credit of service tax on the input service viz, insurance and has not availed any credit with respect to other services.

7. In view of the above, the demand cannot be sustained either on merits or on limitation.

### **Submissions of Revenue**

8. Learned authorized representative appearing for the Revenue vehemently supported the impugned order and asserted that the scope of the appeal must be limited to the extent of remand order passed by the Tribunal on the first round. In the first round, the Tribunal had directed the Commissioner to provide the report of the Assistant Commissioner and since it has been provided, the impugned order needs to be upheld.

9. The appellant had not contested the factual report of availing CENVAT credit on common input service during the

relevant period. During adjudication in the remand proceedings and the appellant was not maintaining separate records with respect to the inputs or with respect to the input services.

10. Since the appellant had not maintained separate records in the input services, the appellant bound to pay an amount equal to 10% of the value of the exempted goods. Reliance is placed on the judgment of the Bombay High Court in the case of **Commissioner of Central Excise, Jaipur vs. Nicholas Piramal (India) Ltd.**<sup>4</sup>

11. We have considered the submission advanced by both sides and perused the records.

12. On the question of limitation, it is a well settled principle that once all the facts are known to the department, extended period of limitation cannot be invoked alleging that the appellant had suppressed facts. In this case, the relevant period is March 2007 to March, 2008. The audit was already conducted in 2009 and a Report was issued. During that period there was no allegation that the appellant had violated rule 6(3) and availed CENVAT credit on common input/ input services. The Second Audit Report was issued on 15.07.2011 made such an allegation. This only proves that the second audit team took a different view than the first audit team and not that the appellant had suppressed any facts. The show cause notice was issued invoking extended period of limitation on 30.04.2012. The demand invoking the extended period of limitation cannot

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4. 2009 (244) ELT 321 (Bom)

sustained on the ground of limitation itself being barred by time itself.

13. Even on merits, it is not disputed that the appellant had maintained separate records for inputs used for manufacture of dutiable and exempted goods. The only common input service which was used was the service tax paid on the insurance services. Needless to say such a service cannot be vivisected into insurance towards the exempted goods and insurance towards the dutiable goods. The total CENVAT credit on this common input service so availed was only Rs. 1,74,190/-. A demand of Rs. 1,21,20,085/- was under rule 6(3) of CCR is made in the show cause notice being 10% of the value of the exempted goods cleared.

14. Learned authorized representative appearing for the Revenue relied on the judgment on the Bombay High Court in **Nicholas Pirmal (India) Ltd.** On the other hand we also find the judgment of Telangana High Court in the case of **TIARA Advertisement vs. Union of India**<sup>5</sup>. It was held in this judgment by the Telangana High Court that a demand cannot be made under rule 14 for an amount of equal to 10% of the value of exempted goods under rule 6(3) of CCR for the reason that it is for the assessee to decide which of the options under rule 6 of the CCR it wants to be avail and Revenue cannot chose an option for the assessee. The relevant portion of this judgment is reproduced below:

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5. **2019 (30) GSTL 474 (Tel)**

**13.** Having considered the issue of maintainability of this writ petition, we are of the opinion that the petitioner cannot be non-suited on the ground of availability of an alternative remedy. The alternative remedy principle is not a straitjacket formula but a rule of convenience which has been evolved by Courts so as to ensure equitable distribution of work. It is therefore within the discretion of this Court to refuse to adopt the said rule in a deserving case. Presently, we find that the second respondent has brazenly exercised power under a provision which was not even available to him, as it was an enabling provision put in place for the benefit of the assessee, and arrived at a wholly unreasonable, if not absurd, result. That apart, the second respondent did not even choose to deal with the binding case law cited before him while dealing with the issues arising for consideration. This arrogant and arbitrary approach adopted by the second respondent cannot be countenanced. It would therefore not be necessary for the petitioner to go through the motions of a statutory appeal to challenge the same. The contention of the respondents as to the maintainability of the writ petition is therefore rejected.

**14.** Further, we may reiterate that Rule 6(3) of the Cenvat Credit Rules, 2004, merely offers options to an output service provider who does not maintain separate accounts in relation to receipt, consumption and inventory of inputs/input services used for provision of output services which are chargeable to duty/tax as well as exempted services. If such options are not exercised by the service provider, the provision does not contemplate that the Service Tax authorities can choose one of the options on behalf of the service provider. As rightly pointed out by Sri S. Ravi, Learned Senior Counsel, if the petitioner did not abide by the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004, it was open to the authorities to reject its claim as regards the disputed Cenvat Credit of Rs. 17,15,489/-.

**15.** We may also note that in the event the petitioner was found to have availed Cenvat Credit wrongly, Rule 14 of the Cenvat Credit Rules, 2004 empowered the authorities to recover such credit which had been taken or utilised wrongly along with interest. However, the second respondent did not choose to exercise power under this Rule but relied upon Rule 6(3)(i) and made the choice of the option thereunder for the petitioner, viz., to pay 5%/6% of the value of the exempted services. The statutory scheme did not vest the second respondent with the power of making such a choice on behalf of the petitioner. The Order-in-Original, to the extent that it proceeded on these lines, therefore cannot be countenanced.

**16.** As regards the issue of debit notes, Sri A. Radha Krishna, Learned Senior Standing Counsel, is not in a position to dispute the case law relied upon by the petitioner in its reply dated 16-5-2016. It is not his case that any of these decisions was overturned or that there is a binding decision of a higher judicial authority to the

contrary. He also has no explanation to offer as to why the second respondent did not even deal with the case law cited before him. We therefore hold that disallowance of Cenvat Credit on the ground that the petitioner had availed the same by producing debit notes instead of invoices cannot be accepted.

**17.** In effect, the Order-in-Original does not withstand judicial scrutiny on both issues and is accordingly set aside. The writ petition is allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs."

15. We do not find any judgment of the jurisdictional High Court on this question. We have been following the Telangana High Court in similar matters. We do not find any reason to take a different view in this matter.

16. In view of the above, the demand of Rs. 1,21,20,085/- being an amount of equal to 10% of the value of exempted goods under rule 6(3) of the CCR made in the impugned order along with an equal amount of penalty cannot also be sustained on merits.

17. The impugned order cannot be sustained either on merits or on limitation. The impugned order is set aside and the appeal is allowed with consequential relief, to the appellant.

[Order pronounced on **12/12/2025**]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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