

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD  
Division Bench  
Court - I**

**APPEAL No. E/996/2009**

*(Arising out of **Order-in-Appeal** No. 30/2009 (H-III)CE, dated 31.07.2009  
passed by CCE & ST (Appeals-III), Hyderabad)*

ITC Limited	..	APPELLANT
	Vs	
CCE, C &ST, Hyderabad-III	..	RESPONDENT

**Appearance**

Shri G. Prahlad, Advocate for the Appellant.

Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

**Coram:**

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 01.01.2019  
Date of Decision: 01.01.2019

**FINALORDER No. A/30032/2019**

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 30/2009 (H-III)CE, dated 31.07.2009.
2. Heard both sides and perused the records.
3. The issue involved in this case is regarding the demand of an amount equivalent to 10% of the value of the exempted goods cleared during the

period March 2003 to July 2007. During the relevant period, appellant had availed CENVAT Credit of common inputs which are used for exempted as well as dutiable goods. The appellant had not maintained separate set of accounts and was issued a show cause notice dated 29.03.2004 for payment of an amount equivalent to 8% of the value of the exempted goods on the allegation that having not maintained separate set of accounts, they are liable to pay the said amount. Appellant, on 28.04.2008, before issuance of show cause notice and before adjudication order being passed, reversed the amount of CENVAT Credit availed which is proportionate to the quantity of the common inputs utilised for the manufacture of exempted goods. Both the lower authorities have come to a conclusion that such proportionate reversal is not sufficient and having not followed the law, the demands which have been raised needs to be confirmed. Ld. Counsel produces that the law is now fairly settled by retrospective amendment to Rule 6 of CCR 2004, under section 73 of Finance Act, 2010, the Central Government has stated its position that in respect of availment of CENVAT credit on common inputs which are used for dutiable and exempted goods, reversal of the credit attributable to the inputs used in the exempted goods is sufficient. The said retrospective amendment granted liberty to the assessee to discharge the entire proportionate amount of CENVAT Credit on the inputs consumed for the exempted goods, along with interest. In that case, penalty is waived. In the case in hand, it is the case of the appellant that the said retrospective amendment would apply.

4. In our view, the said retrospective amendment would apply in the case in hand as there is no dispute that the appellant had reversed proportionate amount of CENVAT Credit on the inputs which were utilised for the exempted goods manufactured and cleared. To that extent, we uphold the impugned order and set aside the orders which confirmed the demand equivalent to 8% of the valuation of the exempted goods. At this juncture, Ld. Counsel prayed for setting aside the penalty imposed by the lower authorities. We are not able to accept the prayer of Ld. Counsel for the simple question and on a specific query from the Bench as to whether the appellant had discharged the interest on 28.04.2008, Ld. Counsel was unable to categorically state that interest was paid. In the absence of discharge of interest on the specified date, we find that appellant is not entitled for any relief on the penalty. In our view, appellant is required to pay the interest as applicable on the amount reversed by him on 28.04.2008 and also the penalty imposed.

5. Appeal stands disposed of as indicated herein above.

*(Dictated and pronounced in open court on 01.01.2019)*

(P.VENKATA SUBBA RAO)  
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)  
MEMBER (JUDICIAL)