

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Service Tax Appeal No. 20090 of 2014

(Arising out of Order-in-Original No. 39/2013-Adjn (ST) Commr. dt.30.09.2013 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II)

M/s Mylan Laboratories

(Formerly Matrix Laboratories Ltd),
Plot No.564/A/22, Road No.92,
Jubilee Hills, Hyderabad – 500 034

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - GST**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance

Shri G. Shivadass, Advocate for the Appellant.

Shri P.R.V. Ramanan, AR (Special Counsel) for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30145/2025

Date of Hearing: 03.04.2025

Date of Decision: 30.04.2025

[Order per: A.K. JYOTISHI]

M/s Mylan Laboratories Ltd (formerly Matrix Laboratories Ltd) (hereinafter referred to as the appellant) are in appeal against the OIO dt.30.09.2013 passed by the Commissioner (impugned order).

2. The issue, in brief, is that the appellants are holder of centralized service tax registration for the purpose of payment of service tax on services under the category of, inter alia, 'Scientific & Technical Consultancy', 'Goods Transport Agency', 'Business Auxiliary Services', etc. In the course of audit, it was noticed that the appellants, who are engaged in manufacture and clearance of exempted goods, were availing Cenvat credit on input services utilized in their corporate office, which was distributing the same to the units from where they were clearing excisable goods on payment of duty by utilizing the above credit so distributed. It was also noticed that the appellants were not maintaining separate accounts for receipt of input

service and therefore, in terms of Rule 6(3)(b) of Cenvat Credit Rules (CCR), they were required to pay an amount equal to 10% of the value of the exempted goods.

3. On adjudication, the Adjudicating Authority examined the charges of non-compliance of Rule 6(3)(b) of CCR and other charges. Charges leveled against the appellant in the SCN dt.23.07.2010 and 22.10.2011, have been summarized at para 17 of OIO, reproduced below for ease of reference:-

S.No.	Issue	SCN OR No. 98/2010 Amount (in Rs.)	SCN OR No. 116/2011 Amount (in Rs.)
1	Demand of equivalent to 10% of the value of exempted goods cleared during the period from 10.09.2004 to 31.03.2008	29,30,59,000/-	Not applicable
2	Demand of proportionate Cenvat Credit for the year 2008-09 under Rule 6(3)(ii) of Cenvat Credit Rules, 2004	13,05,919/-	Not applicable
3	Demand of irregularly availed Cenvat Credit for payment of Service Tax on output services in excess of 20% for the period prior to 01.04.2008	29,34,582/-	Not applicable
4	Demand of the irregularly availed Cenvat Credit on input services used in R&D centers	6,94,35,601/-	84,43,488/-
5	Demand of irregular input service tax credit availed on ineligible invoices	49,91,283/-	Not applicable
6	Demand of irregularly availed credit of service tax on Clearing & Forwarding Services availed for dispatch of finished goods	2,39,238/-	9,71,123/-
7	Demand of differential tax payable on account of non-inclusion of Bank Charges in the taxable value	2,76,216/-	Not applicable
8	Penalty proposed	Under section 76, 77 & 78 of the Finance Act, 1994	Under section 76 & 78 of the Finance Act, 1994

4. The decision of the Adjudicating Authority on this issue is at para 20.4, wherein, inter alia, it was held that there was no provision in law as it stood prior to 01.04.2008 for reversal of proportionate credit and the only option available was to pay 10% of the value of the exempted goods in terms of CCR, 2004. He also examined the appellant's request for considering amendment of Rule 6 of CCR in the Finance Act, 2010, which introduced

Sub-Rule (7) of Rule 6. He observed that as per the said Rule, brought about in terms of amendment in the Finance Act, 2010, the appellants were required to file an application before 07.11.2010, whereas, the same was received and put up before the Commissioner on 10.11.2011. The Adjudicating Authority felt that the Commissioner did not have the power to condone the delay under the provisions of amended Rule 6 and he also noted that interest was also not paid, as required. As regards the argument of duplication of demand, he observed that the said SCN referred to issued on 24.08.2009 to their Manufacturing Unit-1 was in relation to their usage of inputs, on which credit availed, in their manufacturing activity for both dutiable and exempted goods and the matter is still pending before the Tribunal and whereas here, the demand is made on Input Service Distributor and service provider. Thus, no prior knowledge could be attributed. Therefore, he upheld the demand of payment of Rs.29,30,59,000/- towards 10% of the value of the exempted goods.

5. For the period 01.04.2008 to 31.03.2009, for which retrospective amendment was not available, he has examined the same in the light of the submissions of the appellant that the entire credit of input services pertaining to exempted goods and traded goods has been reversed by them, even though they still argued that trading in goods is not an exempted service. The Adjudicating Authority, relying on the judgment of the Tribunal in the case of Orion Appliances Vs CST, Ahmedabad [2010 (19) STR 205 (Tri-Ahd)], held that credit was not admissible on input services attributable to trading activity. While doing so, he held that the definition of the term 'exempted service' as per Rule 2(e) of CCR has been amended w.e.f. 01.04.2011 incorporating an explanation clarifying that exempted services includes 'trading'. Therefore, since this is a clarificatory amendment, it is evident that the trading was to be considered as an exempted service even for the period prior to the said amendment. He has also relied on the Board Circular No. 934/04/2011-CX dt.29.04.2011 clarifying this position.

6. On the issue of irregular availment of Cenvat credit on input services amounting to Rs.6,94,35,601/- for the period from 10.09.2004 to 31.03.2009 and Rs.84,43,488/- for the period 2009-10 to 2010-11, used in the R&D centers and distributed to their manufacturing units for ultimate utilization for payment of duty in contravention to Rule 7 of Service Tax

Rules (STR), he examined various provisions of CCR as well as provisions relating to Input Service Distributor (ISD) under Rule 7, wherein, it has been provided that under clause (b) of Rule 7, credit of service tax attributable to service used in a unit exclusively engaged in the manufacture of exempted goods or provisions of exempted services, shall not be distributed. He also distinguished that this is not a case where services received by them in their R&D centers are indirectly used in the manufacture of their final products and hence they qualify as input service and is also different from a manufacturing unit having in-house R&D and having continuous manufacturing process. It was observed that it is an admitted position that all the R&D centers were specifically engaged in development and research of a new drug, where no Central Excise duty was paid.

7. Insofar as the issue regarding utilization of Cenvat credit in excess of 20%, he observed that the appellants have reversed the entire credit of input credit pertaining to exempted goods and traded goods. As regards demand under various categories, mainly, relating to non-eligibility of credit taken by the appellant, he has gone through each one of them to come to the conclusion as to what is eligible credit and what is not, in the given factual matrix.

8. On the issue of limitation with regard to SCN dt.22.10.2011, the Adjudicating Authority rebutted the contention of the appellant that the department is aware of the activities being carried out by the appellant when they received SCN on 24.08.2009 and therefore, allegation of suppression and/or willful misstatement did not arise in the subsequent SCN on the same issue relying on various judgments including Nizam Sugar Factory Vs CCE [2006 (197) ELT 465 (SC)], by observing that the SCN cited by the appellant was issued to their manufacturing unit by the Commissioner, Hyderabad-II Commissionerate, whereas, the present SCN was issued under the Finance Act to the Corporate Office having service tax registration for distribution of credit to their manufacturing units and since these two are different set of facts, the department can rightly invoke the extended period. In this regard, he has relied on the judgment given in the case of (i) M/s Robot Detective & Security Agency Vs CCE, Chennai and (ii) M/s Saraswati Air Products Ltd Vs CCE [1998 (098) ELT 0391 (Tribunal)], wherein, it was held that the issue of SCN for normal period in parallel

proceedings do not affect the department's right to issue SCN invoking extended period of limitation in respect of the same assessee. He observed that in this case, the assessee is same and having different registrations for each of their units under Central Excise Act and also their Corporate Office under Finance Act, 1994 and therefore, the plea of limitation was not allowed.

9. Learned Advocate for the appellant has submitted that they have been issued two SCNs dt.23.07.2010 for the period 2004 to 2009 and SCN dt.22.10.2011 for the period 2009 to 2011 and both these SCNs have been adjudicated by common order dt.30.09.2013, whereby the demand has been upheld and penalties have been imposed. The issues covered in these matters are summarized as under:-

(a) Credit on common input service used in manufacturing exempted and dutiable goods for the period 10.09.2004 to 31.03.2008:-

10. The main argument of the learned Advocate is that proportionate credit of service tax attributable to exempted goods for the period 2004-2008 was reversed even before the SCN. Therefore, in view of the settled law, reversal of credit before the utilization would amount to non-taking of credit even when the reversal is made subsequent to removal. The reliance has been placed on the following case laws:-

- i) Hello Mineral Water (P) Ltd Vs UOI [2004 (174) ELT 422 (All)]
- ii) CCE Vs Ashima Dyecot Ltd [2008-TIOL-659-HC-Ahd-CX], where the SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court.
- iii) CCE, Ahmedabad Vs Maize Products [2008 (89) RLT 211 (Guj)], where the SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court.

11. He has also argued that they are entitled for the benefit of the retrospective amendment, vide Finance Act, 2010, which has been denied by the Adjudicating Authority for a delay of one day. His submission is that it is a settled law that substantive benefit should not be denied for a procedural lapse. He relied on the following case laws:-

- i) Shree Rama Multi Tech Ltd Vs UOI [2011 (267) ELT 153 (Guj)], where the Hon'ble High Court gave the benefit of amendment even without an application.
- ii) CAE India Pvt Ltd Vs CST, Bangalore [2013 (30) STR 153 (Tri-Bang)]
- iii) ITC Ltd Vs CCE [2019-TIOL-490-CESTAT-Hyd]
- iv) ITC Ltd Vs CCE [2019-TIOL-1648-CESTAT-Hyd]
- v) Aurobindo Pharma Vs CCE [2017-TIOL-1184-CESTAT-Hyd]

(b) Credit taken on input services used for the R&D Units:-

12. He submits that the appellants have four R&D units which develop new processes for their manufacturing unit and these units are receiving credit on certain input services such as GTA service, telephone service, technical testing and analysis service, management and business consultant service, etc., and are taking credit in respect of the same which is getting further distributed by their Corporate Office, acting as ISD. He further submits that the issue is no longer res integra and places reliance on the following judgments.

- i) Cadila Healthcare Ltd Vs CCE [2010 (17) STR 134 (Tri-Ahd), affirmed by Hon'ble Gujarat High Court.
- ii) Jubilant Life Sciences Ltd Vs CCE, Noida [2019 (29) STR 134 (Tri-Ahd), affirmed by Hon'ble Supreme Court.
- iii) Dr Reddy Labs Vs CCE & ST [2010-TIOL-1246-CESTAT-Hyd]
- iv) Aurobindo Pharma Vs CST, Hyderabad [2019-TIOL-3415-CESTAT-Hyd]

(c) Credit taken on trading activities for the period 10.09.2004 to 2009:-

13. In this regard, his main argument is that trading is not an exempted service before 01.04.2011 and that credit can be taken on trading activities. Reliance has been placed on the judgment in the case of Franke Faber India Vs CCE [2017 (52) STR 155 (Tri-Ahd)]. He has further submitted that credit attributable to trading prior to 01.04.2008 as well as post 2008 has already been reversed along with interest.

(d) Irregular availment and utilization of service tax on input credit on certain invoices for the period 10.09.2004 to 2009:-

14. He is mainly arguing that in relation to availment of credit on VAT/Sales tax paid, availment of excess credit, availment of credit on

documents not prescribed under Rule 9 and availment of credit on commission for clearance of inputs have already been reversed. However, they are contesting that they are eligible for taking credit in respect of Group Medclaim insurance, Real estate agent and for services rendered outside India as they are all in relation to their business.

15. They have also contested the demand on Bank charges on the ground that bank charges are not incurred in connection with providing any service but are in connection with making the payment to the service provider and are thus, not includable in the taxable value.

16. On the other hand, learned Special Counsel for the Revenue submitted that the appellant has reversed an amount of Rs.35.41 lakhs on 15.06.2009 on the basis of proportionate reversal of credit and interest of Rs.26.82 lakhs was paid on 29.11.2013 and all these activities took place after the audit pointed out the discrepancy on 28.05.2009 and further, that the interest on the amount due was not paid along with reversal of credit. As regards benefit of amendment in Rule 6, the application itself was received three days after six months period prescribed in the relevant notification and that the Commissioner has no power to condone the said delay.

17. Insofar as the issue relating to demand of credit availed on input services relating to trading activities, he submits that trading activities were exempted services as clarified by the amendment made in 2011 and even though an amount of Rs.13.06 lakhs attributable to the period post 2008 has been reversed along with interest, no intimation of option to reverse the credit was given to the department.

18. Insofar as the issue of demand of credit availed on input services utilized in appellant's R&D centers, it is an admitted fact that these R&D centers were situated outside the manufacturing premises of the appellant and were engaged in developing formulations which were cleared from there for clinical tests and research without payment of duty. Thus, the situation is not same where the R&D activities were in the nature of testing and quality examination carried out in-house at the manufacturing premises, where no clearance takes place. It is obvious that the credit availed and utilized by such R&D centers cannot be considered as having been used directly or indirectly by the manufacturing units.

19. Insofar as the department's contention on denying credit in respect of certain invoices, he is mainly contesting that case law is not applicable to the facts of the case insofar as availment of credit in respect of Group Medical insurance claims is concerned. Similarly, for real estate agent services, there is no evidence of nexus between such activity and the manufacturing activity. For services rendered outside India, again no evidence was produced proving its nexus.

20. On the issue of restriction of credit utilization to a maximum of 20% of Cenvat credit, he submits that as per the provision of Rule 6 of CCR, when the output service provider provides taxable and exempted services, the credit ceiling is fixed at 20% of the Cenvat credit, whereas, the appellant had utilized 100% of the credit. He, however, fairly concedes that such restriction was only till 2008 and subsequent thereto they were allowed to utilized credit in later years and the appellant states that they had made cash payment from 01.04.2008 onwards. However, it is an admitted position that no interest on such excess credit utilized has been paid.

21. Insofar as the issue of limitation is concerned, he reiterates the findings of the Adjudicating Authority.

22. Heard both sides and perused the records.

23. In this appeal, the core issue is whether the appellant have complied with the provision of Rule 6 or otherwise in the factual matrix of their having manufactured and cleared both dutiable and exempted goods, as also the issue whether credit can be taken in respect of unit not manufacturing any excisable goods and thereafter distribute to the units manufacturing excisable goods or otherwise. For the ease of reference, some of the admitted positions are that the appellants through their 13 manufacturing units located at different places are engaged both in the manufacture of exempted goods and excisable goods. In addition, they have 3 R&D centers. Their Corporate Office has taken registration as ISD in accordance with provisions under Finance Act and that they have also, on their own, reversed credit on a proportionate basis which was used for exempted goods manufactured by them, though admittedly, not along with applicable interest thereon.

24. The relevant provisions of Rule 6 of CCR, as it existed prior to 31.03.2008 and post 01.04.2008 are reproduced below:-

Prior to 31.03.2008:-

"Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services – (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services, except in the circumstances mentioned in sub-rule (2).

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input services meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:-

(a) If the exempted goods are –

- (i) goods falling within heading 2207 of the First Schedule to the Excise Tariff Act (hereinafter in this rule referred to as the said First Schedule)
- (ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;
- (iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;
- (iv) Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;
- (v) Newsprint, in rolls, sheets or reels, falling within Chapter 48 of the said First Schedule;
- (vi) Final products falling within Chapters 50 to 63 of the said First Schedule;
- (vii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-
 - (1) No.70/92-CE, dt.17.06.1992, GSR 595(E) dt.17.06.1992;
 - (2) No.62/95-CE, dt.16.03.1995, GSR 254(E) dt.16.03.1995;
 - (3) No.63/95-CE, dt.16.03.1995, GSR 255(E) dt.16.03.1995;
 - (4) No.64/95-CE, dt.16.03.1995, GSR 256(E) dt.16.03.1995.
- (viii) Liquefied Petroleum Gases (LPG) falling under tariff items 2711 12 00, 2711 13 00 and 2711 19 00 of the said First Schedule;
- (ix) Kerosene falling within heading 2710 of the said First Schedule, for ultimate sale through public distribution system.

The manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or.

- (b) If the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory;
- (c) The provider of output service shall utilize credit only to extent of an amount not exceeding twenty per cent of the amount of service tax payable on taxable output service.

Explanation I. – The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer or provider of output service by debiting the CENVAT credit or otherwise.

Explanation II. – If the manufacturer or provider of output service fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 14, for recovery of CENVAT credit wrongly taken.”

Post 01.04.2008:-

“Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services – (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input services meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:-

- (i) The manufacturer shall pay an amount equal to ten per cent of the value of the exempted good and the provider of output service shall pay an amount equal to eight per cent of value of the exempted services; or
- (ii) The manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

Explanation I. – If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II. – For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.”

25. From a plain reading of the provisions, as it existed prior to 01.04.2008, it is obvious that no Cenvat credit can be allowed on such quantity of input or input services, which are used in the manufacture of exempted goods or exempted services except where the manufacturer or provider of output service maintains separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service. Admittedly, this has not been maintained by the appellant even though they are engaged in manufacture of exempted goods as well as dutiable goods and also in the provision of exempted services i.e., trading in goods, which, however, has been contested. Since the options available were only extendable to goods covered within the provision of section 3(a), therefore, there was no provision for the appellant to pay the amount equivalent to Cenvat credit attributable to input and input services used in or in relation to manufacture of such final products at the time of their clearance from the factory and other categories were having only the option to pay an amount equal to 10% of the total price. Since there was no provision, the reversal of proportionate credit suo mot by the appellant was without any authority of law. We have examined the reliance placed on various case laws. In the case of CCE Vs Ashima Dyecot Ltd (supra), the issue was entitlement of notification which had a condition regarding non-availment of credit. Relying on the judgment of Hon’ble Supreme Court in the case of Chandrapur Magent Wires (P) Ltd Vs CCE, Nagpur [1996 (81) ELT 3 (SC)], as also in the case of Hello Minerals (P) Ltd Vs UOI (supra), the Tribunal, inter alia, held that reversal can be made and upheld the decision of the Tribunal that reversal of credit would amount to effect as if the same was not availed and therefore, it would satisfy the condition of notification 30/2004. The facts in the present appeal are different as it is not about notifiational benefit dependent on availment or otherwise of input credit but what is being considered is fundamental rule that no credit can be taken in respect of any

input or input service where it is being used in relation to manufacture of exempted goods or provision of exempted service except in accordance with the provisions within Rule 6 itself. As discussed, *supra*, there was no provision under Rule 6 prior to 2008 for reversal of credit, *suo moto*, and therefore, the reversal, *per se*, would not cure the defect of their having taken wrong credit in terms of Rule 6(1). This situation was resolved by way of retrospective amendment in 2010, which was subject to certain stipulated conditions.

26. In the case of *CCE, Ahmedabad Vs Maize Products (supra)*, the Hon'ble Gujarat High Court examined the appeal filed by the Revenue where the Tribunal had accepted the offer of respondent to reverse the entire credit attributable to the exempted products in terms of provisions under Rule 57AD of Central Excise Rules, 1944, Rule 6 of CCR, 2001 and Rule 6 of CCR, 2002. The Hon'ble High Court did not find any justification as there was no question of law and therefore, the appeal of the Revenue was dismissed. In the present appeal, the facts are distinguished.

27. In the case of *CCE Vs Maan Pharmaceuticals Ltd [2011 (263) ELT 661 (Guj)]*, similar views were endorsed. However, relying on the judgments of *Chandrapur Magent Wires (P) Ltd Vs CCE, Nagpur (supra)* and *CCE, Ahmedabad Vs Maize Products (supra)*, therefore, the facts are again distinguished.

28. We find that somewhat similar issue came up before the Hon'ble Bombay High Court in the case of *CCE, Thane-I Vs Nicholas Piramal (India) Ltd [2009 (244) ELT 321 (Bom)]*, wherein they examined the statutory provisions under Rule 6, as it existed prior to 2008, and *inter alia*, accepted the contention of the Revenue that Rule 6 is part of delegated legislation under section 37(2)(xvii), which *inter alia* clearly provides that insofar as inputs used in the manufacture of exempted goods, no Cenvat credit is allowed. However, there are certain provisions in accordance of which, in a situation like this, where both dutiable and exempted goods are manufactured, recourse can be taken to the said provisions. The Hon'ble High Court held that Rule 6 is made under delegated provision given by the legislation and anybody taking advantage of Rule 6 is fully aware of the requirements of the rules including Rule 6(1) and that the rule mandates

specifically that an assessee seeking to avail Cenvat credit in respect of inputs used in the manufacture of exempted goods, the only method to which he can avail of is by following sub-rule (2). Relevant paras of the Order are reproduced below for ease of reference.

"27. In the light of the above discussion, in our opinion, it is not possible to accept the contention as advanced on behalf of the assessee that the said rule can be read differently. The assessee's submission has been that he gives up the credit which he had taken before the goods leave the factory premises. That amounts to compliance with Rule 6(1). The language of Rule 6(1) is not to grant credit to an assessee except in circumstances mentioned in sub-rule (2). We have therefore no hesitation in rejecting the said contention. It will not be possible in that context to read the rule as directory as sought to be contended on behalf of the assessee. The rule would have to be followed. In other words, it is mandatory, if an assessee seeks to avail of Cenvat Credit as set out in the rule.

28. The Assessing Officer under a taxing statute it is submitted are familiar with estimation/quantification of amount of expenditure/ income etc. as part of the assessment functions. Hence, only justification given in the budget circular for enactment of Rule 57C is not correct. Therefore the method prescribed in Rule 6(3)(b) is only directory and not mandatory. If this argument is accepted then the question revenue can posse to the assessee is that, if is it impossible for the assessee to maintain the books of the quantities of inputs used in the manufacture of dutiable final products. How is it not possible at this stage of manufacture of intermediate product. Learned counsel had drawn our attention to the following observations in Dr.Balbir Singh Vs. Municipal Corporation of Delhi - 1985 (1) SCC 167 when the court held as under:-

".....The assessing authorities would obviously have to estimate for themselves, on the basis of such material as may be gathered by them, the reasonable cost of construction and the market price of the land and arrive at their own determination of the standard rent. This is an exercise with which the assessing authorities are quite familiar and it is not something unusual for them or beyond their competence and capability. It may be noted that even while fixing standard rent under sub-section (4) of Section 9, the assessing authorities have to rely on such material as may be available with them and determine the standard rent on the basis of such material by a process estimation"

In our opinion, the taxing machinery has to follow the method provided more so by the Assessing Officer. He cannot disregard a rule. It is not open to an assessee to contend that because they have chosen not to maintain the records as required, revenue authorities even against the grain of the language of the rule, must estimate the inputs used in the manufacture of final dutiable products and accordingly, pass necessary orders. It is also not possible to accept the contention that because they are familiar with the procedure of ascertaining the amount of credit, that by itself makes rule 6(3)(b) directory. The reference placed on the judgment of the Supreme Court in Krishnamurthy Vs. CIT 1989 (176) ITR 417 (SC), in our opinion is misplaced. In that case, the Supreme Court held considering the provisions of Section 45 of the Income Tax Act that the asset is difficult to value, but is nonetheless of a money value, the best valuation possible must be made. There can be no quarrel with that proposition, considering that under the Income Tax Act normally, there

are two methods of valuation which are land and building, and rent capitalization method.

30. Pro-rata credit it is submitted has been statutorily provided in Cenvat Credit Rules 2004 with effect from 1.4.2008 and the principles and basis enshrined in those rules can be applied for the past period. The submission is that it is only a rule of evidence and such rules of procedural law, they can be applied for the period prior to 1st April 2000 also. Learned counsel seeks to rely on the judgment of the Supreme Court in Commissioner of Wealth Tax Vs. Sharvan Kumar Swarup 1994 (210) ITR 886 (SC) and in Commissioner of Wealth Tax Vs. Lakshmipat Singhania - 1978 (111) ITR 272 (All). In our opinion, it is not possible to accept such a submission. Once there be rules in force, it is those rules which are to be applied. Rules subsequently made may be as a result of experience cannot be made retrospective unless so provided. In the instant case, the rule is prospective from the date the rules come into force and cannot be applied retrospectively. That submission therefore has to be rejected."

29. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of Amrit Paper Vs CCE, Ludhiana [2006 (200) ELT 365 (SC)], wherein it was held that the provisions of Rule 57C of Central Excise Rules, 1944, provides in mandatory and categorical term that no credit of the specified duty paid on the inputs used in manufacture of a final product shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. The appeal was decided against the assessee.

30. Therefore, we find that the argument made by the appellant that merely because they have reversed the credit on their own at some later date and that too without applicable interest, they have tentatively complied with the provisions of Rule 6(1). Insofar as the reliance placed on the amendment introduced vide section 72 and section 72 of the Finance Act, 2010, which inserted Rule 6(7) retrospectively, since it is an admitted position that Rule 6 of CCR is mandatory in nature and not directory, therefore, it has to be complied in all respect by the statutory authority operating within the provisions of statute. It is an admitted position that the application was received beyond the six months period, as also no interest was paid before filing of the application and therefore, on both these counts, there has not been any substantive compliance of the provisions. Therefore, even if one agrees that the dispute was going on, the fact remains that the appellants have not complied with statutory provision as brought in for allowing proportionate reversal for a limited period by way of this retrospective amendment and therefore, as rightly held by the Adjudicating

Authority, they were not eligible for the benefit of the same. They have relied on catena of judgments and we have perused the same. In the case of Shree Rama Multi Tech Ltd Vs UOI (supra), the Hon'ble High Court of Gujarat examined the amendment brought by section 69 of the Finance Act, 2010, allowing certain retrospective amendment in the rules for certain period and the Hon'ble High Court felt that in the factual matrix of the case, where they had not made any application as contemplated under sub-section (2) of section 69, the matter was remanded back to decide the proportionate credit and recovery thereof. We find that Tribunal, being a creature of statute, cannot go beyond the provisions of the Act and Rules, wherein there is clear stipulation that an application has to be made within time along with reversal as well as payment of interest thereon, which had admittedly been not complied with. Thus, this case is distinguished.

31. In the case of CCE, Chennai-II Vs ICMC Corporation Ltd [2015 (315) ELT 388 (Mad)], the Hon'ble Madras High Court allowed the applicability of the amended provisions in the light of the fact that assessee has reversed the credit even prior to the amendment and therefore, upheld the order of the Tribunal, which allowed the availment of the said provisions.

32. In the case of CCE, Mumbai Vs IVP Ltd [2017 (349) ELT 18 (Bom)], it is not a case where there was no provision and still the proportionate credit was allowed. In this appeal, the issue is whether the appellants are entitled to avail retrospective amendment without complying with the conditions stipulated therein. It is an admitted fact that interest component on the reversal was made good only sometime in 2013. Reliance placed on various other judgments including Shree Rama Multi Tech Ltd (supra), CAE India Pvt Ltd (supra) and ITC Ltd (supra) are essentially where the Hon'ble High Courts of Gujarat, Madras, Bombay, as also the Tribunals relying on said judgments have taken a view that retrospective amendment benefit can be allowed without complying with the conditions provided in the said retrospective amendment. We find that the Tribunal, being a creature of statute, has to extend the benefit within the provisions of the law and the rules made thereunder and cannot go beyond what has been explicitly provided in the provisions. It is not denied that the provisions clearly made the applicability of the said amendment provision by complying with certain conditions including filing the application within time, payment of amount of

applicable interest thereon at penal rate of 24%, etc. These provisions are not directory but these are mandatory rules, therefore, strict compliance was required, which in the present appeal has admittedly not been made as observed by the Adjudicating Authority. Therefore, we find that there is no infirmity in the order of the Adjudicating Authority denying them the benefit of amended provisions.

33. For the period post 01.04.2008, clearly there is the statutory provision, which entitles them to reverse the credit in accordance with the provisions and compulsion cannot be made for them to pay @10%. The Adjudicating Authority has held that the activity of the trading is exempted service and they were not eligible to take credit in respect of the same. I find that in various orders passed by the Coordinate Bench viz., Orion Appliances Ltd Vs CST, Ahd (supra), Franke Faber India Ltd Vs CCE (supra) and Marudhan Motors Vs CCE & ST [2017 (47) STR 261 (Tri-Del)], it has been held that trading activity is not exempted service prior to 01.04.2011. Therefore, the ground for demanding an amount equivalent to 10% of exempted service by treating the said trading of goods being an exempted service is not sustainable, even though the Revenue has canvassed that the explanation inserted in 2011 is only clarificatory in nature. However, the Coordinate Benches in the case of Orion Appliances Ltd (supra), inter alia, held that since trading activity is nothing but purchase and sale and is covered under Sales Tax law, it would be appropriate to call it a service and therefore, it cannot be considered as exempted service. In the case of Franke Faber India Ltd (supra), after examining various case laws, it was, inter alia, held that as regards trading activity a specific amendment was made in CCR w.e.f. 01.04.2011 as per Notification No.03/2011-CE (NT) dt.01.03.2011 and it will be applicable only from 01.04.2011, as prior to that there was no provision for either denial of credit or for reversal of the same, as provided under Rule 6 of CCR. Therefore, when the trading activity itself is not being considered as exempted service for the period prior to 01.04.2011, a demand of Rs.13,05,919/- based on reversal of credit on the ground that they were engaged in providing exempted service cannot sustain and to that extent the Order of the Adjudicating Authority is not tenable and is set aside.

34. There is also an argument that some of the goods have been exported and said goods cannot be considered as exempted goods for the purpose of denial of credit in terms of Rule 6 of CCR, in view of the judgment of Hon'ble High Court of Bombay in the case of *Repro India Ltd Vs UOI* [2007-TIOL-795-HC-MUM-CX]. They have relied in their own case of *Astrix Laboratories Ltd Vs CCEC & ST, Hyderabad-I* [2019-TIOL-1773-CESTAT-HYD]. We find that the Tribunal, after going through catena of judgments in this regard, inter alia, held that where the exempted goods were exported, whether they could have taken credit or otherwise and allowed availment of credit in respect of exempted goods which were exported. We do not find any discussion on this aspect either in the SCN or in the impugned order. Nowhere this aspect was canvassed before the Adjudicating Authority by the appellant. However, as a view has been taken that trading was not an exempted service, no further discussion is required with regard to alternative plea of exempted goods exported would not be exempted goods, as such, in view of judgment in the case of *Repro India Ltd Vs UOI* (supra).

35. In respect of credit taken on input services used exclusively by their standalone R&D units, we find that case laws relied by the appellant are where the R&D units were within the manufacturing premises and therefore, the credit was allowed considering them as being in relation to the business of the manufacturing unit. In the present appeal, there are standalone R&D centers engaged in the activity where they are neither clearing any dutiable goods nor any exempted goods or providing any exempted services, if any. Therefore, in terms of Rule 6(1) itself, they could not have taken any credit in relation to said goods or services. Once the credit is not admissible to the said standalone R&D centers, per se, the credit was not available for the ISD to distribute to the other manufacturing units. The argument of the appellant to cover the said activity as having remote connection with their business activity is not tenable. Has that been the case, each and every activity done anywhere would have some business relation with the activity of the appellant but the same cannot be allowed unless it is in accordance with the law as observed by us. The credit was not admissible itself in the first place, therefore, the question of its distribution to other units would not arise in terms of Rule 7 of CCR. Therefore, there is no infirmity in the order of the Adjudicating Authority on this issue.

36. Insofar as the issue of irregular availment of utilization of service tax on input credit on certain invoices during the period 10.09.2004 to 2009, we find that while in certain cases, they have already reversed the amount of credit but in relation to certain credit, they are contesting the eligibility. We find that as far as credit towards Mediclaim Insurance is concerned, the reliance has been placed on Deloitte Support Services India Pvt Ltd Vs CCE, Hyderabad [2017 (5) GSTL 393 (Tri-Bang)], wherein the Tribunal examined the eligibility of group insurance premium and having regards to various decisions, considered that the said credit is eligible. In the case of CCE & ST, LTU, Bangalore Vs Micro Labs Ltd [2011 (24) STR 272 (Kar)], the Hon'ble Karnataka High Court upheld the decision of the Tribunal holding that Cenvat credit of service tax paid on group mediclaim policy is eligible for taking credit. Therefore, having regards to these judgments, we hold that appellant would be entitled for taking credit on group mediclaim insurance.

37. Insofar as taking credit in relation to real estate agency and services rendered outside India, we find that no cogent evidence was provided to the Adjudicating Authority to establish either the nexus with their output service or manufacture or its use in relation to their business. Therefore, the Adjudicating Authority could not come to the conclusion whether they are eligible or otherwise. Therefore, the factual aspect in this regard needs to be ascertained.

38. Insofar as the issue of availment of credit on bank charges is concerned, we find that the Adjudicating Authority has denied the same due to lack of evidence adduced by the appellant.

39. Insofar as the limitation is concerned, we find that the Adjudicating Authority has discussed the issue of limitation. The appellants have relied on catena of judgments, as cited at para 27 of the impugned order. The Adjudicating Authority has not agreed with these submissions on the ground that the appellants being a unit registered under ISD and service provider and were regularly taking credit and distributing the same to other manufacturing units, were admittedly manufacturing both dutiable and non-dutiable goods. He has also not agreed with the applicability of ratio of the judgment of Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs CCE (supra) by distinguishing the said case in the factual matrix of the

appeal. The appellants have also relied on certain judgments where the Coordinate Benches have held that there were conflicting views as regards trading activity being exempted service or otherwise, therefore, in view of the same, invocation of extended period is not sustainable.

40. We find that appellants are a big company having multiple manufacturing units as well as R&D centers and were in fact, engaged in manufacturing both dutiable and exempted goods. As there is some force in the contention that the issue of whether trading activity was exempted service or not and therefore, extended period cannot be invoked in this regard, however, we find that the said issue alone is not covered in the present appeal. Any manufacturer who is availing Cenvat credit is expected to be aware of various provisions and a plain reading of provisions, as is existed during the material time would have indicated that no credit can be taken if they are not manufacturing dutiable goods. In the case of R&D units, clearly, whatever they were manufacturing was not being cleared on payment of duty. The activities resulted in emergence of certain products, which has not been cleared as excisable goods by the appellant nor any notification has been cited in support that such goods were exempted when consumed within the factory. Despite this provision, they have chosen to go ahead and take the credit and thereafter, conveniently passed on to other manufacturing units through ISD where the same were utilized in gross disregard to Rule 7 of CCR. It is apparent that they were aware that they were manufacturing both dutiable and exempted goods. It is also apparent that they themselves have reversed the credit even when there was no such provision under the Rules during 01.04.2004 to 31.03.2008 and still they complied with the provisions not existing purportedly in view of certain judgments cited by them. As discussed supra, those judgments were not relevant to the situation where the issue of payment of equivalent amount was involved. Therefore, taking the shelter under these judgments for their bonafide belief for reversal of credit is not tenable. Similarly, regarding taking credit in respect of certain input services, there could have been some bonafide belief, which is also a fact that they themselves had reversed certain amount. This shows that they were having some doubt but on their own they have reversed when they felt that they have taken wrong credit. Reversal would not take away the fact that they had taken the credit in the first instance even when it was not prima facie, available to them.

Therefore, in the factual matrix, we do not find that plea of the appellant for non-invocation of extended period can be allowed and accordingly, there is no merit in the argument for non-invocation of extended period. To that extent, invocation of extended period by the Adjudicating Authority is upheld. Similarly, penalty and interest applicable thereon, as imposed by the Adjudicating Authority, are also upheld.

41. In essence, in respect of SCN dt.23.07.2010:-

- a) The demand equivalent to 10% of value of exempted goods i.e., Rs.29,30,59,000/- cleared during the period 10.09.2004 to 31.03.2008 is upheld along with payment of interest and equal penalty.
- b) The demand of proportionate Cenvat credit of Rs.13,05,919/- for the year 2008-09 under Rule 6(3)(ii) of CCR read with section 11A of CEA, 1944 and section 73(2) of the Finance Act, 1994 along with equivalent penalty is set aside.
- c) The demand of Rs.29,34,582/- being the irregularly utilized Cenvat credit for payment of service tax on output services is remanded back to the Adjudicating Authority to ascertain whether they have complied with the provisions as submitted by them and that they had already reversed the amount for the period prior to 01.04.2008.
- d) The demand of Rs.6,94,35,601/- being the irregularly availed Cenvat credit on input services used in R&D centers along with equivalent penalty is upheld.
- e) The demand of Rs.48,10,393/- along with equivalent penalty being the irregular availment of input service tax credit is set aside to the extent of credit irregularly availed on group mediclaim insurance. In respect of the demands of remaining amounts, the matter is remanded back to the Adjudicating Authority to ascertain its nexus with the manufacturing activity or business and thereafter, allow the said credit. The equivalent amount of penalty to the extent of demands it upheld, is also imposable. The exact amount of equivalent penalty will be reworked out after excluding the demands which have not been sustained in relation to demands confirmed vide para 29 of the impugned order and the remaining penalty is upheld. The interest, as applicable, is also upheld.

42. In respect of SCN dt.22.10.2011:-

- a) The demand of Rs.84,43,488/- being the irregular availed Cenvat credit on input services used in R&D centers for the period 2009-10 to 2010-11 is upheld along with interest. We, however, do not find any justification for imposing an equal penalty under Rule 15 of CCR read with section 78 of the Finance Act, 1994, inasmuch as this demand is arising out of the SCN dt.22.10.2011, whereas similar issue was already covered in the earlier SCN dt.23.07.2010. Moreover, the penalty under section 76 has been dropped by the Adjudicating Authority. Therefore, penalty of Rs.84,43,488/- under Rule 15 of CCR read with section 78 is set aside.

43. Appeal allowed partly as above.

(Pronounced in the Open Court on 30.04.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)