IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75138 of 2017

(Arising out of Order-in-Original No. 70/COMMR/ST-II/KOL/2016-17 dated 23.09.2016 passed by Commissioner of CGST & Central Excise, Kolkata-II,

M/s Skipper Ltd.,
(Mayur Apartment, 1st Floor, 3A-Loudon street, Circus Avenue Kolkata-700017).

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata,
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

.. ...**Respondent**

APPERANCE :

Mr. Kartik Kurmy, Advocate for the Appellant
Shri A. Mukherjee, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K ANPZHAKAN MEMBER (TECHNICAL)

Final Order No. 77633/2025

DATE OF HEARING : 18.09.2025

DATE OF PRONOUNCEMENT : 04.11.2025

PER R. Muralidhar:

The Appellant is engaged in providing taxable services under category of 'Erection, Commissioning or Installation Service', 'Execution of Work Contract Service', 'Transportation of goods by Road Service' and 'Business Support Service'. The appellants were providing services, which were both taxable as well as exempt from payment of Service Tax. On the ground that the appellant has availed the cenvat credit commonly used for providing the taxable and exempt services, Show Cause Notice dated 21-10-2014 was issued for the period 2009-10 to 2012-13, by invoking the extended period provisions, demanding Service Tax of Rs.1,11,40,506/- based on the @ 6% /5% value of the exempted services provided. In the same SCN, on the ground that the they have incurred foreign exchange towards import of service, they haver not paid the Service Tax on RCM basis Service Tax of Rs.4,90,476 was demanded.The appellants submitted that in respect of

'Erection and Commissioning services', where they have taken the abatement of 33% , they have not taken any cenvat credit. In respect of the common services utilized, they have already reversed the proportionate Cenvat Credit. After due process, the Adjudicating authority confirmed the demands along with interest and penalties. Being aggrieved by the impugned Order, the appellant is before the Tribunal.

2. The Ld Counsel, appearing for the appellant makes the following submissions:

2.1 During the material period the appellants have executed the following contracts :-

(a) Cable Laying work for CESC (Taxable)

(b) Pipe Laying for sewerage project executed at Imphal City, Manipur under the Executive Engineer, Drainage and Sewerage Division, PHED, Government of Manipur; (Exempted)

(c) Construction of sewerage tunnels in Goa under Sewerage & Infrastructure Development Corporation of Goa Ltd; (Exempted)

(d) Erection and Commissioning of other civil works on which service tax was paid on abated value of 33% as per N.F. No.1/2006-ST dated 01.03.2006 during the period 2009-10 and 2010- 11. (Abated Service). This service was provided during 2009-10 and 2010-11 [please see Table-B of SCN at Page 5].

2.2 The Appellant availed common credit on Banking Service, Security Service, Professional Services (consultancy) and Advertisement service.

2.3 The Appellant reversed proportionate credit of Rs.2,32,871/- on 30-11-2013 in the Input Service Credit Register, on proportionate basis attributable to exempted services like Cable Laying Service, Pipe Laying Service and Construction of Sewerage Tunnel in CENVAT Register of

November 2013 (SCN issued on 21-10-2014) and disclosed the same in the ST-3 returns for half year ending October, 2013 to March, 2014 (Rs.2,26,087/- col. 3.1.3.8. and Rs.4,221/- col.13.2.3.4). Copy of the Input Service Credit Register for November, 2013 (Page 11) and ST-3 returns of half year October, 2013 to March, 2014 are annexed hereto and marked as Annexure-S1 (Page 7-18) and Annexure-S2 (Page 19-39) respectively.

2.4 The Appellant has further reversed proportionate credit of Rs.18,913/- in respect of full value of Erection & Commission Service on which abatement of value [67%] was taken on 30-11-2013 and intimated to the Department.

2.5 The aforesaid amount of Rs.2,32,871/- (Rs.2,13,957/- + 18,913/) is appropriate in the impugned orders. While giving reply to the SCN, year-wise calculations for arriving at the above reversal amounts were submitted by the Appellant.

2.6 The Appellant states that in the instant case has already reversed proportionate credit of Rs.2,32,871/- (please see Input Service Credit Register for November, 2013 at (Page 11) of Annexure-S1 hereto for reversal of proportionate CENVAT Credit of Rs.2,32,871/- which is duly supported by detailed calculation duly certified by CA Rahul & Associates vide certificate dated 08-09-2025 which is annexed hereto and marked as Annexure-S3. (Page 40-44) which tantamount to not taking CENVAT Credit attributable to exempted services.

2.7 The Appellant most humbly submits that reversal of credit of Rs.2,32,871/- by the Appellant tantamount to not taking credit attributable exempted services. Under the circumstances they cannot be held liable to pay amount @ 6% /5% reversal of proportionate credit of Rs.2,32,871/-.

- ***(i)*** ***Park Hospitals Vs. CST reported in 2025-VIL-223-CESTAT-KOL-ST (Para 9.2 and Para 9.3)***
- ***(ii)*** ***Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CCE reported in 2009(248) E.L.T 514 (Tri. Chennai) (Para 2)***

2.8 The Appellant further submits that in any case if they have wrongly claimed CENVAT Credit, the such credit can be recovered under Rule 14 of the CENVAT Credit Rules, 2004 and they cannot be foisted with liability @ 6% /5% under Rule 6 of the CENVAT Credit Rules, 2004. Therefore, demand of @ 6% /5% of the exempted value instead of demanding CENVAT Credit is illegal and bad in law. The Appellant relies on the following judgments/ decisions:-

- ***(i)*** ***Tiara Advertising Vs. UOI reported in 2019 (30) G.S.T.L 474 (Telangana) (Para 15)***
- ***(ii)*** ***M/s Texmaco Rail & Engineering ltd Vs. CGST & EX reported in 2021-VIL-626-CE-CESTAT-KOL-CE (Para 4 and 13)***
- ***(iii)*** ***CCE Vs. Surya Vistacom Pvt. Ltd reported in 2022 (66) G.S.T.L 290 (Cal) (Para 13)***

2.9 The Appellant most humbly submits that show cause notice in the instant case is issued on the basis of scrutiny of the books of accounts, returns etc. maintained by them, hence, there was absolutely no suppression of facts etc.

2.10 What is disclosed in the books, return cannot be held suppressed by the Appellant. The case of the department in not based on any new material brought by the department but on the basis of scrutiny of books, returns hence, there can not be any suppression of fact warranting invocation or extended period of limitation.

2.11 The Appellant relies on the following judgments:-

- ***(i)*** ***CCE, Vs. Hindustan Cables Ltd., reported in 2022 (382) E.L.T 188 (Cal.) (Para 10);***

- ***(ii)*** ***Gac Shipping (India) P. Ltd., Vs. CCE reported in 2017 (49) STR 242 (Tri.-Bang) (Para 7);***

- ***(iii)*** ***CCE Vs. Surya Vistacom Pvt. Ltd reported in 2022 (66) G.S.T.L 290 (Cal) (Para 11).***

3. In view of the above submissions, the Ld Counsel prays that the appeal may be allowed both on merits as well as on account of limitation.

4. The Ld A R, on behalf of the Revenue reiterates the findings of the Adjudicating authority and justifies the confirmed demand.

5. Heard both the sides and perused the appeal papers, documentary evidence produced and the cited case laws.

6. We find that admittedly, the appellant has been providing both taxable and exempted services. Banking services, Security services are some of the common services, where they are commonly used. Rule 6 (3A) provides the facility for the appellant to proportionately reverse the cenvat credit if the same has been taken for taxable and exempted services. As a matter of fact Rule 6 (3AA) to facilitate such reversal,

even if the option to reverse the proportionate cenvat credit is not exercised earlier. This amendment goes on to show that liberal approach is required to be adopted in respect of reversal being sought for the common credits. This has been time and again emphasized by various High Courts and Tribunals, because of which the amendment in terms of Rule 6 (3AA) has been brought in.

7. We have gone through the reversal of Rs.2,32,871 on proportionate basis, duly certified by the Chartered Accountant, which is reproduced below :

Annexure-S3

-40-

RAHUL S & ASSOCIATES

Chartered Accountants

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Kolkata - 700 007
Ph. : (033) 2272 1086, 4005 0709
Mob. : 93310 80121
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To
The Customs, Excise & Service Tax Appellate Tribunal
169, AJC Bose Road, "Bamboo Villa" (7th Floor)
Kolkata-700014

This is to certify that M/s Skipper Limited having registered office at Mayur Apartment, 3A, Loudon Street, 1st Floor, Kolkata – 700 017 and having Service Tax: **AADCS7272ASD008** has filed its Service Tax Return for the period 01.10.2013 to 31.03.2014 on 23.04.2014 showing reversal of Proportionate Cenvat Input credit availed during the F.Y 2009-10, 2010-11, 2011-12 & 2012-13 for Erection & Commission and Cable laying and Pipe laying. (The breakup of which is shown in Service Tax Return is as follows and year wise details of the same is enclosed herewith as Annexure):

-Reversal under Cenvat Credit of Service Tax and Central Excise Duty Taken and Utilisation thereof: **Rs. 226087/-**

-Reversal under Cenvat Credit of Education Cess Taken and Utilisation thereof: **Rs. 4521/-**

-Reversal under Cenvat Credit of Secondary and Higher Education Cess Taken and Utilisation thereof: **Rs. 2262/-**

Total Reversal **Rs. 232870/-**

For RAHUL S & ASSOCIATES
Chartered Accountants
FRN: 325978E

Rahul Gupta

RAHUL S & ASSOCIATES KOLKATA Chartered Accountants

(RAHUL GUPTA)
Proprietor
M. No. 063970
UDIN: **25063970BMKRDE3652**

Place: Kolkata
Date: 8th day of September, 2025

8. We find that this Tribunal has dealt with the issue in detail in the case of **M/s. Park Hospitals Vs Commissioner of Service Tax, Kolkata [Service Tax Appeal No.75776 of 2014], Vide FINAL ORDER NO. 75282/2025 Dated 11.02.2025,** has held as under :

9.1 On going through the facts, we find that the appellant initially did not opt for reversal of the Cenvat Credit on proportionate basis. For this they have given the explanation that since the appellant was not required to be registered since they were Hospital and were providing the related services, they were not aware of the statutory provisions. Had they known the same, they would have ensured that they should take the cenvat credit only in respect of the taxable output services. After the Show Cause Notice was issued, on their own they have reversed Rs.25,02,361/- [Rs.14,75,879 + Rs.10,26,482] along with applicable interest of Rs.6,71,531/- on 2nd September, 2013. This fact is also certified by their Chartered Accountant. We have gone through page 464 to 484 of the Appeal and find the claim of the appellant to be correct. We find that Tribunals and High Courts have been consistently holding that reversal of Cenvat Credit would amount non-availment of the same and have also held that the demand of 6 to 8 percent of the value of the exempted services which is way above the proportionate credit to be reversed on account of exempted services, is legally not sustainable.

9.2 We have gone through some of the decision of the High Courts and Tribunals, which are discussed below :

2004 (174) E.L.T. 422 (All.)
HELLO MINERALS WATER (P) LTD.
Versus UNION OF INDIA

4.Certain final products of Chapter 39 of the Schedule to the Central Excise Tariff Act are fully exempted from central excise duty under Notification No. 15/94-C.E., dated 1-3-1994. *The condition for this exemption is that no modvat credit should be availed on the inputs used in manufacturing of these final products. In the present case, the credit had been availed on the inputs but had been reversed subsequently. The issue, therefore, is whether this reversal of credit after availment can satisfy the condition of non-availment of credit under the exemption notification.*

13. On the facts of the case we are of the opinion that this petition deserves to be allowed. The facts of the case show that the Modvat credit taken on the inputs was reversed by the petitioner. Since the reversal of Modvat credit has been done by the petitioner hence in our opinion it has to be treated that no credit was taken by the petitioner on the inputs, namely PVC granules used in the manufacture of PVC/PP bottles as contemplated under the Notification No. 15/94-C.E., dated 1-3-1994.

14. The undisputed facts of the case are that the petitioners have reversed Modvat credit on the entire inputs amounting to Rs. 10,61,379/-.

15. In fact the show cause notice issued to the petitioner specifically records that the petitioner has reversed the credit on PVC granules, which are used in the manufacture of PP Bottles.

22. Hence in our opinion the Tribunal was not justified in taking a view that reversal of the credit having been made by the petitioner *after* removal of the final products the petitioner was not entitled to the benefit of Notification No. 15/94-C.E., dated 1-3-1994.

23. This view of the *Tribunal is in our opinion patently erroneous and contrary to the decision of the five Member Larger Bench of the Tribunal as well as three member bench of the Tribunal, and is also contrary to the ratio of the decision of the Supreme Court in the case of Chandrapur Magnet Wire (supra).*

24. In fact the decision of the five Member Larger Bench of the Tribunal in *Franco Italian Company* (supra) was followed by three Member Bench of the Appellate Tribunal in the case of *ICON Pharma and Surgical (P) Ltd.,* 2000 (40) RLT 918.

25. The Tribunal again in a *three Member Bench decision in the case of Tube Investment of India, Final Order No. 795/2002, wherein the specific issue was whether the reversal of credit subsequent to removal of goods, was fetal to the extension of benefits of the notification* *considered the matter at length. The majority decision upheld the argument of the assessee therein and held that reversal of credit subsequent to the clearance of exempted product is in line with the ratio of the Supreme Court judgment laid down in Chandrapur Magnet Wires Co. (supra).*

31. In view of the above decision *the writ petition is allowed and the demand of duty and penalty created by order dated 30-10-2001 and confirmed by the Tribunal is set aside. Any amount already deposited by the petitioner shall be refunded to the petitioner forthwith with interest at 10% per annum from the date of deposit to the date of refund, and this refund must be made within two months from today*. The petitioner is also entitled for any consequential benefits.

2019 (30) G.S.T.L. 474 (Telangana)
TIARA ADVERTISING Vs UNION OF INDIA

9. It may be noted that *there is no controversy with regard to the entitlement of the petitioner to avail Cenvat Credit but for this disputed amount of Rs. 17,15,489/- out of the total extent of Rs. 1,41,51,903/-.* While so, the second respondent issued *show cause notice dated 19-4-2016 to the petitioner proposing to choose the option under the aforestated Rule 6(3)(i) on its behalf and calling upon it to explain as to why it should not be directed to pay an amount of 5%, upto 31-3-2012, and 6%, from 1-4-2012, of the value of the exempted services, aggregating to Rs. 3,52,65,241/-*. *In its reply dated 16-5-2016, the petitioner contended that it was wholly unreasonable on the part of the authorities to expect it to pay over Rs. 3.50 Crore when the total Cenvat Credit availed by it was less than Rs. 1.50 Crore and the actual dispute boiled down to a mere Rs. 17,15,489/-. It relied on case law to support its contention that such an unreasonable result could not be allowed to follow by application of the law*. The impugned Order-in-Original however reflects that the second respondent did not even advert to the case law cited before him.

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.*

Tuticorin Alkali Chemicals & Fertilisers Ltd.
Vs. CCE, Tirunelveli
2009 (248) E.L.T. 514 (Tri. – Chennai)

2. We have heard both sides. *We find that the assessees reversed the credit taken on the input services used in non-dutiable goods subsequent to the clearance of such goods. They have also paid interest for the delay in reversal of the credit. In this circumstance,* *applying the ratio of the decision of the larger Bench of the Tribunal in Franco Italian Co. Pvt. Ltd. v. CCE - 2000 (120) E.L.T. 792 and the recent decision of the Tribunal in Mount Mettur Pharmaceuticals Ltd. vide Final Order No. 879/2008, dated 8-8-2008 [2009 (235) E.L.T. 664 (Tri.) = 2009 (13) S.T.R. 414 (Tri.)] and the Hon'ble Gujarat High Court in CCE v. Maize Products - 2009 (234) E.L.T. 431 (Guj.), the reversal of credit by the appellants subsequent to the clearance of the goods is as good as not taking any credit.* The Revenue is also compensated for the delay in reversal of credit by payment of interest. *Therefore, the demand for 10% of the net sale price of the exempted goods cannot be sustained. Accordingly, we set aside the demand together with the penalty and allow the appeal*.

Texmaco Rail & Engineering Ltd.
Vs Commissioner of CGST & Excise, Kolkata North
FINAL ORDER NO.75685-75686/2021 Dated 10 NOVEMBER 2021

11. We find that the issue has been settled by the Hon'ble Telangana High Court in favour of the assessee in the case of Tiara Advertising wherein it has been held that in case the assessee has not chosen to maintain separate accounts, the Credit Rules do not authorize the departmental authorities to choose one of the options on behalf of the assessee so as to demand the amount of 5% or 10% as per Rule 6(3) of the Credit Rules. In that event, the authorities can utmost disallowthe credit, if at all, wrongly availed or utilised by invoking the provisions of Rule 14 of the Credit Rules.

There is no legal provision under which an amount equal to 5% or 10% of the value of the exempted goods can be recovered. The reason is that payment of an amount of 5% or 10% is one of the choices under Rule 6 and is not a mandatory payment. This choice cannot be foisted upon the appellant nor can such an amount be recovered under Rule 14. The Ld. A/R for the Revenue has not been able to distinguish the

> *above decision at the time of the hearing. Neither in the written submissions filed by him, the said Ruling of the High Court has been dealt with or distinguished.*
>
> *13. In view of the above factual matrix and the legal position laid down by the Hon'ble High Court, the Show Cause Notice demanding an amount equal to 5% or 10% of the value of the exempted products under Rule 14 is not supported by law. It is not possible to sustain the impugned demand based on such Show Cause Notice and therefore, the appeal filed by the assessee deserves to be allowed.*

9.3 We find that there is no dispute that the appellant has reversed the entire credit of Rs.25,02,361/- taken on exempted output services along with interest of Rs.6,71,531 in September 2013, after the Show Cause Notice was issued. These details have been certified by the Chartered Accountant and they are not being disputed by the Revenue. In the cited High Court decision in the case of Hello Minerals, it has been held that reversal of cenvat credit would result in a situation of no cenvat credit being taken in the first place. In the Tiara decision, the Telangana High Court has gone one step further ahead holding that there is no statutory provision available to demand 6% / 8 %/ 10% in case the assessee does not fulfil the conditions of Rule 6 (3), it went on to hold that at the most the cenvat credit taken can be asked to be reversed. We also find that these decisions have been followed by the Chennai Tribunal and Kolkata Tribunal. Therefore, applying the ratio of these case laws, we hold that the confirmed demand of Rs. Rs.1,00,76,186/-, is legally not sustainable. Accordingly, we set aside the demand and allow the appeal to this extent.

17. Now we take up the issue of time-bar or otherwise of the Show Cause Notice which has been issued by invoking the extended period provisions. The Show Cause Notice has been issued on 19.04.2013 for the demand pertaining to October 2007 to April 2007. If see the demands, we find that the main demand is on account of 6% / 8 % Service Tax on the exempted services on the ground that the appellant has availed cenvat credit in respect of the exempted services. As per our detailed findings in the foregoing paragraphs, the issue as to whether such demand can be legally sustained have been answered in the negative by various High Courts and Tribunals, wherein it is held that even if the cenvat taken is reversed, that would be sufficient. In this case, the

appellant has reversed the cenvat taken along with interest and the decision are in their favour. Further all the cenvat credit taken whether for the exempted services or for the taxable services, have been recorded by them in their books of account. All these make it clear that the Dept has not brought in any detail to the effect that the appellant was indulging in suppression with an intent to evade Service Tax payment. Similarly in case of import of service, even if the same payable, which is not in the present case, the same would be available as Cenvat Credit to the appellant. Hence, there would not be any motive to suppress. The entry of Rs.19 lacs in on account of their clerical mistake while filing the ST3 Returns. In respect of Renting of immovable property services, due to the confusion prevailing at that time, they have neither collected the Service Tax nor paid the same. Subsequently on getting clarification, they have paid the Service Tax along with interest. Thus if all the facts are considered together, we find that the Revenue has not made out any case of suppression, and the non-payment / short payment, if any has been purely on account of interpretational difficulties. The appellant has also shown their bonafides by making the payment of Service Tax, wherever payable, along with interest. Therefore, we hold that the confirmed demand for the extended period is legally not sustainable. We set aside the confirmed demand for the extended period and allow the appeal to this extent even on account of time-bar.

9. We find that to the facts of the present appeal, the cited decision is squarely applicable. Hence, we set aside the confirmed demand of Rs.1,11,40,506 on merits.

10. As canvassed by the appellant, the demand has been quantified from the P & L Accounts, Balance Sheet and other records maintained by them. They are registered assesses and have been filing their Returns. The Dept.is aware that they are providing both taxable and exempted services. Nothing has been brought in the SCN to the effect that they have indulged in any suppression with an intent to evade payment of Service Tax. We have held in similar circumstances, in the

cited case of Park Hospitals that the extended period demand is legally not sustainable. Therefore, even in this case, we set that confirmed demand for the extended period, except for the demand in respect of foreign remittance RCM, which is not being contested by the appellant.

11. So far as the Service Tax demand of Rs.4,90,476/- on RCM basis is concerned, the appellant submits that they have paid the same on being pointed out and hence are not contesting the same. Since, the payment of Service Tax on RCM basis would also enable them to take the Cenvat Credit, we hold that this results in a revenue neutral situation. Hence, we set aside the penalty. In case the appellant has not paid the interest towards belated payment, the same is recoverable from them under Section 75 of the Finance Act 1994

12. The appeal stands allowed as per the above terms. The appellants would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on…04.11.2025.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.