

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 86112 of 2014

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-043-13-14 dated 07.01.2014 passed by Commissioner of Central Excise, Pune-I)

M/s. ThyssenKrupp Industries India Pvt. Ltd. Appellant

S202/1/B, 207/V/2B, Station Road,
Pimpri, Pune 411 018.

Vs.

Commissioner of CE & ST, Pune-I

Respondent

ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

AND

Excise Appeal No. 85932 of 2015

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-040-14-15 dated 05.02.2015 passed by Commissioner of Central Excise, Pune-I)

M/s. ThyssenKrupp Industries India Pvt. Ltd. Appellant

S202/1/B, 207/V/2B, Station Road,
Pimpri, Pune 411 018.

Vs.

Commissioner of CE & ST, Pune-I

Respondent

ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Shailesh P. Sheth, Advocate, for the Appellant
Shri Amrendra Kumar Jha, Deputy Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 10.02.2023
Date of Decision: 10.02.2023

FINAL ORDER NO. A/85557-85558/2023

PER: SANJIV SRIVASTAVA

Appeal No ST/86112/2014 is directed against the order in original No PUN-EXCUS-001-COM-043-13-14 dated 07.01.2014 of the Commissioner Central Excise Pune 1. By the impugned order following has been held:

"ORDER

32.1 I confirm the demand of Rs.8,62,06,300/- (Rupees Eight Crores, Sixty Two Lakhs, Six Thousand and Three Hundred only), as determined in para 28.1 above, payable by the assessee i.e. M/s Thyssenkrupp Industries India Ltd., Pune, in terms of the provisions of clause (c) of sub-rule (3A) of Rule 6 of Cenvat Credit Rules, 2004 read with Explanation-III to sub-rule (3)/(3A), under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. I further order appropriation of an amount of Rs.61,76,635/- already paid by the assessee, against the aforesaid demand.

32.2 I order recovery of interest on the amount of demand confirmed in Para 32.1 above, under the provisions of Rule 6(3A)(e) read with Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA/11AB of the Central Excise Act, 1944. I further order appropriation of the amount of Rs.52,567/- already paid by the assessee, against the aforesaid demand of interest.

32.3 I further impose a penalty of Rs.8,62,06,300/- (Rupees Eight Crores, Sixty Two Lakhs, Six Thousand and Three Hundred only), on the assessee, i.e. M/s Thyssenkrupp Industries India Ltd., Pune, under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004.

33. The said order is issued without prejudice to any other action that may be taken against the assessee under the provisions of the Central Excise Act, 1944 and/or the rules made thereunder and/or any other law for the time being in force."

1.2 Appeal No ST/85932/2015 is directed against the order in original No PUN-EXCUS-001-COM-040-14-15 dated 05.02.2015. By the impugned order following has been held:

"ORDER

31.1 I determine and confirm the demand of Rs.7,94,80,900/- (Rupees Seven Crores, Ninety Four Lakhs, Eighty Thousand and Nine Hundred only), as calculated/determined in para 28.1 above, payable by the assessee i.e. M/s Thyssenkrupp Industries India Ltd., Pune, in terms of the provisions of Rule 6(3)(ii) of the CCR, 2004 read with Rule 6(3A)(c)(iii) ibid read with Explanation-III inserted after Rule 6(3D) ibid, under Section 11A(10) of the

Central Excise Act, 1944, readwith Rule 14 of Cenvat Credit Rules, 2004. I further order appropriation of an amount of Rs. 17,27,506/- since paid by the assessee, against the aforesaid demand.

31.2 I order recovery of interest on the amount of demand determined and confirmed in Para 31.1 above, under the provisions of Rule 6(3A)(e) read with Rule 14 of the Cenvat Credit Rules, 2004, further read with Section 11AA of the Central Excise Act, 1944.

31.3 I impose a penalty of Rs.7,94,80,900/- (Rupees Seven Crores, Ninety Four Lakhs, Eighty Thousand and Nine Hundred only), on the assessee, i.e. M/s Thyssenkrupp Industries India Ltd., Pune, under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004.

32. The said order is issued without prejudice to any other action that may be taken against the assessee under the provisions of the Central Excise Act, 1944 and/or the rules made thereunder and/or any other law for the time being in force."

2.1 Appellant are engaged in manufacture of excisable goods viz. Machinery/Parts/Equipments of Sugar Plant, Cement Plant, Boilers and Bulk Material handling systems, falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act 1985. They are availing CENVAT credit in respect of duty paid on inputs, capital goods and service tax paid on various services received. They are having their Registered Office/Corporate Office at Mumbai and manufacturing units at Cherllapally, Hyderabad and Porbandar, which are separately registered.

2.2 Appellant have centralized service tax registration for payment of Service Tax in respect of taxable output services provided from Pimpri, Hyderabad and Porbandar factories/ units as well as services provided from site offices, Registered Office located at Mumbai, branch offices located at Chennai, "Delhi and Kolkata which are having separate legal entities and are maintaining centralized bills and accounts at Pimpri, Pune. They are also registered as an Input Service Distributor (hereinafter referred as 'ISD') with effect from 30-06-2008.

2.3 For the manufacture of goods and for providing the said output services, the assessee have been receiving various input services i.e. Management Consultancy, Consulting Engineer, CHA, Rent-a-cab, Advertisement, Transport of goods by road services, telephone, courier, security etc. at their Pimpri (Pune) factory and at their branch offices, site offices. Some of the services have been exclusively received and utilized in their Pimpri (Pune) Unit or turnkey projects undertaken by Pimpri (Pune) Unit. Some of the services have been received and utilized for Pimpri (Pune) & Hyderabad Unit. Some of the services have been received and utilized for common purposes.

2.4 Appellant undertake design, engineering, manufacture, supply, transport and erection & commissioning activities of various projects. They supply/sale duty-paid / non-duty paid materials, components, structural steel, parts, and machinery etc. for the said projects, which are either cleared from their manufacturing units or from the premises of job workers/ sub-contractors. Some of the goods are cleared from the port of importation or directly from suppliers to their project sites. In case of supply/sale of goods to customers, which are not manufactured by the assessee, appellants are only trading. It appeared that the input services availed by the assessee in relation to manufacture or for providing taxable output services, have also been used in trading activities.

2.5 After amendment in the CENVAT Credit Rules, 2004 w.e.f 01-04-2011, trading activities have been treated as exempted service. No service tax was leviable prior to or is leviable after the said amendment in the Rule, under Section 66 of the Finance Act, 1994 read with any given exemption. The services or portion of the input services, availed for providing output services, but utilized in relation to trading activities, appeared to be not qualifying as input service, and therefore the credit availed to that extent is not admissible.

2.6 Appellant did not maintained separate accounts input services used in trading activities , as required under Rule 9 (5) & (6) of the Cenvat Credit Rules , 2004. They should have not taken the credit of the input services or that portion of the input services which have been used in relation to the trading

activities or else calculate and reverse the amount of credit/ proportionate credit along with interest, which they failed to do. In view of the option exercised by the assessee for reversal of input service tax credit, in terms of Rule 6(3A)(b)(iii) and Rule 6(3A)(c)(iii) of CCR Rules, 2004, finalization was required to be carried in terms of Rule 6(3A) (d) of Cenvat Credit Rules, 2004 till 30th June, 2012 and therefore pay interest @ 24% per annum in terms of Rule 6(3A)(e) of CCR, 2004.

2.7 Appellant on their own worked out from their input service credit documents/accounts and reversed/paid total service tax of Rs.60,93,784/- as per formula specified under Rule 6(3A)(b)(iii) & Rule 6(3A)(c)(iii) as per condition (c) & (d) of the said rule.

2.8 A show cause notice dated 27.05.2013 was issued to the appellant asking them to show cause as to why:

(i) CENVAT Credit amounting to Rs 8,62,06,300/- wrongly taken during the period April 2011 to March 2012 on input services used in or in relation to trading activities which is an exempted service (which is worked as per formula prescribed under Rule 6 (3A) (b) (iii) & 6 (3A) (c) (iii) as per condition (c) and (d)), should not be denied and recovered from them under rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944/ Section 73 (1) of the Finance Act, 1994 and inadmissible input service tax credit of Rs 60,93,784/- already paid/ reversed on input services used in trading activities should not be adjusted against the aforesaid inadmissible amount.

(ii) Interest at the appropriate rate should not be demanded and recovered as per the applicable provisions

(iii) Penalty should not be imposed in terms of Rule 15 (3) of the CENVAT Credit Rules, 2004.

2.9 Another Show Cause Notice dated 16.06.2014 was issued to appellant on the same ground for the period from April 2012 to March 2013, demanding inadmissible Cenvat Credit of Rs 7,94,80,900/- was issued to the appellant.

2.10 Both the show cause notices have been adjudicated as per the impugned orders referred in para 1 above.

2.11 Aggrieved by the impugned orders appellant has filed these appeals.

3.1 We have heard Shri Shailesh P Seth, Advocate for the appellant and Shri Amrendra Kumar Jha, Deputy Commissioner, authorized representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that

- The demand in the present case has been made in terms Rule 6 (3A) (c) of The CENVAT Credit Rules, 2004 read with Explanation III to sub rule 6(3)/6(3A) *ibid*, by invoking Rule 14 read with Section 11A(1) of the Central Excise Act, 1944.
- Appellant is engaged in supply of turnkey projects and the was also supplying the goods procured form other vendors to project sites, which is trading activity. As the trading activity has been defined as "exempt service" the appellant was required to reverse the credit computed as per the formula provided in Rule 6 (3A).
- Appellant was reversing the cenvat credit as per the prescribed formula, however revenue was of the view that appellant has not reversed the amount as per formula by improper application of the formula, by improper determination of the factors P & N as per the formula.
- The issue involved in the present case is no longer *res integra* and it has been held 'total cenvat credit' for the purpose of formulae under Rule 6 (3A) is only "total Cenvat Credit of Common Input Service" and not total cenvat credit including the credit on input/ input services exclusively used in manufacture of dutiable goods. Reliance is placed on the decisions as follows:
 - Reliance Industries Ltd. [2019 (28) GSTL 96 (T-Ahmd)]
 - E-Connect Solutions (P) Ltd [2021 (376) ELT 678 (T-Del)]
- Admittedly appellant have been reversing the CENVAT Credit by applying the above principle as has been noted in the impugned orders.

- As they have reversed the credit as per the principles laid down in the above decisions the appeals be allowed in their favour.

3.3 Arguing for the revenue learned authorized reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments

4.2 As the issue involved in both the appeals is identical we refer to impugned order in the appeal No ST/86112/2014, wherein following findings have been recorded:

"20. From the facts discussed above, the following undisputed facts emerge:-

- a) The assessee are undisputedly engaged in the activities of trading which is an exempted service;*
- b) They are availing Cenvat credit of service tax paid on input services, which are used in the manufacture of dutiable goods, taxable services and exempted services at their Pimpri Unit;*
- c) As they were unable to maintain separate accounts as provided under Rule 6 (3)(b), they have opted for option (ii) of Rule 6(3) of the CCR,2004 and have opted to pay the amount as determined under Rule 6(3A) *ibid*.*
- d) They have reversed the amount provisionally every month in terms of Rule 6(3A)(b)(iii) *ibid*;"*
- e) They have finally determined the amount of credit attributable to exempted service for the whole financial year i.e. 2011-12, as per their own ascertainment, and paid the same in terms of Rule 6(3A)(c) of the CCR, 2004.*

*21. The main issue therefore to be decided in these proceedings is as to. whether the assessee has correctly determined and paid the amount of credit attributable to the exempted services for whole financial year i.e. 2011-12, as per Rule 6 (3A) of the CCR, 2004. If not, what is the correct amount which was required to be paid by the assessee under Rule 6(3A)(c)(iii) *ibid*, after finalization.*

22. Before proceeding to discuss the assessee's contentions, I reproduce below the extracts of relevant Rules of Cenvat Credit Rules, 2004, for easy reference:

22.1 Rule 2(e) of the CCR, 2004 defines "exempted services" and the same reads as under :-

"Rule 2(e)- "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under Section 66 of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken."

22.1.1 Further, an explanation has been inserted to the said Rule 2(e), vide Notification No.3/2011-C.E.(N.T.), dated 01-03-2011, which is applicable with effect from 01-04-2011, and the same reads as under:

"Explanation: For the removal of doubts, it is hereby clarified that "exempted services" includes trading."

22.1.2 Further, with effect from 01-07-2012, an amended Rule 2(e) has been introduced vide Notification No. 28/2012-C.E. (N.T.), dated 20-06- 2012, and the same reads as under:

"(e) "exempted service" means a-

- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken; but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.'

22.2. Rule 6 of Cenvat Credit Rules, 2004: The said rule provides for the obligation of a manufacturer or producer of final products and a provider of taxable services for availing Cenvat credit on inputs and input services.

22.2.1 Sub-rule (1) of the said Rule 6 provides that Cenvat Credit shall not be allowed on such quantity of inputs used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

22.2.2 Further, sub-rule (2) of Rule 6 provides that 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 services 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 the receipt, consumption and inventory of inputs used and/or for the receipt and use of input services in or in relation to the manufacture of exempted goods and dutiable final products or for the provision of exempted services and for the provision of output services excluding exempted services. The said sub-rule provides that the assessee shall take Cenvat credit only on inputs under sub-clause (ii) and (iv) of clause (a) and input services under sub-clause (ii) and (iv) of clause (b) of the said sub-rule (2). The said sub-rule (2) is reproduced below for easy reference:

"(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

- (a) the receipt, consumption and inventory of inputs used –
 - (i) in or in relation to the manufacture of exempted goods;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
 - (iii) for the provision of exempted services;
 - (iv) for the provision of output services excluding exempted services; and

- (b) *the receipt and use of input services –*
- (i) *in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;*
 - (ii) *in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;*
 - (iii) *for the provision of exempted services; and*
 - (iv) *for the provision of output services excluding exempted services, **and shall take CENVAT credit only on inputs under sub- clauses (ii) and (iv) of clause (a) and input services under sub- clauses (ii) and (iv) of clause (b).***

(Emphasis supplied)

22.2.3. Further, sub-rule (3) of Rule 6 provides that in case manufacturer of goods or the provider of output services, opts not to maintain separate accounts as provided in sub-rule (2); he shall follow any one of the following options as applicable to him namely:-

- (i) *pay an amount equal to five per cent (six per cent w.e.f. 01-04- 2012) of value of the exempted goods and exempted services; or (ii) pay an amount as determined under sub-rule (3A); or*
- (ii) *maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clause (c) of sub-rule (3A) shall not apply for such payment.*

22.2.4 Sub-rule (3A) of Rule 6 of the CCR, 2004 further reads as under:-

"(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

- (a) *while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely...*
- (b) *the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month, -*
 - (i) ...
 - (ii)....
 - (iii) *the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of (E/F) removal or provision of exempted services (provisional) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;*
- (c) *the manufacturer of goods or the provider of output service, amount of CENVAT credit shall determine finally the attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-*
 - (i)
 - (ii)...
 - (iii) *the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during*

the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

- (d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;*
- (e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;*

23. The assessee in their submissions have contended that most of the services considered as 'common' in the impugned Show Cause Notice are in fact not 'common input services'.

23.1 In this regard, I find that the above submission of the assessee is not acceptable, in as much as, they have not furnished any documentary evidence to support their contention. Further, for determining the quantum of the Cenvat credit attributable to the exempted service, the categories of the exempted services have no relevance. I find that as per the formulae prescribed under Rule 6 (3A) (c) (iii) of the CCR, 2004, the following factors' are relevant:

- (I) $M = \text{Value of exempted services provided} + \text{total value of exempted goods manufactured and removed during the financial year};$*
- (II) $N = \text{Value of taxable output service provided} + \text{value of exempted services provided} + \text{value of the dutiable and exempted goods manufactured and removed};$*
- (III) $P = \text{Total Cenvat credit taken on input services during the financial year.}$*

23.2 I, therefore, find that the duty demanded in the impugned SCN has been correctly worked out in terms of the aforesaid

formulae and hence the categories of the exempted service have no relevance with the computation of the duty demand.

24. The assessee in their submissions have also contended that there are computation errors in the working of the duty demand. The assessee have contended that the value of dutiable goods manufactured and removed as shown under the factor "N", should have been Rs.360,24,98,262/-instead of Rs.172,23,69,388/- as considered by the Department in the impugned S.C.N. According to them, the amount of Rs.360,24,98,262/- includes the value of dutiable goods removed from their Pimpri, Hyderabad and other various sites, whereas the Department has considered the dutiable goods removed by the Pimpri unit alone. They have further stated that the value of dutiable goods cleared from the Pimpri unit should have been considered as Rs. 175,60,76,814/- as against Rs. 172,23,69,388/- considered in the impugned S.C.N.

24.1 I find that the above submissions of the assessee is not acceptable. In this regard, I refer to the definition of the "assessee", given in Rule 2(c) of Central Excise Rules, 2002 (this reference is aptly drawn in terms of Rule 2(t) of the CCR, 2004). Accordingly, an assessee means...

"assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person;

24.2 I find that the term 'assessee' in this case is relevant to the factory located at Pimpri, Pune, which is holding Central Excise Registration. The impugned SCN has been issued to the assessee of Pune-I Central Excise Commissionerate in respect of the said factory of the assessee. It is an undisputed fact that Pune-I Commissionerate has no jurisdiction over the activities of other manufacturing units/sites of M/s Thyssenkrupp Industries India Ltd., who are holding separate Central Excise Registrations. Thus, any reference to the activities of the unit located at Hyderabad or at various sites, having different Central Excise registrations, being separate entities in terms of the Central Excise Law, would be extraneous, being ultra vires and beyond

the legal ambit. Thus, there arises no question of considering the total turnover of Rs.360,24,98,262/- of all the units/factories for calculating the assessee's duty liability. Since the calculation of the amount of Rs.172,23,69,388/- is based on the data / information available in the ER-1 returns of the Pimpri Plant which is registered as a Central Excise assessee within the jurisdiction of Central Excise, Pune-I Commissionerate, and the information submitted by the said unit to the Range officer from time to time, the demand has been correctly worked out and legally sustainable. I find no relevance in taking the information relating to other units while computing the amount for the assessee's unit at Pimpri, Pune, in terms of Rule 6(3A)(c)(iii) of the CCR, 2004. Further, the assessee have not substantiated their claim with documentary evidence that the value of dutiable goods cleared from the Pimpri unit should have been considered as Rs. 175,60,76,814/- as against Rs. 172,23,69,388/- considered in the impugned S.C.N. I, therefore, hold that the amount of Rs.172,23,69,388/- has been correctly considered, and reject the assessee's contention that the total turnover Rs.360,24,98,262/- of all the units/factories/sites merited consideration for calculating the assessee's duty liability.

24.3 In this regard, I rely upon the decision of Hon'ble CESTAT in the case of Commissioner of Central Excise, Guntur V. Integral Construction Company [2010 (17) S.T.R. 380 (Tri. Bang.)], wherein the Tribunal has held as under:-

.....

25. The assessee in their submission have also contended that the whole basis for computation of the demand of Rs.8,62,06,300/- is wrong on account of the following facts:

- (i) The total input service tax credit has been considered for calculating the pro-rata credit attributable to exempted services. The total input service tax credit taken during the subject period is Rs.22,75,99,680/- has been taken for such a working, instead of considering service tax credit taken only on "Common" input services to the extent of Rs.2,04,87,485/-, as provided in the said Rule 6 (3)(ii) of CCR 2004.*

(ii) The dutiable turnover relating to Pimpri unit to the extent of Rs.172,23,69,388/- (correct amount is Rs.175,60,76,814/-) alone has been considered in the working annexed to show cause notice instead of considering the turnover of Rs.360,24,98,262/- which is as per their working, which has also led to the difference in arriving at the excess pro rata cenvat credit reversal sought by the department in the impugned show cause notice.

25.1 In short, the assessee has challenged the values of factors "P" and "N" of the formula provided under Rule 6(3A)(c)(iii) of the CCR,2004. I have already dealt with their contention with regards to factor "N", in Para 24.2 above, holding that the dutiable turnover of Rs.172,23,69,388/- pertaining to the Pimpri unit has been correctly considered.

25.2 I find that the factor "P" of the formulae stipulated under Rule 6(3A)(c)(iii) of the CCR,2004 denotes Total Cenvat credit taken on input services during the financial year'. The assessee's contention that Rule 6 (3)(ii) of the CCR, 2004 provides for considering the service tax credit taken only on common input services, is factually incorrect, in as much as, the said Rule reads as follows .. "pay an amount as determined under sub-rule (3A)".

25.3 Further, Rule 6(3A)(c)(iii) of the CCR, 2004 reads as under- "(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year."

25.4 It is, therefore, evident that the above provisions are crystal clear and that there is no scope of having different interpretations and restricting the scope of the factor "P", by

substituting it with Cenvat credit taken only on common input services instead of the total Cenvat credit taken on all input services during the financial year. In this regard, I rely upon the judgment of Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. [2010 (256) E.L.T. 369 (Guj.)], wherein the Hon'ble Court has held that no canon of interpretation permits exercise of rewriting statutory provision. The relevant para of the said judgement is reproduced below for easy reference :-

"16. The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub- section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute, such right cannot be available to a statutory Tribunal."

26. The assessee in their submissions have also contended that the total Cenvat credit of Rs.22,78,34,139/- has been considered in the SCN (as factor "P"), whereas it should have been Rs.2,04,87,485/- only, in as much as, out of the total cenvat credit of Rs.22,75,99,680/-, Rs.20,71,12,194/- pertains to Cenvat credit of input services used exclusively for dutiable final products or taxable output services for which there is 100% admissibility, and only balance cenvat credit of Rs.2,04.87.486/- is attributable to credit availed on common input services. No part of such legitimate cenvat credit availed can be denied, since none of the provisions of Rule 6 (1) or Rule 6 (2) or Rule 6 (3) r/w 6 (3A) is applicable to such services, as such input service credit has been availed by virtue of Rule 3 r/w Rule 2 (1) and Rule 9 of CCR 2004. The assessee have contended that consideration of the entire cenvat credit of Rs.22,75,99,680/- for the purpose of computation of pro-rata reversal of cenvat credit u/r Rule 6 (3) (ii) r/w 6 (3A) of CCR 2004 is incorrect, when the said provisions of rule requires that only credit of such input

services which are used for both dutiable / exempted goods and taxable / exempted services to be taken and the said rule no way provides to take entire cenvat credit which will include inputs services which are used for specific dutiable final products and also taxable output services. When it comes to pro rata reversal under Rule 6 (3) r/w Rule 6 (3A) (c)(iii) only input services which have been used for "both dutiable/ taxable output services as well' exempted goods / exempted services" is only to be considered and not all the cenvat credit availed on input services. In short, the assessee's contention is that as they have maintained separate accounts for receipt and use of input services in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal; and for the provision of output services excluding exempted services, as provided under Rule 6 (2)(b) of CCR, 2004, except for the common input services, the said amount of Cenvat credit, which is admissible to them, should not be considered for determining the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services.

26.1 I find that the above submission of the assessee is not acceptable. There is no proposal in the impugned SCN to deny the Cenvat credit on the input services which have been used exclusively for dutiable final products or taxable output services, as contended by the assessee. It is only the turnover of such Cenvat credit which has been considered for determining the quantum of the Cenvat credit attributable to the exempted service as provided under Rule 6(3A)(c)(iii) of the CCR, 2004. This turnover has been correctly considered as discussed by me in Paras 25.2 and 25.3 above. The contentions made by the assessee are therefore factually incorrect and hence liable to be rejected.

26.2 I find that the assessee have contended to have partially complied with the provisions of Rule 6 (2) (b) i.e. compliance to the extent of sub- clauses (ii) and (iv) of the said Rule. However, they have failed to comply with the requirements of sub-clauses (i) and (iii) and to follow the important condition of the said Rule

of not taking credit on common input services. They were, therefore, not eligible for availing of the procedure prescribed under Rule 6(2) and correctly opted for Rule 6 (3)(ii). Once they have opted for Rule 6(3)(ii), it was obligatory upon them to follow the procedure as prescribed under Rule 6 (3A), in totality, and to work out the amount payable by them at the end of the financial year strictly as provided under Rule 6 (3A)(c)(iii) of the CCR, 2004, and there was no scope for deviation from the procedure prescribed therein. It is not permissible under the provisions of Rule 6 of the CCR, 2004 to partially follow the procedure under sub-rule (2), and simultaneously for the remaining portion to opt for the procedure under sub-rule (3)/(3A). I, therefore, hold that it is obligatory upon the assessee, who have taken Cenvat credit on common input services, to follow any of the options of Rule 6 (3) read with Rule 6(3A) in respect of entire activities of their Pimpri unit, on account of their failure to maintain separate accounts for receipt and use of input services as provided under clause (b) of Rule 6(2) of the CCR, 2004. Accordingly, I find that for the purpose of calculation of amount under Rule 6(3A), the entire input service credit availed by the assessee's Pimpri unit is required to be considered. Therefore, the cenvat credit required to be considered would be Rs.22,78,34,139/- and not Rs.2,04,87,486/-, as contended by the assessee.

26.3 In this regard, I rely upon the judgement of Hon'ble Bombay High Court in the case of M/s NICHOLAS PIRAMAL (INDIA) LTD - 2009 (244) E.L.T. 321 (Bom.), wherein Hon. Court has, inter alia, held as under:-

"...."

26.4

27. The assessee have also contended that if the turnover figure of Rs.175.60.76.814/- pertaining only to Pune unit is to be considered then it becomes necessary to reduce the cenvat credit figures of common input services to the extent of Rs.43.03.691/- from Rs.2,04,87,485/-, which credit corresponds to the turnover of Units located at Hyderabad and units located at other sites. They have also submitted that cenvat credit of common input services of Rs.43,03,691/- pertaining to other

units such as Hyderabad and other units at various sites, can be legally availed and used by the main unit having ISD / centralized service tax registration.

27.1 The assessee's above contention is not acceptable. I find that the Cenvat credit on input services pertaining to their other units has been consumed in their main unit i.e. Pimpri unit. Therefore, the same has been correctly considered while determining the amount of Cenvat payable by them in terms of Rule 6(3A)(c)(iii) of the CCR, 2004.

28. In view of the foregoing discussions, I find that the amounts for the three parameters of the formula as per Rule 6(3A)(c)(iii) of the CCR, 2004, works out as under :-

i.	"M" viz., the total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year 2011-12	Rs. 2,61,44,28,489/-
ii.	"N" viz., the total value of taxable (output) and exempted services provided and total value of dutiable and exempted goods manufactured and removed during the financial year 2011-12	Rs. 6,90,96,58,182/-,
iii	"P" viz., total CENVAT credit taken on input services during the financial year 2011-12	Rs. 22,78,34,139/-

28.1 Accordingly, the amount attributable to input services used in or in relation to provision of exempted services, as per the formula $(M/N) \times P$, works out to Rs. 8,62,06,300/-, as detailed under :-

$$\frac{\text{Rs.} 2,61,44,28,489/-}{\text{Rs.} 6,90,96,58,182/-} \times \text{Rs.} 22,78,34,139/- = \text{Rs.} 8,62,06,300/-$$

29. Thus, to sum up, I find that the assessee have availed the Cenvat credit on certain common input services, which have been used in relation to the manufacturing activity as well as provision of exempted services, i.e. trading activities and since they have admittedly not maintained separate accounts, as required under the provisions of Rule 6(2), they have opted for the procedure as prescribed under Rule 6(3A) of the Cenvat Credit Rules, 2004. They were, therefore, required to pay the amount as determined in terms of Rule 6(3A)(c)(iii) of the CCR, 2004. However, it is found that the assessee failed to correctly determine and pay the amount as provided under Rule

6(3)(c)(iii) of the CCR, 2004. Thus, the amount of Rs.8,62,06,300/- as determined in para 28.1 above, is liable to be recovered in the manner as provided under Rule 14 for recovery of Cenvat credit wrongly taken, in view of Explanation- If below sub-rule (3D) of Rule 6 of Cenvat Credit Rules, 2004, which clearly provides that "if the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A) and (3B), it shall be recovered, in the manner as provided in Rule 14, for recovery of Cenvat credit wrongly taken," and I hold accordingly. I further hold that the assessee are also liable to pay interest on such amount in terms of provisions of Rule 6(3A)(e) read with Rule 14 of CCR, 2004 and Section 11AB / 11AA of the Central Excise Act, 1944."

4.3 From the impugned order reproduced as above the only dispute in the matter is in relation to determination of the value of factors "M", "N" & "P" in the formula prescribed as per the Rule 6 (3A) for the determination of the proportionate credit to be reversed in respect of the common input services used for providing the exempted services – trading activities and used in manufacture of the dutiable goods. We find the issue has been settled by the tribunal in the case of E-Connect Systems [2021 (376) ELT 678 (T-Del)] holding as follows:

"14. The issue that arises for consideration in this appeal is regarding the manner of computation of proportionate reversal of credit determined under Rule 6(3A) of the Rules. The contention of the Department is that for the purpose of reversal, the total Cenvat credit taken on input services, including the common input services should be considered while the contention of the appellant is that "total Cenvat credit taken on input services" should include only common input services and services used in exempted services and not the services used exclusively in rendering taxable output services.

15. In order to appreciate contentions, it will be appropriate to refer to the relevant provisions of Rule 6 of the Rules and it is as follows :

"Rule 6. Obligation of a manufacturer or producer of final products and a provider of taxable service. - (1) The CENVAT credit shall not be allowed on such quantity of input used in or in

relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacturer of exempted goods and their clearance upto the place of removal 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) ******

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

(i) pay an amount equal to six per cent of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be six per cent. of the value so exempted.

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 used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or output services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay provisionally, for every month,
-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D , where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A ;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services (provisional) = (E/F) multiplied by G , where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month.”

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

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

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

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

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

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

21. In this connection, reference can be made to the decision of the Tribunal in Reliance Industries, wherein while dealing with a

similar issue, the Tribunal held that the term total Cenvat credit taken on input services in the pre-amended rule is only total Cenvat credit of common service and will not include the Cenvat credit on input/input services exclusively used for the manufacture of dutiable goods. The relevant portion of the decision is reproduced below :

"7. We have carefully considered the submissions made by both the sides and perused the record. The limited issue to be decided in this case is that for the purpose of calculating the CENVAT credit for reversal in terms of rule 6(3A) as per of formula given therein, whether the total Cenvat credit means it is including the Cenvat credit of input services exclusively used for dutiable product should be taken or total Cenvat credit of only common input service should be taken. Before proceeding, it is necessary to read the relevant Rule 6(1), (2), (3) pre and post-amendment notification.....

.....

10. From the above it can be seen that when anomaly was noticed, the Government has substituted the sub-rule (3A). The legislators very consciously substituted the Rule with intention to give a clarificatory nature to the provision of sub-rule (3A) so as to make it applicable retrospectively. It was all along not the intention of the Government to deny Cenvat credit on the input/input service even though used in the dutiable goods. Keeping the said view in mind, the substitution in sub-rule (3A) of Rule 6 was made. Therefore, the substituted provision of sub-rule (3A) shall have retrospective effect being clarificatory."

4.4 In case of National Steel & Agro Industries Ltd. [Final Order No 51518-51519/2021 dated 25.05.2021, following has been held:

"26. It is clear from the above, that the final amount to be debited as inadmissible CENVAT credit under Rule 6(3A) is $D=(E/F) \times C$ where, E represents the sum of value of exempted goods and exempted services, F represents the sum of value of exempted and dutiable goods as well as exempted and non-exempted services. 'C' is calculated as $C = T - (A+B)$ where T is the total credit taken, A is the credit on inputs and input services

used exclusively in the exempted goods and exempted services and hence ineligible and B represents the credit on inputs and input services used exclusively in dutiable goods and non-exempted services. In other words, C represents only the credit taken on the common inputs and input services.

27. In the present appeals, the appellant has taken no credit on inputs or input services used exclusively for exempted services and had taken credit only on the inputs and input services used in manufacture of dutiable goods. The only dispute is regarding the credit on common input services used in their headquarters which was transferred to the field units through ISD invoices. This credit cannot be attributed wholly to either the dutiable goods manufactured or the exempted service rendered viz., trading. This should therefore, be apportioned. The adjudicating authority, therefore, erred in taking the total credit taken (including credit taken on inputs and input services used exclusively for manufacture of dutiable goods) to calculate the amount of CENVAT credit that must be reversed under Rule 6(3A). For the period April 2016 to June 2017, this was clearly, against the explicit rule position as laid down in Rule 6(3A)(b) discussed above.

28. Insofar as the period 2015- 2016 is concerned, during the relevant period, Rule 6(3A) (c) (iii) read as follows: (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

29. In this formula, there is no dispute regarding the values of M (the value of exempted services and exempted goods) and N (total of exempted and non-exempted services and dutiable and exempted goods). The dispute is regarding $\underline{P}$ which, according to the Revenue, is $\underline{\text{the total CENVAT Credit taken on input}}$

services', i.e., it should include not only the credit taken on common input services but also credit taken on input services used in manufacture of dutiable goods. According to the appellant only the CENVAT credit taken on common input services should be considered as the total CENVAT Credit taken since that is the credit in dispute which can be disallowed in proportion to the value of the exempted services to the total turnover.

30. To appreciate this issue, Rule 6 must be read as a whole while interpreting this formula. Rule 6(1) prohibits any credit on inputs and input services used in or in relation to exempted goods or exempted services. The rationale of this provision is evident. CENVAT credit enables one to use the credit to reduce duty or tax liability on the output goods or services. If they are not chargeable to duty or tax, one cannot take credit either. However, there are those who produce both dutiable and exempted goods and taxable and exempted services. Rule 6(2) deals with such situations and requires such a person to maintain separate records and take credit only the inputs and input services which are used for manufacture of dutiable goods or provision of taxable services. However, if one produces both dutiable and exempted goods and provides both taxable and exempted services and chooses not maintain separate records, Rule 6(3) gives different options of paying an amount as a percentage of the value of the exempted goods and services or reversing an amount of credit taken. In the factual matrix of this case, the appellant has followed Rule 6(2) and maintained separate records and has not taken credit on the inputs and input services used in provision of exempted service viz., trading and has taken credit only on the inputs and input services used in manufacture of dutiable goods.

31. However, there are some services used in the headquarters office of the appellant which cannot be attributed completely to either the manufacture of dutiable goods or to the provision of exempted services viz., trading. The only option in respect of such services is to divide the credit on such input services in proportion to the value of the dutiable goods and exempted services and deny credit to the extent it is attributable to the

exempted services using the formula under Rule 6(3A). Therefore, the total credit taken in the formula under Rule 6(3A) can only refer to such credit as is not covered by Rule 6(2), i.e., credit on common input services. Only such an interpretation is harmonious with the restriction on credit laid down under Rule 6(1) and the provision for maintenance of separate records under Rule 6(2). We do not find anything in the CENVAT Rules which prohibits an assessee from following Rule 6(2) in respect of the inputs and input services where it is feasible to maintain separate records and follow Rule 6(3A) in case of such inputs or input services where it is not feasible to do so. It would have been a different situation if the appellant had not followed Rule 6(2) at all and took credit on all the inputs and input services regardless of whether they are attributable to the manufacture of dutiable goods or provision of exempted services. Then the total CENVAT credit taken during a year would have included all the CENVAT credit taken.

32. We concur with a similar view taken by a coordinate Bench at Ahmedabad in Reliance Industries. Paragraph 8 of the decision is reproduced below: "8. From the reading of Rule 6(1), it is clear that only in respect of input or input service used in exempted goods are not allowed. That means input or input service used in taxable service/dutiable goods, CENVAT credit is allowed. Sub-rule (2) of Rule 6 is only as an option that if any input or input services used in exempted goods, credit should not be allowed and only with this intention some mechanisms for expunging CENVAT credit attributed only to the exempted goods are provided. As per clause (b) (ii) & (iv), it is clearly provided that entire credit in respect of receipt and use of inputs/ input service is allowed when such input and input service is used in dutiable final products and taxable service. However, nowhere in Rule 6 it is provided that the input or input service used in dutiable goods shall not be allowed. The Revenue is only interpreting the term —total CENVAT credit provided under the formula. If the whole Rule 6(1)(2)(3) is read harmoniously and conjointly, it is clear that —Total CENVAT Credit for the purpose of formula under Rule 6(3A) is only total CENVAT credit of common input service and will not include the CENVAT credit on

input/ input service exclusively used for the manufacture of dutiable goods. If the interpretation of the Revenue is accepted, then the CENVAT credit of part of input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of the Rule of CENVAT Credit Rules, 2004.

(emphasis supplied)

33. Since the appellant has followed Rule 6(2) and has not taken any CENVAT credit on the input services which were used exclusively for providing exempted services, the formula under Rule 6(3A) can only be used to only proportionately divide the credit taken on common input services and deny credit to the extent it is attributable to the exempted service viz., trading during the periods relevant to both appeals, viz., 2015-16 and April 2016 to June 2017.

34. To sum up, the main basis on which the demands were raised in both the Show Cause Notices have already been dropped by the adjudicating authority since the appellant had reversed proportionate amount of credit. Only the computation of the amount to be reversed is in dispute. The adjudicating authority has erred in (a) taking the total turnover of traded goods as the value of trading service instead of following Explanation 1(c) to Rule 6 to calculate the value of trading service; (b) For the periods covered in both appeals, the adjudicating authority has erred in reckoning the total credit taken instead of credit on common input services in calculating the amount of credit required to be reversed. The impugned orders, therefore, cannot be sustained."

4.5 Undisputedly and admittedly appellant has reversed/ paid the amount of the CENVAT Credit attributable to trading activities as per the prescribed formula in Rule 6(3A) as interpreted in the above referred orders. The fact of reversal is also noted in the impugned orders.

4.6 Thus we do not find any merits in the impugned order on the merits of demand. As the demand is set aside there can be no question for interest or penalty. Hence the impugned orders are set aside.

5.1 Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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