CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 85290 of 2025
(on behalf of respondent)

In

Service Tax Appeal No. 85273 of 2019

(Arising out of Order-in-Original No. MUM/CGST-MW/COMMR/56/SP/2018-19 dated 31.10.2018 passed by Commissioner, CGST, Mumbai West.)

Speciality Restaurants Ltd. .... **Appellant**
B-25, 4th Floor, Mayura Landmark-I,
Off New Link Road, Andheri West, Mumbai- 400 058.

Versus

Commissioner of CGST and Central Excise, Mumbai West .... **Respondent**
Bharat Sanchar Nigam Limited, Administrative Building,
6th Floor, D Wing, Juhu Tara Road,
Santacruz West, Mumbai- 400 054.

<u>Appearance:</u>

Shri Vinay S. Sejpal, Advocate for the Appellant
Shri Jitesh Kumar Jain, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85890/2026

Date of Hearing: 15.07.2026
Date of Decision: 15.07.2026

Per: S.K. MOHANTY

This miscellaneous application has been filed by the Revenue for change of name and address of the respondent in the cause title from "*Commissioner of Central Excise & Service Tax, Mumbai West, Ground Floor, Mahavir Jain Vidyalaya, C.D. Burfiwala Road, Juhu Lane, Andheri (W), Mumbai - 400058*" to "*Commissioner of CGST and Central Excise, Mumbai West*", having address at "*Bharat Sanchar Nigam Limited, Administrative Building, 6th Floor, D Wing, Juhu Tara Road, Santacruz (W),* *Mumbai – 400054*" in the cause title to the appeal filed by the appellant. The prayer made by Revenue is considered and accordingly, the miscellaneous application is allowed. The said changed name and address of the respondent is being substituted in the cause title to this appeal.

2. Heard both sides and examined the case records.

3. The appellants herein, are engaged in providing 'Restaurant and outdoor catering services' and for that purpose, got themselves registered with the jurisdictional Service Tax authorities. In terms of Rule 2(C) of the Service Tax (Determination of Value) Rules, 2006 read with the Notification No. 12/2006-S.T. dated 19.04.2006 as amended by Notification No. 24/2012–S.T. dated 06.06.2012, the appellants had determined the taxable value @ 40% of the total turnover for payment of service tax. Availment of such abatement is subject to condition that no CENVAT Credit shall be taken on the duties paid on any goods classifiable under Chapter 1 to 22 of the Central Excise Tariff Act, 1985. Since, for provision of the above taxable services, the appellants had used the goods for preparation of food articles and also engaged in provision of service under the above taxable category, the Department had interpreted that the benefit provided under the notification dated 19.04.2006 and 06.06.2012 shall not be available to the appellants inasmuch as they had sold the cooked food without payment of Central Excise duty. Thus, the Department was of the impression that sale of food being exempted, are confirming to the definition of 'exempted service' as per Rule 2(l) of the CENVAT Credit Rules, 2004 and therefore, the appellants were required to follow the procedures laid down under Rule 6(3) of the said Rules of 2004. On basis of such understanding, show-cause proceedings were initiated against the appellants, which culminated into the Order-in-Original dated 31.10.2018 (for short, referred to as "the impugned order"), wherein the learned Commissioner of CGST, Mumbai West Zone has confirmed the proposals made therein. Feeling aggrieved with the impugned order dated 31.10.2018, the appellants have preferred this appeal before the Tribunal.

4. We find that the issue with regard to applicability of the provision of Rule 6(3) of the Rues of 2004 has been dealt with by the Central Board of Indirect Taxes and Customs (CBIC) in the Circular No. 213/3/2019-Service Tax dated 05.07.2019, clarifying as under: -

> *"3.0 **Issue: Is reversal under rule 6(3) of the Cenvat Credit Rules 2004 additionally required, when providing the** "service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity". (i.e. section 66E (i) of the Finance Act, 1994) ?*
>
> *Answer: On a plain and strict interpretation of the wording of the relevant provisions, other than the restrictions in rule 2C of the Service Tax (Determination of Value) Rules 2006, there is no need for any further reversal of credit under rule 6(3) of the Cenvat Credit Rules 2004."*

On reading of the said Circular, it would transpire that in case of provision of the "Restaurant Service", where food or any other articles are supplied, then there is no need for reversal of CENVAT Credit under Rule 6(3) of the Rules of 2004.

5. The dispute involved in the present appeal is for the period from August, 2012 to March, 2015. We find that for the subsequent period i.e., April, 2015 to June, 2017, the learned Commissioner of CGST, Mumbai West, by placing reliance on the said Circular dated 05.07.2019 of CBIC had dropped the proposals made in the show-cause notice against the appellants. Since there is no ambiguity with regard to exempted goods/ services, in the circumstances when service is provided in a restaurant, we are of the view that stand of the Department for reversal of CENVAT Credit by taking recourse to sub-rule (3) of Rule 6 *ibid* cannot be sustained.

6. In view of the above discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged these demands on the appellants. Therefore, the impugned order is set aside and appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha