# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**
and
**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

C.M.A.No.1179 of 2018

M/s.Honda Motor India Private Limited,
No.82, Panapakkam Village,
Karanodai Periyapalayam Road,
Uttukottai Taluk,
Thiruvallur – 601 102.
Tamil Nadu. ... Appellant

Vs.

1.The Commissioner of Central Excise
and Service Tax,
Chennai Outer Commissionerate

2.The Customs, Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
Chennai – 600 006. ... Respondents

Prayer: Appeal under Section 35G of the Central Excise Act, 1944, against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai dated 08.11.2017 in Final Order No.42827/2017.

For Appellant : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran & Sridharan
Attorneys

For Respondents :
For R1 : Mr.K.S.Ramaswamy
Senior Standing Counsel
For R2 : Tribunal

## JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Civil Miscellaneous Appeal has been filed against the Final Order No.42827/2017 in Appeal No.E/41533/2017-SM dated 08.11.2017 passed by the second respondent the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai.

2. By the Impugned Order dated 08.11.2017, the second respondent had dismissed the appeal of the appellant against the Order-in-Appeal No.91/2017 (CXA-I) dated 28.03.2017 passed by the Appellate Commissioner.

3. The Appellate Commissioner in turn had earlier affirmed the demand confirmed by the Additional Commissioner of Central Excise vide Order-in-Original No.55/2016 and Order-in-Original No.56/2016 in respect of the demand proposed in the following Show Cause Notices:-

| Sl.No. | Show Cause Notice No. | Date | Period | Amount (Rs.) |
|---|---|---|---|---|
| 1. | 19/2015 | 01.05.2015 | April 2013 to March 2014 | 12,07,125 |
| 2. | 36/2015 | 19.08.2015 | April 2014 to March 2015 | 28,15,648 |
| | | | Total : | **40,22,773** |

4. At the time of admission, this Court has framed the following substantial questions of law, to be answered are as follows:-

1. *Whether the 2nd respondent is correct in holding that 'total Cenvat credit taken' into consideration instead of 'common Cenvat credit taken' for the purpose of reversal of credit under Rule 6(3A) (c) (iii) of the Cenvat Credit Rules, 2004?*

2. *Whether the 2nd respondent is correct in holding that the term 'total Cenvat Credit taken' used in the provision of Rule 6(3A)(c)(iii) of Cenvat Credit Rules, 2004 is unambiguous?*

3. *Whether the 2nd respondent is correct in placing reliance on the Stay Order of the Hon'ble Tribunal in the case of Thyssenkrupp Industries to hold that only 'total Cenvat credit taken' should be considered in the formula under Rule 6(3A)(c)(iii) of Cenvat Credit Rules, 2004?*

5. In this appeal, the appellant has questioned the correctness of the impugned Final Order dated 08.11.2017 passed by the second respondent in Final Order No.42827/2017 in Appeal No.E/41533/2017-SM.

6. The appellant was engaged in manufacture of “dutiable goods” and components. Apart from the manufacture of “dutiable goods”, the appellant was also engaged in “trading of goods” namely “generated parts” which involved mere packing of bought out parts.

7. The appellant had availed CENVAT credit on common input services, which were both used for manufacture of “dutiable goods” namely “automobile parts” and for trading of goods namely “generated parts”.

8. Since trading of “generated parts” was in the “negative list” under Section 66D(e) read with Section 65B(44) of the Finance Act, 1994, no service tax was payable on such trading activity.

9. Therefore, it was deemed to be “exempted service” within the meaning of Rule 2(e) of the CENVAT Credit Rules, 2004/“exempted goods” within the meaning of Rule 2(d) of the CENVAT Credit Rules, 2004 for the purpose of Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004.

10. The allegation against the appellant was that the appellant availed CENVAT Credit on input services which were common to both manufacturing activity and the aforesaid trading activity but the appellant failed to pay the amount correctly under Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004.

11. The allegations was that though the appellant had opted to pay the amount under Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004 but had not furnished necessary intimations under Rule 6(3A)(a) vide their letter dated 01.04.2004.

12. The allegations of the Department was that the appellant was required to pay the amount as per the formula in Rule 6(3A)(c)(iii) of the Cenvat Credit Rules, 2004 attributable to the input services both used in or in relation to manufacture of "exempted goods" (and their clearance upto the place of removal) and/or provision of "exempted services" as per the Formula namely <u>M</u>/<u>N</u> x <u>P</u> where:-

> (i) <u>M</u> denoted total value of "exempted services" provided plus the total value of "exempted goods" manufactured and removed during the financial year, and
> (ii) "N" denoted total value of "taxable" and "exempted

services" provided, and total value of "dutiable" and "exempted goods" manufactured and removed during, the financial year, and

(iii) "P" denoted total CENVAT credit taken on "input services" during the financial year.

13. The case of the appellant was that the CENVAT credit taken on input service during the financial year for the purpose of "P" in the above Formula is to be confined to "common input services" availed which were both used in relation to "dutiable final products" and "exempted services" namely "trading activity" and not the total of CENVAT credit availed on "input services" as it would lead to distortion.

14. At the outset, it was submitted by the learned counsel for the appellant that the issue is no longer *res integra* and is covered by the following three decisions of the CESTAT, Chennai and the order of the CESTAT, New Delhi in the Appellant's own case.

| Sl.No. | Excise Appeal No. | Final Order No. | Date |
|---|---|---|---|
| 1. | 41303/2019 | 40540/2020 | 24.02.2020 |
| 2. | 41120/2016 | 40717/2021 | 11.01.2021 |
| 3. | 54157/2018 | 51046/2021 | 22.02.2021 |

15. Apart from the above, a reference is also made to Order-in-Original No.117/AC/CGST&CE/Sankrail/2017-18 dated 08.03.2018 passed by the Assistant Commissioner of Central Tax, Sankrail CGST Division, Howrah Commissionerate, dealing with an identical issue wherein the demand proposed was dropped.

16. Arguing further, the learned counsel for the appellant would submit that the formula under Rule 6(3A) of the CENVAT Credit Rules, 2004 has to be construed by confining the denomination "P" to the total "common input services" and not the total credit availed by an assessee.

17. That apart, the learned counsel for the appellant submitted that the entire scheme under Rule 6(3A) of the CENVAT Credit Rules, 2004 underwent to change vide Notification No.13/2016-CE (NT) dated 01.03.2016. Therefore, it is submitted that, it has to be read as clarificatory nature and therefore retrospective.

18. It is further submitted that the Rule was substituted by virtue of the aforesaid notification. The learned counsel for the appellant would further

submit that the same Tribunal has allowed the appeal of the appellant for the Assessment Years 2011-2012 and 2012-2013 vide its Final Order No.40717/2021 in Central Excise Appeal No.41120 of 2016 when the provisions read identically and for the Financial Year 2015-2016 vide its order dated 24.02.2020 vide Final Order No.40540/2020 in Central Excise Appeal No.41303 of 2019 in the appellant's own case reported in 2020 (3) TMI 523.

19. Apart from the above, the appellant has also placed reliance on Circular No.334/8/2016-TRU dated 29.02.2016. Specifically, a reference was made to Paragraph 13 of the Circular in the light of changes relating to service tax and the changes relating to CENVAT Credit Rules, 2004 vide Circular No.334/8/2016-TRU dated 29.02.2016 from D.O.F.No.334/8/2016-TRU dated 29.02.2016 of the Central Board of Excise and Customs, New Delhi, Ministry of Finance (Department of Revenue), Government of India.

20. The learned Standing Counsel for the respondent would submit that the appellant ought to have confined the common "input credit" by restricting the proportionate credit for working the formula in Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004. Since the appellant has failed to restrict the

credit, the Impugned Final Order passed by the Appellate Tribunal does not call for any interference.

21. On the other hand, it was the case of the Department that while adopting the said formula for calculating the amount payable under the Rule 6(3A)(c)(iii) of CENVAT Credit Rules, 2004 in respect of P, instead of adopting total CENVAT credit availed on "common input services" during the financial year as prescribed under the said Rule, the appellant had confined CENVAT credit taken only on "common input services" during the financial year.

22. This had resulted in short payment of amount payable under the Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004 and thus, the demand was confirmed vide Order-in-Original Nos.55/2016 and 56/2016, which decision was affirmed by the Appellate Commissioner vide Order-in-Appeal No.91/2017 (CXA-I) dated 28.03.2017 and by the Appellate Tribunal vide Impugned Order dated 08.11.2017.

23. We have heard the learned counsel for the appellant and the learned Senior Standing Counsel for the first respondent.

24. The dispute had arisen on account of the alleged failure of the appellant to maintain separate account as is contemplated under Rule 6(2) of the CENVAT Credit Rules, 2004 and the appellant opting to pay amount under Rule 6(3A)(c)(iii) of the CENVAT Credit Rules, 2004 as is stood during the period in dispute.

25. The scheme under the CENVAT Credit Rules, 2004 formerly CENVAT Credit Rules, 2002 and Modvat Rules under Central Excise Rules, 1944 was to allow the "manufacturers" as also the "service providers" to avail "input tax credit" i.e., " CENVAT Credit" on duty/tax paid on "input", "input services" and "capital goods" to the extent they were to be used in or in relation for manufacture of "dutiable goods and/or "taxable services" or both.

26. There was prohibition to the effect that no credit shall 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 up to the place of removal or for provision of exempted services.

27. This is clear from **Explanation II** to Rule 6(2) of the CENVAT Credit Rules, 2004. **Explanation II** to Rule 6(2) of the CENVAT Credit Rules, 2004 reads as under:-

> "**Explanation 2** – 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 up to the place of removal or for provision of exempted services."

28. To the extent, such "inputs" or "input services" were exclusively used for providing "exempted goods" or "exempted services" no credit was to be availed where a manufacturer manufactures and clears both dutiable goods/exempted goods and/or where a service provider provides both taxable/exempted service, such manufacturer or service provider as the case may be required to maintain separate accounts for.

29. This is the mandate in Rule 6(2) of the CENVAT Credit Rules, 2004. Thus, restricted credit alone was available. Rule 6(2)(a) and Rule 6(2)(b) of the CENVAT Credit Rules, 2004 read as under:-

| **Rule 6(2)(a) of the CENVAT Credit Rules, 2004** | **Rule 6(2)(b) of the CENVAT Credit Rules, 2004** |
|---|---|
| (a) the receipt, consumption an inventory of inputs used-<br>i. in or in relation to the manufacture of exempted goods;<br>ii. **in or in relation to the manufacture of dutiable final products excluding exempted goods**;<br>iii. for the provision of exempted services;<br>**iv. for the provision of output services excluding exempted services.** | (b) the receipt and use of input services-<br>i. in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;<br>ii. **in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal**;<br>iii. for the provision of exempted services; and<br>**iv. for the provision of output services excluding exempted services.** |

30. As per **Explanation 1** to the CENVAT Credit Rules, 2004, as it stood, if the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, such manufacture shall exercise such option for all exempted goods manufactured by it or, as the case may be, all exempted services provided by it, and such option shall not be withdrawn during the remaining part of the financial year. **Explanation 1** to Rule 6(2) of the

CENVAT Credit Rules, 2004 as it stood, reads as under:-

> **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.

31. Thus, manufacturer or service provider as the case may be opting not to maintain separate account as was contemplated in Rule 6(2)(a) and (b) of the CENVAT Credit Rules, 2004, had three options, namely:-

| **Option-1** | **Option-2** | **Option-3** |
|---|---|---|
| (i) pay an amount equal to six percent of value of the exempted goods and exempted services | (ii) **pay an amount as determined under sub-rule (3A)** | (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); | | |

32. For the purpose of determination of the amount payable under 2nd option in Rule 6(3)(ii) of the CENVAT Credit Rules, 2002, a mechanism was provided in Rule 6(3A) of the CENVAT Credit Rules, 2004. Rule 6(3A) of the CENVAT Credit Rules, 2004 during the period in dispute read 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 :-
>
> (i) name, address and registration number of the manufacturer of goods or provider of output service;
>
> (ii) date from which the option under this clause is exercised or proposed to the 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 in 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 months 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 service during the month.

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-

i. the amount of CENVAT credit attributable to inputs used in or relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or relation to manufacture of said exempted goods, denotes as H;

ii. the amount of CENVAT credit attributable to inputs used for provision of exempted services = J/K multiplied by L, where J denotes the total value of exempted services provided during the financial year, K 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 financial year and L denotes the total CENVAT credit taken on inputs during the financial year minus H;

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**;

(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 percent, per annum from the due date i.e., 30th Jun till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-

i. details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally as per condition (b),
ii. CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined

as per condition (c),

iii. amount short paid determined as per condition (d), along with the date of payment of the amount short-paid,

iv. interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

v. credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four percent per annum from the due date till the date of payment."

33. The dispute has arisen only on account of interpretation of the formula in Rule 6(3A)(c)(ii) of the CENVAT Credit Rules, 2004 as it stood during the period in dispute. The dispute is whether alphabet "P" in the formula in Rule 6 (3A)(c)(ii) of the CENVAT Credit Rules, 2004 would denote the total CENVAT credit taken by a manufacturer on input services during the financial year or would denote the total CENVAT credit taken on common input services.

The formula in Rule 6(3A)(c)(ii) of the CENVAT Credit Rules, 2004 is as follows:-

| Formula | Expansion |
|---|---|
| M/N x P | Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year. (M)<br>------------------------------------------------------------<br>Total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed during the financial year. (N)<br><br>X Total CENVAT credit taken on input services during the financial year. (P) |

34. The issue relating to common input and common input service was in dispute for a fairly long period of time right from inception under the Central Excise Rules, 1944 and later under the provisions of the CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004. Several clarificatory circulars have also been issued. Taking note of all these, the Central Government amended the provisions and finally substituted the provisions vide Notification No.13/2016-CE (NT) dated 01.03.2016. The correction made in the above notification by substituting Rule 6(3A)(c)(iii) formula has to be held clarificatory in nature and therefore retrospective.

35. Under the new dispensation pursuant to amendment to Rule 6 of the Cenvat Credit Rules, 2004 vide notification No.13/2016-CE (NT) dated 01.03.2016, the "ineligible credit" was to be determined both provisionally and

finally.

36. For easy comparison and reference Rule 6 of the Cenvat Credit Rules, 2004 both before and after amendment are reproduced below:-

| Pre-2016 | Post-2016 |
|---|---|
| Rule 6. **Obligation of a manufacturer or producer of final products and a provider of output service –**<br><br>(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 manufacture of exempted goods and their clearance upto the place of removal of for provision of exempted services, except in the circumstances mentioned in sub-rule (2):<br><br>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.<br><br>(2) **Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufacturers 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** | Rule 6. **Obligation of a manufacturer or producer of final products and a provider of output service –**<br><br>(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 manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and *the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be*:<br><br>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.<br><br>**Explanation 1.** - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from |

| Pre-2016 | Post-2016 |
|---|---|
| **provider of output service shall maintain separate accounts for-**<br>(a) the receipt, consumption an inventory of inputs used-<br>i. in or in relation to the manufacture of exempted goods;<br>**ii. in or in relation to the manufacture of dutiable final products excluding exempted goods;**<br>iii. for the provision of exempted services;<br>iv. **for the provision of output services excluding exempted services;** and<br>(b) the receipt and use of input services-<br>i. in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;<br>**ii. in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;**<br>iii. for the provision of exempted services; and<br>**iv. for the provision of output services excluding exempted services,**<br>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). | the factory.<br>**Explanation 2.** - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.<br>**Explanation 3.** - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].<br>**Explanation 4.** - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]<br>[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]<br>[(3) (a) A manufacturer who manufactures two classes of goods, |

| **Pre-2016** | **Post-2016** |
|---|---|
| (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:-<br><br>(i) pay an amount equal to six percent of value of the exempted goods and exempted services or<br><br>(ii) **pay an amount as determined under sub-rule (3A); or**<br><br>(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:<br><br>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);<br><br>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 | namely :-<br><br>(i) non-exempted goods removed;<br><br>(ii) exempted goods removed; or<br><br>(b) a provider of output service who provides two classes of services, namely :-<br><br>(i) non-exempted services;<br><br>(ii) exempted services,<br><br>shall follow any one of the following options applicable to him, namely :-<br><br>[(i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or]<br><br>(ii) pay an amount as determined under sub-rule (3A) :<br><br>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) :<br><br>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 seven per cent. of the value so exempted :<br><br>Provided also that in case of transportation of goods or passengers |

| Pre-2016 | Post-2016 |
|---|---|
| then the amount specified in clause (i) shall be six percent of the value exempted.<br><br>Provided also that in case of transportation of goods of passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 percent of value of the exempted services.<br><br>**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.<br><br>**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.<br><br>**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.<br><br>(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:-** | by rail, the amount required to be paid under clause (i) shall be an amount equal to two per cent. of value of the exempted services.<br><br>**Explanation 1.** - 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.<br><br>**Explanation 2.** - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.<br><br>**Explanation 3.** - For the purposes of this sub-rule and sub-rule (3A),-<br><br>(a) **-non-exempted goods removed means** the final products excluding exempted goods **manufactured and cleared upto the place of removal;**<br><br>(b) **-exempted goods removed means** the exempted goods manufactured and cleared upto the place of removal;<br><br>(c) -non-exempted services means the output services excluding exempted services.]<br><br>**(3A) For determination of amount required to be paid 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:-**<br><br>(a) the manufacturer of goods or the provider of output service shall intimate |

| Pre-2016 | Post-2016 |
|---|---|
| (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 :-<br>(i) name, address and registration number of the manufacturer of goods or provider of output service;<br>(ii) date from which the option under this clause is exercised or proposed to the exercised;<br>(iii) description of dutiable goods or output services;<br>(iv) description of exempted goods or exempted services;<br>(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.<br>(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month-<br>i. the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;<br>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 | in writing to the Superintendent of Central Excise giving the following particulars, namely:-<br>i. name, address and registration number of the manufacturer of goods or provider of output service;<br>ii. date from which the option under this clause is exercised or proposed to be exercised;<br>iii. description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;<br>iv. description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed and such exempted services provided;<br>v. CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.<br>Notification No.13/2016-CE (NT) dated 01.03.2016.<br>(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the |

| Pre-2016 | Post-2016 |
|---|---|
| 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 months minus A;<br><br>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 service during the month.<br><br>(c) **the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-**<br><br>i. the amount of CENVAT credit | following sequential steps and provisionally pay every month, the amounts determined under sub- clauses (i) and (iv), namely :-<br><br>(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;<br><br>(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non- exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;<br><br>(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-<br><br>C = T - (A + B);<br><br>**Explanation.** - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.<br><br>iv. the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be |

| Pre-2016 | Post-2016 |
|---|---|
| attributable to inputs used in or relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or relation to manufacture of said exempted goods, denotes as H;<br>ii. the amount of CENVAT credit attributable to inputs used for provision of exempted services = J/K multiplied by L, where J denotes the total value of exempted services provided during the financial year, K 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 financial year and L denotes the total CENVAT credit taken on inputs during the financial year minus H;<br>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 | called ineligible common credit, denoted as D and calculated as follows and shall be paid, -<br>D = (E/F) x C;<br>where E is the sum total of –<br>(a) value of exempted services provided; and<br>(b) value of exempted goods removed, during the preceding financial year;<br>where F is the sum total of -<br>(a) value of non-exempted services provided,<br>(b) value of exempted services provided,<br>(c) value of non-exempted goods removed, and<br>(d) value of exempted goods removed, during the preceding financial year :<br>Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty per cent. of the common credit;<br>(v) remainder of the common credit shall be called eligible common credit and denoted as G, where,-<br>G = C - D;<br>**Explanation.-** For the removal of doubts, it is hereby declared that out of the total credit T, which is,sum total of |

| Pre-2016 | Post-2016 |
| --- | --- |
| CENVAT credit taken on input services during the financial year;<br><br>(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.<br><br>(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 percent, per annum from the due date i.e., 30th Jun till the date of payment, where the amount short-paid is not paid within the said due date;<br><br>(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;<br><br>(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) | A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.<br><br>(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen per cent. per annum;<br><br>(c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-<br><br>(i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, |

| Pre-2016 | Post-2016 |
|---|---|
| and (f) respectively, the following particulars, namely:-<br>i. details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally as per condition (b),<br>ii. CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),<br>iii. amount short paid determined as per condition (d), along with the date of payment of the amount short-paid,<br>iv. interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and<br>v. credit taken on account of excess payment, if any, determined as per condition (f);<br>(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribe in condition (b), due to reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine | shall be called Annual ineligible credit and denoted as A(Annual);<br>(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);<br>(iii) common credit left for further attribution shall be denoted as C(Annual) and calculated as, -<br>C(Annual) = T(Annual) – [A(Annual) + B(Annual)];<br>(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, -<br>D(Annual) = (H/I) x C(Annual);<br>where H is sum total of-<br>(a) value of exempted services provided; and<br>(b) value of exempted goods removed;<br>during the financial year;<br>where I is sum total of - |

| Pre-2016 | Post-2016 |
|---|---|
| the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.<br><br>(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four percent per annum from the due date till the date of payment.<br><br>(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial year institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans of advance shall pay for every month an amount equal to fifty percent of the CENVAT credit availed on inputs and input services in that month.<br><br>(3C) ....<br><br>(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT | (a) value of non-exempted services provided,<br><br>(b) value of exempted services provided,<br><br>(c) value of non-exempted goods removed; and<br><br>(d) value of exempted goods removed;<br><br>vi. during the financial year; |

| Pre-2016 | Post-2016 |
|---|---|
| credit of inputs and input services shall be taken.<br><br>**Explanation I** - "Value" for the purpose of sub-rules (3) and (3A), -<br><br>(a) shall have the same meaning as assigned to it under Section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under Section 3, 4 or 4A of the Excise Act, read with rules made thereunder;<br><br>(b) in the case of a taxable service, when the option available under sub-rules (7), (7A), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under Section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;<br><br>(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten percent of the cost of goods sold, whichever is more;<br><br>(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or | |

| Pre-2016 | Post-2016 |
|---|---|
| one percent of the purchase price of the securities traded, whichever is more;<br>(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.<br>**Explanation II** – The amount mentioned in sub-rules (3), (3A) and (3B), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.<br>**Explanation III** – If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (3), (3A) and (3B), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.<br>**Explanation IV** – In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnerhsip firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March" | |

37. This has been explained in Circular No.334/8/2016-TRU dated 29.02.2016 from D.O.F.No.334/8/2016-TRU dated 29.02.2016 of the Central Board of Excise and Customs, New Delhi, Ministry of Finance (Department of Revenue), Government of India. Annexure -II (B) from the above said Circular reads as under:-

> "Important changes in Cenvat Credit Rules, 2004 effective from 1-4-2016 [Para 13 of the JS(DO) letter dated 1-3-2016]
>
> With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. Following are the important changes :
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) .....
>
> (e) .....
>
> (f) .....
>
> (g) .....
>
> (h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.
>
> i. sub-rule (1) of rule 6 is being amended to first state

the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub rules (2) and (3), for two different situations.

ii. sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e., Reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

iii. **sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A)**.

iv. **The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no**

**circumstances this part can be greater than the whole credit**.

v. **Sub-rule (3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month.** The four key steps for calculating the credit required to be paid are :-

(a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available;

(b) Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;

(c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services **by multiplying the common credit** with the ratio of **value of exempted goods manufactured or exempted services provided** to the **total turnover of exempted and non-exempted goods and exempted and non-exempted services** in the previous financial year;

(d) Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule.

vi. **A new sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be**

**allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen per cent. per annum**.

vii. **A new sub-rule (3AB) is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30-6-2016, for the units who are required to discharge the obligation in respect of financial year 2015-16**.

viii. Sub-rule (3B) of rule 6 is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

(i) Following are the other changes being made in rule 6 of the Cenvat Credit Rules :

i. Explanations 3 and 4 are being inserted in rule 6, sub-rule (1) so as provide for reversal of CENVAT Credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a 'service' under the Finance Act, 1994.

ii. Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.

iii. Sub-rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an "exempted service" on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of 'exempted service' by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f 1st June, 2016 after enactment of Finance Bill 2016.

(j) .....

(k).....

(l) .....

(m) .....

(n).....

(o).....

The existing sub-rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit."

38. Thus, it is evident that it is the common input services taken during financial year and not the total CENVAT credit which has to be considered for reversal under Rule 6 (3A)(c)(ii) of the CENVAT Credit Rules, 2004. The distortion in the old Rules as it stood during the period in dispute in Rule 6 (3A)(c)(ii) of the CENVAT Credit Rules, 2004 was cured to ensure both manufacturers/service providers do not pay reverse/pay the amount under Rule 6 (3A)(c)(ii) of the CENVAT Credit Rules, 2004 in excess.

39. The definition of "exempted service" and "final products" as it stood during the period in dispute and thereafter have undergone slight variations. They are reproduced below:-

| Pre-2016<br>(Substituted with effect from 01.07.2012 by Notification No.28/2012-CE (NT) dated 20.06.2012) | Post-2016<br>(Substituted with effect from 01.07.2012 by Notification No.28/2012-CE (NT) dated 20.06.2012) |
|---|---|
| Rule 2.<br>(e) **"exempted service"** means a | Rule 2.<br>(e) **"exempted service"** means a- |

| Pre-2016 | Post-2016 |
|---|---|
| (Substituted with effect from 01.07.2012 by Notification No.28/2012-CE (NT) dated 20.06.2012) | (Substituted with effect from 01.07.2012 by Notification No.28/2012-CE (NT) dated 20.06.2012) |
| (1) taxable service which is exempt from the whole of the service tax leviable thereon; or<br>(2) **service, on which no service tax is leviable under Section 66B of the Finance Act;** or<br>(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;<br>**but shall not include a service which is exported in terms of Rule 6A of the Services-Tax Rules, 1994**. | (1) taxable service which is exempt from the whole of the service tax leviable thereon; or<br>(2) **service, on which no service tax is leviable under Section 66B of the Finance Act;** or<br>(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;<br>**but shall not include a service-**<br>**(a) which is exported in terms of Rule 6A of the Service Tax Rules, 1994; or**<br>**(b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.** |
| 4 (h) "final products" means excisable goods manufactured or produced from input, or using input service; | 4 (h) "final products" means excisable goods manufactured or produced from input, or using input service; |

40. Thus, the trading activities carried out by the appellant were "exempted service" within the meaning of the provisions of the CENVAT Credit Rules, 2004. The trading activities carried out by the appellant were "exempted

service" both before and after amendment to the Rules.

41. As far as the present dispute is concerned, Rule 2(e) of the CENVAT Credit Rules, 2004 is relevant as it stood prior to 2016. It has not undergone any change for the purpose of this inquiry. Similarly, Rule 6 of the CENVAT Credit Rules, 2004 also underwent few changes.

42. During the period in dispute between **April 2013 to March 2015,** the Rule 6 of the CENVAT Credit Rules, 2004 read slightly different from how it read after the amendment vide **Notification No.13/2016-CE (NT)** dated **01.03.2016**.

43. Under the new dispensation, after 2016, as per **Explanation 1** to Rule 6(1) of the CENVAT Credit Rules, 2004 "exempted goods" or "final products" as defined in Rule 2(d) and 2(h) of the CENVAT Credit Rules, 2004 included "non-excisable" goods cleared for a consideration from the factory. **Explanation 1** to Rule 6(1) of the CENVAT Credit Rules, 2004 reads as under:-

> "**Explanation 1** – For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory."

44. The expression "exempted goods" as defined in Rule 2 (d) and the expression "final products" as defined in Rule 2 (h) of the CENVAT Credit Rules, 2004 reads as under:-

| Rule 2 (d) | Rule 2 (h) |
| --- | --- |
| "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No.1/2011-CE, dated 1-3-2011 or under entries at S.Nos.67 and 128 of Notification No.12/2012-CE, dated 17-03-2012 is availed. | "final products" means excisable goods manufactured or produced from input, or using input service; |

45. Thus "traded goods" became "exempted goods" defined in Rule 2(d) of the CENVAT Credit Rules, 2004 and included "non-excisable goods" cleared for a consideration from the factory under the new dispensation.

46. As per **Explanation 3** to Rule 6(1) of the CENVAT Credit Rules, 2004, expression **"exempted services"** as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in Section 65B(44) of the

Finance Act, 1994 (provided that such activity has used inputs or input services). **Explanation 3** to Rule 6(1) of the CENVAT Credit Rules, 2004 reads as under:-

> "**Explanation 3.** - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services]."

47. All through the period right from inception till 2016, the provisions read identically. For the Assessment Years 2011-2012, 2012-2013 and 2015-2016, the appellant's appeal was also allowed by the Tribunal. The dispute in these two cases pertain to the Assessment Years 2013-2014 and 2014-2015 which prior to 2016. Since, the provisions have been amended to remove distortion arising out of strict application of the old format, we see no reasons to take a different stand in this appeal.

48. In view of the above, the appellant shall be entitled for consequential relief if any. We are therefore of the view that the Impugned Order deserves to be set aside and is accordingly set aside. This Civil Miscellaneous Appeal stands allowed. No costs.

**[R.S.K., J.]** **[C.S.N., J.]**

**29.08.2024**

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Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb/vji/nst

**R.SURESH KUMAR, J.**
and
**C.SARAVANAN, J.**

arb/vji/nst

C.M.A.No.1179 of 2018

29.08.2024