

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Service Tax Appeal Nos. 41366 & 41367 of 2016

(Arising out of Order-in-Original No. LTUC/209 & 210/2016-C dated 22.04.2016 passed by Commissioner of Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai)

M/s. Sify Technologies Ltd.,
2nd Floor, Tidel Park,
No.4, Rajiv Gandhi Salai,
Taramani, Chennai-600 113.

....Appellant

Versus

Commissioner of GST & Central Excise ... Respondent
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

Ms. Natasha Jhaner, Chartered Accountant for the Appellant
Ms. Rajni Menon, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.41222-41223/2025

DATE OF HEARING: 20.08.2025

DATE OF DECISION: 31.10.2025

Per: Shri P. Dinesha

These are the appeals against the common Order-in-Original No. LTUC/209 & 210/2016-C dated 22.04.2016 passed by the Commissioner of Large Taxpayer Unit, Chennai.

2. At para 16 of that order, the Adjudicating Authority has framed the issues for adjudication numbered (i) to (v). In the Memorandum of Appeal before us, the Appellant avers that it is not aggrieved by the Adjudicating Authority's decisions in respect of issues (i) and (ii). Issues (iv) and (v) relate to interest under Rule 14 of the CENVAT Credit Rules, 2004 and penalty under Rule 15(1) thereof. These issues are consequential. Therefore, issue (iii) merits consideration first. This issue relates to the manner of reversal of CENVAT credit attributable to exempted goods/services.

3. The Appellant provides various taxable services and avails CENVAT credit of Service Tax paid on various

input services under the CENVAT Credit Rules, 2004. The Appellant also trades in certain goods. The Appellant therefore renders both taxable and exempt services and avails CENVAT credit in respect of some input services which are commonly used for rendering both taxable and exempted services. In this respect, it is common ground that the Appellant would have to comply with the provisions of Rule 6 of the aforesaid rules.

4. Rule 6(1) provides that credit shall not be allowable in respect of input services used in or in relation to the manufacture of exempted goods or for the provision of exempted services. It further provides that the credit so not allowed shall be calculated and paid by the Assessee in terms of sub-rules (2) or (3) of Rule 6. Sub-rule (2) deals with an Assessee who exclusively renders exempted services or exclusively manufactures exempted goods. This sub-rule is therefore clearly not applicable to the Appellant.

5. Sub-rule (3) deals with cases where, in the case of a manufacturer, both exempted and non-exempted

goods are manufactured, and in the case of a service provider, both exempted and non-exempted services are rendered. These persons have the option either to pay an amount equal to 6% of the value of exempted goods or 7% of the value of exempted services, subject to a maximum of the total credit available, or to pay an amount determined in accordance with sub-rule (3A).

6. In the present case, Show Cause Notices were issued alleging that the Appellant's claim that it was following the procedure prescribed by sub-rule (2) was not correct, and that the Appellant was liable to pay amounts only as per sub-rule (3A). The Appellant responded that it was never its case that sub-rule (2) applied and that it was only following sub-rule (3A).

7. By the impugned order, the Adjudicating Authority found that the Appellant had opted for the method prescribed in Rule 6(3)(ii), i.e., computing and paying an amount in the manner prescribed by Rule 6(3A). He then observed that sub-rule (3A) contemplates three factors. The third of these factors, he notes, is "P" which is the total CENVAT credit taken

on input services. He records the Appellant's contention that the amount of reversal was to be determined only with reference to common CENVAT credit, i.e., credit availed in respect of inputs and input services used in common for both exempted and taxable outputs. He holds that "P" ought to be the total credit and not only common credit for periods prior to 01.04.2016.

8. The Adjudicating Authority has thus substituted total credit for common credit in the variable "P" and concluded that excess amounts of credit ought to have been reversed and paid. Demands have, consequently, been raised. The Appellant impugns these actions.

9. We have heard Ms. Natasha Jhaner, learned Chartered Accountant for the Appellant and Ms. Rajni Menon, Ld. Deputy Commissioner for the Respondent-Revenue. The short point is therefore whether for the tax periods under consideration, i.e., April 2012 to March 2014, the variable "P" in Rule 6(3A) of the CENVAT Credit Rules, 2004 would denote total credit or common credit.

10. Rule 6(3A) was amended with effect from 01.04.2016 by Notification No. 13/2016-C.E. dated 01.03.2016.

11. Before amendment, sub-rule (3A) contained 9 clauses (a) to (i). Clause (a) dealt with the mode of exercising the option to comply with the Rule. Clause (b) dealt with provisional determination. Clause (c) dealt with final determination. Clause (d) to (i) deal with other related matters such as interests, adjustment of excess amounts, intimation of payment or adjustment, etc. We are therefore concerned only with clause (c). Clause (c) contains three sub-clauses numbered (i) to (iii). Admittedly, only sub-clause (iii) is relevant. The relevant portions of sub-clause (iii), as they stood before such amendment, read as follows:

"(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 of the financial year in the following manner, namely:-

... ..

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods 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."

12. From the sub-rule reproduced above, it is clear that until 31.03.2016, the variable "P" denoted total CENVAT credit.

13. After amendment, sub-rule (3A) contained clauses (a) to (g). Here too, only clause (c) is relevant. Clause (c) contains three sub-clauses, all of which are reproduced below.

"(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:-

(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, shall be called Annual ineligible credit and denoted as A (Annual);

(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);

(iii) common credit left for further attribution shall be denoted as C (Annual) and calculated as,-

$$C \text{ (Annual)} = T \text{ (Annual)} - [A \text{ (Annual)} B \text{ (Annual)}];$$

(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,-

$$D \text{ (Annual)} = (H/I) C(\text{Annual});$$

where H is sum total of-

- (a) value of exempted services provided, and
- (b) value of exempted goods removed during the financial year;

where I is sum total of-

- (a) value of non-exempted services provided,
- (b) value of exempted services provided,
- (c) value of non-exempted goods removed."

14. From the above, it will be seen that three kinds of credit are contemplated. The first is eligible credit which is attributable exclusively to the manufacturer of taxable goods or rendition of taxable services which is denoted as "A". The second is ineligible credit, which is attributable exclusively to exempted goods or exempted services. This is denoted as "B". The Rule

also contemplates a third category which is not exclusively attributable either to taxable or exempted goods manufactured or services rendered. This third category is termed common credit denoted by the letter "C".

15. Therefore, the concept of common credit finds mentioned for the first time only with effect from 01.04.2016. However, we find that in ***Commissioner of C. Ex. & St., Rajkot v. Reliance Industries Ltd.*** [2019 (28) GSTL 96 (Tri.-Ahmd.)] upon which the learned Chartered Accountant for the Appellant has placed reliance, a Co-ordinate Bench of this Tribunal has, considering the pre-amendment Rule 6, held that:-

"If the whole Rule 6(1), (2) and (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 duty goods, shall stand disallowed, which is not provided under any of the Rule of Cenvat Credit Rules, 2004."

16. This Tribunal then went on to hold that when this anomaly was noticed, the sub-rule (3A) was

substituted with the *"intention to give a clarificatory nature to the provision of Sub-Rule (3A) so as to make it applicable retrospectively."* This Tribunal held that *"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... Therefore, the substituted provision of sub-rule (3A) shall have retrospective effect being clarificatory."*

17. Reliance Industries has been followed by another Co-ordinate Bench in the case of ***E-connect Solutions P. Ltd. v. Commissioner of C. Ex. & CGST, Udaipur*** [2021 (376) ELT 678 (Tri. - Del.)].

18. The Hon'ble Jurisdictional Madras High Court, by its judgement dated 29.08.2024 in ***M/s. Honda Motor India P. Ltd. v. CCE & ST*** (C.M.A. No. 1179/2018) observed at para 47 that the *"provisions have been amended to remove distortion arising out of strict application of the old format"* and proceeded to grant relief to the Assessee.

19. We are conscious of the fact that the Respondent, in the impugned order, relies on an order of this Tribunal in ***Thyssenkrupp Industries (I) P. Ltd. v. Commissioner of Central Excise, Pune*** [2014 (310) ELT 317 (Tri.-Mum.)] which seems to lay down a contrary proposition. We are of the opinion that this order does not come in our way in reaching our conclusions considering that Reliance and E-Connect are cases where this Tribunal has considered the effect of the amendments. Thyssenkrupp, having been decided before the amendment, did not have the benefit of the text of the amendment itself to interpret its effect on the law before it. This, combined with the view on this precise point expressed by the Hon'ble Madras High Court, compel us to find in favour of the Appellant.

20. We, therefore, are of the opinion that the present case is squarely covered by the decisions in Reliance Industries and. E-Connect Solutions. The judgement of the Hon'ble High Court seems to lay down the same law. Respectfully following this precedent, we hold that the variable "P" for the tax periods under consideration

would denote only common credit which arises from inputs/ input services used both for exempted and non-exempted goods/services.

21. In view of our conclusions on the issue on merits, other issues do not merit adjudication.

22. The impugned order is held to be bad in law. The appeals are allowed.

(Order pronounced in open court on 31.10.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)