

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

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41118 of 2018

(Arising out of Order-in-Original No. 31/2017(Commr.)(CE) dated 30.11.2017 passed by Commissioner of GST and Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. EID Parry India Limited

Keel Arungunam Road,
Nellikuppam,
Panruti Taluk – 607 105.

...Appellant

Versus

Commissioner of GST and Central Excise

Trichy Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

And

Excise Appeal No. 41127 of 2018

(Arising out of Order-in-Original No. 32/2017(Commr.)(CE) dated 30.11.2017 passed by Commissioner of GST and Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. EID Parry India Limited

Pugalur, Karur District,
Pugalur – 639 113.

...Appellant

Versus

Commissioner of GST and Central Excise

Trichy Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. Raghav Rajeev, Advocate

For the Respondent : Mr. M. Selvakumar, Authorized Representative

CORAM:

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

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

FINAL ORDER Nos. 40391-40392 / 2026

DATE OF HEARING : 18.12.2025

DATE OF DECISION : 18.03.2026

Per Mr. VASA SESHAGIRI RAO

The present appeals have been filed by M/s. E.I.D. Parry (India) Ltd. (hereinafter referred to as "the appellant") against Orders-in-Original Nos. 31/2017 and 32/2017 dated 30.11.2017 passed by the Commissioner of GST & Central Excise, Tiruchirappalli (hereinafter referred to as "the impugned orders"). The appellant manufactures sugar, denatured ethyl alcohol and bio-compost and operates sugar units with captive co-generation plants within the factory premises. Electricity generated using bagasse during the sugar manufacturing process is partly consumed captively for manufacture of dutiable products and the surplus is wheeled out to the Tamil Nadu Electricity Board grid and other locations. The appellant availed CENVAT credit on inputs and input services used in manufacture, while certain services such as professional, consultancy, telephone and security services were used commonly for manufacturing activities as well as electricity generation.

1.2 On undertaking audit for the period from March 2015 to March 2016, the department noticed that part of the electricity generated in the COGEN Plant was wheeled out to the grid and other locations such as guest houses and corporate offices. Treating such electricity as "exempted goods", the department alleged that the appellant had not

maintained separate accounts for common inputs and input services as required under Rule 6(2) of the CENVAT Credit Rules, 2004. Accordingly, show cause notices dated 27.04.2017 proposed recovery of 6% of the value of electricity cleared outside the factory under Rule 6(3)(i) along with interest and penalties. The appellant contended that proportionate CENVAT credit attributable to common input services had already been reversed under Rule 6(3A) along with applicable interest, amounting to Rs.3,68,433/- for the Nellikkupam Unit and Rs.4,32,565/- for the Pugalur Unit before the issue of SCN. However, the adjudicating authority rejected the said contention on the ground that the option under Rule 6(3A) had not been exercised within the prescribed time and consequently confirmed demands of Rs.2,43,26,716/- and Rs.2,61,92,637/-, along with interest and penalties, through the impugned orders.

2. Aggrieved by the said orders, the appellant has filed the present appeals before this Tribunal.

3. The Ld. Advocate Mr. Raghav Rajeev, appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized

Representative Mr. M. Selvakumar, appeared for the Revenue and defended the findings in the impugned orders.

4. The Ld. Advocate Mr. Raghav Rajeev made the following submissions which are summarised as below: -

4.1 The impugned orders proceed on an incorrect understanding of the provisions of Rule 6 of the CENVAT Credit Rules, 2004. There is no dispute regarding the eligibility of CENVAT credit availed on inputs and input services used in the manufacture of dutiable final products. The dispute pertains only to the treatment of electricity generated in the co-generation plant and cleared outside the factory.

4.2 The Ld. counsel submitted that electricity generated in the cogen plant is not the result of any independent manufacturing activity but arises as an incidental consequence of the sugar manufacturing process. Bagasse generated during crushing of sugarcane is used as fuel in boilers to produce steam which is used for electricity generation. A portion of such electricity is consumed captively for manufacture of dutiable products such as sugar and ethanol while the surplus electricity is wheeled out to the grid.

4.3 It was further submitted that the appellant had maintained separate accounts for inputs used exclusively in electricity generation and no CENVAT credit was taken on such inputs. Only certain common input services such as professional services, security services and telephone services were used commonly in the manufacturing activities and electricity generation.

4.4 The Ld. counsel submitted that in respect of such common input services the appellant had reversed proportionate credit attributable to the generation of electricity cleared outside the factory in terms of Rule 6(3A) and had also intimated the department regarding such reversal through letters dated 23.01.2017.

4.5 It was further submitted that once proportionate credit is reversed under Rule 6(3A), the department cannot compel the assessee to pay 6% of the value of exempted goods under Rule 6(3)(i). Rule 6 provides multiple options to the assessee and it is for the assessee to choose the appropriate option.

4.6 The Ld. counsel also relied upon various decisions of the Tribunal wherein it was held that reversal of proportionate credit under Rule 6(3A) satisfies the requirement of Rule 6 and the department cannot insist upon payment of 6% of the value of exempted goods.

4.7 It was also argued that failure to intimate the department in writing regarding exercise of option under Rule 6(3A) is merely a procedural lapse and cannot result in denial of the substantive benefit.

4.8 The Ld. counsel therefore submitted that the impugned orders confirming demand of 6% of the value of electricity are unsustainable and liable to be set aside.

5. The Ld. Authorised Representative Mr. M. Selvakumar appearing for the Revenue reiterated the findings recorded in the impugned orders and further submitted that: -

5.1 Rule 6 of the CENVAT Credit Rules mandates maintenance of separate accounts for inputs and input services used in the manufacture of dutiable goods and exempted goods. In the present case, the appellant had

admittedly used common input services in the generation of electricity which was cleared outside the factory.

5.2 It was further submitted that the appellant had not exercised the option under Rule 6(3A) at the relevant time nor had they followed the procedure prescribed therein. The reversal of credit was made only after the audit objection was raised and therefore cannot be treated as compliance with Rule 6(3A).

5.3 The Ld. Authorised Representative submitted that the provisions of Rule 6(3) clearly stipulate that where separate accounts are not maintained, the manufacturer is required to pay an amount equivalent to 6% of the value of exempted goods. Since the appellant did not comply with the prescribed procedure for proportionate reversal, the adjudicating authority was correct in confirming the demand under Rule 6(3)(i).

5.4 It was further argued that the impugned orders have correctly interpreted the provisions of the CENVAT Credit Rules and therefore the appeals deserve to be rejected.

6. Upon consideration of the rival submissions and records of the case, the following issues arise for determination: -

- i. Whether electricity generated in the co-generation plant and wheeled out to the grid constitutes exempted goods attracting the provisions of Rule 6 of the CENVAT Credit Rules, 2004.
- ii. Whether the appellant, having reversed proportionate CENVAT credit attributable to common input services under Rule 6(3A), can still be required to pay 6% of the value of exempted electricity under Rule 6(3)(i).
- iii. Whether non-intimation of exercise of option under Rule 6(3A) would disentitle the appellant from availing the benefit of proportionate reversal.
- iv. Whether the demands raised in the show cause notices dated 27.04.2017 are barred by limitation.

7. We now proceed to examine the issues in seriatim.

ISSUE NO. (i) Whether electricity cleared outside the factory constitutes exempted goods attracting the provisions of Rule 6 of the CENVAT Credit Rules, 2004

8.1 We have carefully considered the rival submissions made by both sides and examined the records

of the case including the show cause notices, the impugned Orders-in-Original, the written submissions of the appellant and the comments filed by the department. The first issue that arises for determination is whether electricity generated in the co-generation plant and wheeled out to the electricity grid or other locations can be treated as exempted goods so as to attract the provisions of Rule 6 of the CENVAT Credit Rules, 2004.

8.2 The Ld. counsel for the appellant submitted that the electricity generated in the co-generation plant is not the result of an independent manufacturing activity but arises as a consequence of the sugar manufacturing process. It was submitted that bagasse emerging during crushing of sugarcane is used as fuel in the boilers to generate steam which in turn drives the turbines to produce electricity. A portion of such electricity is consumed captively in the manufacture of dutiable final products such as sugar and denatured ethyl alcohol while the surplus electricity is wheeled out to the State Electricity Board grid. The learned counsel therefore submitted that electricity generation is only incidental to the manufacturing process and cannot be treated as an independent activity attracting the provisions of Rule 6.

8.3 The Ld. Authorised Representative appearing for the department, however, submitted that electricity cleared outside the factory is exempted goods in terms of Rule 2(d) of the CENVAT Credit Rules. It was argued that once electricity is cleared outside the factory without payment of duty the provisions of Rule 6 automatically become applicable and the assessee is required to comply with the conditions prescribed under the said rule.

8.4 We find that electricity is classifiable under Chapter 27 of the Central Excise Tariff but is exempt from payment of duty. Electricity cleared outside the factory would therefore fall within the expression "exempted goods" under Rule 2(d) of the CENVAT Credit Rules. However, this by itself does not automatically attract liability under Rule 6(3). Such liability arises only where common inputs or input services have been used in the manufacture of both dutiable goods and such exempted electricity.

8.5 The Ld. counsel also relied upon the judgment of the Hon'ble Madras High Court in *Commissioner of Central Excise vs EID Parry (India) Ltd. - 2013 (293) E.L.T. 10 (Mad.)* wherein the Court examined the treatment of by-

products and waste materials emerging during the manufacture of sugar. The Hon'ble High Court observed that inevitable by-products emerging during the manufacturing process cannot be treated as independent products for the purpose of denying credit benefits. The Court observed that: -

"Captive inputs were brought into factory for use in manufacture of final products viz. sugar, molasses and denatured ethyl alcohol. After emergence of such products and wastes, there was no manufacture of final products once again. Their usage could not be perceived beyond first degree."

The ratio of the above judgment indicates that incidental outputs arising during the manufacturing process cannot automatically be treated as independent products so as to deny legitimate credit benefits.

8.6 The Ld. counsel further relied upon the judgment of the Hon'ble Supreme Court in *Union of India vs DSCL Sugar Ltd – 2015 (322) E.L.T. 769 (S.C.)* wherein the Court examined the nature of bagasse emerging during the manufacture of sugar and held that bagasse is merely a waste product and cannot be treated as manufactured goods. The Hon'ble Supreme Court held that: -

"Bagasse emerges as a waste product in the course of manufacture of sugar and therefore cannot be considered as a manufactured final product."

Though the said judgment relates to bagasse, the principle laid down therein clearly indicates that inevitable by-products or incidental outputs arising during the manufacturing process cannot automatically be treated as independent manufactured goods for the purpose of denying credit benefits.

8.7 Therefore, while electricity cleared outside the factory would fall within the definition of "exempted goods" under Rule 2(d) of the CENVAT Credit Rules, the liability under Rule 6 would arise only to the extent that CENVAT credit has been availed on common inputs or input services used in relation to both dutiable goods and such exempted electricity.

ISSUE NO. (ii) Whether the appellant, having reversed proportionate CENVAT credit under Rule 6(3A), can still be required to pay 6% of the value of electricity cleared outside the factory

9.1 The next issue for consideration is whether the appellant, having reversed proportionate credit attributable to common input services in terms of Rule 6(3A), can still be required to pay an amount equivalent to 6% of the value of electricity cleared outside the factory.

9.2 The Ld. counsel for the appellant submitted that Rule 6 of the CENVAT Credit Rules provides multiple options to the assessee. According to the appellant, where separate accounts are not maintained the assessee may either pay a specified percentage of the value of exempted goods or reverse the proportionate credit attributable to exempted goods under Rule 6(3A). It was submitted that the appellant had opted for the second option and had reversed proportionate credit attributable to common input services used in relation to electricity generation.

9.3 The Ld. Authorised Representative for the department contended that the appellant had not exercised the option under Rule 6(3A) within the prescribed time and therefore the benefit of proportionate reversal cannot be extended to the appellant.

9.4 We find that the issue is no longer res integra and stands settled by several judicial precedents relied upon by the appellant.

In Scantrans India Pvt. Ltd. vs Commissioner of GST & Central Excise, Chennai - 2024 (7) TMI 60 - CESTAT

Chennai, the Tribunal held that once proportionate credit attributable to exempted goods has been reversed the demand for payment of 5%/6% of the value of exempted goods cannot be sustained. The Tribunal observed:

"In such circumstances, the Department ought not to have raised the Show Cause Notice demanding 5%/6% of the value of exempted goods."

9.5 Similarly, in *JPP Mills Pvt. Ltd. vs Commissioner of GST & Central Excise, Salem – 2019 (1) TMI 54 (CESTAT Chennai)*, the Tribunal held that once the assessee reverses proportionate credit attributable to exempted goods, the requirement of Rule 6 stands satisfied and the department cannot compel the assessee to adopt the option of paying a fixed percentage of the value of exempted goods.

9.6 Another relevant decision is *Sify Technologies Ltd. vs Commissioner of GST & Central Excise, Chennai – 2025 (11) TMI 130 – CESTAT Chennai*, wherein the Tribunal examined the formula prescribed under Rule 6(3A) and held that reversal of credit attributable to exempted goods in accordance with the statutory formula satisfies the requirement of Rule 6.

9.7 The Ld. Counsel also relied upon the judgment of the Hon'ble Supreme Court in Maruti Suzuki Ltd. vs Commissioner of Central Excise – 2009 (240) E.L.T. 641 (S.C.), wherein the Court explained the concept of nexus between inputs or input services and manufacturing activity and held that CENVAT credit is admissible only where such nexus exists. The said judgment underscores that the scope of credit and the obligations arising under Rule 6 must be examined in the context of the actual use of inputs or input services.

9.8 Applying the above principles to the facts of the present case, we find that the appellant has reversed proportionate credit attributable to common input services used in relation to electricity generation. Once such credit stands reversed the object of Rule 6 stands achieved.

9.9 Requiring the appellant to pay an amount equivalent to 6% of the value of electricity cleared outside the factory would result in recovery far exceeding the credit actually availed and would therefore defeat the very objective of the CENVAT credit scheme which is intended to avoid cascading of taxes.

ISSUE NO. (iii) Whether failure to intimate the department regarding exercise of option under Rule 6(3A) disentitles the appellant from proportionate reversal

10.1 The next issue that arises for determination is whether the appellant can be denied the benefit of proportionate reversal on the ground that the option under Rule 6(3A) was not exercised within the prescribed time.

10.2 The Ld. counsel for the appellant submitted that the requirement of intimation under Rule 6(3A) is merely procedural in nature and cannot be used to deny substantive benefits where the assessee has otherwise complied with the essential conditions of the rule.

10.3 The Ld. Authorised Representative for the department adverted that the appellant had not complied with the procedural requirements of Rule 6(3A) and therefore cannot claim the benefit of proportionate reversal.

10.4 We find that the requirement of intimation under Rule 6(3A) is procedural in nature and is intended only to facilitate verification by the department. The rule does not provide that failure to intimate the department within a specified time would automatically result in denial of the benefit of proportionate reversal.

10.5 From the records we find that the appellant has reversed proportionate credit attributable to common input services used in relation to electricity generation and has also intimated the department regarding such reversal. The records indicate that the appellant reversed CENVAT credit of ₹3,68,433/- for the Nellikkupam Unit and ₹4,32,565/- for the Pugalur Unit along with applicable interest, and the department has not disputed the correctness of such reversal.

10.6 Therefore, the procedural lapse alleged by the department cannot be used to deny the substantive benefit available to the appellant under Rule 6(3A).

ISSUE NO. (iv): Whether the demand raised in the show cause notices is barred by limitation and whether penalties are sustainable

11.1 The Ld. counsel for the appellant has also raised the issue of limitation. It was submitted that the show cause notices issued in the present case are clearly barred by limitation. It was contended that the period involved in the present proceedings is March 2015 to March 2016, whereas the show cause notices in both the appeals were issued only

on 27.04.2017. The learned counsel submitted that during the disputed period the normal period of limitation prescribed under Section 11A of the Central Excise Act, 1944 was one year, and therefore the department could have issued the show cause notices only within one year from the relevant date. The learned counsel therefore argued that since the extended period of limitation has not been invoked in the show cause notices and there is no allegation of fraud, suppression of facts or wilful misstatement with intent to evade payment of duty, the entire demand is liable to be set aside on the ground of limitation alone.

11.2 We have carefully considered the above submissions and examined the records of the case. From the show cause notices and the impugned orders, we find that the demands have been raised for the period March 2015 to March 2016, whereas the show cause notices have been issued only on 27.04.2017. We also note that the department has not invoked the extended period of limitation under the proviso to Section 11A of the Central Excise Act, 1944, nor are there any allegations of fraud, suppression of facts or wilful misstatement with intent to evade payment of duty.

11.3 We further observe that during the relevant period the normal period of limitation prescribed under Section 11A(1) of the Central Excise Act, 1944 was one year. The said provision was amended by the Finance Act, 2016, whereby the normal limitation period was extended to two years with effect from 14.05.2016. It is a settled principle that amendments enlarging the limitation period cannot be applied retrospectively to revive demands which had already become barred under the law prevailing during the relevant period.

11.4 Applying the above statutory provisions to the facts of the present case, we find that even for the last month of the disputed period, namely March 2016, the normal period of limitation of one year would expire in March 2017. Since the show cause notices were issued only on 27.04.2017, the demands have clearly been raised beyond the normal period of limitation prescribed under Section 11A of the Central Excise Act, 1944.

11.5 In the absence of any invocation of the extended period of limitation and in the absence of any allegation of fraud, suppression of facts or wilful misstatement, the department cannot sustain the demand beyond the normal

period of limitation. Accordingly, we hold that the demands raised in the show cause notices dated 27.04.2017 for the period March 2015 to March 2016 are barred by limitation and are therefore unsustainable in law.

11.6 We further observe that since the demand itself is not sustainable on the ground of limitation under the normal period, the penalties imposed in the impugned orders cannot be sustained. It is well settled that where the demand itself fails and there is no allegation or finding of fraud, suppression of facts or wilful misstatement with intent to evade payment of duty, the provisions relating to imposition of penalty under the Central Excise Act, 1944 and the CENVAT Credit Rules, 2004 are not attracted.

11.7 In the present case, the show cause notices do not allege any suppression of facts or wilful misstatement and the demand itself has been found to be barred by limitation. Consequently, the penalties imposed in the impugned orders are also unsustainable and liable to be set aside.

11.8 Thus, the demands confirmed in the impugned orders are unsustainable both on the ground of limitation as well as on merits, and the penalties imposed are also liable to be set aside, and are accordingly set aside.

12.1 In view of the foregoing discussion and findings recorded above, we hold that the appellant, having reversed proportionate CENVAT credit attributable to common input services used in relation to electricity generation in terms of Rule 6(3A) of the CENVAT Credit Rules, 2004, has complied with the requirements of Rule 6 of the said Rules. Consequently, the demand raised under Rule 6(3)(i) for payment of 6% of the value of electricity cleared outside the factory is not sustainable on merits.

12.2 We further hold that the show cause notices dated 27.04.2017, covering the period March 2015 to March 2016, have been issued beyond the normal period of limitation prescribed under Section 11A of the Central Excise Act, 1944, and in the absence of any invocation of the extended period of limitation or allegation of fraud, suppression or wilful misstatement, the demands are time-barred.

12.3 Since the demands themselves are not sustainable both on merits and limitation, the penalties imposed in the impugned orders are also not sustainable and are accordingly set aside.

13. Accordingly, the impugned Orders-in-Original Nos. 31/2017 and 32/2017 dated 30.11.2017 are set aside, and the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 18.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK