CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 40499 of 2018

(Arising out of Order-in-Original No. 21/COMMR/CE/2017 dated 30.10.2017 passed by Commissioner of GST and Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Tamil Nadu Newsprint and Papers Limited **...Appellant**
Kagithapuram,
Karur – 639 136.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

With

Excise Appeal No. 40500 of 2018

(Arising out of Order-in-Original No. 21/COMMR/CE/2017 dated 30.10.2017 passed by Commissioner of GST and Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Tamil Nadu Newsprint and Papers Limited **...Appellant**
Kagithapuram,
Karur – 639 136.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

APPEARANCE:

For the Appellant : Mr. M.N. Bharathi, Advocate
For the Respondent : Mr. M. Selvakumar, Authorized Representative

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40408-40409 / 2026

DATE OF HEARING : 24.02.2026
DATE OF DECISION : 23.03.2026

Per Mr. VASA SESHAGIRI RAO:

M/s. Tamil Nadu Newsprint and Papers Ltd. (TNPL)., Kagithapuram (hereinafter referred to as "the appellant") has filed two appeals before this Tribunal. The first appeal arises out of Order-in-Original No. 22/Commr/CE/2017 dated 30.10.2017 passed by the Commissioner of GST & Central Excise, Tiruchirappalli, covering the period from April 2009 to July 2014. The second appeal arises out of Order-in-Original No. 21/Commr/CE/2017 dated 30.10.2017, covering the period April 2009 to June 2017 in respect of electricity generated at windmills and sold, and April 2011 to June 2017 in respect of trading of notebooks. In both cases, the Show Cause Notices alleged short reversal of common CENVAT credit attributable to exempted goods/services under Rule 6(3A) of the CENVAT Credit Rules, 2004, read with Rule 14 and Section 11A of the Central Excise Act, 1944. Though the adjudicating authority did not confirm the demands as originally proposed and reworked the computation, demands were confirmed along with interest and penalties.

1.2 The appellant is engaged in the manufacture of printing and writing paper falling under Chapter 48 of the

Central Excise Tariff. During the relevant period, certain clearances were exempt under applicable notifications; the appellant generated electricity in windmills and also undertook trading of notebooks, both treated as exempted activities for the purposes of Rule 6 of the CENVAT Credit Rules, 2004. The appellant availed CENVAT credit on inputs and input services used commonly and opted for proportionate reversal under Rule 6(3A). The department alleged that the appellant had incorrectly applied the formula by restricting it to common input services and by not properly including the value of electricity and traded goods, and contended that the appellant was liable either to pay 5%/6% of the value of exempted goods under Rule 6(3)(i) or to reverse a higher amount under Rule 6(3A).

2. Aggrieved by the confirmation of the demands, interest and penalties, the appellant has filed the present appeals. Since the facts and issues involved are common, both the appeals were heard together and are being disposed of by this common order.

3. The Ld. Advocate Shri M.N. Bharathi, appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized

Representative Shri M. Selvakumar appeared for the Revenue and defended the Impugned Orders.

4. The Ld. Advocate Shri M.N. Bharathi, made the following submissions which are summarised as below: -

He has submitted that the issue is no longer *res integra* and stands covered by several decisions of this Tribunal including *Lotte India Corporation Ltd., Dalmiya Cement (Bharat) Ltd., Honda Cars India Ltd., Toshiba JSW Power Systems Pvt. Ltd.* and *CCE v. Reliance Industries Ltd.,* among others *etc.,* wherein it has been consistently held that for the purpose of Rule 6(3A), the term "total CENVAT credit" refers only to total common input service credit and not to credit exclusively used in manufacture of dutiable goods. It was argued that the department's interpretation would lead to absurd results and disallow credit validly availed on inputs/input services exclusively used for dutiable goods, which is not contemplated under Rule 6. It was further contended that electricity generated in windmills located outside the factory and sold to TNEB is not "exempted goods" cleared from the factory so as to attract Rule 6(3). With regard to trading of note books, it was submitted that the appellant had already discharged liability under Rule 6(3A) and that the formula had been applied correctly by including value of exempted goods/services in denominator

and reversing proportionate common credit. The extended period was also challenged on the ground that the entire demand was based on audit objections and ER-1 returns and records were regularly filed. Reliance was placed on Supreme Court decision in Cosmic Dye Chemical and several Tribunal decisions on limitation.

5. The Ld. Authorized Representative supported the impugned orders and contended that Rule 6 mandates strict compliance and that the appellant failed to include value of electricity and traded goods in computing the reversal to be made. It was argued that the formula under Rule 6(3A) refers to total credit and not merely common input service credit and that the adjudicating authority has correctly re-determined the differential amount. It was further submitted that the appellant did not maintain separate accounts and therefore liability under Rule 6(3)(i) or Rule 6(3A) arises automatically.

6. Upon hearing both sides and perusing the records, the following questions arise for determination: -

i. Whether the appellant has correctly applied Rule 6(3A), including determination of common credit and inclusion of electricity and trading turnover in computing proportionate reversal?

ii. Whether the impugned orders have travelled beyond the Show Cause Notices?

iii. Whether the extended period is invocable? and,

iv. Whether penalty is sustainable?

Each of the above questions is examined in detail hereunder.

Issue No. (i): Whether the appellant has correctly applied rule 6(3A), including determination of common credit and inclusion of electricity and trading turnover in computing proportionate reversal: -

7.1 We find that the principal allegation in both the Show Cause Notices is that the appellant, though having opted to discharge liability under Rule 6(3A) of the CENVAT Credit Rules, 2004, has incorrectly applied the statutory formula by restricting the computation to common input service credit and by not properly including the value of electricity generated at windmills and trading turnover while determining the quantum attributable to exempted goods and exempted services. The adjudicating authority has taken the view that the expression "total CENVAT credit" occurring in Rule 6(3A) must include the entire credit availed during the period, including credit exclusively attributable to dutiable goods, and that the appellant was liable, in the alternative, either to pay 5%/6% of the value of exempted

goods under Rule 6(3)(i) or to reverse a higher amount under Rule 6(3A).

7.2 In order to examine the correctness of this interpretation, it is necessary to analyse the scheme of Rule 6 as a whole. Rule 6(1) clearly prohibits availment of credit only in respect of inputs and input services used exclusively in the manufacture of exempted goods or provision of exempted services. Rule 6(2) mandates maintenance of separate accounts where inputs and input services are used for both dutiable and exempted outputs. Rule 6(3) provides alternative options in cases where separate accounts are not maintained — either payment of a prescribed percentage of the value of exempted goods/services or reversal of proportionate credit in terms of the formula prescribed under Rule 6(3A). The statutory scheme thus makes it evident that only credit attributable to exempted goods or exempted services is required to be neutralised, and there is no legislative intent to deny credit legitimately availed and exclusively used in the manufacture of dutiable goods.

7.3 We find that the interpretation adopted in the impugned order, namely that "total CENVAT credit" under Rule 6(3A) includes credit exclusively attributable to dutiable goods, defeats the scheme of Rule 6(1). If such exclusive

credit is loaded into the formula, it would result in proportionate disallowance of credit otherwise lawfully admissible. Rule 6(3A) is a machinery provision for quantification and cannot be construed in a manner that results in substantive denial of legitimate credit.

7.4 The consistent judicial view of various Benches of the Tribunal supports this interpretation. In *CCE v. Reliance Industries Ltd., 2019 (369) ELT 3 (Tri.-Ahmd.),* it was held that the expression "total CENVAT credit" in Rule 6(3A) must be read harmoniously with Rule 6(1) and therefore refers only to total common credit. In *Lotte India Corporation Ltd. v. CCE, 2020 (373) ELT 395 (Tri.-Chennai),* it was held that reversal under Rule 6(3A) is confined to common input service credit and that credit attributable exclusively to dutiable output cannot be artificially introduced into the computation. Similar views were expressed in *Dalmiya Cement (Bharat) Ltd. v. CCE, 2023 (382) ELT 211 (Tri.-Del.)* wherein Rule 6 was held to be a machinery provision intended only to neutralise ineligible common credit.

7.5 We further note that in *Toshiba JSW Power Systems Pvt. Ltd. v. Commissioner of GST & Central Excise, Chennai, 2023 (6) TMI 543 (Tri.-Chennai),* this Bench held

that loading credit exclusively attributable to dutiable goods into the Rule 6(3A) formula would distort the statutory scheme and lead to unintended denial of legitimate credit. Likewise, in *E-Connect Solutions Pvt. Ltd. v. CCE, 2019 (27) GSTL 401 (Tri.-Del.),* the Delhi Bench of the Tribunal held that Rule 6(3A) merely provides a mechanism to quantify common credit attributable to exempted output and cannot be expanded to cover credit that stands outside Rule 6(1). The Tribunal observed that inclusion of credit exclusively attributable to taxable output would amount to denial of credit which is otherwise admissible under Rule 3. The cumulative ratio of these decisions establishes that only common credit is subject to apportionment under Rule 6(3A).

7.6 Applying the above legal position to the facts of the present cases, we find that the appellant has identified common input services used in the manufacture of dutiable as well as exempted goods/services and has reversed credit proportionate to the exempted turnover. The workings of the Appellant have not been shown to be arithmetically incorrect. The dispute is not one of non-reversal but of interpretation of the base on which the formula is to operate. In our considered view, the appellant has correctly confined to

common credit, in consonance with the statutory scheme and binding precedents.

7.7 We now examine the inclusion of electricity generated at windmills and trading turnover. It is not in dispute that part of the electricity generated at windmills located outside the factory was sold to TNEB. For the purposes of Rule 6, even assuming electricity to be "non-excisable/exempted goods" within the meaning of Rule 2(d), the legal consequence is only proportionate reversal of common credit attributable to such exempted turnover. There is no finding that the appellant availed credit exclusively attributable to generation of electricity without reversal. The records indicate that the value of electricity sold has been included while computing proportionate reversal under Rule 6(3A).

7.8 Similarly, trading of notebooks is treated as an "exempted service" under Rule 2(e). For such trading activity also, the statutory requirement is only to reverse proportionate common credit attributable to such exempted turnover. There is no material to show that the appellant failed to include such turnover while working out the computation under Rule 6(3A).

7.9 We further find that once the appellant has opted for reversal under Rule 6(3A) and followed the prescribed mechanism, the department cannot compel payment under Rule 6(3)(i) at 5%/6% of the value of exempted goods/services. The options under Rule 6(3) are mutually exclusive. The impugned order itself proceeds to rework the amount under Rule 6(3A), thereby accepting that Rule 6(3A) governs the field.

7.10 In view of the foregoing discussion, we hold that the appellant has correctly applied Rule 6(3A) by confining the computation to common credit and by including the value of electricity generated and trading turnover for the purpose of determining proportionate reversal. The interpretation adopted in the impugned orders, which loads exclusive dutiable credit into the formula and seeks to substitute the statutory option exercised by the appellant, is contrary to the scheme of Rule 6 and settled judicial precedent. Accordingly, the demand on this ground is unsustainable.

Issue No. ii) Whether the impugned order travelled beyond the Show Cause Notices issued: -

8.1 It is a settled principle that adjudication cannot travel beyond the allegations in the Show Cause Notice. The

SCN is the foundation of the case and defines the scope of adjudication.

8.2 In the present matter, the Show Cause Notices primarily alleged short reversal under Rule 6(3A) and sought recovery under Rule 14. However, in the impugned order, the adjudicating authority has undertaken fresh re-determination on grounds not specifically alleged in the SCN, including reinterpretation of formula and alternative confirmation under Rule 6(3)(i).

8.3 The SCN did not allege that the appellant had wrongly availed credit exclusively used for dutiable goods. Nor did it allege that the option under Rule 6(3A) was invalidly exercised. The foundation of the notice was alleged short-payment.

8.4 By confirming demand under an interpretation not put to the appellant's notice in the SCN and by effectively substituting the option chosen by the appellant, the adjudicating authority has enlarged the scope of the proceedings.

8.5 We find that the appellant relied on the Supreme Court's decision in *CCE v. Ballarpur Industries Ltd., 2007*

(215) ELT 489 (SC), wherein it was held that adjudication cannot travel beyond the Show Cause Notice and any order based on grounds not alleged in the SCN is unsustainable.

8.6 Further reliance was placed on *CCE v. Brindavan Beverages (P) Ltd., 2007 (213) ELT 487 (SC),* where the Apex Court held that if allegations in the SCN are vague or different from findings in the order, the demand cannot be sustained.

8.7 A similar principle has been reiterated by the Hon'ble Madras High Court in *Indian Oil Corporation Ltd. v. Commissioner of Central Excise, 2017 (354) ELT 585 (Mad.),* wherein it was held that adjudication must remain confined to the specific allegations set out in the Show Cause Notice and that confirmation of demand on grounds not forming part of the notice is legally impermissible. The ratio of these decisions squarely applies to the present case.

8.8 In the present case, the SCN alleged short reversal under Rule 6(3A). However, the impugned order undertakes reinterpretation of the formula and in parts confirms liability under Rule 6(3)(i), though such alternative demand was not specifically proposed in the Show Cause

Notice. Such confirmation under an alternative option not alleged in the SCN amounts to enlargement of the case.

8.9 Following the ratio of Ballarpur Industries and Brindavan Beverages, it must be held that the impugned order has travelled beyond the SCN to that extent and is legally unsustainable.

8.10 Therefore, to the extent the impugned order confirms demand on grounds not specifically alleged in the SCN, is legally unsustainable.

Issue No. iii) Whether extended period is invocable

9.1 We find that the entire demand in both appeals is based on scrutiny of ER-1 returns, balance sheets and audit objections. There is no allegation of clandestine removal, falsification of records or suppression of material facts beyond the allegation of short reversal of CENVAT credit.

9.2 We observe that the issue involved in the present case pertains to interpretation of the formula prescribed under Rule 6(3A) of the CENVAT Credit Rules, 2004. The appellant has regularly filed ER-1 returns and disclosed the turnover relating to electricity generated and

trading activities. The computation sheets forming the basis of reversal were part of the statutory records and were available for verification.

9.3 The appellant submitted that the extended period under Section 11A of the Central Excise Act, 1944 can be invoked only where there is fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. In support, reliance was placed on the landmark judgment of the Hon'ble Supreme Court in *Cosmic Dye Chemical v. CCE, 1995 (75) ELT 721 (SC),* wherein it was held that the expression "suppression of facts" must be read ejusdem generis with fraud and collusion and must therefore be wilful and with intent to evade duty. The Court categorically held that mere failure to pay duty or mere inaction does not amount to suppression.

9.4 We further note that in *Pushpam Pharmaceuticals Co. v. CCE, 1995 (78) ELT 401 (SC),* the Hon'ble Supreme Court clarified that suppression must be deliberate and intentional and not arising from mere interpretation or misunderstanding of law. The Court observed that something more than mere omission is required to invoke the extended period.

9.5 We further note that this Tribunal in *RR Polymers v. Commissioner of GST & Central Excise, Madurai, 2025 (1) TMI 1375 (Tri.-Chennai),* held that where the demand arises solely from audit scrutiny of disclosed financial records and statutory returns, the ingredients necessary for invocation of the extended period are absent. Similarly, in *Pallipalayam Spinners Pvt. Ltd. v. Commissioner of GST & Central Excise, Salem, 2025 (10) TMI 388 (Tri.-Chennai),* it was held that audit verification of already disclosed records cannot be equated with suppression or wilful misstatement. These decisions further reinforce the conclusion that the extended period is not invocable in the present case.

9.6 We find that in the present case; the entire demand arises from an audit objection concerning interpretation of Rule 6(3A) and computation methodology. All relevant figures relating to electricity generation, trading turnover and CENVAT credit were reflected in statutory returns and financial records. There is no allegation or evidence of any positive act of suppression, wilful misstatement or intent to evade duty.

9.7 We observe that where the dispute is purely interpretational and the assessee has disclosed all relevant particulars in statutory returns, invocation of the extended

period is impermissible in law. The department has not established any deliberate withholding of information. In the absence of any allegation in the Show Cause Notice establishing intent to evade duty with supporting material, the extended period cannot be sustained merely on interpretational differences.

9.8 Therefore, respectfully following the law laid down by the Hon'ble Supreme Court in Cosmic Dye Chemical, Pushpam Pharmaceuticals and Uniflex Cables Ltd., we hold that the extended period under Section 11A is not invocable in the present case.

Issue No. (iv) Whether penalty is sustainable: -

10.1 We find that penalties have been imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 on the premise that the appellant had wrongly availed and short-reversed CENVAT credit with intent to evade payment of duty.

10.2 We observe that Rule 15(2) read with Section 11AC contemplates penalty only where credit has been wrongly taken or utilised by reason of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. The ingredients required for invoking

extended period under Section 11A are substantially similar to those required for imposition of penalty under Section 11AC.

10.3 We have already held, while deciding Question (iii), that the issue involved in the present case is purely interpretational concerning application of Rule 6(3A) formula and treatment of electricity and trading turnover. The entire demand has arisen from scrutiny of statutory records and audit objections. There is no evidence of fraud, collusion, wilful misstatement or deliberate suppression of facts.

10.4 We further observe that where the dispute pertains to interpretation of statutory provisions and the assessee has acted on a plausible interpretation supported by judicial decisions, imposition of penalty is not justified. In *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT (J159) (SC),* the Hon'ble Supreme Court held that penalty will not ordinarily be imposed unless the party acted deliberately in defiance of law or was guilty of contumacious conduct or dishonest intention.

10.5 Likewise, in *Uniflex Cables Ltd. v. CCE, 2011 (271) ELT 161 (SC),* the Apex Court held that where the issue is interpretational and the assessee has disclosed all

material facts, penalty under Section 11AC is not sustainable.

10.6 In the present case, not only have we held that the demand itself is unsustainable on merits and limitation, but we also find absence of any element of mens rea. Therefore, the essential pre-condition for imposition of penalty under Rule 15(2) read with Section 11AC is not satisfied.

10.7 Accordingly, we hold that the penalties imposed in both appeals are liable to be set aside. So, ordered accordingly.

11. In view of the detailed findings recorded hereinabove, we hold that the appellant has correctly exercised the option under Rule 6(3A) and reversed proportionate common credit; that electricity and trading activity are relevant only for computation under Rule 6(3A) and no demand under Rule 6(3)(i) is sustainable; that to the extent indicated above the impugned orders travel beyond the scope of the Show Cause Notices; that the extended period of limitation is not invocable; and that the penalties imposed are unsustainable.

12. Consequently, the impugned Orders-in-Original are set aside. Both appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 23.03.2026)

(JUSTICE DILIP GUPTA)
PRESIDENT

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK