

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.1

Excise Appeal No. 50853 Of 2025

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-35-37-2024-25 dated 03.07.2024 passed by the Commissioner of Central Excise and CGST, Udaipur]

Hindustan Zinc Limited
Yashad Bhawan, Udaipur, Rajasthan

: Appellant

Versus

**Commissioner of Central Excise
& CGST, Udaipur**
142-B, Sector -11, Hiran Magri,
Udaipur Rajasthan-313002

: Respondent

with
Excise Appeal No. 50854 Of 2025

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-35-37-2024-25 dated 03.07.2024 passed by the Commissioner of Central Excise and CGST, Udaipur]

Hindustan Zinc Limited
Yashad Bhawan, Udaipur, Rajasthan

: Appellant

Versus

**Commissioner of Central Excise
& CGST, Udaipur**
142-B, Sector -11, Hiran Magri,
Udaipur Rajasthan-313002

: Respondent

AND
Excise Appeal No. 50898 Of 2025

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-35-37-2024-25 dated 03.07.2024 passed by the Commissioner of Central Excise and CGST, Udaipur]

Hindustan Zinc Limited
Yashad Bhawan, Udaipur, Rajasthan

: Appellant

Versus

**Commissioner of Central Excise
& CGST, Udaipur**
142-B, Sector -11, Hiran Magri,

: Respondent

Excise Appeal No. 50853 Of 2025
Excise Appeal No. 50854 Of 2025
Excise Appeal No. 50898 Of 2025

Udaipur Rajasthan-313002

APPEARANCE:

Ms. Sukriti Das and Ms. Arushi Prabhakaran, Advocates for the Appellant
Shri Bhagwat Dayal, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 50978-50980/2026

Date of Hearing:19.05.2026

Date of Decision:22.05.2026

P. ANJANI KUMAR

M/s Hindustan Zinc Limited¹ are engaged in the manufacture of Zinc Ingots and leads and are registered with Central Excise. The appellants are availing CENVAT credit on inputs, capital goods and inputs services. During the course of Audit of the records of the appellant, it appeared to the department that the appellant availed credit of inputs like (furnace oil) and inputs in the captive power plant for generation of electricity which was partly consumed by the appellant and partly wheeled out/transferred to their sister concern M/s AVVNL that the appellant have failed to maintained separate records in respect of capital goods, inputs and input services utilized for manufacture of exempted and dutiable products and therefore, they are liable to pay an amount of 5%/6% on value of electricity wheeled out/sold to their sister concerns. Accordingly, three show

¹ **The Appellant**

cause notices dated 22.03.2016, 08.05.2017 and 03.04.2018 covering the period 2011-12 to 2017-18 (upto June 2017) and demanding amount of Rs. 6,94,90,360/- + Rs. 17,26,781/-+Rs. 6,87,036/-. The proposals in the show cause notices were confirmed by the impugned order dated 05.07.2024 along with interest and equal penalty under section 11AC of the Central Excise, 1944/Rule 25 of Central Excise Rules, 2002.

2. Ms. Sukriti Das, learned counsel for the appellant submits that during the relevant period, the appellant has transferred electricity of value of Rs. 12,142.28 lacs to their sister concerns and M/s AVVNL. The appellants have reversed the CENVAT credit in respect of the inputs and input services attributable to power sold to their sister concerns. The appellant has reversed a total amount of Rs. 2,06,19,157/- during the period 2011-12 to 2017-18 (up to June, 2017) from time to time. All the reversals have been informed to the department from time to time and to adjudicating authority, vide defense reply dated 07.09.2021 to the show cause notice. It is on record that learned Commissioner vide the impugned order confirmed one of such payments in respect of show cause notice dated 08.05.2017 and appropriated the amount. In spite of the same, learned Commissioner holds that the appellant is liable to pay an amount as required under Rule 6 of the CENVAT Credit Rules. She submits that proportionate reversal amounts to non-avilment of CENVAT credit and compliance of Rule 6(3A) of CENVAT Credit Rules.

3. She submits that this Bench of the Tribunal has settled the issue in favour of the appellant, in respect of their other units, vide Final Order No. 51781-51786/2025 dated 24.11.2025 and Final Order No. 50064-50069/2026 dated 15.01.2026. She further relies on

- (i) Chandrapur Magnets Private Limited versus Collector of Central Excise, Nagpur²
- (ii) Commissioner of Central Excise and Customs versus Precot Meridian Limited³
- (iii) Commissioner of Central Excise, Jaipur-I versus Sanjay Engineering Industries⁴
- (iv) Commissioner of Central Excise and Service Tax, Udaipur versus Secure Meters Limited⁵ affirmed by Hon'ble Rajasthan High Court in Union of India versus Secure Meters Limited⁶
- (v) Commissioner of Central Excise versus Hindustan Zine Limited⁷
- (vi) Star Agri-warehousing & Collateral Management Ltd. versus Commissioner, Central Excise & Service Tax, Jaipur⁸
- (vii) Hello Minerals Water Pvt. Ltd. versus Union of India⁹
- (viii) VivekPharmachem (India) Limited versus Commissioner, Central Goods and Service Tax, Commissioner Jaipur, Final Order No. 50785 dated 23.8.2022 in Excise Appeal No. 51380 of 2018-CESTAT New Delhi

² **1996 (81) ELT 3 (S.C)**

³ **2015 (325) ELT 234 (S.C.)**

⁴ **2016 (43) STR (354) (Raj.)**

⁵ **2017 (354) ELT 146 (Tri.-Del)**

⁶ **2017 (354) ELT A32 (Raj.)**

⁷ **2021 (375) E.L.T. 446 (Tri. - Del.)**

⁸ **2021 (44) G.S.T.L. 271 (Tri. - Del.)**

⁹ **2004 (174) ELT 422 (All.)**

- (ix) Commissioner, Central Excise Jaipur -I versus Shree Auro Iron Ltd., Final Order No. 50688/2023 dated 15.5.2023 in Service Tax Appeal No. 51194 of 2016-CESTAT New Delhi

4. Learned Counsel for the appellants submits further that the demand cannot be raised out/rightly @5%/6% of the sale value of electricity sold due to non-maintenance of records. Rule 6(3) merely gives the options to to the appellants to uses capital goods, inputs and input services in the manufacture of excisable and exempted goods. The appellant has exercised the option under Rule 6(3) (ii) and therefore issue of demand invoking Rule 6(3) (ii) is ex-facie erroneous. She relies on the following decisions:-

- (i) Tiara Advertising versus Union of India¹⁰
- (ii) Sky Automobiles versus The Principal Commissioner, Central GST, Central Excise and Service Tax, Final Order No. 59782/2024 dated 4.12.2024 in Service Tax Appeal No. 51090 of 2018
- (iii) Agarwal Metal Works Pvt. Ltd. versus Commissioner of CGST, Alwar¹¹
- (iv) The Oberoi Raj Vilas versus Commissioner of Central Excise, Jaipur, Final Order No. 52052-52054/2018 dated 30.05.2018 in Service Tax Appeal No. ST/51210/2024-CESTAT New Delhi
- (v) Rajasthan Renewable Energy, Corporation Limited versus Commissioner of Central Excise, Jaipur, Final Order No. 50347-50438/2023 dated 1.3.2023 in Service Tax Appeal No. 51569 of 2015 and Service Tax Appeal No. 52471 of 2016

¹⁰ **2019 (30) GSTL 474 (Telangana)**

¹¹ **2022 (65) GSTL 372-CESTAT Delhi**

5. Learned Counsel submits that electricity is not exempted goods and hence Rule 6 of Credit Rules has no application. As per Rule 2(d), the term '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. Though Central Excise Tariff provides Item 27160000 for 'Electrical Energy', no rate of duty is specified, not even 'zero'. It's simply left blank. Therefore, as per section 2(d), as no duty is specified 'electrical energy' cannot be even held to be 'excisable goods'. She relies on the decision of the Tribunal in **Rajasthan Renewable Energy, Corporation Limited (supra)**.

6. Learned Counsel submits further that in the absence of any quintessential ingredients of fraud, suppression etc. extended period is not invocable. Explanation III to Rule 6 borrows the provisions of Rule 14 of Cenvat credit Rules, only for recovery of the amount payable under sub-rules (3), (3A) & (3B). It does not borrow provisions of Section 11AC of the Central Excise Act, 1962 for imposing penalty. She submits that in their own case (supra), involving identical facts, this bench held that extended period is not invocable. She relies on the following decisions:-

- (i) Air India Ltd. v. Commissioner of Service Tax, New Delhi, Final Order No. 50245/2024 in Service Tax Appeal No. 51541/2017-CESTAT New Delhi Affirmed by Hon'ble Delhi High Court in Commissioner CGST, Delhi South versus. Air India Ltd., 2024 DHC 8153-DB

- (ii) Rangoli Division v. Commissioner (Appeals), Final Order No. 51318/2023 in Service Tax Appeal No. 51722 of 2018-CESTAT New Delhi
- (iii) GD Goenka Private Limited v. The Commissioner of Central Goods and Services Tax, Delhi South, Final Order No. 51088/2023, CESTAT New Delhi

7. Shri Bhagwat Dayal, learned authorised representative for the revenue, reiterates the findings of the impugned order. He submits elaborately on the provisions of Rule 6 by way of a chart. He submits that as per Explanation III to Rule 6, provisions of Rule 14 of Cenvat credit Rules, can be initiated for recovery of the amount payable under sub-rules (3), (3A) & (3B). He submits that the decision in respect of the cases relied upon by the counsel for the appellants was on the point that rule 6 has no recovery provisions and as such amounts demanded invoking Rule 6 could not have been confirmed. However, in the instant case, rule 14 has been duly invoked. As Explanation III under rule 6 provides for recovery during the impugned period, the cases relied upon are not applicable. He relies on the case of **Commissioner of Central Excise, Thane-I** versus **Nicholas Piramal (India) Limited**¹² and submits that high court held inter alia that *"it will not be possible in that context to read the rule as directory as sought to be contended on behalf of the assessee. The rule would have to be followed. In other words, it is mandatory, if an assessee seeks to avail of Cenvat Credit as set out in the rule."*

¹² **2009 (244) ELT 321 (Bom.)**

8. Having heard rival contentions as above and having perused the records of the case and the cases relied upon by both the parties, we find that the issue is no longer *res integra*, in view of the principle enunciated by the Hon'ble Apex Court in the case of **Chandrapur Magnets Private Limited** versus **Collector of Central Excise, Nagpur (supra)** and the decision of this bench in the case of **Hindustan Zinc Limited** versus **The Commissioner** vide Final Order No. 51781-51786/2025 dated 24.11.2025, wherein it was held as under:-

26. No duty was payable by the appellant under section 11A of the Central Excise Act as the amount of credit availed by the appellant on the sale of electricity sold to the State Electricity Board had been reversed as reversal of credit amounts to not taking credit at all.

27. The Supreme Court in **Chandrapur Magnet Wires (P) Ltd. vs. Collector of C. Excise, Nagpur** 1996 (81) ELT 3 (S.C.) and **Commissioner of Central Excise & Customs vs. M/s. Precot Meridian Limited** 2015 (325) E.L.T 234 (S.C.) held that reversal of credit means that the party did not avail the input service credit. A Division Bench of the Tribunal in **M/s. Star Agriwarehousing & Collateral Management Limited vs. Commissioner, Central Excise & Service Tax** in Service Tax Appeal No. 51818 of 2015 decided on 28.01.2020 also observed that once the proportionate reversal of CENVAT credit takes place, it tantamount to non-availing of the input service credit.

9. We further find that this bench held in the case of **Hindustan Zinc Limited** versus **The Commissioner** vide Final Order No. 50064-50069/2026 dated 15.01.2026 held as under:-

"17. It is settled law that if CENVAT credit availed on inputs and input services attributable to electricity sold out to the State Electricity Board is reversed on monthly basis, even at a later stage, it would tantamount to not availing credit at all as was observed by the Supreme Court in **Chandrapur Magnet Wires (P) Ltd. vs. Collector of C. Excise, Nagpur 1996 (81) E.L.T. 3 (S.C.)** and **Commissioner of Central Excise & Customs vs. Precot Meridian Ltd. 2015 (325) E.L.T. 234 (S.C.)** This issue was also examined at length by the Tribunal in the own case of the appellant in Excise Appeal No. 50298 of 2025 connected with five more excise appeals which were decided on 24.11.2025.

18. The demand raised in the impugned order in respect of inputs and input services attributable to electricity sold to the State Electricity Board, therefore, has to be set aside."

10. We find that learned authorised representative tried to differentiate the above cases stating that decision in those cases was for the reason that there was no provision under rule 6 for recovery and rule 14 was not invoked. We find that the decision in the above cases is clearly on the basis of jurisprudence that evolved on the issue and not only for the reason that rule 14 was not invoked. We further find that this bench had considered the case of **Nicholas Piramal (India) Ltd. (supra)** in the case of **M/s Jayaswal Neco Industries Limited vs. Principal Commissioner of Central Goods and Service Tax & Central Excise, Raipur**¹³ and observed as under:-

"7. We find that the learned Authorized Representatively heavily relied on the decision of

¹³ **Final Order No. 50461-50462/2025 dated 01.04.2025**

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Nicholas Piramal (India) Ltd. (supra) the said decision is not applicable to the facts of the case of as the Cenvat Credit Rules, 2004 has been amended by the Finance Act, 2010 and the said decision pertains to the earlier provision of rule Cenvat Credit Rules, 2004. Therefore, the said decision have no bearing on the facts of this case.”

11. In view of the discussion as above, we find that the impugned order cannot be sustained. As a result, we allow all the three appeals.

(Order pronounced in the Open Court on 22.05.2026)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.