IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 40382 of 2016

(Arising out of Order in Original No. 38/2015 (C) (ST) dated 04.12.2015 passed by the Commissioner of Central Excise, Puducherry)

Apeejay Surendra Park Hotels Ltd. **Appellant**
601, Anna Salai
Chennai – 600 006.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Smt. Radhika Chandrasekar, Advocate for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40663/2026

Date of Hearing: 16.02.2026
Date of Decision: 02.06.2026

Per M. Ajit Kumar,

This appeal is directed against Order-in-Original No. 38/2015 (C) (ST) dated 04.12.2015 passed by the Commissioner of Central Excise, Puducherry (impugned order).

Factual Matrix

2. The appellant, engaged in the hotel business, provided various taxable services including Business Auxiliary Service (**BAS**), Business Support Service (**BSS**), outdoor catering, mandap keeper and GTA. The department alleged that for the period 2008-09 to 2010-11, it wrongly availed and utilised full CENVAT credit on common input

services by classifying them as 'Management Consultancy' and 'Intellectual Property Rights' service on the premise that they were covered under rule 6(5) of the Cenvat Credit Rules 2004 (**CCR, 2004**), though they were allegedly BAS/BSS, and failed to reverse credit attributable to exempt services, leading to excess credit of Rs. 1,07,29,311/- which was recoverable under Rule 14 of the said Rules. It was also alleged that, during the said period, the appellant wrongly claimed abatement under Notification No-01/2006-ST dated 01.03.2006 for outdoor catering, mandap keeper and GTA services while availing CENVAT credit on common inputs/input services, resulting in short-payment of service tax of Rs. 37,74,164/-. After due process the Ld. Commissioner accepted the appellant's stand on classification with respect to the violation of Rule 6(3) of the CCR, 2004, holding that the recipient's jurisdictional officers could not dispute the supplier's classification, but denied the benefit of Notification No. 1/2006-ST and accordingly confirmed the demand of Rs. 37,74,164/- with interest, and imposed penalty under Section 78 of the Finance Act, 1994 (**FA, 1994**). Hence, the appeal.

3. The learned Advocate Smt. Radhika Chandrasekar appeared for the appellant and Shri N. Satyanarayanan, Ld. Authorized Representative appeared for the respondent.

Submissions on behalf of the Appellant

3.1 Smt. Radhika Chandrasekar the Ld. Counsel for appellant submitted that:

A. The Appellant submits that it operates a luxury hotel and is registered under various taxable service categories. In the course of

its business, it availed general management and hotel operation services from M/s Apeejay Surrendra Hotels Pvt. Ltd. and M/s Apeejay Surrendra Corporate Services Pvt. Ltd.

B. In respect of Mandap Keeper service, the Appellant discharged service tax on 60% of the taxable value by availing abatement under Notification No. 1/2006-ST dated 01.03.2006. They did not avail credit of input services used for Mandap Keeper/Outdoor Catering service and availed credit only on common input services used for other taxable output services.

C. The proviso to Notification No. 1/2006-ST restricts credit only in respect of input services used for providing the very taxable service on which abatement is claimed; it does not impose any blanket prohibition on availment of CENVAT credit. Further under Rule 6(5) of the CCR, 2004, credit of the specified services is admissible so long as such services are not used exclusively for exempted services.

D. The SCN itself records that the impugned credit was taken on common input services such as telephone, security and management consultancy, even while the Appellant availed the benefit of Notification No. 1/2006-ST. The Order-in-Original also notes availment of credit on equipment hire, internet, security agency, technical inspection and certification, and management consultancy services, and further acknowledges that credit on management consultancy and security agency services was taken under Rule 6(5) of the CCR, 2004, where no restriction applies if such services are used for both taxable and exempted output services.

E. Credit of service tax paid on GTA under reverse charge is also admissible, as the same is not an input service used for providing such abated taxable service. This position stands affirmed by the Tribunal in ***Lemon Tree Premier Vs CCT, Hyderabad-IV*** [2024 (4) TMI 397], wherein it was held that Notification No. 1/2006-ST bars credit only qua input services relatable to such taxable service and not all CENVAT credit.

F. The demand relates to the period from April 2008 to March 2011 and the SCN was issue on 20.04.2013, which is more than 18 months from the normal period of demand. Further the extended period is also not invocable, there being no suppression or misstatement. The entire demand arises out of an interpretational dispute, and all material facts were available in the Appellant's records. Consequently, the demand is time-barred, and the levy of interest and penalty is wholly unsustainable.

The Ld. Counsel prayed that their appeal may be allowed.

Submissions on behalf of the Respondent-Revenue

3.2 Shri N. Satyanarayanan, Ld. Authorized Representative, took us through the impugned order and submitted that:

A. The dispute pertains to the period 2008-09 to 2010-11. Having availed Cenvat Credit the appellant could not take the benefit of abatement under conditional notification 1/2006-ST, dated 01.03.2006.

B. As per the proviso to Notification No-01/2006-ST dated 01.03.2006, the exemption shall not apply in cases where, among things, the CENVAT credit of duty on inputs or capital goods or the

CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CCR, 2004.

C. Rule 6 of CCR, 2004, provides for certain obligations and procedures to be followed by a provider of taxable and exempted services.

D. According to Rule 6(2), a separate account is required to be maintained in respect of input services, if the output services are taxable as well as exempted and a assessee can claim CENVAT credit only on those used for dutiable goods and taxable output services. Rule 6(3) considers a situation wherein when separate account is not maintained, in such a situation, either a flat amount as a percentage of exempted & taxable services is to be paid or an amount as prescribed under Rule 6(3A) is liable to be paid.

E. Since the appellant had utilised the credit common input services for paying tax on exempted products, the credit has rightly been denied.

The Ld. A.R. prayed that the appeal may be dismissed.

Discussion & Analysis

4. We have considered the rival submissions and perused the material placed on record. The dispute pertains to availing credit of common input services that have been utilized when providing exempted output services.

Interpretational Issue

5. The appellant has submitted that there is no suppression of fact or misstatement and the entire demand for Service Tax pertains to the extended period due to an interpretational dispute and is hence time-

barred. Limitation being a jurisdictional issue and especially when the entire demand pertains to the extended period, it requires to be examined at the earliest. The question then arises as to what is a purely interpretational dispute.

5.1 We find that the expression **"interpretation"** in its ordinary legal sense signifies the process of ascertaining the true meaning, scope and effect of the language, be it that of a word or phrase, that is under dispute. A dispute by itself refers to a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. **Black's Law Dictionary**, 5th Edn., p. 424 defines "dispute" as under:

> '**Dispute**.—A conflict or controversy; **a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other**. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'
> (emphasis added)

In legal usage, interpretation denotes the judicial determination of the meaning of language employed by the Legislature, particularly where the text is said to admit of doubt, ambiguity, limitation, or competing constructions. It does not arise where the controversy is merely factual, such as appreciation of evidence, scrutiny of records, or factual inferences. **Black's Law Dictionary**, Ninth Edition, defines interpretation as under:

> **"interpretation,** *n.* (14c) 1. **The process of determining what something, esp. the law or a legal document, means**; **the ascertainment of meaning to be given to words or other manifestations of intention**. [Cases: Contracts

> "Interpretation, as applied to written law, is the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the law designed it to convey to others." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 1 (1896).
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> "**There is more to interpretation in general than the discovery of the meaning attached by the author to his words**. Even if, in a particular case, that meaning is discoverable with a high degree of certitude from external sources, the question whether it has been adequately expressed remains." Rupert Cross, *Statutory Interpretation 149* (1976)."
> (emphasis added)

Every dispute is based on differences in views, but that does not make it interpretational. A mere assertion is not sufficient to prove the existence of an interpretational dispute. **An interpretational dispute must arise from a genuine and demonstrable ambiguity in law, reflected in the pleadings and submissions of the party and in the findings of the authorities. The legal point must be debatable and unresolved, due to the lack of a clarification or binding precedent at the time the lis arose, or a subsequent clarificatory circular being issued evidencing prior ambiguity, which affect the rights of parties in rem under the statute. As per the universally accepted legal principle, one who asserts must prove. Without that factual and legal foundation, a plea of "interpretation" would be seen merely as an attempt to seek an undue advantage under the guise of law.**

5.2 Since in this appeal the issue of time-bar cannot be gleaned merely from a record of the events, a proper threefold scrutiny would be necessitated: first, whether the demand is sustainable on merits; second, whether it falls beyond the normal period of limitation; and

third, whether the Department has established, by cogent evidence, deliberate suppression or willful misstatement with intent to evade Service Tax. Accordingly, the merits of the demand must be examined first. Only if the demand survives on merits does the question of examining the valid invocation of the extended period arise. We hence proceed accordingly.

6. The proviso to Notification No. 1/2006-ST states that the notification **shall not apply in cases where**, the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing **such taxable service**, has been taken under the provisions of the CCR, 2004. Further under Rule 6(5) of the CCR, 2004, credit of the **services specified therein** is admissible so long as such services are not **used exclusively for exempted services**. Hence on a careful appreciation of the facts, we find considerable force in the submissions advanced on behalf of the Appellant, for reasons discussed below.

7. Rule 6(5) of the CCR, 2004, reads as under:

> "Rule 6(5). Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act **shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services**."
> (emphasis added)

8. Law is well settled that there is no one-to-one relationship, between input and output, in the Cenvat credit scheme [See: **Collector of Central Excise, Pune Vs Dai Ichi Karkkaria Ltd.** - 1999 (112) E.L.T. 353 (S.C.)]. Further service by its very nature is

rendered and consumed simultaneously and it cannot be stored. Once credit is earned it can be denied only as per law. In this context, while interpreting the provision of a Notification it must be read harmoniously with the provisions of the Rules. We find that the said Rule 6(5) was in force at the relevant time of the dispute and has been omitted vide Notification No. 3/2011-C.E. (N.T.), dated 1-3-2011 with effect only from 01.04.2011 i.e. after the period under dispute.

9. As per Notification No. 1/2006-ST, the Cenvat credit of duty on inputs or capital goods or the Cenvat credit of Service Tax on input services should not be 'used for providing **such** taxable service'. The word 'such' appearing in the proviso to Notification No. 1/2006-ST refers to the taxable service exempted by the notification. However, in the case of common inputs used for both dutiable and exempted output services the said phrase must be understood harmoniously in the context of Rule 6(5) of CCR 2004. The said Rule starts with a non obstante clause, which is a legislative device seeking to confer overriding effect upon a particular provision over other conflicting provisions that may be found either in the same enactment or some other enactment. Hence in the event of conflict between Rule 6(1), (2), (3) and Rule 6(5) of CCR 2004, owing to its overriding effect, the provision of Rule 6(5), carrying the non obstante clause will have to be given effect to. **The dispute then melts as Rule 6(5) allows credit of the whole of service tax paid on taxable service so long as such services are not used exclusively for exempted services**. We find that the SCN does not allege that the impugned common input services utilised are not specified services in terms of Rule 6(5) of CCR,

2004, or that proportionate credit was not to be availed as attributable to input services used in relation to provision of non-abated services. In the circumstances if an assessee is eligible to take credit it is also allowed to utilise the same.

10. We find that a similar issue was examined by a Coordinate Bench of this Tribunal in the case of **Lemon Tree Premier** (supra), cited by the appellant. Relevant portion of the said Order is reproduced below:

> ". . . Rule 6(5) as it stood during the relevant period states that credit is eligible on the services specified therein, if such services are not used exclusively for exempted services. Even if we consider that prior to 1-5-2011, the output services of short-term accommodation services and restaurant services were not taxable services, the appellants were rendering other taxable services like health club and fitness service, internet cafe service etc. **Since the services specified in Rule 6(5) were not used by the appellant exclusively for non-taxable services, the appellants are eligible for the credit.** The said Rule starts with a non obstante clause wherein it is stated that notwithstanding anything contained in Rule 6(1), (2) and (3), the assessee will be eligible for credit on input services specified therein when it is not exclusively used for exempted services. The said Rule was omitted w.e.f. 1-4-2011. The credit is eligible on application of Rule 6(5) of CCR, 2004.
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> 6. Following the above decisions and after considering the facts and evidences presented before us, we hold that the demand raised in respect of wrong availment of credit and wrong availment of abatement cannot sustain. The impugned order to the extent of demand raised on these issues is set aside without disturbing the demand of Service Tax on Convention services. The appeal is allowed in above terms. . ."

11. In the circumstances the impugned order demanding duty, as the appellant had wrongly claimed abatement under Notification No-01/2006-ST dated 01.03.2006 on certain output services, after availing CENVAT credit on common inputs/input services, requires to be set aside on merits. Since the issue has been decided on merits

other issues like interest, penalty and time-bar on 'interpretational' grounds are no longer relevant and are not discussed.

Conclusion

12. Accordingly, we set aside the impugned order. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of on the said terms.

(Order pronounced in open court on 02.06.2026)

Sd/-	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

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