

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 4**

**SERVICE TAX APPEAL NO. 50844 OF 2019**

[Arising out of Order in Original No. 38/Commr/RK/Audit-II/2018-19 dated 28.12.2018 passed by the Commissioner of Central Goods and Service Tax, New Delhi]

**M/S VERTIV ENERGY PVT LTD**

**....APPELLANT**

(formerly known as Emerson Network Power (I)Ltd)  
NH-II, Ground Floor, C-Block, Community Centre,  
Naraina Vihar,

Vs.

**COMMISSIONER OF CGST & CENTRAL  
EXCISE-DELHI SOUTH**

**....RESPONDENT**

Audit II,  
1<sup>st</sup> Floor, EIL Annexe Building  
Bhikaji Kama Place, R.K. Puram  
New Delhi-110066

**Appearance:**

Shri B.L. Narasimhan and Ms. Shreya, Advocates for the Appellant  
Shri Aejaz Ahmad, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT  
HON'BLE MR. P. V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 51085 /2026**

**DATE OF HEARING : 20/04/2026  
DATE OF DECISION : 25/06/2026**

**P.V.SUBBA RAO**

1. The order dated 28.1.2018<sup>1</sup> passed by the Commissioner deciding the proposals in the Show Cause Notice dated 13.12.2016 covering the period 2011-12 to 2014-15 is assailed by M/s Vertiv Energy Private Limited<sup>2</sup> in this appeal. In the impugned order the Commissioner ordered recovery of Rs. 12,36,00,000/- under rule 14

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**1 Impugned order  
2 The appellant**

of the Cenvat Credit Rules, 2004<sup>3</sup> read with the proviso to section 73 of the Finance Act, 1994<sup>4</sup>. Further he demanded service tax of Rs. 51,65,712/- under the proviso to section 73 of the Act along with interest under section 75 of the Act. He imposed an equal amount as penalty under rule 15 of the CCR and Section 78 of the Act and further imposed penalties of Rs. 5,16,571/- under section 76 of the Act and Rs. 10,000/- under section 77(i) and 77(ii) of the Act and Rs. 20,000/- under section 70 of the Act.

2. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records.

3. The three issues for consideration in this appeal on merits are.

- (i) Demand of Rs. 12,36,00,000/- under rule 6(3) of the CCR, 2004.
- (ii) Service Tax said to have been short paid by the appellant under the head "erection, commissioning and installation service" during 2012-13
- (iii) Service tax said to have been short paid on account of change in the rate of tax after 01.04.2012 (during 2011-12)

4. The appellant is engaged in manufacture and trading of goods such as uninterrupted power supply systems, DC power systems, precision air conditioning systems etc. It's business is divided into

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**3** CCR  
**4** Act

four zones i.e, North, South, East and West, and the present appeal pertains to the demand raised against the appellant in north zone where it was registered with the respondent. The appellant availed CENVAT credit on various input services which it had received. Some of the input services were attributable to taxable services and some to exempted services and some were common input services. The case of the Department is that the appellant had not maintained separate records of CENVAT credit taken for taxable and exempted services and had availed CENVAT credit on common input services. Therefore, according to the department, the appellant was required to pay an amount under Rule 6(3) of CCR. Since the appellant's accounts (trial balance) were not maintained separately for each zone, the turnover in the North Zone was reckoned by the Commissioner to be 40% of its turnover across India. Accordingly, the amount to be recovered under rule 6(3) of CCR has been worked out. The appellant's contention is that the question of payment of amount under rule 6(3) of CCR does not arise because it had only availed proportionate amount of CENVAT credit on common input services. It is the contention of the appellant that of the total service tax paid on such services, it had only taken CENVAT credit in proportion to the taxable services. Voucher-wise details of the service provider, nature of service, service tax paid and CENVAT credit availed and percentage have been given by the appellant in its reply to the show cause notice which is at pages 388 and 391 of the appeal.

5. Therefore, according to the appellant it had not availed any ineligible CENVAT credit.

6. The next submission of the appellant is that at any rate an amount under rule 6(3) of CCR can be recovered under rule 14 of CCR only if the assessee opts for Rule 6(3) and not otherwise. Reliance is place on the judgment of the Telangana High Court in **M/s Tiara Advertising vs. Union of India**<sup>5</sup>.

7. With respect to the second demand on the service tax alleged to have been short paid under the head "erection, commissioning and installation services" during 2012-13, the appellant submits that it had paid service tax on the entire services rendered by it but under different heads. The services in dispute fall under two heads-works contract service" and "erection, commissioning and installation service". He also submitted a chartered accountant's certificate to that effect which is at page 320 of the appeal book which shows the service tax paid under "erection, commissioning and installation service" "works contract service". Therefore, the appellant contends that it had paid correct it service tax in respect of all services.

8. With respect to the third part of the demand, the allegation is that the appellant had raised certain invoices during the month of February and March 2012 but the payments were received after April 1, 2012 when the rate of service tax was increased from 10% to 12%. It is alleged that as per the point of taxation rules service tax should have been paid at 12% and not at 10%. The appellant's submission with respect to this is as follows:

SI No.	Situation	Payment of service tax
1.	Invoices raised and services rendered, both prior to 01.04.2012	Since services were provided and invoice was raised, service tax was

		paid @10.3%, which was the rate applicable prior to 01.04.2012 in terms of Rule 4(a)(ii) of POT Rules.
2.	Invoice raised prior to 01.04.2012. Services partially provided prior to 01.04.2012 and partially after 01.04.2012. Entire payment received in advance prior to 01.04.2012	Since entire payment was received in advance prior to 01.04.2012, service tax was paid @ 10.3% which was the rate applicable prior to 01.04.2012 in terms of Rule 4(b)(ii) of POT Rules.
3	Invoices raised prior to 01.04.2012, services partially provided prior to 01.04.2012 and to such extent payment received prior to 01.04.2012. Some portion of service rendered and payment received after 01.04.2012.  Some portion of service rendered and payment received after 01.04.2012	To the extent services provided and payment received prior to 01.04.2012, service tax was paid @ 10.3% ;which was the rate applicable prior to 01.04.2012 in terms of Rule 4(a)(ii) of POT Rules. To the extent services were provided and payment was received after 01.04.2012, service tax payable at 12.36%. On account of which differential demand of Rs. 4,15,777/- (along with interest) was paid during the audit as per Rule 4(b)(i) of POT Rules.

9. Learned counsel for the appellant also contested the demand on grounds of limitation and further contested the imposition of penalties.

10. Learned authorized representative appearing for the Revenue submitted that the impugned order is correct and proper and its calls for no interference.

11. We have considered the submissions advanced by both sides.

12. The first issue is whether the demand of an amount as a percentage of the value of the exempted services could be made under rule 6(3) of CCR read with Rule 14 of CCR. We find that the issue is no longer *res integra*. Rule 6 of the CCR places various obligations on the person availing CENVAT credit. If any of these obligations is not met the CENVAT credit would be irregular and it can be recovered from assessee. These obligations can be fulfilled in one

of the several ways provided under rule 6. The first option is not to avail CENVAT credit on the inputs and input services used in providing exempted services as per Rule 6(1) of the CCR. The second option is to maintain separate accounts of the inputs and input services used in providing taxable services and exempted services under Rule 6(2) of CCR. The third option is to pay an amount as a percentage of the value of the exempted services under rule 6(3) of CCR. The assessee is free to choose any of the options and fulfill its obligations accordingly. However, if he does not fulfill obligation under any of the options, the CENVAT credit availed by the such assessee would be wrong and can be recovered under rule 14 of the CCR.

13. Further, if the assessee opts for payment of an amount under Rule 6(3) of CCR but was does not pay the amount, such amount can also be recovered under rule 14 of the CCR.

14. Nothing in the CCR permits officers to make a choice and require the assessee to fulfil obligation as per the officers choice. An amount under rule 6(3) of CCR cannot be demanded from the assessee under Rule 14 of CCR by making a choice for the assessee. The judgment of the Telangana High Court in **Tiara Advertising** answered this question very clearly. The relevant portion of which is as follows:

"7. Rule 6 of the CENVAT Credit Rules, 2004 deals with the obligations of a provider of taxable and exempted services. Rule 6(1) states that CENVAT Credit shall not be allowed on inputs/input services exclusively used for providing exempted services. Rule 6(2) provides that if inputs or input services are used for provision of output services which are chargeable to duty or tax as well as exempted services, then separate accounts are to be maintained for receipt, consumption and inventory of inputs and receipt and use of input services and the provider shall take credit only on inputs used for dutiable output services. Rule 6(3)

of the CENVAT Credit Rules, 2004 is relevant for the purpose of this case and states to the effect that a provider of output services who opts not to maintain separate accounts, as required under Rule 6(2), should follow any one of the options provided under Clauses (i) to (iii) thereunder, as applicable to him. Clause (i) provides for the option of paying an amount equal to 5% of the value of the exempted services. Pursuant to Notification No.18/2012 dated 17.03.2012, the amount to be paid under Clause (i) was increased to 6% with effect from 01.04.2012.

8. It is an admitted fact that the petitioner did not maintain separate accounts of the inputs/input services utilized for providing certain taxable and exempted output services. It also did not choose to opt for one of the procedures stipulated in Rule 6(3) set out supra. The petitioner however availed and utilised CENVAT Credit on such inputs/input services which were common to both taxable and exempted output services and the same amounted to Rs.17,15,489/-.

9. It may be noted that there is no controversy with regard to the entitlement of the petitioner to avail CENVAT Credit but for this disputed amount of Rs.17,15,489/- out of the total extent of Rs.1,41,51,903/-. While so, the second respondent issued show-cause notice dated 19.04.2016 to the petitioner proposing to choose the option under the aforesaid Rule 6(3)(i) on its behalf and calling upon it to explain as to why it should not be directed to pay an amount of 5%, upto 31.03.2012, and 6%, from 01.04.2012, of the value of the exempted services, aggregating to Rs.3,52,65,241/-. In its reply dated 16.05.2016, the petitioner contended that it was wholly unreasonable on the part of the authorities to expect it to pay over Rs.3.50 Crore when the total CENVAT Credit availed by it was less than Rs.1.50 Crore and the actual dispute boiled down to a mere Rs.17,15,489/-. It relied on case law to support its contention that such an unreasonable result could not be allowed to follow by application of the law. The impugned Order-in-Original however reflects that the second respondent did not even advert to the case law cited before him."

15. The demand of an amount under rule 6(3) of CCR cannot, therefore, be sustained for this reason.

16. Further, we note that the appellant has demonstrated it had taken only the proportionate amount of CENVAT credit on the common input services and had not availed any CENVAT credit to the extent that they were attributable to exempted services. If the appellant has not availed complete amount of CENVAT credit the question of reversing a portion of it under rule 6(3) of CCR does not

arise. This part of the demand cannot be sustained even for this reason.

17. The second issue is of the service tax said to have been short paid under the head "erection, commissioning and installation service" during 2012-13. The certificate from the Chartered Accountant for the year 2011-12 is placed at page 320 of the appeal. Details of the service tax paid on various services and the manner in which service was treated in each of the invoices is placed at pages 321-335 of the appeal. What is clear from this is that the appellant had rendered not only "erection, commissioning and installation service" but had also rendered works contract services and annual maintenance contract services for which he raised invoices and paid appropriate amount of service tax. Such being the case the demand of service tax under installation and commissioning services cannot be sustained and needs to be set aside.

18. The third part of the demand arises on account of change of rate of service tax with effect from 01.04.2012 from 10% to 12%. The case of the department is that the appellant had received the amounts after 01.04.2012 but has wrongly paid service tax at the lower rate of 10%. According to the appellant, in some invoices both the date of invoices and date of rendering of services was before 01.04.2012. In such cases as per rule 4(a)(ii) of the point of taxation was the date of issuing of invoices. Therefore, according to the appellant no service tax was payable at a higher rate in such cases, regardless of when the payment was received.

19. The second set of invoices are those raised before 01.04.2012 but services were provided partly before and partly after 01.04.2012 and the entire payment was received in advance before 01.04.2012. Such cases are covered by POT Rules 4(b) (ii). The rate of service tax is the date of receipt of the rate of invoices whichever is earlier. Therefore, the higher rate of tax could not applied.

20. The third set of invoices were issued before 01.04.2012 and the services were rendered both before and after 01.04.2012 and part of the payment was received after 01.04.2012 and part before this date. According to the appellant, to the extent services were provided and payment was received before 01.04.2012 service tax was paid at the older rate as per rule 4(a)(ii) of POT Rules. To the extent the payment was received after 01.04.2012, the appellant agrees that the higher rate of tax was applicable and had paid differential service tax of Rs.4,15,777/- (along with interest) during the audit itself as per rule 4(b)(i) of POT Rules.

21. We have gone through the point of Taxation Rules and find that only to the extent the payment was received after 01.04.2012 for the invoices raised before this date, higher rate of service tax of 12% would apply. The appellant contends that of the total amount alleged to have been received after 1.04.2012 in the show cause notice, only a portion was received after this date and it had paid differential service tax on this amount during audit itself. Therefore, nothing remains to be paid.

22. In view of the above, we find that none of the three items of demand of service tax / CENVAT credit can survive on merits in this case.

23. Consequently, the demand of interest and penalties also cannot survive. In view of the above, the appeal is allowed and the impugned order is set aside with consequential relief to the appellant if any.

[Order pronounced on **25/06/2026**]

**(DR. RACHNA GUPTA)**  
**(OFFICIATING PRESIDENT)**

**(P. V. SUBBA RAO)**  
**MEMBER ( TECHNICAL )**

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