

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 51342 OF 2018

[Arising out of the Order-in-Appeal No. 37/ST/DLH/2018 dated 15/02/2018 passed by The Commissioner of Central Excise & CGST (Appeals-I), New Delhi – 110 002.)

M/s IFCI Limited

IFCI Tower, 61, Nehru Place,
New Delhi – 110 019.

.....Appellant

Versus

**Commissioner of CGST,
Delhi East,**

CR Building, IP Estate,
New Delhi – 110 002.

....Respondent

APPEARANCE:

Shri B.L. Narasimhan and Shri Kunal Agarwal, Advocates for the appellant.

Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51185/2026

DATE OF HEARING : 29.06.2026

DATE OF DECISION: 15.07.2026

P.V. SUBBA RAO

The questions which fall for consideration in this appeal are:

- (i) If common input services were used for providing taxable services and also for some activity which did not amount to service at all, is the assessee required to reverse CENVAT credit proportionately or whether the assessee can avail full CENVAT credit of service tax paid on such common input services? (Although the

proceedings in this case were on the ground that the appellant had rendered trading service which was an exempted service and therefore, should have reversed proportionate amount of CENVAT credit, both sides agree that the appellant had bought and sold securities on its own account and hence the activity was an investment and was not a service at all)

- (ii) In the facts of this case, whether there were sufficient grounds to invoke extended period of limitation and to impose penalties?

2. **M/s. IFCI Ltd.**¹ filed this appeal to assail the Order dated 15.02.2018² passed by the Commissioner (Appeals) in which upheld the order of the Additional Commissioner and rejected the appellant's appeal. The appellant is a Government of India undertaking which provides loans and banking and financial services to its customers and it is registered with the service tax department and pays service tax. It also avails CENVAT credit of the service tax paid on input services and excise duty paid on inputs used in providing the services.

2. A show cause notice dated 21.4.2014³ was issued to the appellant covering the period April 2008 to March 2011 proposing to recover CENVAT credit of Rs. 89,84,539/- under Rule 14 of the CENVAT Credit Rules, 2004⁴ read with section 73 of the Finance Act, 1994⁵. It was also proposed to impose an equal amount as penalty under Rule 15(3) of CCR read with section 78 of the Act

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- 1. appellant
 - 2. impugned order
 - 3. SCN
 - 4. CCR
 - 5. Act

and to further impose penalties under sections 77(1) and 77(2) of the Act.

4. The proposals in the SCN were confirmed by the Additional Commissioner in his order which were, on appeal, upheld by the Commissioner (Appeals) in the impugned order.

5. The appellant had, in addition to providing taxable services, purchased and sold shares and securities which activity was not leviable to service tax. The allegation in the SCN was that such trading is an exempted service in view of the Rule 2(e) of the CCR read with the explanation issued by Notification No. 03/2011-CE (NT) dated 1.3.2011 and therefore, the appellant could have only availed proportionate amount of CENVAT credit on the following common input services but it had wrongly availed 100% CENVAT credit:

- (i) Housekeeping services
- (ii) Professional consultancy
- (iii) Telephone & internet services
- (iv) Courier services
- (v) Advertisement services
- (vi) Professional Training services, etc.

6. Therefore, the proposal in the SCN was to deny and recover proportionate amount of CENVAT credit under Rule 6(3) of the CCR. Rules 2(e) and 6 of CCR read as follows:

RULE 2. Definitions. — In these rules, unless the context otherwise requires, -

...

(e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable and includes services on which no service tax is leviable under section 66 of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Explanation.- For the removal of doubts, it is hereby clarified that "exempted services" includes trading

6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.

(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.

(3) (a) A manufacturer who manufactures two classes of goods, namely :-(i)non-exempted goods removed;(ii)exempted goods removed; or

(b) a provider of output service who provides two classes of services, namely:-

(i) non-exempted services;(ii)exempted services,

shall follow any one of the following options applicable to him, namely :-

- (i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or
- (ii) pay an amount as determined under sub-rule (3A):or
- (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (A) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) for the said clause and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:

7. It must be pointed out that the explanation to Rule 2(e) of CCR was inserted with effect from 1.4.2011 which included trading as an exempted service but in this case, the entire period of dispute was before 1.4.2011. The SCN, however, was issued on the ground that the appellant had, by buying and selling securities, traded goods and such trading in goods is, as per Rule 2(e) read with the explanation, an exempted service. Since the common input services on which the appellant had availed CENVAT credit were used not only render taxable services but also for trading, the appellant was required to reverse proportionate amount of CENVAT credit as per Rule 6(3) of CCR and since it failed to do so, the amount is recoverable under Rule 14 of CCR.

8. Learned counsel for the appellant submits that the appellant had not traded in securities at all but had invested its own funds in various securities and for this purpose bought and sold securities. Buying and selling of shares and securities was not done for someone else and hence the investment by the appellant cannot be called trading. Therefore, it was outside the scope of Rule 6(3) of CCR. In support of this contention that investing one's own funds does not amount to trading (an exempted service), the appellant relied on the following decisions of this tribunal:

- (a) **Ponni Sugars Erode Ltd. versus The Commissioner of GST & Central Excise⁶**
- (b) **Instakart Services Pvt. Ltd. versus Commissioner of Central Tax, Bengaluru⁷**
- (c) **Cognizant Technology Solutions Pvt. Ltd. versus The Commissioner of GST & Central Excise, Chennai⁸**
- (d) **Tata Sons Ltd. versus Commissioner of Service tax, Mumbai⁹**
- (e) **Siegwerk India Pvt. Ltd. versus Commissioner, Central Goods & Service Tax, Commissionerate¹⁰**
- (f) **Career Point Limited versus Commissioner of Central Goods & Service Tax, Excise and Customs, Udaipur¹¹**
- (g) **Seigwerk India Pvt. Ltd. versus Commissioner of CGST¹²**
- (h) **GMR Hyderabad Air Cargo and Logistics Pvt. Ltd. versus Commissioner of Central Tax Rangareddy GST Service Tax¹³**
- (i) **Flipkart Internet Pvt. Ltd. versus Commissioner of Central Tax¹⁴**

6. Final Order No. 40497-40498/2024 dated 24.04.2024

7. Final Order No. 20415/2024 dated 13.03.2024

8. Final Order No. 41016/2024 dated 01.08.2024

9. Final Order No. 86042-86043/2022 dated 01.11.2022

10. Final Order No. 58747/2024 dated 01.10.2024

11. Final Order No. 50601/2025 dated 06.05.2025

12. Final Order No. 50426-50427/2025 dated 21.03.2025

13. Final Order No. A/30142-30144/2025 dated 29.04.2025

14. Final Order No. 21728/2024 dated 24.10.2024

15. Final Order No. A/87423/2024 dated 25.11.2024

- (j) **Finolex Cables Ltd. versus Commissioner of Central Excise and Service Tax, Pune – I¹⁵**
- (k) **East West Pipelines Pvt. Ltd. versus Commissioner of CGST & CE Balapur¹⁶**

9. Learned counsel further submits that the activity of purchase and sale of shares is neither a service nor is it goods. Hence, the demand which was proposed in the SCN, confirmed by the original authority and upheld in the impugned order is not sustainable.

10. Further, he submits that there is no recovery provision for the amount and hence the demand is unsustainable.

11. Lastly, he contends that the demand was time-barred and extended period of limitation could not be invoked and even if extended period of limitation was invoked, the period of April 2008 to September 2008 was still time barred. He also submitted that interest could not have been demanded nor penalties imposed.

12. In the additional written submissions given after the hearing, learned counsel also argued that buying and selling of shares by it was not an independent activity at all but it was part of the rendering it's taxable services of banking and financial services and therefore, all input services must be treated as having been used for providing taxable services only.

13. Learned authorised representative for the Revenue agrees that the appellant had invested its own funds in buying and selling securities and as per the above decisions, such investment cannot be called trading at all.

14. However, learned authorised representative submits that what needs to be decided is if full CENVAT credit of common input services used partly for rendering taxable services and partly for activities which do not amount to service at all can be claimed. He submitted that any input services used for an activity which is not a service at all, falls outside the scope of Finance Act, 1994¹⁷, Central Excise Act, 1944¹⁸ and also CCR. Therefore, the assessee is not entitled to CENVAT credit on such input services.

15. Learned authorised representative further submits that where the input service is used partly for rendering taxable service and partly for activity which is not a service at all, the assessee would be entitled only to proportionate amount of CENVAT credit because to the extent the input service was used for an activity which is not a service at all, there cannot be entitlement to CENVAT credit under CCR.

16. Therefore, learned authorised representative submitted that to the extent the appellant had availed CENVAT credit on common input services partly used for an activity which is not a

17. Act

18. Excise Act

service, the appellant has to reverse the CENVAT credit and since the appellant failed to do so, the impugned order is correct and proper and calls for no interference. He placed reliance on the decision of this Tribunal in **M/s. Lally Automobiles Pvt. Ltd. versus Commissioner of Service Tax, Delhi**¹⁹ upheld by the Delhi High Court²⁰ and further by the Supreme Court²¹.

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

18. The undisputed fact is that the appellant had bought and sold securities in its own account thereby investing its funds and had not rendered any service to any other entity. Such investment of own funds cannot be called a service at all- either taxable or exempted as held in **Ponni Sugars** and other decisions by this Tribunal.

19. The submission of the learned counsel is that since the demand is under Rule 6(3) read with Rule 14 of CCR which deals with only exempted services and the aforesaid investment of its own funds does not amount rendering any service at all, let alone an exempted service, it was not required to reverse proportionate amount of CENVAT credit.

20. The submission of the learned authorised representative is that any activity which is not a service at all does not fall under

19. 2018 (10) G.S.T.L. 310 (Tri. – Del.)

20. 2018 (17) G.S.T.L. 422 (Del.)

21. 2019 (24) G.S.T.L. J115 (S.C.)

the purview of the Finance Act or Excise Act or the CCR and therefore, any input services used in such activity would also not fall under the definition of 'input service' under CCR and no CENVAT credit could be taken on such input services. In fact, the appellant had not taken any CENVAT credit on input services used exclusively for this activity of investments. The same logic should apply to input services which are partly used for providing taxable services and partly for activities which are not services at all and to the extent they are used for activity which is not a service, CENVAT credit is not admissible. Therefore, proportionate amount of CENVAT credit should be reversed.

21. The issue has been decided in **Lally Automobiles**. The dispute therein was whether the appellant was required to reverse proportionate amount of CENVAT credit on its trading activity. During the relevant period, the explanation to Rule 2(e) of the CCR stating that trading was an exempted service had not been inserted. The case of the Revenue was that it was nevertheless an exempted service and the case of the appellant therein was that it was not an exempted service. This Tribunal ruled in favour of the Revenue. On appeal, **Delhi High Court** examined the matter at length and held that an activity which was not a service would fall outside the purview of the CCR and hence input services for such activity were not eligible for CENVAT credit at all. Further, if it was a common input service, it was held that the assessee has to reverse proportionate CENVAT credit. His Lordship Justice Ravindra Bhat, (as he was then)

Judge of Delhi High Court, examined the matter and held as follows:

Analysis and conclusions

15. Rule 6(2) of the Cenvat Credit Rules, is extracted below :

“Where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input services, /***/, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take Cenvat credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.”

16. Therefore, the issue is whether the assessee could claim the credit on input which were not services. Input credits can be used for payment of service on output service provided such services are used to provide output services. Undoubtedly, there cannot be an exact correlation between one kind of input and corresponding. That is the reason the Rules cover situations where assessees provide both exempted and taxable services. **Wherever someone undertakes activities that cannot be called a service or which is not “manufacture”, that activity goes out of the purview of both Central Excise Act as well as Finance Act, 1994. In such cases, an assessee would be ineligible for claiming input-service tax credit on an output which is neither a service nor excisable goods. There is no provision to cover situations where an assessee is providing a taxable service and is undertaking another activity which is neither a service nor manufacture. In such a situation, the only correct legal position appears to be that it is for the assessee to segregate the quantum of input service attributable to trading activity and exclude the same from the records maintained for availing credit.** This cannot be done in advance as it may not be possible to foretell the quantum of trading activity as compared with taxable activity. The obvious solution would be to ensure that once in a quarter or once in a six months, the quantum of input service tax credit attributed to trading activities according to

standard accounting principles is deducted and the balance only availed for the purpose of payment of Service tax of output service.

17. In the present case, the assessee's argument that there is no mechanism to reverse credit, once taken, in the opinion of this Court, cannot be accepted. The assessee was well aware of the exact nature and extent of its *service tax liability*. It was also aware of the eligible *service tax inputs*. Therefore, when it did claim successfully and unchallenged input credits in respect of activities that were not subjected to service tax levy, it was aware that the claim was excessive and could not be justified. If, for instance, input credits were claimed in respect of goods or rents, attributable to retail business, those credits were clearly impermissible. In these circumstances, this Court finds no infirmity with the concurrent findings of the lower authority and the CESTAT, which concluded that show cause notice and recoveries were in order.

18. As regards the method of calculation and invocation of extended period of penalty, the assessee's contentions again, to the Court's mind, are groundless. The assessee concededly did not maintain regular separate accounts in respect of non-service tax leviable activities. Therefore, the adjudicating authority adopted the method of proportionate turnover based attribution to the assessee's liability:

"I find that it was clear in 2008 itself that no Cenvat Credit is available for services used for trading as decided by Hon'ble CESTAT in the Metro shoes case. The noticee has availed the Cenvat Credit used for exempted services namely trading without reversing the proportionate credit. They have never informed the department about taking the wrong credit. This would have been undetected if the facts were not noticed during audit. M/s. Lally Automobiles Private Ltd. have failed to inform the department that they are not maintaining the separate records for input services used for taxable and exempted services. It is already noted that the law requires an assessee to maintain separate records of Cenvat credit received on taxable or non-taxable services. In case the separate records are not maintained, the Cenvat credit is to be reversed as per Rule 6(3) of the Cenvat Credit Rules, 2004;. I find that : M/s. Lally Automobiles Private Ltd. have not reversed the same by suppression of material facts. The excess credit availed utilized by them is liable to be recovered in

terms of Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of Finance Act, 1994."

19. This Court is of opinion that the lack of any method in the rules in such cases, would only mean that a reasonable and logical principle should be applied, not concededly that what should and could not be claimed as input credit, (but was in fact so claimed) ought to be "left alone" because of the *composite nature of the assessee's business*. While any assessee has a right to organize its business in the most convenient and efficient manner, it cannot claim that that such organization is so structured that its tax liabilities cannot be clearly discerned. In this case, the adjudicating authority adopted the proportionate percentage to the turnover method approach, which in this Court's opinion, is reasonable.

20. This Court is also of the opinion that the invocation of the extended period of limitation was warranted in the circumstances of the case. Being conscious of its trading activity and that it was not liable to service tax (since it did not include the *amounts earned from that business, in its returns*) meant that the assessee was aware of what it was doing. It cannot now take shelter under the plea that non-trading activity was expressly exempt from claiming credit, in 2011. That amendment made no difference, given that trading was never taxable under the Finance Act, 1994. In these circumstances, the Revenue was justified in invoking the extended period of limitation in this case.

21. In the light of the above findings, all the questions framed are answered in favour of the Revenue and against the assessee. The appeal is, therefore, dismissed.

(emphasis supplied)

22. On appeal, the Supreme Court, while dismissing the Civil Appeal, explicitly upheld the above reasoning in the following words:

"Delay condoned.

We have heard Learned Counsel appearing for the appellant and perused the impugned order passed by the High Court of Delhi.

In our considered view, the reason assigned by the High Court in passing the impugned order needs no interference as the same is in consonance with law.

Accordingly, there is no merit in the appeal and is dismissed."

(emphasis supplied)

23. In **Lally Automobiles**, while the proceedings were initiated on the ground that trading was an exempted service, the ruling of Delhi High Court was that if an activity is not a service at all, it goes out of the purview of the Finance Act and Central Excise Act and therefore, no CENVAT credit is admissible on input services to the extent they are used in such activity and this reasoning was explicitly upheld by the Supreme Court while dismissing the Civil Appeal.

24. In this appeal also, the demand was on the ground that the appellant had traded in securities and such trading was an exempted service and hence proportionate amount of CENVAT credit on common input services must be reversed. Relying on several decisions, learned counsel for the appellant has successfully argued that the activity was investment and it was not a service at all. We agree that the activity of buying and selling securities by the appellant, being on its own account and not for someone else, was only investment and not trading or any other form of service.

25. It is also not in dispute that the appellant had not taken any CENVAT credit on the input services used exclusively for this activity.

26. The question is whether CENVAT credit of the full service tax paid on common input services used partly for rendering taxable services and partly for this activity of investment was admissible. **Lally Automobiles** answered the question in negative and held that no CENVAT credit will be available to the extent the common input services were used for activity which is not a service and CENVAT credit must be reversed proportionately.

27. In the decisions relied on by the learned counsel for the appellant, the decision of the Delhi High Court explicitly upheld by the Supreme Court in **Lally Automobiles** was not brought to the attention of the bench.

28. In **Ponni Sugars**, the finding of a bench of this Tribunal was that buying and selling of shares was an investment and not a service which decision we are following in this order. However, the decision of the Delhi High Court and Supreme Court in **Lally Automobiles** that if an activity is neither manufacture nor a service, no CENVAT credit on the input services used partly for such an activity will be available was not placed before the bench in **Ponni Sugars** and was not considered. In this appeal, since learned authorised representative for the Revenue relied on it and we respectfully follow **Lally Automobiles**.

29. In **Instakart Services** also, the decision in **Lally Automobiles** was not placed before the bench.

30. **Cognizant Technology Solutions** followed **Ponni Sugars** but it did not consider **Lally Automobiles** since it was not placed before the bench.

31. Likewise, in all the other decisions relied on by the learned counsel involving the question of investments in shares/mutual funds, **Lally Automobiles** was not presented before the bench nor was it considered.

32. In the additional submissions made after the hearing of the matter, learned counsel also submitted that the input services in question were used only for providing taxable services and not for the activity which did not amount to a service at all. It is the submission that buying and selling of shares on its own account was part of providing banking and financial services and therefore, all input services were used only for providing taxable services.

33. On the submission that the input services were used only to provide taxable services and not for the activity which did not amount to service, we find that the input services in dispute were as follows:

- a. Housekeeping services
- b. Professional consultancy
- c. Telephone & internet services

- d. Courier services
- e. Advertisement services
- f. Professional Training services, etc.

34. These are evidently, not services which can be attributed to any particular activity but are services meant for running the office and can only be called common input services. We, therefore, do not agree with the submission that these were used exclusively used for providing taxable services.

35. The submission that it's own investments were also part of providing banking and financial services is clearly not true. The computation of the demand in the relied upon document (RUD) IV to the SCN clearly shows the profit earned from sale of its securities and it's proportion in the total income of the assessee. These figures were obtained from the appellant itself during investigation. Clearly, sale and purchase of shares was a separate activity earning profits and it was not part of any taxable service. The profits earned from this activity were recorded separately by the appellant in its books of account and it had provided the information during the investigation.

36. Clearly, such investments were neither a taxable service nor a manufacturing activity and hence were clearly beyond the scope of Finance Act as well as Excise Act and hence no CENVAT credit could have been taken of the input services used in such an activity either fully or partly as held in **Lally Automobiles** by

the Delhi High Court which reasoning was explicitly upheld by the Supreme Court.

37. The question as to whether extended period of limitation could be invoked and penalty could be imposed if common input services were used in part for activity which did not amount to a service but proportionate amount of CENVAT credit was not reversed, were answered in affirmative in **Lally Automobiles.**

38. In view of the above, we find that the impugned order is correct and proper and calls for no interference. This appeal is accordingly, dismissed.

(Order pronounced in open court on 15/07/2026.)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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