IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION [Central Excise]
(Original Side)

Reserved on : 16.07.2026.
Pronounced on : 12.08.2026

CEXA 6 of 2025
With
IA No. GA 2 of 2024

Commissioner of Central Excise Commissionerate Kolkata IV
...Appellant
-Vs-
M/s. Ganges Valley Foods Private Limited
...Respondent

CEXA 7 of 2025
With
IA No. GA 2 of 2024

Commissioner of Central Tax GST Howrah Commissionerate
...Appellant
-Vs-
M/s. Ganges Valley Foods Private Limited
...Respondent

Present:-

Mr. Uday Sankar Bhattacharjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant

Mr. Rahul Tangri, Adv.
..... for the Respondent

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Rajarshi Bharadwaj, J:

1. The appeal arises from an order of the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, dated June 05, 2024 in Excise Appeal No. 75365 of 2024, whereby the Tribunal failed to appreciate the respondent's non-compliance with the mandatory requirements of Rule 6 of the CENVAT Credit Rules, 2004 and consequently rendered findings that are contrary to the statutory scheme.

2. The facts of the case in a nutshell are that the respondent, M/s. Ganges Valley Foods Pvt. Ltd., is engaged in the manufacture of biscuits classifiable under the Central Excise Tariff Act, 1985. During the financial years 2010-11 to 2015-16, the respondent manufactured both dutiable biscuits and biscuits exempt from payment of central excise duty. The exemption was available to packaged biscuits having a retail sale price not exceeding Rs. 100 per kilogram in terms of the notification no. 12/2012-CE.

3. For the manufacture of both dutiable and exempted products, the respondent utilised common inputs and input services. Under Rule 6 of the CENVAT Credit Rules, 2004, an assessee using common inputs for the manufacture of dutiable as well as exempted goods is required either to maintain separate accounts in respect of such inputs or to comply with one of the statutory mechanisms prescribed under Rule 6(3) of the Credit Rules, including payment of a specified percentage of the value of exempted goods or reversal of proportionate CENVAT credit in accordance with the procedure prescribed under Rule 6(3A) of the Credit Rules.

4. During departmental audit and scrutiny of the respondent's ER-1 returns, it was noticed that the respondent had not maintained separate accounts as required under Rule 6(2) of the Credit Rules. Although the respondent claimed to have reversed the proportionate credit attributable to exempted goods, the Revenue found that such reversals had not been reflected in the statutory ER-1 returns for the period from 2010-11 to 2014-15, except for the period between July 2014 and March 2015. It was further alleged that the respondent had failed to comply with the mandatory procedural requirements prescribed under Rule 6(3A), including the obligation to intimate the jurisdictional superintendent regarding payments and adjustments within the prescribed time.

5. Consequently, the department issued two Show Cause-cum-Demand notices dated April 28, 2015 and April 26, 2016 demanding amounts of Rs.21,95,15,813/- and Rs.5,78,83,997/-, respectively, together with applicable interest and penalties. The adjudicating authorities, by orders dated August 30, 2016 and October 26, 2017, confirmed the demands along with the consequential liabilities.

6. Aggrieved thereby, the respondent preferred two appeals before the Customs, Excise and Service Tax Appellate Tribunal. By a common order dated June 05, 2024, the Learned Tribunal allowed the appeals, holding that the respondent had either not availed the disputed credit or had reversed the proportionate credit attributable to exempted goods and had periodically intimated the department. Challenging the correctness of the said findings, the Revenue herein the appellant has preferred the present appeal.

7. Learned counsel appearing for the appellant raises the issue on the following substantial question of law that have been admitted:

I. *Whether the impugned order dated June 05, 2024 (Subsequently, rectified on August 07, 2024) Passed by the learned, tribunal is contrary to the provisions of Rule 6(3) and 6(3A) of the Cenvat Credit Rules 2004?*

8. The Learned Counsel on behalf of the appellant submits that the impugned order passed by the Learned Customs, Excise and Service Tax Appellate Tribunal is contrary to the provisions of the CENVAT Credit Rules, 2004, suffers from perversity and is liable to be set aside. The Learned Tribunal failed to appreciate the mandatory statutory scheme governing availment and reversal of CENVAT credit under Rule 6 of the CENVAT Credit Rules, 2004 and erroneously extended the benefit of proportionate reversal to the respondent despite undisputed non-compliance with the prescribed statutory procedure.

9. The Learned Counsel for the appellant submits that the respondent, a manufacturer of biscuits, was engaged in the manufacture of both dutiable goods and exempted goods, namely biscuits having a retail sale price not exceeding Rs.100 per kilogram. It is an admitted position that common inputs and common input services were used in the manufacture of both categories of goods. However, the respondent failed to maintain separate accounts for receipt, consumption and inventory of such common inputs and input services as mandatorily required under Rule 6(2) of the CENVAT Credit Rules, 2004. Having failed to maintain separate accounts, the respondent was statutorily obliged to exercise one of the options prescribed under Rule 6(3) of the Credit Rules, namely, either to pay the prescribed percentage of the value of exempted goods or to determine and reverse proportionate credit strictly in accordance with the procedure laid down under Rule 6(3A) of the Credit Rules. Instead of complying with either of the statutory options, the respondent adopted a self-devised mechanism of reversing certain amounts on the basis of its own internal calculations, which has no sanction in law.

10. It is further submitted that the legislative intent underlying Rule 6 is explicit and unambiguous. The statutory scheme prohibits retention of CENVAT credit attributable to exempted goods. Where common inputs are used in the manufacture of both exempted and dutiable products, the law mandates strict adherence to the mechanism prescribed under Rule 6. The respondent, having admittedly availed common credit without maintaining separate accounts, could not bypass the statutory procedure and substitute it with an independent method of computation. Such unilateral action is wholly alien to the statutory framework and defeats the legislative object of ensuring that credit relatable to exempted goods is not retained.

11. The appellant further submits that the procedure prescribed under Rule 6(3A) of the Credit Rules is mandatory in nature and not merely directory. The repeated use of the expression *"shall"* throughout the provision clearly demonstrates the legislative mandate that the manufacturer is required to determine the amount of proportionate credit provisionally on a monthly basis, make the prescribed reversals, carry out annual adjustments and comply with all procedural requirements stipulated therein. There exists no discretion permitting an assessee to evolve an alternative mechanism of reversal. The respondent admittedly failed to reflect such monthly reversals in its statutory ER-1 Returns during almost the entire disputed period from the financial years 2010-11 to 2014-15. Official records obtained from the Assistant Commissioner of Central Excise, Rishra Division, categorically establish that no such reversals were disclosed in the statutory returns except during the limited period from July 2014 to March 2015. Such non-disclosure itself demonstrates complete non-compliance with the statutory procedure contemplated under Rule 6(3A) of the Credit Rules.

12. It is submitted that the Learned Tribunal erred in recording the finding that the respondent had either not availed credit on exempted goods or had already reversed the proportionate credit attributable thereto. The said finding is wholly unsupported by the material on record and is therefore perverse and non est in law. Had the respondent genuinely refrained from availing credit attributable to exempted goods, there would have been no occasion for it to advance submissions regarding subsequent reversal of such credit. The very defence advanced by the respondent proceeds on the basis that common credit had in fact been availed. The adjudicating authority, after detailed examination of the records, had categorically noticed serious evidentiary deficiencies. Chartered Accountant certificates for the financial years 2010-11 and 2012-13 were not produced at all. Even for the financial years 2013-14 and 2014-15, the figures contained in the certificates were neither reconciled with the statutory records nor reflected in the respondent's replies furnished before the departmental authorities. In the absence of such reconciliation, the respondent failed to establish that the amounts allegedly reversed represented the actual proportionate credit attributable to exempted goods.

13. The appellant further submits that the respondent also failed to comply with the mandatory procedural requirements contained in Rule 6(3A)(g) of the Credit Rules, which obligates an assessee to intimate the jurisdictional Superintendent within fifteen days regarding payments, adjustments or interest relating to the annual computation. No such intimation was ever furnished during the relevant period. Compliance with Rule 6(3A) of the Credit Rules cannot be achieved through subsequent explanations or production of private records. It is a settled principle of law that where a statute prescribes that a particular act shall be performed in a particular manner, it must necessarily be performed in that manner or not at all. Any deviation from the prescribed statutory procedure cannot subsequently be validated through equitable considerations or ex post facto compliance.

14. It is further submitted that the burden of establishing the admissibility of CENVAT credit squarely rests upon the assessee claiming such benefit. The respondent failed to discharge this burden by producing complete and reliable documentary evidence demonstrating compliance with Rule 6(3A) of the Credit Rules. Mere assertions regarding proportionate reversal or production of incomplete records do not satisfy the statutory requirements. The Learned Tribunal committed a manifest error by effectively shifting the burden upon the Revenue to disprove the respondent's claim instead of requiring the respondent to establish strict compliance with the statutory provisions. The Tribunal failed to examine whether the prescribed formula under Rule 6(3A) of the Credit Rules had been correctly applied, whether provisional monthly reversals had been carried out, whether annual adjustments had been made in accordance with law and whether the mandatory procedural conditions had been fulfilled.

15. The Learned Counsel further places reliance upon the judgment of the Hon'ble Supreme Court in ***State of Jharkhand v. Ambey Cement*** reported in ***2004 (178) E.L.T 55 (SC)***, wherein it has been held that where an exemption or statutory concession is subject to prescribed conditions, such conditions are mandatory and must be complied with strictly. Reliance is also placed by the learned counsel upon the judgment of the Bombay High Court in ***Commissioner of Central Excise v. Nicholas Piramal (India) Ltd.*** reported in ***2009 (244) E.L.T 321 (Bom)***, wherein it has been categorically held that the statutory procedure prescribed under Rule 6 is mandatory and that an assessee cannot substitute the legislatively prescribed mechanism with a procedure of its own choosing. The respondent's reliance upon ***Tiara Advertising v. Union of India*** reported in ***[2019 (30) G.S.T.L. 474 (Telangana)]*** is wholly misconceived and distinguishable. In that case, Rule 14 of the Credit Rules had not been invoked by the authorities. In the present case, however, Rule 14 was specifically invoked in the show cause notice on account of the respondent's failure to comply with the mandatory requirements governing proportionate reversal under Rule 6(3A), thereby rendering the said decision wholly inapplicable.

16. It is therefore submitted by the Learned counsel that once the respondent failed to comply with the mandatory conditions prescribed under Rule 6 and Rule 6(3A), it forfeited its entitlement to claim the benefit of proportionate reversal of credit. Therefore, the respondent became liable to discharge the amount prescribed under Rule 6(3), namely 5% or 6% of the value of exempted goods, as applicable during the relevant period, together with applicable interest and consequential penalties under law. The Learned Tribunal failed to deal with or dislodge the detailed findings recorded by the adjudicating authority regarding the respondent's statutory defaults and instead, proceeded on assumptions unsupported by evidence. The impugned order, therefore, suffers from manifest errors of law as well as perversity of findings and deserves to be set aside, with the order of the adjudicating authority being restored.

17. Learned Counsel for the respondent submits that the present appeal filed by the Department under Section 35G of the Central Excise Act, 1944, is both legally and factually unsustainable. The dispute pertains to the period from financial year 2010-11 to 2015-16, during which the respondent was engaged in the manufacture and supply of biscuits for Britannia Industries Limited. Under the Central Excise Tariff Act, 1985, biscuits with an MRP up to Rs. 100 per kg were exempt from duty, while those exceeding that value was taxable. Consequently, the respondent was governed by Rule 6 of the Cenvat Credit Rules, 2004, which mandates that an assessee must not avail credit on inputs used for exempted goods or alternatively, must reverse proportionate credit for common inputs used in both taxable and exempted products.

18. The respondent followed the procedure prescribed under Rule 6(3A) read with Rule 6(3)(ii) of the Credit Rules. During the relevant period, the Respondent availed a total credit of Rs.95,88,077/- on common inputs and input services. Out of this amount, credit totaling Rs.68,78,976/- was duly reversed in accordance with the formula provided under Rule 6(3A), leaving a net credit of only Rs.27,09,101/-. To substantiate this compliance, the respondent filed the necessary intimation letters at the beginning of each financial year and submitted Chartered Accountant (CA) certificates at the end of the year to justify the reversals.

19. Despite this substantial compliance, the Department issued Show Cause notices proposing an arbitrarily high demand of Rs.27,73,99,810/- under Rule 6(3)(i) of the Credit Rules. This demand was calculated based on a fixed percentage (5%, 6% or 7%) of the total value of exempted goods, rather than the actual credit availed on common inputs. The respondent contends that confirming a demand of over Rs. 27 crores when the total common credit involved was less than Rs. 96 lakhs are per se fallacious and legally untenable.

20. Learned Counsel further submits that the Hon'ble CESTAT, Kolkata, rightly set aside this demand in its Final Order dated June 05, 2024. The Tribunal recorded a factual finding that the respondent had either not availed credit for exempted goods or had reversed the proportionate credit as required. The respondent highlights that the department's challenge to this order on the grounds of "perversity" is meritless. While the appellant revenue claims that CA certificates were not submitted, the respondent has filed a supplementary affidavit to bring on record all intimation letters for financial year 2010-11 to 2015-16, as well as the specific CA certificates for those years. This includes a consolidated CA certificate dated August 02, 2016 covering the period from financial year2010-11 to2014-15.

21. The respondent maintains that the entire issue is factual in nature. The Hon'ble Tribunal reached its conclusion after reviewing the records and observing that the respondent had indeed complied with the reversal requirements. As held by various High Courts in cases such as ***Commissioner v. Aries Pharmaceuticals*** reported in ***2010 (253) E.L.T.A138 (Bom.)*** and ***Commissioner v. Jai Balaji Industries Ltd.*** reported in ***2017 (356) E.L.T. A48 (Chattisgarh),*** findings by the Tribunal regarding compliance with Rule 6 are factual findings. Since no perversity has been established in the Tribunal's findings, no substantial question of law arises in this appeal and it should be dismissed on this ground alone.

22. Regarding the Department's objection that these reversals were not reflected in the ER-1 returns between April 2010 and June 2014, the respondent submits that this constitutes a minor procedural lapse. The respondent initially availed credits on a net basis in its returns. Once the Department questioned this method of disclosure, the Respondent began making separate disclosures for gross credit and reversals. It is a well-settled principle that substantial compliance with the law which is verified here by CA certificates and intimation letters cannot be overlooked due to technical disclosure issues in tax returns.

23. Furthermore, the respondent submits that the Department has no legal authority to choose the option for the assessee under Rule 6. The Cenvat Credit Rules provide the assessee with the right to choose between different methods of compliance. Once the respondent elected to reverse proportionate credit under Rule 6(3)(ii), the Department cannot unilaterally invoke Rule 6(3)(i) to enforce a higher demand. Reliance is placed by the Learned Counsel on the Hon'ble Telangana High Court decision in ***Tiara Advertising v. Union of India (supra)***, which held that the Department cannot enforce a specific option on an assessee. If the Department believed the reversal under Rule 6(3A) was incorrect, its only recourse was to reject the wrongly availed credit and provide a correct calculation under that same rule, rather than switching the assessee to a more punitive option.

24. The disproportionate nature of demanding over 28 times the total common credit availed, further illustrates the Department's error. Such an approach is not only legally flawed but also defies the logic of the Cenvat credit scheme, which is intended to prevent the cascading of taxes, not to serve as a penal measure for procedural variations.

25. Therefore, the respondent submits that the findings of the Hon'ble CESTAT are well-reasoned and based on the evidence of record, which has now been further fortified by the documents produced via the supplementary affidavit. The respondent has proven that it did not retain any credit attributable to exempted goods, thereby satisfying the core objective of Rule 6. Hence, the respondent prays that this Hon'ble Court take the additional documents on record, recognize that no substantial question of law is involved and dismiss the Department's appeal with costs.

26. Having heard learned counsel for the parties and upon perusal of the pleadings and materials on record, this Court notes that the respondent manufacturer was engaged in the production of biscuits, some of which were dutiable and others which were exempt from excise duty under Notification No. 12/2012-CE. In the course of these operations, the respondent utilized common inputs and input services for both categories of goods. Under the statutory framework of Rule 6 of the Cenvat Credit Rules, 2004, an assessee using common inputs is required to either maintain separate accounts or follow one of the compliance mechanisms provided in Rule 6(3) to ensure that credit is not retained for inputs used in exempted products. The respondent in this case elected to reverse proportionate credit in accordance with the formula and procedure prescribed under Rule 6(3A).

27. The Revenue's challenge to the Tribunal's order is primarily based on the assertion that the respondent failed to strictly adhere to the procedural requirements of Rule 6(3A), specifically by failing to reflect reversals in its statutory ER-1 returns between 2010 and 2014 and by failing to provide timely intimations to the jurisdictional Superintendent. On the basis of these alleged procedural defaults, the Revenue issued show cause notices demanding approximately Rs. 27.74 crores. This demand was calculated using the formula in Rule 6(3)(i), which requires a payment of a fixed percentage of the total value of exempted goods. The Revenue contends that the mandatory nature of Rule 6(3A) implies that any deviation from the prescribed procedure results in a forfeiture of the right to proportionate reversal, thereby making the percentage-based payment under Rule 6(3)(i) the only remaining obligation.

28. This Court's holds to dismiss the appeal rests on several key legal principles. The Court affirms that the right to choose between the options provided under Rule 6(3) rests exclusively with the assessee herein the respondent. The Cenvat Credit Rules provide the manufacturer with the discretion to select the method of compliance that best suits its operations. The Department is not empowered by the statute to choose or enforce a specific option on behalf of an assessee. Even if the Department maintains that an assessee has incorrectly applied the formula under Rule 6(3A), its lawful remedy is to reject the wrongly availed credit or provide a correct calculation under that same sub-rule. The Revenue cannot unilaterally switch the assessee to the more punitive, percentage-based option under Rule 6(3)(i) as a consequence of procedural disagreements or errors in the application of the chosen mechanism.

29. This Court further finds that the primary objective of Rule 6 is to prevent the retention of Cenvat credit attributable to exempted goods, thereby ensuring tax neutrality. The evidence on record, including the supplementary affidavit and the findings of the Tribunal, establishes that the respondent reversed credit totaling Rs.68,78,976/- out of a total common credit of Rs.95,88,077/-. This reversal effectively satisfied the core requirement of the Cenvat scheme. The Revenue's attempt to impose a demand of over Rs. 27 crores, which is roughly 28 times the total common credit actually availed by the respondent is legally fallacious and defies the logic of the tax system. Such demand transforms a compensatory tax provision into an arbitrary penal measure, which is contrary to the legislative intent of the Cenvat Credit Rules.

30. As regards to the Revenue's concerns over procedural non-compliance, this Court holds that substantial compliance verified by documentary evidence cannot be invalidated by minor procedural lapses. While the Revenue emphasized the lack of disclosure in ER-1 returns, the respondent explained that it initially availed credits on a net basis and later adjusted its disclosure method once questioned. The production of Chartered Accountant certificates and intimation letters for the entire period from 2010 to 2016 provides sufficient factual proof that the required reversals were indeed calculated and made. When the substantive objective of the law has been met and can be verified through independent audits and records, technical defects in the mode of disclosure in tax returns do not justify the denial of a substantive right or the imposition of a disproportionate liability.

31. Therefore, this Court observes that the findings of the Learned Tribunal are primarily factual in nature. The Tribunal reviewed the records and recorded a finding of fact that the respondent had either not availed the disputed credit or had reversed the proportionate credit attributable to exempted goods. It is well-settled that findings by the Tribunal regarding compliance with Rule 6 are factual determinations. In the absence of evidence that these findings were perverse, no substantial question of law arises for determination by this Court under Section 35G of the Central Excise Act. The documents provided in the supplementary affidavit further fortify the Tribunal's conclusions. For the foregoing, the appeal filed by the Revenue is found to be devoid of any merit. The order of the Tribunal is upheld and the appeal is dismissed. All connected applications are also accordingly, disposed of. The substantial question of law is answered in positive and against the revenue.

32. There shall be no order as to costs.

33. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

Kolkata
12.08.2025
PA(BS)