CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal Nos. 40364 and 40365 of 2016

(Arising out of Order-in-Original Nos. CHN-SVTAX-001-COM-67&68/2015 dated 28.12.2015 passed by Commissioner of Service Tax, Newry Towers, No. 2054-I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

With

Service Tax Appeal Nos. 40884 and 40885 of 2016

(Arising out of Order-in-Original Nos. CHN-SVTAX-001-COM-93&94/2016 dated 28.01.2016 passed by Commissioner of Service Tax, Newry Towers, No. 2054-I, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

With

Service Tax Appeal No. 40570 of 2018

(Arising out of Order-in-Appeal No. 447/2017 (CTA-I) dated 08.12.2017 passed by Commissioner of GST and Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

And

Service Tax Appeal No. 40460 of 2021

(Arising out of Order-in-Appeal No. 36/2021 (CTA-I) dated 24.03.2021 passed by Commissioner of GST and Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Accentive (India) Private Limited **...Appellant**
No. 5, L M Krishna Building,
Balavinayagar Nagar,
Main Road, Arumbakkam,
Chennai – 600 106.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054-I,
12th Main Road,
Anna Nagar,
Chennai – 600 040.

And

Service Tax Appeal No. 41181 of 2016

(Arising out of Order-in-Original No. 02/2016-Service Tax dated 08.01.2016 passed by Commissioner of Central Excise, MHU Complex, Nandanam, Chennai – 600 035)

M/s. Accentive (India) Private Limited **...Appellant**
No. 5, L M Krishna Building,
Balavinayagar Nagar,
Main Road, Arumbakkam,
Chennai – 600 106.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai South Commissionerate,
MHU Complex,
Nandanam,
Chennai – 600 035.

APPEARANCE:
For the Appellant : Mr. N. Sri Prakash, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40013-40019 / 2026

DATE OF HEARING : 18.08.2025
DATE OF DECISION : 08.01.2026

Per Mr. VASA SESHAGIRI RAO

The present batch of appeals has been filed by M/s. Accentiv India Private Limited (formerly known as Royal Images Direct Marketing Pvt. Ltd. / SurfGold.com India Pvt. Ltd.), hereinafter referred to as the 'Appellants', assailing various Orders-in-Original and Orders-in-Appeal passed by the jurisdictional Commissioners/Commissioners (Appeals), whereby demands of service tax along with interest and penalties have been confirmed against the appellant for different periods under provisions of the Finance Act, 1994 read with the CENVAT Credit Rules, 2004.

1.2 Since all these appeals arise out of common facts, involve identical business models, related with interpretation of Rule 6 of CCR, and raise overlapping legal

issues, the same are taken up together and disposed of by this common final order. The details of the impugned are shown in the Table below.

1.3 Briefly stated the facts are that the appellant is engaged in the business of loyalty management and customer relationship programmes for its clients. The scope of its activity broadly includes conceptualizing loyalty schemes, managing customer databases, tracking accumulation and redemption of loyalty points and facilitating redemption through supply of goods and/or gift vouchers procured from third-party vendors.

1.4 During the course of audit, the Department took the view that the appellant was engaged in trading of goods / gift vouchers, which was a non-taxable activity prior to 01.04.2011 and an exempted service thereafter, by virtue of the amendment to Rule 2(e) of the CENVAT Credit Rules, 2004. It was alleged that the appellant had wrongly availed and utilised CENVAT credit on common input services attributable to such trading activity, in contravention of Rule 6 of the CENVAT Credit Rules, 2004.

1.5 Accordingly, Show Cause Notices/Statement of demands were issued proposing: denial and recovery of inadmissible CENVAT credit, demand of interest under Rule

14 of the CENVAT Credit Rules read with Section 75 of the Finance Act, 1994, and imposition of penalties under the relevant provisions.

1.6 The said Show Cause Notices/SOD's were adjudicated by the respective authorities, and thereafter in some cases by the Commissioner (Appeals) resulting in confirmation/upholding of demands along with interest and penalties.

2. Aggrieved by such orders, the appellant has filed the present appeals before the Tribunal. The details of the Appeals filed, SCN/OIO/OIA details are tabulated below appeal wise.

Sl. No.	**Appeal No(s).**	**SCN/SOD No. & Date**	**OIO / OIA No. & Date**	**Period of Dispute**	**Amount of Service Tax / CENVAT Credit Involved (Rs.)**	**Penalty Proposed / Imposed**
1	ST/40364–40365/2016	SCN 361/2012 dt 20.1.12 SOD No 21/2014 dt 11.3.2014	OIO 67&68/2015-ST dated 208.12.2015	Apr 2007 – Jun 2012& April 2012 to June 2013	ST: 90,88,901/- & ST: 5,66,165/-	Penalty equal to tax & Penalty: 56,616/-
2	40884–40885/2016	SCN No 31/2014 dt 28.10.2014& SOD No 67/2015 dt 24.04.2015	OIO 93&94/2015-16 ST1 dated 28.01.2016	Apr 2012 – Mar 2014	ST: 63,63,271/- & ST :66,99,327/-	Penalty: 63,63,271/-& Penalty: 6,69,932/-
3	41181/2016	SCN No 106/2013 dt 18.04.2013	OIO 02/2016-ST dated 08.01.2016	Oct 2007 – Mar 2012	ST: 1,38,82,895/-	Penalty: 1,38,82,895/-
4	40570/2018	SOD No 52/2016-ST-1 Dt 18.4.2016	OIA 447/2017(CTA-I) Dt 8.12.2017	Apr 2014 – Mar 2015	ST: 72,28,883/-	Penalty: 7,22,888
5	40460/2021	–do–	OIA 36/2021(CTA-I) Dt 24.03.2021	Apr 2016 – Jun 2017	ST: 1,57,63,803/-	Penalty equal to tax

3. The Ld. Advocate Mr. N. Sri Prakash, appeared on behalf of the Appellant and advanced detailed submissions in support of the Appellants and the Ld. AR Ms. Anandalakshmi Ganeshram, appeared for the Revenue and defended the Impugned Orders.

4. The contentions of the Ld. Advocate Mr. N. Sri Prakash are summarised as below: -

4.1 That it is engaged in providing loyalty management and customer relationship services to corporate clients, which include designing loyalty programmes, managing customer databases, tracking accumulation and redemption of reward points and facilitating such redemption. The procurement and supply of goods or gift vouchers is only incidental and ancillary to the principal taxable service and that the Department has erred in artificially segregating the activity and treating the same as trading.

4.2 That the consideration received from clients is for an integrated service package, and the cost of goods or vouchers merely represents reimbursement of expenses incurred in the course of providing taxable services. Vivisection of such composite activity, according to the appellant, is impermissible in law.

4.3 That prior to 01.04.2011, trading was neither a taxable service nor an exempted service under the Finance Act, 1994 or the CENVAT Credit Rules, 2004. Consequently, Rule 6 of the CENVAT Credit Rules could not have been invoked for the said period. The Explanation inserted in Rule 2(e) w.e.f. 01.04.2011, including trading as an exempted service, is prospective and cannot be applied retrospectively.

4.4 That for the period post 01.04.2011, even assuming trading to be an exempted service, the appellant submits that it was entitled to avail CENVAT credit on common input services subject to compliance with Rule 6, and that appropriate amounts were discharged wherever required. Denial of credit, therefore, is unjustified.

4.5 That it is further contended that gift vouchers are not goods, but are merely instruments or actionable claims evidencing a right to receive goods in future, and hence trading of vouchers cannot be equated with trading of goods. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Sunrise Associates v. Govt. of NCT of Delhi – (2006) 5 SCC 603.*

4.6 On limitation, the appellant submits that the extended period has been wrongly invoked, as all transactions were recorded in books of accounts and the issue involved is purely interpretational. There was no wilful suppression or intent to evade tax, and the Department was aware of the appellant's activities through audits and correspondence. Consequently, interest and penalties are not sustainable, and the impugned orders deserve to be set aside with consequential relief.

5. Whereas the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram for the Revenue supported the findings recorded in the impugned Orders-in-Original / Orders-in-Appeal and submits that the appellant is engaged in procurement and supply of goods and gift vouchers, which constitutes trading activity. The activity is independent and distinct from the service component, as the appellant purchases goods/vouchers from third-party vendors, holds inventory, transfers them to customers on redemption and recovers the cost separately. The appellant also discharges VAT/CST on such supplies, which clearly establishes that the activity is treated as sale/trading of goods.

5.1 Further, it is submitted that trading is neither manufacture nor provision of taxable service and therefore

credit attributable to trading is inadmissible. Prior to 01.04.2011, trading was a non-taxable activity, and credit relating thereto was never admissible under Rule 3 of the CENVAT Credit Rules, 2004. The Explanation inserted in Rule 2(e) w.e.f. 01.04.2011, clarifying that "exempted services include trading", is clarificatory in nature, as evident from the words "for removal of doubts", and does not create any new restriction.

5.2 For the period post 01.04.2011, trading is expressly an exempted service, and Rule 6 squarely applies. The appellant has neither maintained separate accounts under Rule 6(2) nor complied strictly with Rule 6(3)/(3A). Hence, denial and recovery of CENVAT credit is fully justified.

5.3 The contention that gift vouchers are mere pieces of paper or actionable claims is untenable. Gift vouchers represent goods-in-lieu of which assured redemption value and are inextricably linked to supply of goods. The reliance placed on Sunrise Associates is misplaced, as lottery tickets involve uncertainty, whereas gift vouchers guarantee redemption.

5.4 On limitation, it is submitted that the appellant failed to disclose trading activity and inadmissible credit

availment in statutory returns, and mere recording in books of accounts does not amount to disclosure. Suppression with intent to evade is clearly established, justifying invocation of the extended period of limitation.

5.5 She submits that interest is mandatory and compensatory, and penalties are rightly imposed once suppression is established.

5.6 Accordingly, the Ld. AR prayed that the appeals be dismissed and the impugned orders be upheld in toto.

6. We have heard the Ld. Counsel for the Appellant and the Ld. Authorized Representative for the Revenue. We have perused the appeal records, show cause notices/SOD's, impugned Orders-in-Original / Orders-in-Appeal, written submissions placed on record, the relevant statutory provisions of the Finance Act, 1994 and the CENVAT Credit Rules, 2004, as well as the judicial precedents cited by both sides.

7. Upon such consideration, the following issues arise for our determination: -

i. Whether the activities undertaken by the Appellant in procurement and supply of gift articles and gift

vouchers as part of loyalty management programmes constitute trading activity, distinct from the taxable service of Business Support Services / Business Auxiliary Services.

ii. Whether gift vouchers supplied by the Appellant are to be treated as goods/trading or as actionable claims, and consequently whether such activity falls within the scope of "exempted service" / "non-taxable activity" for the purposes of Rule 6 of the CENVAT Credit Rules, 2004.

iii. Whether CENVAT credit on common input services is admissible prior to 01.04.2011, when trading was not expressly included in the definition of "exempted service" under Rule 2(e) of the CENVAT Credit Rules, 2004.

iv. Whether the Appellant was required to reverse/pay amounts under Rule 6(3) / Rule 6(3A) of the CENVAT Credit Rules, 2004 for the period from 01.04.2011 to 31.03.2016, in respect of trading of goods and gift vouchers.

v. Whether, pursuant to the amendments effective from 01.04.2016, including insertion of Explanation 3 and Explanation 4 to Rule 6(1), the value adopted by the Appellant for reversal of CENVAT credit in respect of gift vouchers/actionable claims is legally sustainable.

vi. Whether invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 is justified, and whether demand of interest and imposition of penalties under the relevant provisions are sustainable.

8.1 We proceed to examine the above issues seriatim, on the basis of facts, statutory framework and judicial precedents. At the outset, we note that the relevant statutory provisions of the Finance Act, 1994, the CENVAT Credit Rules, 2004, as also the applicable CBEC Circulars, have already been exhaustively reproduced and analysed in the impugned Orders-in-Original / Orders-in-Appeal. In order to avoid prolixity and repetition, the same are not reproduced herein once again. Our findings, therefore, proceed on the basis of the said statutory framework and circulars as already noticed by the lower authorities.

8.2 We further note that the dispute in the present batch of appeals spans across three distinct periods during which the provisions of the CENVAT Credit Rules, 2004 underwent material amendments, particularly with respect to the treatment of trading activity and the obligations under Rule 6. Our findings on the issues under consideration are,

therefore structured period-wise, keeping in view the statutory position as it prevailed during each relevant period.

ISSUE No. 1 Whether procurement and supply of goods and gift vouchers by the appellant constitute "trading activity" under the CENVAT Credit Rules, 2004

9.1 The Ld. Counsel for the appellant submitted that the appellant is primarily engaged in providing loyalty management services, which include designing loyalty programmes, managing customer databases, tracking accumulation and redemption of points, and facilitating redemption through supply of gifts or vouchers. The supply of goods or gift vouchers is only incidental to the main taxable service, and such supply cannot be artificially vivisected and treated as an independent trading activity. The appellant contended that the consideration received from clients is for an integrated service package, and the cost of gifts or vouchers is merely a reimbursable element forming part of the composite service. It is further argued that prior to 01.04.2011, trading was neither a taxable service nor an exempted service, and therefore Rule 6 of the CENVAT Credit Rules, 2004 could not be invoked for the period prior to the said date. The appellant placed reliance on the decisions of the Hon'ble Supreme Court in *BSNL v. Union of India – 2006 (2) STR 161 (SC)* and *Larsen & Toubro*

Ltd. – 2015 (39) STR 913 (SC) to contend that composite contracts cannot be artificially split for the purpose of taxation.

9.2 The Ld. Authorized Representative contended that the appellant's contention of composite service is factually incorrect and legally untenable.

a) It was submitted that the appellant:
    i. procures goods and gift vouchers from third-party vendors,
    ii. holds them as inventory,
    iii. transfers them to customers on redemption, and
    iv. recovers the cost separately from clients.

b) The AR submits that the appellant discharges VAT / CST on goods supplied, which itself establishes that the appellant treats the activity as sale of goods, independent of service.

c) It is further contended that gift vouchers represent goods-in-lieu, having assured redemption value, and the activity of buying and selling such vouchers is nothing but trading.

d) The AR relied on the judgment of the Hon'ble Delhi High Court in *Lally Automobiles Pvt. Ltd. – 2014 (17) GSTL 422 (Del.),* affirmed by the Hon'ble Supreme Court in *2019 (24) GSTL J115 (SC),* wherein it was

categorically held that trading is a non-taxable activity prior to 01.04.2011 and an exempted service thereafter, and credit attributable thereto is inadmissible and should not have taken at all.

e) Reliance was also placed on the Three-Member Bench decision of this Tribunal in *Dorma India Ltd. – 2023 (9) Centax 249 (Tri.-Chennai),* which has exhaustively examined Rule 6 in the context of trading activities.

9.3 We have carefully considered the rival submissions and perused the records.

The primary question is whether the procurement and supply of goods and gift vouchers by the appellant is merely incidental to service or constitutes an independent trading activity.

a) From a perusal of agreements, invoices and accounting records, the following undisputed facts emerge:
    i. Goods and vouchers are procured independently by the appellant.
    ii. The cost of such goods/vouchers is recovered separately.
    iii. VAT / CST is discharged on such supply.
    iv. The appellant maintains inventory of goods and vouchers.

b) These facts clearly demonstrate that the appellant is engaged in buying and selling of goods/vouchers, which squarely falls within the ordinary and commercial understanding of trading.

c) The reliance placed on BSNL and Larsen & Toubro is thus misplaced. Those judgments deal with indivisible works contracts involving transfer of property in goods during execution of works. In the present case, the supply of goods and vouchers is not inextricably linked to service execution, but is an independent commercial activity.

d) The Hon'ble Delhi High Court in Lally Automobiles Pvt. Ltd. has clearly held that:

"Trading activity is not a service and credit attributable to trading is not admissible."

e) This judgment has been affirmed by the Hon'ble Supreme Court, and is binding.

f) The Three-Member Bench in Dorma India Ltd. has further clarified that even prior to 01.04.2011, trading being a non-taxable activity, credit attributable thereto was never admissible.

Accordingly, we hold that the procurement and supply of goods and gift vouchers by the appellant constitutes trading activity.

Therefore, the issue is decided against the appellant. The procurement and supply of goods and gift vouchers constitute trading activity.

Issue 2: Whether gift vouchers are actionable claims or goods-in-lieu, and whether their supply can escape Rule 6 of the CENVAT Credit Rules

10.1 The appellant submitted that gift vouchers are merely pieces of paper representing a right to receive goods in future and therefore qualify as actionable claims. Reliance was placed on *Sunrise Associates v. Govt. of NCT of Delhi – (2006) 5 SCC 603*, wherein lottery tickets were held to be actionable claims and not goods.It was contended that since actionable claims are outside the scope of "goods" and "services", trading of gift vouchers cannot be brought within the ambit of Rule 6.

10.2 But, the Ld. AR submitted that the reliance on Sunrise Associates is wholly misplaced as

a)

i. Lottery tickets involve chance and uncertainty.
ii. Gift vouchers guarantee redemption.
iii. Gift vouchers cannot be encashed and can only be exchanged for goods.

b) that gift vouchers are goods-in-lieu, representing assured value, and are integrally linked to supply of goods.

c) And in support of this contention, reliance was placed on the decisions rendered in the cases of: -

   i. Lally Automobiles Pvt. Ltd.

   ii. Dorma India Ltd. and

   iii. Board Circular No. 943/4/2011-ST dated 29.04.2011

10.3 On examination of both the submissions, we find that the comparison sought to be drawn with lottery tickets is fundamentally flawed.

a) In Sunrise Associates, the Hon'ble Supreme Court held lottery tickets to be actionable claims because the purchaser has no assured right to prize money.

b) In contrast, a gift voucher:

   i. carries assured value,

   ii. is redeemable against goods,

   ii. represents consideration already received.

c) Thus, gift vouchers represent goods-in-lieu, and not actionable claims.

d) This distinction has been clearly recognised in the case of Lally Automobiles Pvt. Ltd., wherein the Court held that trading of goods, even if non-taxable, attracts consequences of Rule 6 of CENVAT Credit Rules, 2004.

10.4 Therefore we hold that Gift vouchers are not actionable claims.

They represent goods-in-lieu, and their trading attracts Rule 6 of CCR 2004 consequences.

Issue 3: Whether CENVAT credit attributable to trading activity is admissible prior to 01.04.2011 under the CENVAT Credit Rules, 2004

11.1 The appellant submits that prior to 01.04.2011, trading was neither a taxable service nor an exempted service under the Finance Act, 1994 or the CENVAT Credit Rules, 2004.

i. It was submitted that Rule 6 of the CENVAT Credit Rules, 2004 applies only when a manufacturer or service provider is engaged in manufacture of exempted goods or provision of exempted services. Since trading was not defined as an exempted service during the material period, Rule 6 could not have been invoked.
ii. The appellant argued further that the Explanation inserted in Rule 2(e) w.e.f. 01.04.2011, which clarified that “exempted services include trading”, is prospective and cannot be applied retrospectively.
iii. It was also submitted that the Department cannot deny credit for a period when there was no statutory

restriction, and such denial would amount to reading words into the Rule, which is impermissible in fiscal statutes.

iv. Reliance was placed on judicial precedents where it has been held that CENVAT credit cannot be denied in the absence of an express prohibition, and ambiguity must be resolved in favour of the assessee.

11.2 The Ld. Authorized Representative submitted that even prior to 01.04.2011, trading was a non-taxable activity, and credit attributable to non-taxable activities was never admissible under the CENVAT Credit Rules.

i. It was contended that CENVAT credit is a benefit and not a vested right, and can be availed only to the extent permitted by statute. Rule 3(1) of the CENVAT Credit Rules permits credit only of duties/taxes paid on inputs or input services used in or in relation to manufacture of dutiable goods or provision of taxable services. Trading being neither, credit relatable thereto was inadmissible ab initio. The Explanation inserted in Rule 2(e) w.e.f. 01.04.2011 is clarificatory in nature, as evident from the phrase "for removal of doubts", and therefore only clarifies the existing legal position.

ii. In support of this argument, reliance is placed on: -

a) Lally Automobiles Pvt. Ltd. – 2014 (17) GSTL 422 (Del.), affirmed by 2019 (24) GSTL J115 (SC); and

b) Dorma India Ltd. – 2023 (9) Centax 249 (Tri.-Chennai) (3-Member Bench);

11.3 We have carefully considered the rival submissions and find that

a) The foundational principle of the CENVAT scheme is that credit is admissible only when inputs or input services are used for manufacture of dutiable goods or provision of taxable services. This principle flows from Rule 3(1) read with Rule 2(l) of the CENVAT Credit Rules, 2004.

b) Trading, by its very nature, is neither manufacture nor service. It does not attract excise duty or service tax. Therefore, input services used exclusively or partly for trading cannot qualify as "input services" eligible for credit.

c) The contention that Rule 6 cannot apply prior to 01.04.2011 because trading was not expressly included as an exempted service is misconceived. The Hon'ble Delhi High Court in Lally Automobiles Pvt. Ltd. has categorically held that:

> ***"Even prior to 01.04.2011, trading being a non-taxable activity, credit attributable thereto was not admissible."***

The Hon'ble Supreme Court having dismissed the appeal against the said judgment, the ratio has attained finality.

d) The Three-Member Bench of this Tribunal in Dorma India Ltd. has exhaustively analysed this issue and held that:

   i. the Explanation inserted in Rule 2(e) is clarificatory; and,

   ii. credit attributable to trading activity is inadmissible even for the period prior to 01.04.2011.

e) The phrase "for removal of doubts" used in the Explanation is a clear legislative indicator that the amendment was intended to clarify the existing position and not to create a new levy or restriction.

f) We therefore hold that credit attributable to trading activity was not admissible even prior to 01.04.2011, and the Department was justified in denying such credit.

Finding on Issue No. 3 CENVAT credit attributable to trading activity is not admissible even for the period prior to 01.04.2011.

The issue is decided against the appellant.

Issue No: 4 Whether, for the period from 01.04.2011 to 31.03.2016, the appellant is entitled to avail CENVAT credit on common input services attributable to trading activity,

and whether compliance with Rule 6 of the CENVAT Credit Rules, 2004 is mandatory

12.1 The Ld. Counsel for the appellant submitted that for the period from 01.04.2011 onwards, although "trading" was included within the definition of "exempted service" by virtue of amendment to Rule 2(e) of the CENVAT Credit Rules, 2004, the appellant is still entitled to CENVAT credit on common input services.

12.2 It was contended that the appellant is primarily engaged in providing taxable output services such as Business Support Service / Business Auxiliary Service, and that procurement and supply of gifts / gift vouchers is only incidental to such taxable services.

12.3 It is argued that Rule 6(3) and Rule 6(3A) of the CENVAT Credit Rules prescribe only optional mechanisms and cannot result in absolute denial of credit, particularly when the appellant has paid service tax on taxable output services.

12.4 The appellant further submits that gift vouchers are merely instruments or actionable claims and cannot be equated with "goods", and therefore trading of gift vouchers

should not be treated as an "exempted service" for the purpose of Rule 6.

12.5 It was also pleaded that the valuation mechanism prescribed for trading under Rule 6 is artificial and unworkable in the case of gift vouchers, and therefore strict compliance should not be insisted upon.

12.6 Reliance was placed on certain decisions where denial of credit was interfered with on the ground that the assessee was predominantly providing taxable services and trading was incidental.

12.7 *Per contra*, the Ld. Authorized Representative for the Revenue submits that with effect from 01.04.2011, the legal position is no longer res integra, as trading is expressly deemed to be an "exempted service" under Rule 2(e) of the CENVAT Credit Rules, 2004 by way of Explanation inserted *vide* Notification No. 3/2011-CE (NT).

12.8 It was submitted that once an activity is treated as an exempted service, Rule 6(1) clearly bars availment of CENVAT credit on inputs and input services used for such exempted services.

12.9 The Ld. Authorized Representative contends that the appellant admittedly did not maintain separate accounts as required under Rule 6(2), nor did they follow the statutory mechanism under Rule 6(3) or Rule 6(3A) for proportionate reversal/payment.

12.10 It was argued that the contention that Rule 6 is optional is legally untenable. Once an assessee chooses not to maintain separate accounts, compliance with Rule 6(3) / 6(3A) becomes mandatory.

12.11 The Department submitted that the nature of gift vouchers has been judicially recognised as representing value of goods and their procurement and supply clearly amounts to trading activity.

12.12 Reliance was placed on the following decisions:

i. *Lally Automobiles Pvt. Ltd. v. CCE – 2014 (17) GSTL 422 (Del.) affirmed by Supreme Court – 2019 (24) GSTL J115 (SC)*
ii. *Dorma India Ltd. – 2023 (9) Centax 249 (Tri.-Chennai) (Three-Member Bench)*

It was prayed that denial of credit for non-compliance with Rule 6 be upheld.

12.13 We have carefully considered the rival submissions and examined the statutory provisions applicable for the period from 01.04.2011 to 31.03.2016.

12.14 At the outset, it is necessary to note the statutory change brought about with effect from 01.04.2011. By virtue of Notification No. 3/2011-CE (NT), an Explanation was inserted in Rule 2(e) of the CENVAT Credit Rules, 2004, which categorically provides that:

> "For the removal of doubts, it is hereby clarified that exempted services include trading."

Thus, from 01.04.2011 onwards, trading is statutorily deemed to be an exempted service, irrespective of the fact that it is not a taxable service under the Finance Act, 1994.

12.15 Once an activity is treated as an exempted service, Rule 6(1) comes into operation, which mandates that no CENVAT credit shall be allowed on inputs or input services used for provision of exempted services.

12.16 Rule 6(2) permits availment of credit only if the assessee maintains separate accounts for inputs/input services used in taxable and exempted services. It is an admitted position on record that the appellant did not maintain separate accounts.

12.17 In such a situation, Rule 6(3) provides a mandatory statutory consequence, requiring the assessee to either - pay a specified percentage of value of exempted

service, or - reverse proportionate credit in terms of Rule 6(3A).

12.18 The argument of the appellant that Rule 6 is optional is misplaced. The option exists only between the methods prescribed under Rule 6(3), and not between compliance and non-compliance. This position has been consistently upheld by courts.

12.19 We find that the Three-Member Bench of this Tribunal in Dorma India Ltd. has exhaustively analysed Rule 6 post-2011 and held that failure to disclose trading activity and failure to reverse credit attracts demand under Rule 6, and extended period is invocable.

12.20 As regards the plea that gift vouchers are actionable claims or mere instruments, we find no merit. Gift vouchers represent pre-determined value of goods redeemable at the time of use. Their procurement and supply form part of the trading chain. This aspect has been elaborately dealt with in Dorma India Ltd. and Lally Automobiles Pvt. Ltd., which are squarely applicable.

12.21 The Board Circular No. 943/4/2011-CX further clarifies that no credit is admissible on input services used in

trading activity, and appropriate reversal/payment under Rule 6 is mandatory.

12.22 We also find that the appellant has not demonstrated compliance with Rule 6(3A) either by way of provisional reversal, final computation or certified reconciliation. Mere assertion that trading is incidental does not dilute the statutory obligation.

12.23 The case laws relied upon by the appellant pertained either to periods prior to 01.04.2011 or to fact situations where Rule 6 compliance was demonstrated. Hence, they are clearly distinguishable.

12.24 In view of the above discussion, we hold that for the period from 01.04.2011 to 31.03.2016, trading activity undertaken by the appellant is an exempted service within the meaning of Rule 2(e) of the CENVAT Credit Rules, 2004.

12.25 CENVAT credit attributable to such trading activity is inadmissible, unless the appellant strictly complies with the requirements of Rule 6(2), Rule 6(3) or Rule 6(3A).

12.26 Since the appellant admittedly failed to maintain separate accounts and failed to follow the prescribed

reversal/payment mechanism, the denial of credit is legally sustainable. For the period from 01.04.2011 to 31.03.2016, CENVAT credit attributable to trading activity is inadmissible unless Rule 6 is strictly complied with.

Thus, the issue is decided against the appellant.

Issue No. 5 Whether, after the amendments to the CENVAT Credit Rules post-2016, the appellant is entitled to avail CENVAT credit / whether the demands for the post-2016 period are sustainable

13.1 The Ld. Counsel for the appellant submits that for the later period, particularly April 2016 to June 2017, the Department has mechanically continued to apply Rule 6 of the CENVAT Credit Rules without appreciating the changed statutory framework.

i. It was argued that with the advent of the negative list regime and subsequent rationalisation of CENVAT provisions, the treatment of trading and exempted services underwent significant changes, and therefore earlier interpretations cannot be automatically extended.
ii. It was further contended that the Department has failed to demonstrate actual utilisation of credit attributable exclusively to trading activity, and denial of credit on presumptive basis is unsustainable.

13.2 The Ld. Authorized Representative submitted that the post-2016 amendments do not dilute the fundamental principle that credit is not admissible on exempted services.

i. It is submitted that even after amendments, trading continues to be an exempted service, and Rule 6 continues to apply.

ii. That the appellant has neither maintained separate accounts nor complied strictly with Rule 6(3A), which prescribes the mechanism for proportionate reversal.

iii. And that the appellant has consistently failed to disclose the full extent of trading activity, and therefore demands for later periods are also sustainable.

iv. Reliance was placed on:

a) Dorma India Ltd. – 2023 (9) Centax 249 (Tri.-Chennai),
b) *Lally Automobiles Pvt. Ltd. – affirmed by Supreme Court, and*

13.3 We have carefully considered the rival submissions and we find that the amendments carried out post-2016 to the CENVAT Credit Rules were largely procedural and rationalising in nature and did not alter the core eligibility condition for availment of credit. Trading continued to be treated as an exempted service, and the bar under Rule 6(1) against availment of credit on inputs/input

services used for exempted services remained unchanged. The appellant has not produced any cogent evidence to show that:

i. separate accounts were maintained in terms of Rule 6(2), or
ii. the exact proportionate reversal was carried out strictly in accordance with Rule 6(3A).

13.4 Mere assertion of reversal, without demonstrating strict procedural compliance, cannot entitle the appellant to retain credit. The Tribunal in Dorma India Ltd. has categorically held that post-amendment provisions do not grant any automatic entitlement to credit, and that Rule 6 compliance remains mandatory. We also find no merit in the contention that the Department cannot raise demands for successive periods. Where non-compliance continues, each period gives rise to a fresh cause of action.

13.5 We finally find that the appellant is not entitled to avail CENVAT credit attributable to trading activity even for the post-2016 period, in the absence of strict compliance with Rule 6.

The issue is decided against the appellant.

Issue No. 6 Whether invocation of the extended period of limitation, demand of interest and imposition of penalties are sustainable

14.1 The learned Counsel for the appellant submitted that the invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 is wholly unsustainable in the facts of the present case as it was contended that the entire demand has been raised on the basis of:

i. contracts and agreements entered into by the appellant,
ii. invoices raised on clients, and
iii. books of accounts regularly maintained and produced before the Department.

Therefore, according to the appellant, there was no suppression of facts, wilful misstatement or intent to evade tax.

14.2 It was further submitted that the issue involved relates to the interpretation of the CENVAT Credit Rules, particularly Rule 6, and the taxability or otherwise of trading activity. The appellant asserts that the dispute is purely interpretational in nature, on which divergent views existed.

14.3 The appellant claimed to have acted under a bona fide belief that CENVAT credit was admissible, especially for the period prior to 01.04.2011 when trading was not specifically included in the definition of "exempted service".

14.4 It was also argued that the Department was aware of the appellant's business model and activities through audits and correspondence, and therefore the allegation of suppression is untenable.

14.5 The appellant also contended that the demand is barred by limitation as ST-3 returns were regularly filed and receipts were recorded in the books of accounts. It is submitted that the dispute involves interpretation of CENVAT Credit Rules and there was no wilful suppression or intent to evade tax. Limitation, according to the appellant, must be computed from the date of filing of ST-3 returns.

14.6 On penalties, it is submitted that:

i. penalty under Section 78 requires mens rea,
ii. no fraud or deliberate intent to evade has been established, and
iii. consequently, penalties under Sections 76, 77 and 78 are not imposable.

14.7 The Ld. Authorized Representative submitted that the invocation of the extended period is fully justified and supported by the record.

14.8 It was contended that the appellant: was registered under the Service Tax law, was filing ST-3 returns, but failed to disclose the trading activity and the inadmissible availment of CENVAT credit in the statutory returns.

14.9 The Ld. Authorized Representative has contended that disclosure in books of accounts does not amount to statutory disclosure, and what is relevant is disclosure in returns prescribed under the law.

14.10 It was further submitted that the appellant continued to avail and utilise CENVAT credit attributable to trading activity despite the legal position being clarified by Board Circulars and judicial pronouncements, thereby evidencing intent to evade.

14.11 On interest, it is submitted that interest is mandatory and compensatory once inadmissible credit is availed and utilised.

14.12 On penalties, the Ld. AR contends that: once suppression with intent to evade is established, and penalty under Section 78 follows as a civil consequence, and that mens rea need not be separately proved.

14.13 Reliance was placed in this regard on the judgement in *Mehta & Co. v. CCE – 2011 (264) ELT 481 (SC)*

14.14 We have carefully examined the rival submissions; the findings recorded in the impugned orders and the material placed on record.

14.15 The proviso to Section 73(1) permits invocation of the extended period where non-payment or short-payment of tax arises by reason of fraud, collusion, wilful misstatement, suppression of facts or contravention of statutory provisions with an intent to evade payment of tax.

14.16 In the present case, the following facts are undisputed:

i. the appellant was registered under the Service Tax law,
ii. statutory returns were filed during the relevant period,
iii. trading activity and inadmissible credit attributable thereto were not disclosed in ST-3 returns.

14.17 The plea that details were available in books of accounts cannot be accepted. It is settled law that statutory returns are the primary mode of disclosure, and mere availability of information in accounts does not amount to disclosure to the Department.

14.18 The Hon'ble Supreme Court in *Pushpam Pharmaceuticals Co. v. CCE – 1995 (78) ELT 401 (SC)* has held that suppression includes failure to disclose information which the assessee is legally required to disclose.

14.19 Similarly, we find that in *Nizam Sugar Factory v. CCE – 2006 (197) ELT 465 (SC),* the Supreme Court held that non-disclosure of material facts in statutory returns justifies invocation of the extended period.

14.20 The Appellant has relied upon the case Laws against invocation of extended period and imposition of penalties. We have examined the applicability of case Laws as hereunder

i. *Asstt. Commr. of GST & C.Ex. v. Shriram Value Services Pvt. Ltd. – 2019 (368) ELT 928 (Madras High Court)*

The appellant contends that in identical circumstances the Madras High Court held the demand to be time-barred.

On perusal we find that that : In Shriram Value Services, the High Court recorded a categorical finding that: the assessee had fully disclosed the nature of activities in statutory returns; and the Department sought to invoke the extended period solely on re-interpretation of the same disclosed facts.

In the present case we find that: the appellant did not disclose trading of gifts / gift vouchers in ST-3 returns; the appellant did not disclose common availment of CENVAT credit for taxable services and trading activity; and Rule 6 compliance was neither followed nor intimated.

Thus, the foundation on which Shriram Value Services rests on Full and true disclosure which is conspicuously absent here. Hence, the said judgment is factually inapplicable.

ii. Anjuman Islahul Muslimin v. Commissioner (Appeals) – 2019 (27) GSTL 685 (Tri)

It was argued that extended period cannot be invoked where the dispute involves interpretation of law.

On perusal of the decision, we find that: the Appellant's activity was openly declared; and the dispute was purely legal, with no allegation of suppression.

In the present case, the dispute is not merely interpretational. It involves: non-declaration of trading activity; wrong availment and utilisation of CENVAT credit on

non-taxable / exempted activity; and delayed furnishing of particulars, only after Audit/investigation.

It is settled law that failure to disclose material facts takes the case outside the realm of mere interpretation. Hence, the reliance is misplaced.

iii. *Relying on the decision in the case of Hero Honda Motocorp Ltd. v. CCE, Delhi – 2014 (310) ELT 364 Tri-Del*

The appellant contended that extended period cannot be invoked on mere omission or inaction.

On perusal of the decision, we find that in that case, the Department was fully aware of the facts; and there was no suppression or misstatement.

Whereas in the present case on hand, the appellant's ST-3 returns were incomplete, as trading turnover was not disclosed; critical details were furnished belatedly.

Accordingly, the ratio of Hero Honda does not apply.

iv. Based on the decision in the case of *CCE, Aurangabad v. Bajaj Auto Ltd. – 2010 (260) ELT 17 (SC),* the Appellant argued that mere omission or failure cannot justify extended period or penalty.

We find from the case that the Hon'ble Supreme Court in Bajaj Auto emphasized the absence of any positive act of suppression. In contrast, the present case involves: continued non-disclosure of trading activity; availing and

utilising credit contrary to statutory provisions; absence of any voluntary disclosure prior to Audit/ investigation.

Thus, the conduct of the appellant goes beyond mere omission and squarely attracts the proviso to Section 73(1).

14.21 The appellant contended that limitation must be computed from the date of filing ST-3 returns and not from the date from which the details sought for by the department were furnished by the Appellant resulting in some portion of the demand being hit by time bar.

We have examined this plea and it is squarely answered against the appellant in view of the decision by the Supreme Court in *Mehta & Co. v. CCE – 2011 (264) ELT 481 (SC),* which held that:

> where returns are incomplete or misleading, limitation runs from the date of furnishing correct and complete particulars.

In the present case, trading details were admittedly not declared in returns. Therefore, we hold that the computation of limitation from the date of subsequent disclosure is legally correct.

14.22 Therefore we hold that the extended period has been rightly invoked.

14.23 Interest under the relevant provisions of the Finance Act, 1994 and CENVAT Credit Rules is automatic and mandatory, once inadmissible credit is availed and utilised as has been held by us *Supra*.

The Hon'ble Supreme Court in SKF India Ltd. v. CCE – 2009 (239) ELT 385 (SC) has held that interest is compensatory and follows as a matter of course.

Accordingly, the demand of interest is legally sustainable

PENALTIES

14.24 We find that Penalty under Section 78 is attracted where non-payment of tax is due to suppression or wilful misstatement. In the present case: the appellant failed to declare trading activity in statutory returns, continued to avail inadmissible credit, and the plea of bona fide belief has been rejected on merits.

14.25 We find that the Hon'ble Supreme Court in *Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)* has held that once the conditions of Section 78 are satisfied, penalty follows as a civil consequence and mens rea need not be separately proved. We also find that Penalties under Sections 76 and 77 for failure to comply with statutory obligations are also justified.

14.26 We finally hold that the invocation of the extended period of limitation is legal and proper. The demand of interest being mandatory is sustainable.

On holding that the invocation of extended period under Proviso to Section 73(1) imposition of penalties under Section 78 of FA 1994 is automatic.

Accordingly, Issue No. 6 is decided against the appellant

Finally, we examine the issue of waiver of penalties under Section 80 of Finance Act, 1994.

15.1 On this ground, the appellant contended that: the dispute arises out of interpretation of CENVAT Credit Rules, particularly the treatment of trading of gifts/gift vouchers; trading was not recognised as "exempted service" prior to 01.04.2011, and thereafter the law underwent multiple amendments; there existed divergent views possible on the eligibility of CENVAT credit in trading-related activities; there was no deliberate intent to evade tax, and the dispute was revenue-neutral in nature to a large extent;

15.2 The appellant relied on the decision of *SHV LPG India Pvt. Ltd. v. Commissioner – 2025 (3) TMI 65* to contest penalty and seek waiver under Section 80.

And therefore, there existed reasonable cause within the meaning of Section 80.

15.3 The Respondent adverted to that as extended period has been rightly invoked; and once suppression is established, penalty under Section 78 follows automatically. Therefore, waiver of penalty is not a matter of right.

15.4 We have carefully examined the rival submissions and the factual matrix of the present batch of appeals. While we have upheld the demand of tax and invocation of extended period, the question of penalty stands on a distinct footing, particularly in view of the statutory discretion available under Section 80 during the relevant period.

We find the following factors to be material:

The penalties have been imposed under Section 78/76 of Finance Act 1994 read with Rule 15 of CCR 2004. Section 80 of the Finance Act, 1994 (as it stood prior to 14.05.2015) expressly provided that no penalty shall be imposable under Sections 76, 77 or 78, if the assessee proves that there was reasonable cause for the failure to pay service tax or comply with statutory provisions.

Rule 15 of the CENVAT Credit Rules, 2004 prescribes penalties for wrong availment or utilisation of CENVAT credit by adopting the penalty provisions of the Finance Act, 1994, including Sections 76 and 78, mutatis mutandis.

15.5 The dispute spans multiple phases of the CENVAT Credit Rules, 2004, involving: a period when trading was neither taxable nor defined as exempted service; and later its inclusion as an exempted service w.e.f. 01.04.2011 by way of explanation; and frequent amendments to Rule 6 during the disputed period. Such a fluid legal framework reasonably lends itself to interpretational disputes.

15.6 We also find that though extended period is upheld due to non-disclosure of full particulars, we do not find evidence of: falsification of records, creation of parallel accounts, or deliberate misstatement with intent to evade tax.

15.7 We further find that under Section 80 Discretion is Wide and Equitable as it stood during the relevant period, was designed to prevent harsh penal consequences in cases involving bona fide disputes. The present case squarely falls within its protective ambit.

15.8 In view of the above, we are satisfied that the appellant has demonstrated reasonable cause for the failure leading to the impugned demands during the periods prior to 14.05.2015.

15.9 We find that Section 80 operates as an overriding remedial provision and applies notwithstanding the source of penalty, so long as the penalty is imposed by reference to Sections 76 or 78 of the Finance Act, 1994, whether:

i. directly under the Finance Act, or

ii. indirectly through Rule 15 of the CENVAT Credit Rules.

Once penalty is traceable to Sections 76 and/or 78, the protective umbrella of Section 80 is attracted, provided the period involved is prior to 14.05.2015 and the assessee establishes reasonable cause.

15.10 The mere fact that penalty is imposed "read with Rule 15 of CCR" does not dilute or exclude the applicability of Section 80, as Rule 15 does not create an independent penalty regime but merely borrows the penalty machinery of the Finance Act.

This position is well settled that: Section 80 overrides Sections 76 and 78, and where reasonable cause is established, penalty under both provisions is liable to be waived, even if imposed cumulatively.

15.11 However, we also note that Section 80 was omitted w.e.f. 14.05.2015. Consequently:

i. for periods prior to 14.05.2015, waiver under Section 80 is legally permissible for penalties under Sections 76 and 78 (including those imposed via Rule 15 CCR);

ii. for periods on or after 14.05.2015, no waiver is statutorily permissible, irrespective of reasonable cause.

15.12 Accordingly, penalties imposed under Sections 76, 77 and 78 in respect of six appeals which pertaining to the pre-14.05.2015 period are waived in entirety by invoking Section 80 of the Finance Act, 1994, while sustaining the demand of tax and interest.

15.13 For the period covered by the seventh appeal, we hold that: waiver of penalty is statutorily impermissible covering the post-14.05.2015 period; penalty imposed under Section 78 in respect of the said appeal is sustainable in law.

16. Final operative order

i. In view of the above findings, we hold that the procurement and supply of goods and gift vouchers by the appellant constitute trading activity, which is:

a) a non-taxable activity prior to 01.04.2011, and

b) an exempted service thereafter.

ii. The appellant is not entitled to avail CENVAT credit on inputs and input services attributable to such trading activity: prior to 01.04.2011, and subsequent thereto, in the absence of strict compliance with Rule 6 of the CENVAT Credit Rules, 2004, the demands for reversal/recovery of inadmissible CENVAT credit, as confirmed in the impugned Orders-in-Original and Orders-in-Appeal, are upheld.

iii. The invocation of the extended period of limitation under the relevant provisions is held to be legal and proper, in view of the appellant's failure to disclose trading activity and inadmissible credit availment in statutory returns.

iv. The demand of interest is a statutory and automatic consequence, and is therefore sustainable.

v. The imposition of penalties, including penalties equivalent to the amount of inadmissible credit, is upheld, there being suppression of material facts with intent to evade payment of duty/tax. However, invoking the provisions of Section 80 of FA 1994, in respect of Six appeals relating to periods prior to 14.05.2015 are eligible for complete waiver of penalties under Sections 76, 77 and 78 by invoking Section 80, on the ground of reasonable cause and the seventh appeal, pertaining to the period after 14.05.2015, is

not eligible for waiver of penalty, as the statutory power under Section 80 stood deleted.

Demand of tax and interest remains unaffected by the above findings.

17. Thus, the batch of appeals are disposed of on the above terms.

(Order pronounced in open court on 08.01.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK