NATION TAX MARKET

आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

[illegible] Floor, GST Bhavan,
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Rajkot – 360 001

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रजिस्टर्ड डाक ए.डी. द्वारा :-

क	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-120-TO-126-2018-19

आदेश का दिनांक / Date of Order:	18.06.2018	जारी करने की तारीख / Date of Issue:	21.06.2018

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग [illegible]

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :

M/s. Reliance Industries Limited, Village : Moghpar Padana, Gagva, Jamnagar-361140

[illegible]

(A) [illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible]

(B) [illegible]

[illegible]

17

18 (1)

(i)
(ii)
(iii)

(C)

19

19A

19B

19C

19D

19E

19F

19G

:: ORDER IN APPEAL ::

M/s. Reliance Industries Limited, Vadodara, Hazira, Dahej and Jamnagar units (hereinafter referred to as 'appellants') registered with LTU, Mumbai having principal place of business at Village – Meghpar, Padana, Gagva, Jamnagar – 361140, filed seven appeals against Orders-in-Original No. 30-40/DC/RPR/LTU/MUM/CGST/2017-18 dated 20.09.2017 (hereinafter referred to as 'impugned orders') passed by the Deputy Commissioner, Central Excise & Service Tax, LTU Mumbai (hereinafter referred to as 'lower adjudicating authority') in terms of CBEC Circular No. 1053/5/2017-CX dated 29.6.17 read with Notification No. 2/2017-Central Tax dated 19.6.2017.

2. The brief facts of the case are that appellants had filed seven claims for refund aggregating to Rs. 5,22,32,437/- paid by them by way of reversal of cenvat credit taken in excess to comply with Rule 6(3A) of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"); that while making payment towards finalisation of amounts payable under Rule 6(3A) of CCR, 2004 at the end of FY 2014-15 and 2015-16 they had calculated reversal of input services credit based on the formula prescribed under Rule 6(3A)(c)(iii) of CCR, 2004; that in the said formula A/B is multiplied by F where "F" denotes the total cenvat credit taken on input services during FY 2014-15 and 2015-16; that while calculating the amount attributable to input services used in manufacture and removal of exempted final products, they considered "F" as "total cenvat credit on input services" instead of considering the cenvat credit only on "common input services". Show Cause Notices were issued to the appellants proposing rejection of refund claims on the grounds that that Rule 6(1) of CCR, 2004 prohibits availment of cenvat credit on only such quantity of input or input service, which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2); that it is obligatory on the part of the manufacturer of dutiable and exempted goods and provider of taxable and exempted services to follow Rule 6 of CCR, 2004 and the operation of this rule does not depend upon the volition of the assessee; that 'exempted goods' means 'excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to Nil rate of duty' so as to construe that the exempted goods include goods which are exempt from duty under Notification (conditional or unconditional) issued under Section 5A of the Act; that Rule 6(3A)(f) of CCR, 2004 allows credit of excess amount paid in FY 2014-15, on their own. The refund claims were rejected by the lower adjudicating authority vide common impugned orders on the ground that appellants had filed refund claims under Section 11B of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') whereas Section 11B of the Act does not provide for refund of amount reversed under

Rule 6(3A)(c)(iii) of CCR, 2004; that Rule 6(3A)(c) of CCR, 2004 has provision allowing assessee to take cenvat credit on their own of excess reversal made under the said rule; that in the formula prescribed under Rule 6(3A)(c)(iii) of CCR, 2004 "H" denotes total cenvat credit taken on input services during the financial year and cannot be interpreted to be Cenvat credit taken only on 'common input services'; that Rule 6(3A) was amended vide Notification No. 13/2016-CE(N.T.) dated 01.03.2016 and not 'substituted' as claimed by the appellants.

3. Being aggrieved with the impugned orders, the appellants have preferred these appeals, inter-alia, on the following grounds: -

(i) The lower adjudicating authority has erred by holding that Section 11B of the Act has no provisions for refund of amount reversed under Rule 6(3A)(c)(iii) of CCR, 2004. Appellants submitted that there was no such proposal in SCN; that SCNs were issued on the sole ground that appellants could adjust the excess amount on their own by taking credit of such amount in terms of Rule 6(3A)(c) of CCR, 2004 and hence subject refund claims were not sustainable. The lower adjudicating authority has relied upon Rule 6(3D) of CCR, 2004, which was not covered in the SCN as the basis for rejecting the refund claims and thus, refund claims were rejected on the grounds which were not covered in SCNs and the lower adjudicating authority has travelled beyond scope of the SCNs. It is settled legal position that adjudicating authority cannot go beyond the scope of SCN as held in the following judgments of the Hon'ble Supreme Court and High Courts:

- Toyo Engineering India Ltd. – 2006 (201) ELT 513 (SC)
- Champdany Industries Ltd. – 2009 (241) ELT 481 (SC)
- Nestle India Ltd. – 2008 (234) ELT 329 (Bom.)
- Gas Authority of India – 2008 (232) ELT 7 (SC)
- Kandarp Digiphoto – Dholaka – 2014 (307) ELT 494 (Guj.)

(ii) Without prejudice to the above submissions, appellants submitted that Explanation to Rule 8 of the Central Excise Rules, 2002 specifically provides that the expressions 'duty' or 'duty of excise' shall also include the amount payable in terms of CCR, 2004. Section 2A of the Act also provides that reference to expression "duty", "duties", "duty of excise" and "duties of excise" shall be construed to include a reference to "Central Value Added Tax (Cenvat)". Explanation to Section 35F of the Act also provides that "duty demanded" shall include amount payable under Rule 6 of CCR, 2004. Therefore, the appellants are entitled to refund under Section 11B of the Act as amount reversed in terms of Rule 6 of CCR, 2004 is nothing but "duty" as referred in Section 11B of the Act. The lower adjudicating authority has not given any finding on Explanation to Rule 8 of Central Excise Rules, 2002 even though it was

referred by the appellants in their submissions. It was submitted that Rule 6(3)(i) of CCR, 2004 is not general in nature but it is framed for the purpose of exemption notification only and hence cannot be applied universally. In the instant case appellants have not claimed any exemption which has the condition that no CENVAT credit of input and input service shall be taken. The reversal made by the appellant in terms of obligation prescribed under Rule 6 of CCR, 2004 and not to fulfil any condition of exemption notification and hence Rule 6(3)(i) of CCR, 2004 is not applicable in the instant case. The decision of the Hon'ble Gujarat High Court in the case of Indo-Nippon Chemicals Co. Ltd. reported as 2005 (183) ELT A17 (Guj.) maintained by the Hon'ble Supreme Court reported as 2005 (183) ELT A17 (SC) has held that refund claim arising out of input credit scheme is covered under Section 11B of the Act. The impugned order passed by the lower adjudicating authority ignoring the Hon'ble Supreme Court judgment is legally not sustainable.

viii. The lower adjudicating authority has held that in case of excess reversal of CENVAT credit, there is a provision in CCR, 2004 for the assessee to take credit of excess payment made, or liability, after reconciliation at the end of the financial year. Hence, the lower adjudicating authority ought to have held that, although appellant is not entitled for refund under Section 11B of the Act, the appellant is entitled to restore the said amount in their CENVAT Credit Register under Rule 6(3)(i) of CCR, 2004 and should have passed order accordingly. Merely because appellant referred different section of law in their refund applications substantive right of the appellants cannot be taken away unless the lower adjudicating authority is able to show that prejudice has been caused to the revenue from the refund claims. Appellant relied on decisions in the case of Hayyam Labs Pvt. Ltd. reported as 2017 (08) STR 187 (Tri. – Ahmd.) and Ajmer Automobiles (P) Ltd. reported as 2012 (28) STR 19 (Tri. – Del.). However, GST Law, 2017 has been implemented w.e.f. 01.07.2017 & restoration of amount in the CENVAT Credit Register at this juncture, will not help the appellants as such amount cannot be utilized towards payment of their GST liability. In case with such a situation, the legislature has already contemplated under Section 142 (3)(a) of CGST Act, 2017, for disbursement of refund in cash in respect of every special proceeding relating to a claim for CENVAT credit initiated whether before, on or after the appointed date as the amount covered under the refund claims have not been carried forward as on the appointed day under GST Act, 2017.

(v) There was no allegation in SCNs whether reversal under Rule 6 of CCR, 2004 is required in respect of "local input services" or "common input services" and hence rejection of refund claims has been made on a ground not covered in SCNs and therefore, the impugned order is required to be set aside. Without prejudice, appellants

submitted that entire provisions of Rule 6 of CCR, 2004 has been carved out only to specify circumstances and situation where certain quantum of credit is not available to the assessee. Rule 6(2) and Rule 6(3) are only machinery provisions which seeks to achieve the overall objective of Rule 6(1) that no credit should be taken in respect of input and input service used for manufacture of exempted goods. Rule 6(2) and Rule 6(3) are complimentary and not mutually exclusive therefore Rule 6(3) cannot be read in isolation but it has to be read with Rule 6(2) and in the context of Rule 6(1) of CCR, 2004. The credit of service tax paid on input services exclusively used for manufacture of dutiable goods automatically gets excluded because of provisions of Rule 6(1) and therefore there is no question of including such credits for reversal purpose which does not attract provisions of Rule 6(3). If such credit is included for the purpose of reversal under Rule 6(3A) of CCR, 2004 then it will lead to absurd result which will defeat the entire objective of cenvat credit scheme. It is a settled legal position that the interpretation which gives rise to an anomaly or absurdity the same should be avoided as held in the decisions in the cases of Mahyco Monsanto Biotech (I) Pvt. Ltd. reported as 2016 (44) STR 181 and Geeta Inds. (P.) Ltd. reported as 2010 (249) E.L.T. 59 (Tri. – Del.). The reliance placed by the lower adjudicating authority on the judgment of Authority of Advance Ruling in the case of Sterlite Industries (India) reported as 2007 (208) E.L.T. 248 (AAR) is misplaced as the issue involved in the said case was interpretation of an exemption notification. It is settled legal position that when facts of the case are different, ratio cannot be made applicable as held in Maharashtra [illegible] Ltd. [illegible] Co. reported as 2014 (35) STR 1235 (Tri. – Mum.) and Gupta Energy Pvt. Ltd. reported as 2016 (37) STR 270 (Tri. – Mum.);

(v) There may be cases when some input services may be commonly used for manufacturing of dutiable and exempted goods and eligibility of such credit is subject to fulfilment of obligation provided under Rule 6 of CCR, 2004. Rule 6(1) of CCR 2004, provides that, cenvat credit shall not be allowed on such quantity of input and input services which are used in or in relation to manufacture of exempted goods except in the circumstances mentioned in sub-rule (2). A logical inference which can be drawn from Rule 6(1) is that, full cenvat credit shall be allowed on such quantity of input and input service exclusively used for manufacture of dutiable final products without any exception. The whole purpose of Rule 6(3) is to provide for reversal mechanism for credit attributable to common inputs and common input services used for manufacture of dutiable goods and exempted goods. Therefore, if some input services have not at all been used for manufacture of exempted goods, there is no logic for the same to be factored while determining the liability under Rule 6(3) of CCR, 2004. There cannot be intention of the legislature to include those cenvat credit of exclusive input services for the purpose of reversal when it comes to reversal under Rule 6(3) of CCR, 2004. Even

an interpretation that total cenvat credit which includes exclusive credit used for manufacture of dutiable goods also required to be considered for the purpose of reversal under Rule 6(3) is not justifiable and cannot stand and is against the spirit of Cenvat Credit scheme. The appellants relied on decisions of Hon'ble CESTAT Mumbai in the case of Mercedes Benz India (P) Ltd. reported as 2016-TIOL-550-CESTAT-MUM and Mascon Valves Industries Ltd. reported as 2016-TIOL-479-CESTAT-MUM wherein it has been held that Rule 6 of CCR is not enacted to extract illegal amount from the assessee.

5(i) The formula prescribed under Rule 6(3A) of CCR, 2004 envisages credit of input services which is covered under Rule 6(2) of CCR, 2004 i.e. common input services which is allowed to be availed in full and then pay on pro-rata basis which is attributable to exempted goods or exempted services as the case may be. This is the reason the legislature has been careful to use the word "attributable" on three out of all the places given in the formula at clause 6(3A)(c)(i) and 6(3A)(c)(ii). The main objective of these rules is to provide for reversal of common credit attributable to input services used for manufacture of exempted goods. If some input services have not at all been used for manufacture of exempted goods, then Rule 6(3) cannot be made applicable for such services. This aspect can also be vouched from CBEC Circular No 754/70/2003-CX dated 09.10.2003 and No. 868/6/2008-CX dated 09.05.2008. The lower adjudicating authority erred by ignoring CBEC Circular dated 09.10.2003 on the ground that it was issued in the context of inputs and was issued in 2003 i.e. prior to introduction of CCR, 2004. Appellants referred Rule 16 of CCR, 2004 which provides that any notification, circular, instruction, standing order, trade notice or other order issued under CCR, 2002 and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules. The lower adjudicating authority erred by ignoring CBEC Circular dated 09.05.2008 on the ground that the said circular does not explicitly mention that for the purpose of computation of amount as per Rule 6(3A) of CCR, 2004, only the credit taken on common input services are to be taken. Appellants submitted that ratio/principle laid down in the said circular is that what is required to be taken for computation of amount payable under Rule 6(3A) of CCR, 2004 is the credit taken on common input services only. The clarification given by CBEC vide Circular No. 943/4/2011-CX dated 29.4.2011, it is clear that, full cenvat credit of input and input services exclusively used for manufacture of dutiable goods are allowed and reversal under Rule 6 of CCR, 2004 is required in respect of common input and input services only. The appellants relied on decision in the case of Chennai Petroleum Corporation Ltd. reported as 2012 (286) ELT 467 (Commr. Appl.) and prima facie view taken by Hon'ble CESTAT, Chennai in the case of Sify

Technology Ltd. reported as 2014-TIOL-[illegible]-CESTAT-MAD. The lower adjudicating authority instead of relying on above referred orders has chosen to rely a stay order of CESTAT, Mumbai in the case of Thyssenkrupp Industries (I) Pvt. Ltd. reported as 2014-TIOL-1625-CESTAT-MUM. The lower adjudicating authority has neither distinguished the above referred orders relied upon by the appellants nor given any findings regarding non applicability of the said orders in the instant case. It is settled legal position that, if two views are possible, one favorable to assessee is to be taken in taxation matters as held in Sun Export Corporation reported at 1997 (93) ELT 641 (SC) and Ponds (I) Ltd. reported as 1992 (60) ELT [illegible] (Mad.).

(vii) Rule 6(3) of CCR, 2004 prevailing at the relevant time starts with non obstante clause to state that, although there is a prohibition for availing credit of input service for manufacture of exempted goods under Rule 6(1) and Rule 6(2), by virtue of non obstante clause, assessee can initially avail full cenvat credit on common input services used in manufacture of dutiable and exempted goods and later follow either of the options provided under Rule 6(3)(i) or Rule 6(3)(ii) of CCR, 2004. The non obstante clause has reference of sub rules (1) and (2) of Rule 6 of CCR, 2004 and not to any other provisions contained in CCR, 2004. Therefore, Rule 6(3) or 6(3A) of CCR, 2004 cannot have overriding effect over the enabling provisions of Rule 3(1) and Rule 3(4) of CCR, 2004.

(viii) The lower adjudicating authority has erred by not extending benefit of retrospective amendment made in CCR, 2004 vide Notification No. [illegible]/2016-CE dated 1.3.2016 on the ground that said Notification "amends" CCR, 2004 and it is not a "substitution" as claimed by the appellant. It is true that the said Notification was issued amending different Rules of CCR, 2004 vide which some rules were 'substituted', some rules were 'omitted' and some rules were 'inserted'. The impugned Rule 6(3) was 'substituted' by the said Notification and since the lower adjudicating authority has not disputed appellant's submission on 'substitution', benefit needs to be extended from the date of original Notification i.e. 10.09.2004. The Para 2 of the said Notification reads as "save as otherwise provided, they shall come into force on 1.4.2016. The Legal Glossary 1979 Edition which is a Government of India publication, in which the phrases "Save as otherwise provided" has been shown to mean "Except when otherwise provided". Since Rule 6(3) of CCR, 2004 has been substituted w.e.f. 10.09.2004 the words 'save as otherwise provided' becomes significant and the above wording followed by the stated text i.e. they shall come into force on 1.4.2016 becomes redundant.

(ix) Appellants has submitted certificate issued by Chartered Accountant confirming that the said amount is not charged to expenses and shown as receivable in their books of accounts.

4. Personal Hearing in the matter was attended to by S/Shri George Mathews, Vice-President and Devesh Suchak, Manager on behalf of appellant who reiterated grounds of appeals and submitted that there are two sets of SCN but decided by common order; that the impugned order has traveled beyond the scope of SCN inasmuch as the grounds taken to decide the issue were not part of SCN; that Section 11B covers refund of cenvat credit and clause (c) of sub section (2) of Section 11B; that reversal is to be made of credit of common input services and not of total cenvat credit; that it is clear from Hon'ble Finance Minister Budget speech that there was no change as far as substantive part of Rule 6(3) and Rule 6(3A) of CCR, 2004; that the issues have been decided by the Commissioner (Appeals) in case of Chennai Petroleum Corp. Ltd. reported as 2012 (285) ELT 469 (Commr. Appl.) and Deepak Chemicals Ltd. (page 142-149 of paper book of PH submission); that in view of above appeals should be allowed by way of granting refund in cash as per Transitional Provisions under Section 142 of Central Goods & Service Tax Act, 2017.

FINDINGS: -

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during the personal hearing. The issue to be decided is whether the impugned order, in the facts and circumstances of the case, rejecting refund of cenvat credit reversed under Rule 6(3A)(c)(iii) of CCR, 2004 is correct, legal and proper or not.

6. I find that the appellant has filed refund claims on the ground that they had availed cenvat credit on such inputs and input services which were exclusively used in manufacture of dutiable goods; that they had also availed cenvat credit on common input services which were used in manufacture of both dutiable and exempted goods during FY 2014-15 and 2015-16; that they had opted to pay amount in terms of Rule 6(3A) of CCR, 2004; that they have reversed the amount determined as per formula prescribed under Rule 6(3A)(c)(iii) of CCR, 2004, at the end of respective financial year, considering total credit of input service instead of total credit of common input service which is in excess of Rs. [illegible]/- payable under the said Rule and therefore claimed refund for the said amount. The lower adjudicating authority has held that the formula prescribed under Rule 6(3A) (c)(iii) of CCR, 2004 where, 'F' denotes total cenvat credit taken on input services during the financial year and cannot be interpreted to be Cenvat credit taken only on 'common input services'. I would like to reproduce relevant text of Rule 6 of CCR, 2004 prevailing at the material time, which reads as under:-

Rule 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 used in or in relation to the manufacture of exempted goods or provision of exempted services, or input service 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, except in the circumstances mentioned in sub-rule (2):
Provided ....

Explanation 1. .. ...

Explanation 2. . .

(2) 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 –

(a) . . .

(b) the receipt and use of input services –

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) . . . ; and for

(iv) . . .

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely –

(i) . . . ; or

(ii) pay an amount as determined under sub-rule (3A);

or

(iii) ....

Provided that . . . .

Provided further . .

Provided also .. ..

Explanation I. . . . ...

Explanation II. -

Explanation III. - . ... .

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:

(a) . . . . .

(b) The manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month, -

(i) ....

(ii) ......

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) The manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely: -

(i) ....

(ii)

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services = (H/I) multiplied by J, where H denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, I denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed during the financial year, and J denotes total CENVAT credit taken on input services during the financial year

8.1 I find that Rule 6 of CCR, 2004 provides obligation upon the manufacturer of dutiable and exempted goods inasmuch as Rule 6(1) of CCR, 2004 disallows cenvat credit on input services which are used in manufacture of exempted goods except in the circumstances specified in sub-rule (2); that Rule 6(2) of CCR, 2004 provides that the manufacturer shall maintain separate accounts for input service meant for use in the manufacture of dutiable final products and meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of input service which is intended for use in the manufacture of dutiable goods; that Rule 6(3) provides an option to manufacturer of dutiable and exempted goods to pay amount attributable to input services used in or in relation to manufacture of exempted goods as per formula prescribed under Rule 6(3A) of CCR, 2004 if the manufacturer do not opt to maintain separate records.

8.2 I find that intent and object of legislation behind above Rule 6 of CCR, 2004 is not to allow cenvat credit on input services, which are used in manufacture of exempted goods or used in providing exempted services and to deal with the situations where cenvat credit is availed on inputs and input services which are used for manufacture of both dutiable as well as exempted goods and no separate records are maintained, the legislation provides option to pay amount attributable to input services used in or in relation to manufacture of exempted goods under Rule 6(3A) of CCR, 2004 and framed formula to arrive at cenvat credit attributable to manufacture of exempted goods and so as to achieve the objectives of Cenvat Credit Scheme. In the instant case, the appellant has not availed cenvat credit on input services which were exclusively used for exempted goods, to that extent they have properly followed Rule 6(1) of CCR, 2004. At the same time, in respect of such input services which were commonly used for manufacture of dutiable and exempted goods, they have opted to follow Rule 6(3A) of CCR, 2004 and paid amount attributable to input services used in or in relation to manufacture of exempted goods as per formula prescribed under Rule 6(3A)(c)(iii) of CCR, 2004. Initially, the appellant paid the amount considering total input services availed by them. However, they filed refund claims on the ground that they have to consider cenvat credit on common input service only and therefore, they filed refund claim having excess amount paid. Looking to the provisions of Rule 6 of CCR, 2004 and the essence of Cenvat Credit Scheme, I am of the considered view that cenvat credit legally availed on input services which were exclusively used for manufacture of dutiable goods cannot be considered at the time of payment of amount under Rule 6(3A)(c)(iii) of CCR, 2004 and accordingly, I hold that the appellant has correctly filed refund claim which were paid in excess. I further find that the Central Government has issued Notification No. 13/2016-CE dated 1.3.2016 under which Rule 6(3A) of CCR, 2004 has been substituted and the formula to arrive at cenvat credit of input service attributable to the exempted goods were also substituted, which has been framed to consider "total cenvat credit availed on common input services" and not "total cenvat credit availed on input services". The said notification gives a clear indication that the intention of the Government was to replace the old wordings with the new ones as held by the Hon'ble Supreme Court in the case of Indian Tobacco Association reported as 2005 (187) ELT 162 (SC) wherein it has been held as under:

> *15. The word "substitute" ordinarily would mean "to put (one) in place of another", or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".*
>
> *(Emphasis supplied)*

6.3 The Hon'ble High Court of Karnataka in the case of Fosroc Chemicals (India) Pvt. Ltd. reported as 2015 (318) ELT 240 (Kar.) has also held as under:

9. What is the effect of "substitution" of a provision in the place of an existing one is no more res integra. The Constitution Bench of the Hon'ble Apex Court in the case of Shamarao V. Parulekar v. The District Magistrate, Thana, Bombay & Others reported in AIR 1952 SC page 324, dealing with the scope of substitution of a provision by way of amendment held as under:-

"When a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that there is no need to refer to the amending Act at all."

(Emphasis supplied)

6.4 In view of above, I find that rejection of refund claim on the ground that total cenvat credit availed on input service is to be considered in the formula prescribed under Rule 6(3A)(c)(iii) of CCR, 2004 as held by the lower adjudicating authority is not correct, legal and proper.

7. The appellant has also contended that SCNs did not allege as to whether reversal under Rule 6 of CCR, 2004 is required in respect of "total input service" or "common input service" and thus, the lower adjudicating authority has travelled beyond scope of SCNs which is legally unjustified. I find the submission of the appellant is correct and proper and hence, I have no option but to hold that the impugned orders can't travel beyond scope of SCNs in this regard. Therefore, I find that the appellant is entitled for refund of Rs. 5,20,22,427/- being excess amount paid by them as per formula under Rule 6(3A)(c)(iii) of CCR, 2004.

8. I also find that the lower adjudicating authority has rejected refund claims on the ground that Section 11B of the Act does not provide for refund of amount reversed under Rule 6(3A)(c)(iii) of CCR, 2004 and for holding so has relied on Rule 6(3D) of CCR, 2004 which provides that cenvat credit reversed under Rule 6(3A) of CCR, 2004 is "amount" and not "duty". The appellant has vehemently argued that they are entitled for refund under Section 11B of the Act as amount reversed in terms of Rule 6 of CCR, 2004 is nothing but "duty" as referred in Section 11B of the Act read with Explanation to Rule 2 of the Central Excise Rules, 2002, which states that the expressions 'duty' or 'duty of excise' shall also include the amount payable in terms of CCR, 2004. I find that the dispute as to whether all the refund claims are to be governed under Section 11B of the Act or not, stands settled by the Hon'ble Supreme Court in the landmark judgment of Mafatlal Industries Limited reported as 1997 (89) ELT 247

(S.C.), wherein it has been held that no claim for refund is maintainable except under and in accordance with the provisions of Section 11B of the Act; that Section 11B of the Act provides for refund of duty/taxes which have been collected contrary to law, i.e. on account of a mis-interpretation or mis-construction of a provision of law, rule, notification or regulation. I find that the Hon'ble High Court of Gujarat also in the case of Indo-Nippon Chemicals Co. Ltd. reported as 2005 (185) ELT 19 (Guj.) has held as under:

> *"28. We have looked into the provisions contained in Rule 57F and the Notification issued thereunder (copies of which were supplied to us along with written submissions). We do not find anything in Rule 57F or the Notification issued thereunder to infer non-applicability of the provisions under Section 11B of the Act with the aid of clause (e) under proviso to sub-section (2) of Section 11B of the Act to come to a conclusion that the claim for refund of duty based on Market Linked Scheme is maintainable under the said Section. In our opinion, the provisions contained in Rule 57F and the Notification issued thereunder do not take away right of a party to resort to the provisions of Section 11B of the Act for such a refund. Rule 57F and the Notification enables refund to be claimed under the Market Linked Scheme but the procedure and the limitation for claiming such refund would be governed by the provisions of Section 11B of the Act.*
>
> (Emphasis supplied)

8.1 I find that the above referred judgment has been maintained by the Hon'ble Supreme Court reported as 2005 (186) ELT A117 (SC). I also find that refund of Cenvat credit reversed in excess by the appellant under Rule 6(3A)(c)(iii) of CCR, 2004 is fully covered under clause (e) of Section 11B (2) of the Act. It is settled legal position that provisions made in the Act would prevail over the Rules framed under the said Act and therefore, rejection of refund claim on the ground of Rule 6(3A)(f) of CCR, 2004 is not correct. I also find that Rule 6(3A) has not been invoked in SCNs; thus, the basis on which refund claims have been rejected is not sustainable. Hence, I hold that findings of the lower adjudicating authority in this regard are not correct, legal and proper.

9. The appellant has contended that restoration of amount in the Cenvat Credit Register at this juncture, will not help them as such amount cannot be utilized towards payment of their GST liability under GST Law, 2017 in terms of Transitional Provisions under Section 142 of Central Goods & Service Tax Act, 2017. I find that Section 142(6)(a) of CGST Act, 2017 is applicable in this respect, which I would like to reproduce as under:-

> *(6)(a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of*

credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act :

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

9.1 In view of above provisions, refund claims for cenvat credit initiated before, on or after the appointed day under the existing law are required to be disposed of in terms of existing law and amount of cenvat credit needs to be refunded in cash provided that balance of said amount has not been carried forward under CGST Act. The appellant has submitted that they have not carried forward the amount of disputed cenvat credit and therefore, I hold that they are entitled for cash refund of cenvat credit in view of the aforesaid provisions.

10. In view of above findings, I set aside the impugned orders and allow appeals with consequential relief.

१०.१ अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

10.1 The appeals filed by the appellant are disposed off as above.

(कुमार संतोष)
आयुक्त (अपील्स)

[illegible]

By RPAD

To,

(i) M/s. Reliance Industries Limited, Village – Meghpar, Padana, Gagva, District Jamnagar – 361140	(i) मे. रिलायंस इंडस्ट्रीज लिमिटेड, विलेज – मेघपर, पडाना, गागवा, डिस्ट्रिक्ट – जामनगर – [illegible]

Copy for information and necessary action to:

1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2) The Commissioner, CGST & Central Excise, Rajkot
3) The Deputy Commissioner, CGST & Central Excise Division, Jamnagar
4) Guard File.