

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

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 51478 OF 2022

(Arising out of Order-in-Original No. 44/Commr/Delhi East/AP/2021 dated 26.11.2021 passed by the Commissioner, CX & GST Commissionerate, Delhi East, New Delhi)

Godfrey Phillips India Limited

.....Appellant

49 Community Centre,
New Friends Colony,
Srinivaspuri, New Delhi - 110025

VERSUS

Commissioner, Central Tax,

.....Respondent

GST, Delhi East,
C.R. Building, I.P. Estate,
New Delhi – 110002

APPEARANCE:

Shri S.C. Vaidyanathan and Shri Shivam Batra, Advocates for the Appellant

Shri Aejaz Ahmad, Authorized Representative for the Department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 28.11.2025
DATE OF DECISION: 05.12.2025**

FINAL ORDER NO. 51817/2025

JUSTICE DILIP GUPTA:

Godfrey Phillips India Limited¹ has filed this appeal to assail the order dated 26.11.2021 passed by the Commissioner, CX and GST Commissionerate Delhi East² by which the demand towards exempted services has been confirmed with interest and penalty by invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994³ and a direction has been given to recover

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- 1. the appellant**
 - 2. the Commissioner**
 - 3. the Finance Act**

it from the appellant under section 73(1) of the Finance Act read with rule 6(3)(i) and rule 14 of the CENVAT Credit Rules, 2004⁴.

2. The appellant is engaged in various services such as management or business consultant service, consulting engineer service, manpower recruitment/supply agency service, business auxiliary service, renting of immovable property service, legal consultancy service and sponsorship services and was registered as an Input Service Distributor⁵ with the service tax department.

3. The appellant claims that being an ISD, it complied with the requirement of proportionate reversal of credit pertaining to common input services in terms of rule 6(3)(ii) read with rule 6(3A) of the 2004 Credit Rules and, accordingly, distributed the balance of such credit to its manufacturing units in terms of rule 7 of the 2004 Credit Rules.

4. The appellant further claims that the manufacturing units of the appellant are engaged in manufacture of cigarettes, pan masala and other tobacco products. The profit earned from selling such products was utilized for day to day functioning of the business of the appellant. The surplus profit so earned by the appellant was invested in various schemes of Mutual Funds.

5. The audit officers conducted an audit of the records of the appellant for the Financial Year 2013-2014 to 2017-2018, wherein it was observed that the appellant was engaged in trading of securities, but did not maintain any separate account for the same.

6. Pursuant to the said audit, a show cause notice dated 16.04.2019 was issued to the appellant proposing a demand of Rs. 4,80,06,500/- under section 73(1) of the Finance Act read with rule 6(3)(i) and rule 14 of

4. the 2004 Credit Rules

5. ISD

the 2004 Credit Rules by invoking the extended period of limitation. The show cause notice alleged that the activity of redemption of Mutual Funds is an exempt service as it falls under the ambit of "Trading of Goods" in the negative list under section 66D(e) of the Finance Act warranting reversal of CENVAT credit thereon in terms of rule 6(3)(i) of the 2004 Credit Rules.

7. The Commissioner confirmed the entire demand of recovery of CENVAT credit along with interest and imposed penalties upon the appellant observing that the redemption of Mutual Funds is an exempted service as it falls under the ambit of "Trading of Goods" as provided under section 66D(e) of the Finance Act. The findings given in the impugned order are as follows:

- (i)** The frequency and amount involved in the purchase of units in Mutual Funds for investment was huge, which indicates that the appellant was involved in trading with an intention to earn profit. Thus, the activity of the appellant of investing money in Mutual Funds for profit and then selling the same, tantamounts to purchase and sale i.e. trading of securities. In this regard, the difference between Mutual Funds trading and trading of other securities is irrelevant since even in Mutual Funds there is a purchase price and sale price;
- (ii)** Prior to 01.07.2012, trading was considered as service but exempted from service tax in view of definition of "exempted services". Even during the relevant period, trading of goods remained a service but was exempted from service tax. Thus, the contention that an activity must first be chargeable to service tax and then must be exempted from tax, is not tenable since the definition of "exempted service" under rule 2(e) of the 2004 Credit Rules also includes inter

alia a service on which no service tax is leviable under section 66B of the Finance Act;

- (iii) The contention of the appellant that its activity cannot be considered as "exempted service" in terms of rule 2(l) of the 2004 Credit Rules is not tenable as the 2016 amendment in rule 6 has only widened the scope of exempted services;
- (iv) Rule 6(3) of the 2004 Credit Rules is applicable to present case as firstly, the purchase and sale of securities is from one person to another and secondly, the appellant is providing taxable services as well as exempted services. Further, the said rule is applicable as in the activity of investment in Mutual Funds, the other person is the entity providing Mutual Funds units, and the amount paid for purchasing the Mutual Funds/ the amount received on redemption, is the consideration; and
- (v) The appellant is not liable to reverse proportionate credit under rule 6(3)(ii) of the 2004 Credit Rules read with rule 6(3A) of the 2004 Credit Rules as the appellant, by not furnishing any intimation to the department, has not complied with rule 6(3A) of the 2004 Credit Rules.

8. It is against this order of the Commissioner that the appellant has filed this appeal.

9. Shri S.C. Vaidyanathan, learned counsel for the appellant assisted by Shri Shivam Batra submitted that the issue involved of non-reversal of proportionate CENVAT credit availed on common input services used in relation to redemption of Mutual Funds by considering it to be "Trading of Goods", which is an exempted service in terms of section 66D(e) of the Finance Act, has been settled by a Division Bench of this Tribunal in **M/s.**

Siegwerk India Pvt. Ltd. vs. Commissioner, Central Goods & Service Tax, Commissionerate, Alwar⁶. Learned counsel, therefore, submitted that the impugned order deserves to be set aside on this ground alone. In the alternative, the learned counsel also submitted that the activity of investment in Mutual Funds cannot be termed as a "service" for the purpose of the Finance Act and that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

10. Shri Aejaz Ahmad, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference.

11. It is seen that the issue involved in this appeal is indeed covered by the decision of the Tribunal in **Siegwerk India**. The relevant portion of the decision is reproduced below:

"12. The issue that arises for consideration in this appeal is non-reversal of proportionate CENVAT credit availed on common input services namely chartered accountant services, telephone services and legal services, used in relation to 'redemption of mutual funds' by considering it to be 'trading of goods', which is an exempted service in terms of section 66D(e) of the Finance Act.

13. The submission advanced by learned counsel for the appellant is that subscription and redemption of liquid mutual fund units cannot be termed as 'trading of goods' and hence, do not qualify as 'exempted services' for the reason that the term 'trading' involves buying and selling of goods with transfer of title in property from one person to another. However, transfer of units does not take place in mutual funds because the units cease to exist i.e., they get cancelled or relinquished upon redemption. The present activity would, therefore, not be akin to the sale and purchase of shares in a

6. Service Tax Appeal No. 53816 of 2018 decided on 01.10.2024 (Tri.-Del.)

stock market. Securities, on the other hand, are traded and the ownership of such securities is transferred from one person to the other.

14. It is seen that the main ingredients of 'trading' are— (i) there should be two parties and a market to purchase and sell the goods involved; (ii) there should be transfer of right/title involved from the seller to the buyer while selling the same; and (iii) there should be a fixed price known in advance while selling or buying the said goods.

15. The activities undertaken by the appellant, namely, the activity of subscription and redemption of the units of mutual funds cannot be said to be an activity of sale and purchase of the securities. When the units of mutual funds are redeemed, the mutual funds units cease to exist. Thus, investment activities undertaken by the appellant would be different from 'trading in securities'."

(emphasis supplied)

12. The Tribunal, thereafter, referred to a decision of the Tribunal in **M/s. Ambuja Cements Ltd. vs. Commissioner of Customs, Central Excise & GST, Nagpur**⁷ and after examining the definitions of purchase, sale, trade, trading, redemption and subscription, observed:

"4.5 From the definitions as above, I am convinced that following are the ingredients of trading:

- i. There should be two parties and a market to purchase and sell the good involved;
- ii. There should be transfer of right/title involved from the seller to the buyer, while selling the same;
- iii. There should be a fixed price known in advance while selling or buying the said good etc.

If we test the activities undertaken by the appellant, against the above criteria the activity of subscription and redemption of the units of the mutual fund is not an activity of sale and

7. 2023 (5) TMI 806 – CESTAT Mumbai

purchase of the securities. When the units of mutual fund are redeemed, the units cease to exist i.e., gets cancelled or relinquished, It does not get transferred to the third party. Thus investment activities undertaken by the appellants is totally different from 'trading in securities'."

(emphasis supplied)

13. After referring to the decisions of the Tribunal in **Ace Creative Learning Pvt. Ltd. vs. Commissioner of Central Tax, Bengaluru South GST Commissioner⁸, M/s. Tata Sons Ltd. vs. Commissioner of Service Tax-I, Mumbai (vice-versa)⁹** and **Space Matrix Design Consultants Pvt. Ltd. vs. Commissioner of Central Tax, Bangalore North¹⁰**, the Tribunal further observed:

"4.7 From the above since I find that the activity of redemption and subscription of mutual fund is akin to management of investments and not trading in services, it cannot be held as exempted service, for seeking the reversal as per provisions of Rule 6 of CENVAT Credit Rules, 2004. In the impugned order, reliance has been placed on the decision in the case of Roca Bathroom Products Pvt. Ltd. [2017 (51) S.T.R. 432 (Tri.- Del.)]. The said decision is distinguishable as it is in respect of the trading of goods and not in the case where the Education Guide itself clarifies that buying and selling of the unit of mutual funds is not service itself."

(emphasis supplied)

14. In view of the aforesaid decisions of the Tribunal, it has to be held that the activity of subscription and redemption of units of Mutual Funds cannot be said to be an activity of sale and purchase of the securities. It would, therefore, not be an activity relating to trading and securities. The

8. 2021 (4) TMI 687 – CESTAT Bangalore

9. 2022 (11) TMI 325 – CESTAT Mumbai

10. 2019 (4) TMI 1599 – CESTAT Bangalore

activity undertaken by the appellant would, therefore, not be an exempted service in terms of section 66D(e) of the Finance Act and proportionate reversal of credit was not required to be made.

15. The Division Bench of the Tribunal in **Siegwerk India** also held that the extended period of limitation under the proviso to section 73(1) of the Finance Act could not have been invoked.

16. Thus, in view of the aforesaid decision of the Tribunal in **Siegwerk India**, it has to be held that the Commissioner committed an error in confirming the demand with interest and penalty by the impugned order dated 26.11.2021. The order, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **05.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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