CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89875 of 2013

(Arising out of Order-in-Original No. 35/COMMR/M-III/WLH/2013-14 dated 01.11.2013 passed by the Commissioner of Central Excise, Mumbai-III.)

CEAT Limited **..... Appellants**
RPG House
463, Dr. Annie Besant Road
Worli, Mumbai – 400 030.

Versus

Commissioner of Central Excise **..... Respondent**
Mumbai-III Commissionerate
Vardaan Trade Centre, Wagle Industrial Estate
Thane (West), Maharashtra – 400 604.

Appearance:

Shri Gajendra Jain a/w Shri Saurabh Bhise, Advocates for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85903/2025

Date of Hearing: 19.12.2024
Date of Decision: 16.06.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s CEAT Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 35/COMMR/M-III/WLH/2013-14 dated 01.11.2013 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise, Mumbai-III.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein are engaged, *inter alia*, in manufacture of excisable goods viz., tyres, tubes and flaps falling under Chapter 40 of the Central Excise Tariff Act, 1985 and were registered under Central Excise authorities bearing Registration No. AAACC1645GXM001. The appellants

avail CENVAT credit of duty on inputs and capital goods used in such manufacture of final products. For the purpose of manufacture of finished goods viz. tyres, the appellants procure various inputs and avail CENVAT credit of excise duty paid on such inputs. During the period of dispute, the appellants had availed CENVAT credit of duty paid on one of the input viz., nylon tyre cord fabrics which was used in the manufacture of tyres after subjecting it to the process of dipping in solution which is a preparation of resorcinol, formaldehyde & latex solutions and passed through heating chambers, to obtain Dipped Nylon Tyre Card Fabrics (DNTCF) which in turn is captively used in the manufacture of tyres. The said DNTCF was leviable to Additional Duty of Excise (in lieu of sales tax) under the provisions of Additional Duties of Excise (Goods of Special Importance) Act, 1957. In terms of Section 3 of the Act of 1957, such additional duties shall be levied and collected in respect of goods described in the First Schedule to the Act and produced or manufactured in India. The provisions of Central Excises and Salt Act, 1944 and the rules made thereunder, shall apply in relation to the levy and collection of such additional duties as they apply in relation to levy and collection of Central Excise duty. Further, in terms of Section 4 of the said Act of 1957, during each financial year, there shall be paid out of the Consolidated Fund of India to the States in accordance with the provisions of Second Schedule such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year, as are specified in that Schedule. The said additional duty of excise leviable on DNTCF is hereinafter referred to as "AED(GSI)" for short.

2.3 However, the appellants had disputed the duty liability of AED(GSI) on account of their claim of classification of DNTCF under CETH 59.06 as against the contention of the Department for classification of the said goods under CETH 59.02, and accordingly did not discharge the duty liability of said additional duty of excise. The dispute was agitated in various appellate forums and finally the matter went up to the Hon'ble Supreme Court, wherein the matter was ruled in favour of revenue. In the meantime, 23 show cause notices (SCNs) had been issued to the appellants for recovery of AED (GSI) on disputed DNTCF and vide Order-in-Original No.19-41/ KKS/2005-06 dated 28.02.2006, the duty demands were confirmed by the adjudicating authority. The appellants paid the duty demand of AED (GSI) for Rs.6,59,36,795/- by debiting the CENVAT credit account on 05.06.2006, towards payment of AED (GSI) demanded vide order dated 28.02.2006. The restoration of CENVAT credit and its utilization only for payment of AED

(GSI) was upheld by the Commissioner of Central Excise, Mumbai-III vide Order-in-Original No.18/KKS/2006-07 dated 28.02.2007. The jurisdictional Assistant Commissioner of Central Excise, vide letter dated 16.03.2007 had allowed credit of Rs.6,59,36,795/- of AED (GSI) for the period 16.03.1995 to 02.06.1998 on the quantity of Dipped Nylon Tyre Cord Fabrics (DNTCF) which has gone into the manufacture of dutiable final product-'tyres' as per the Order-in-Original dated 28.02.2006. Further, the appellants had utilised the credit of AED (GSI) towards payment of Basic Excise Duty (central excise duty) on clearances of final product of tyres effected during the months of April/May, 2007. The department had interpreted that the action taken by the appellants in taking CENVAT credit of AED (GSI) and its utilization for payment of Central Excise duties on final product is improper as explained in detail as below.

2.4 In terms of the extant legal provisions governing CENVAT credit, during the relevant point of time, AED (GSI) paid on inputs was not allowed under Rule 57A of the erstwhile Central Excise Rules, 1944 read with Notification No. 5/94-C.E. (N.T.) dated 01.03.1994. AED (GSI) paid on inputs was allowed as credit in terms of amendments made to Rule 57A of erstwhile Central Excise Rules, 1944 vide Notification No.08/95-C.E. (N.T.) dated 16.03.1995. Therefore, the appellants started availing Modvat credit of AED (GSI) paid on nylon tyre cord fabric. Since, 57A *ibid* provided that credit of AED (GSI) could be utilised only for payment of AED (GSI) on final products, and the final product tyres did not attract AED (GSI), the credit of AED (GSI) could not be utilised by the appellants and it started accumulating in their credit Ledger. As on 01.04.2000, the appellants had accumulated credit of AED (GSI) taken during the period 16.03.1995 to 31.03.2010, amounting to Rs.20,49,01,187/-.

2.5 The said accumulated credit of AED (GSI) was carried forward by the appellants under CENVAT Credit Rules, 2001 and CENVAT Credit Rules, 2002 by virtue of the savings clause in the transitional provisions. The restriction placed on the credit of AED (GSI) for its utilisation only for payment of AED (GSI) on final products continued up to 28.02.2003. With the amendment introduced through CENVAT Credit (Second Amendment) Rules, 2003 introduced through Notification No.13/2003-C.E. (N.T.) dated 01.03.2003, Rule 3(6)(b) of CENVAT Credit Rules, 2002 was substituted with an explanation, which enabled the credit of AED (GSI) taken as CENVAT credit to be utilised for payment of any other duty of excise including Basic Excise Duty on payment of duty for final products.

2.6 In other words, prior to 01.04.2000, credit of AED (GSI) paid on inputs could be utilised only towards payment of AED (GSI) on the final products. However, with effect from 01.03.2003, the CENVAT Credit Rules were amended so as to provide for utilisation of AED (GSI) paid on inputs, towards payment of basic excise duty and special excise duty on finished products. However, vide Section 88 of the Finance Act, 2002, the CENVAT Credit Rules were retrospectively amended so as to restrict the utilisation of AED (GSI) towards payment of duties of excise under First or Second Schedule of CETA, 1985, only when such duty was paid on or after 01.04.2000. Further, vide Section 124 of the Finance Act, 2005, the law was amended providing for recovery of CENVAT credit of AED (GSI) leviable and paid prior to 01.04.2000 which had been utilised for payment of basic and special excise duty, as the same was not permissible in view of the retrospective amendment made in the Finance Act, 2004.

2.7 Since in the present case, the duty payment towards AED (GSI) pertains to the period 16.03.1995 to 02.06.1998, the Department is of the view that the appellants are not eligible to utilise the credit of AED(GSI) for payment of excise duties other than AED (GSI) as explained in paragraph 2.3 above and accordingly SCN dated 29.07.2007 was issued for recovery of wrongly utilised credit. In adjudication of the above SCN, learned Commissioner of central excise vide impugned order dated 01.11.2013 had confirmed the proposals made in the SCN for demand of Rs.6,59,36,795/- under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 and also imposed a penalty of Rs.50,00,000/- on the appellants under Rule 15(1) ibid. Being aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted extracts of the Central Excise Rules, 1994; CENVAT Credit Rules, 2002/ 2004 and Notifications issued thereunder; in order to demonstrate the legal provisions that existed at various points of time and that AED (GSI) paid on 05.06.2006 by the appellants satisfy the requirement of the duty "paid on or after the 1st day of April, 2000" mentioned in Explanation to Rule 3(7)(b) of Central Credit Rules, 2004. Hence, he claimed that the utilisation of the AED (GSI) lying in that CENVAT credit ledger towards payment of BED is correct. Learned advocate further submitted that there is no restriction or condition that AED (GSI) paid on or after 01.04.2000 must

not pertain to the period prior to 01.04.2000. Also, he stated that there is no requirement that levy under Section 3 of the AED (GSI) Act should arise after 01.04.2000. In this regard, he also placed on record the extract of the legal provisions in Section 88 of the Finance Act, 2004; Section 124 of the Finance Act, 2005 and the Circular issued by the CBEC vide Circular No. 70/16/2003-CX dated 06.03.2003. Therefore he pleaded that it is impermissible to add words and rewrite the explanation, in order to deny the benefit of AED (GSI) credit on the ground that such duty should be leviable and paid on or after 01.04.2000.

3.2 Learned Advocate stated that the dispute regarding payment of AED (GSI) on NTCDF was finally settled before the Hon'ble Supreme Court in favour of revenue, and the appellants had paid AED (GSI) on NTCDF manufactured and captively consumed by the appellants in the manufacture of final product i.e., tyres, on 05.06.2006, pursuant to the adjudication order dated 26.02.2006 passed by the Commissioner of Central Excise, Mumbai-III holding that AED (GSI) is payable on nylon tyre cord dipped fabrics. The appellants have filed credit of the AED (GSI) paid in June, 2006 and utilised the same for payment of BED, in view of the explanation to Rule 3(7)(b) of CENVAT Credit Rules, 2004. Thus, he claimed that merely by change of legislation suddenly, the appellants could not be put in a position to lose this valuable right.

3.3 In this regard, learned Advocate submitted that the dispute is fully covered by the Final Orders of the Tribunal in the case of *Goodyear India Limited Vs. Commissioner of Central Excise, Faridabad* – 2006 (199) E.L.T. 842 (Tri.-Del.) and in the case of *Apollo Tyres Limited Vs. Commissioner of Central Excise* - 2013 (9) TMI 168 CESTAT Bangalore. In the appeal filed by the department against the above order of the Tribunal, the Hon'ble High Court of Kerala vide judgement delivered on 20.07.2015 have upheld the Order of the Tribunal. With the above submissions and those made in the grounds of appeal, learned Advocate prayed for allowing the appeal, with consequential relief.

4.1 Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner of Central Excise in the impugned order and submitted that in view of the specific provisions for utilisation of AED (GSI) provided by way of retrospective amendment in the Finance Act, 2004 w.e.f. 01.03.2003, it is not permissible to use the CENVAT credit of AED (GSI) for payment of BED or SED, since the

amendment had brought out a stipulation that AED (GSI) leviable and paid after 01.04.2000 alone was permissible for utilisation of such credit towards payment of any duty of excise on the final product. Therefore he submitted that, where only payment of AED (GSI) is involved after 01.04.2000, such amount paid cannot be taken as CENVAT Credit for the purpose of payment of BED or SED on final products.

4.2 Further, learned AR also stated that in view of the legal provisions introduced in Finance Act, 2005, any amount of AED (GSI) utilised for payment of BED irregularly, as in the case of the appellants, then the same is required to be recovered as per the provisions made in the said Finance Act, 2005. Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form written paper books in this case by both sides were also perused carefully.

6. The short issue for determination before the Tribunal is that in the facts and circumstances of the present case, whether the payment of Additional Duty of Excise (Goods of Special Importance) being the disputed duty liability during the period 16.09.1995 to 02.06.1998, paid on 05.06.2006, and the same has been taken as CENVAT credit, is permissible for utilisation of payment of Basic Excise Duty payable on clearance of final product i.e., tyres or not?

7.1 In order to appreciate the issues under dispute, the specific legal provisions governing the CENVAT credit at the relevant time, along with the earlier position under the Central Excise Rules, 1994; CENVAT Credit Rules, 2002; CENVAT Credit Rules, 2004 and the specific provisions of the Finance Act, 2004; Finance Act, 2005; Additional Duties of Excise (Goods of Special Importance) Act, 1957 relating to the dispute are extracted and given below for ease of reference:

ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT, 1957 (58 OF 1957)

An Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its second report dated the 18th December, 1990.

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows:

"1. Short title and extent. — (1) This Act may be called the Additional Duties of Excise (Goods of Special Importance) Act,1957. (2) It extends to the whole of India.

2. Definitions. — In this Act, —
(a) "additional duties" means the duties of excise levied and collected under sub-section (1) of Section 3;

(b) "State" does not include a Union territory;

3. Levy and collection of Additional Duties. — (1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in column (4) of the said Schedule.

(2) The duties of excise referred to in sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 (1 of 1944), and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1)

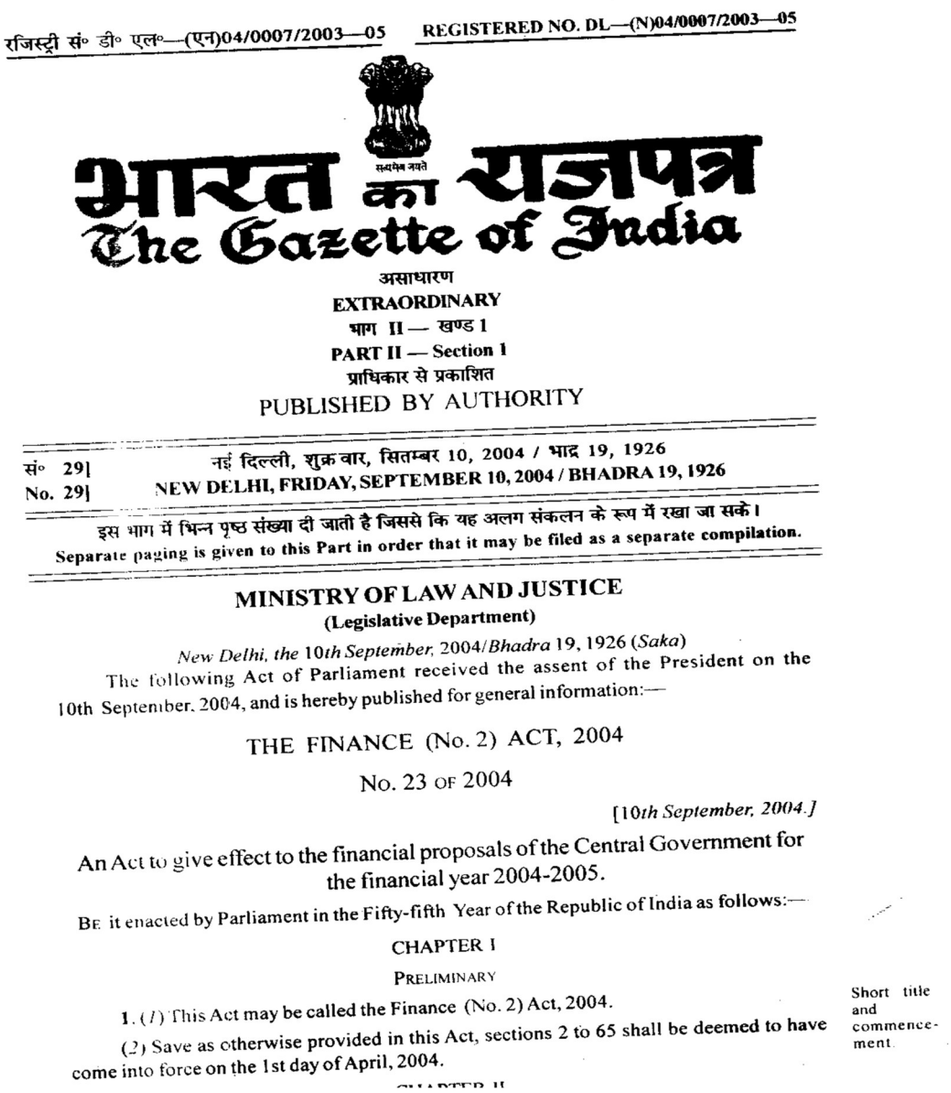
4. Distribution of additional duties among States. — During each financial year, there shall be paid out of the Consolidated Fund of India to the States in accordance with the provisions of the Second Schedule such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year, as are specified in that Schedule.

5. Expenditure to be charged on the Consolidated Fund of India. — Any expenditure under the provisions of this Act shall be expenditure charged on the Consolidated Fund of India."

From plain reading of the aforesaid legal provisions, it transpires that AED (GSI) is levied on selected goods namely textiles, sugar and tobacco in terms of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. This is also the duty of excise since the taxable event is manufacture. However, since this duty is over and above the duty of excise levied under the Central Excise Act, it is called Additional Duty of Excise. In terms of the legal provisions under the Constitution of India, particularly Article 272, the duties are to be collected by the Centre/the Government of India, but is distributed between the Union and the States. The distribution is as per the order of the President of India and

based on the recommendations of the Finance Commission. Since the distribution is to be made as per the law, and the ratio of distribution of additional excise duty between Centre and States is recommended by the Finance Commission, it is implied that AED (GSI) collected by the Central Government should be entirely distributed to the States. This is on the understanding between the Union and States is that the States will not levy sales tax on the sale of these commodities covered by AED (GSI) 1957 Act. The portion of AED (GSI) collected which relates to the Union Territories is of course retained by the Central Government. However, besides these legal provisions, there are certain more legal provisions provided under the special acts i.e., Central Excise Act, 1944 and rules made thereunder, Finance Acts, 2004 and 2005 which also contain certain provisions dealing with the disputed issue, which being special acts in nature have also to be examined for proper appreciation of the correct position of law.

7.2 The specific legal provisions that was amended in the Finance Acts, in respect of the *Explanation* relating to Additional Duty of Excise (Goods of Special Importance), relating to the present dispute are as follows:



रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—05 REGISTERED NO. DL—(N)04/0007/2003—05

सत्यमेव जयते

भारत का राजपत्र
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असाधारण
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PART II — Section 1
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 10*th September,* 2004/*Bhadra* 19, 1926 (*Saka*)

The following Act of Parliament received the assent of the President on the 10th September, 2004, and is hereby published for general information:—

THE FINANCE (No. 2) ACT, 2004

No. 23 OF 2004

[10*th September, 2004.*]

An Act to give effect to the financial proposals of the Central Government for the financial year 2004-2005.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Finance (No. 2) Act, 2004. Short title and commencement.

(*2*) Save as otherwise provided in this Act, sections 2 to 65 shall be deemed to have come into force on the 1st day of April, 2004.

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Amendment of the CENVAT Credit Rules, 2002.

88. (*1*) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, in rule 3, in sub-rule (*6*), in clause (*b*), the *Explanation* shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly, 1 of 1944.

notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said *Explanation* shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said *Explanation* as amended by this sub-section had been in force at all material times.

(*2*) For the purposes of sub-section (*1*), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times. 1 of 1944.

(*3*) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been disallowed but which would not have been disallowed if the amendment made by sub-section (*1*) was in force at all material times. 58 of 1957.

(*4*) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been availed but which would not have been availed if the amendment made by sub-section (*1*) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944, shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President. 58 of 1957. 1 of 1944.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Explanation 2.—For the purposes of this section, the expression "CENVAT credit" has the meaning assigned to it in the CENVAT Credit Rules, 2002.

THE SECOND SCHEDULE

[*See* section 88(*1*)]

Provision of the CENVAT Credit Rules, 2002 to be amended	Amendment	Date of effect of amendment
(1)	(2)	(3)
Explanation to clause (*b*) of sub-rule (*6*) of rule 3.	In the CENVAT Credit Rules, 2002, in rule 3, in sub-rule (*6*), in clause (*b*), for the *Explanation*, the following *Explanation* shall be substituted, namely:— "*Explanation.*—For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);".	1st March, 2003.

T. K. VISWANATHAN,
Secy. to the Govt. of India.

रजिस्ट्री सं॰ डीएल॰-(एन)04/0007/2003-05 REGISTERED NO. DL-(N)04/0007/2003-05

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 13*th May*, 2005/*Vaisakha* 23, 1927 (*Saka*)

The following Act of Parliament received the assent of the President on 13th May, 2005 and is hereby published for general information:—

THE FINANCE ACT, 2005

No. 18 OF 2005

[13*th May*, 2005.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2005-2006.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Finance Act, 2005. Short title and commencement.

(*2*) Save as otherwise provided in this Act, sections 2 to 64 shall be deemed to have come into force on the 1st day of April, 2005.

XXX XXX XXX

124. In the Finance (No. 2) Act, 2004,— Amendment of Act 23 of 2004.

(*a*) in section 88, after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) Notwithstanding anything contained in sub-section (*4*), the following procedure shall be followed for the recovery of the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 which has been availed but which would not have been availed if the amendment made by sub-section (*1*) was in force at all material times (hereinafter referred to in this section as the amount of credit), namely:—

(*i*) the Central Excise Officer shall, on or before the 25th day of May, 2005, serve notice on the person from whom the recovery is to be made (hereinafter referred to as the assessee), requiring the assessee to declare the amount of credit utilised by him on different dates for payment of duty of excise (hereinafter referred to as the CENVAT duty) leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985;

(*ii*) the assessee shall furnish the declaration as required under clause (*i*) on or before the 31st day of May, 2005;

(*iii*) the Central Excise Officer shall, after considering the declaration made by the assessee under clause (*ii*), determine the amount of credit utilised on different dates for payment of CENVAT duty;

(*iv*) the Central Excise Officer shall separately determine the amount of interest on the amount of credit (hereinafter referred to as the amount of interest) utilised for paying the CENVAT duty, in accordance with the provisions of clause (*v*);

(*v*) the amount of interest on amount of credit utilised for paying the CENVAT duty shall be at a rate of thirteen per cent. per annum for the period beginning on and from the day when each time the amount of credit was so utilised and ending on the 10th day of September, 2004;

(*vi*) the Central Excise Officer shall, on or before the 15th day of June, 2005, inform the assessee, in writing, the amount of credit and the amount of interest so determined under clauses (*iii*) and (*iv*);

(*vii*) the assessee shall pay an amount equal to one-thirty sixth part of each of the amount determined under clauses (*iii*) and (*iv*) by the fifth day of every month, commencing from the month, following the month of receipt of information of the amount determined by the Central Excise Officer;

(*viii*) the assessee may make payment on his own towards the amount of credit or, as the case may be, the amount of interest, in excess of the amount required to be paid up to a particular month;

(*ix*) where the assessee pays the total amount of credit and the amount of interest so determined under clauses (*iii*) and (*iv*), respectively, the Central Excise Officer shall issue an order confirming the payment of credit and the amount of interest and discharging the assessee from any recovery of the amount of credit;

(*x*) for the purposes of this sub-section, it is hereby clarified that the amount of credit has been fully utilised first towards payment of the CENVAT duty before utilising the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 paid on or after the 1st day of April, 2000 for payment of the CENVAT duty.

(*6*) Where the assessee fails to furnish the declaration as required under clause (*i*), or has furnished the declaration but failed to pay the amount by the day as specified in clause (*vii*), of sub-section (*5*), the provisions of sub-section (*4*) shall apply subject to the modification that the notice, requiring the assessee to show cause why he should not pay the amount specified in the notice, shall be served upon him within three months from the date of his such failure.";

7.3 The extract of Rule 3 of CENVAT Credit Rules, 2004 and earlier legal provisions given under CENVAT Credit Rules, 2002/2004, and erstwhile Central Excise Rules, 1944, are extracted and given below:

Central Excise Rules, 1944 – (Prior to 16.03.1995)

AA. Credit of duty paid on excisable goods used as inputs.

RULE 57A. Applicability. *-(1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf,* ***for the purpose of allowing credit of any duty of excise or the additional duty*** *under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duty") paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the "inputs")* ***and for utilising the credit so allowed towards payment of duty of excise leviable on the final products****, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification:….."*

Extract of Notification No.5/94-C.E. (N.T.) dated 01.03.1994

Goods notified for purposes of credit of duty under MODVAT.- *In exercise of the powers conferred by rule 57A of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 177/86-Central Excises, dated the 1st March, 1986, the Central Government hereby specifies the final products described in column (3) of the Table hereto annexed and in respect of which, -*

(i) the duty of excise under the Central Excises and Salt Act, 1944 (1 of 1944);

(ii) the additional duty of excise under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); and

(iii) the additional duty under section 3 of the Customs Tariff Act, 1975 (51) of 1975), equivalent to, -

(a) the duty of excise specified under (i) above; and

(b) the duty of excise specified under (ii) above,

(hereinafter referred to as "specified duty") paid on inputs, described in the corresponding entry in column (2) of the said Table, shall be allowed as credit when used in or in relation to the manufacture of the said final products and the credit of duty so allowed shall be utilised for payment of duty leviable on the said final products, or as the case may be, on such inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules:…..

Central Excise Rules, 1944 – (w.e.f. 16.03.1995)

AA. Credit of duty paid on excisable goods used as inputs.

RULE 57A. Applicability*. - (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf,* ***for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975*** *(51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duty") paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the "inputs") and for* ***utilising the credit so allowed towards payment of duty of excise leviable on the final products****, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification :*

Extract of Notification No.5/94-C.E. (N.T.) dated 01.03.1994 as amended by Notification No.8/95-C.E. (N.T.) dated 16.03.1995

In exercise of the powers conferred by rule 57A of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 177/86-Central Excises, dated the 1st March, 1986, the Central Government hereby ***specifies the final products*** *described in column (3) of the Table hereto annexed and in respect of which, -*

(i) the ***duty of excise*** *under the Central Excises and Salt Act, 1944 (1 of 1944);*

*(ii) the **additional duty of excise** under section 3 of the Additional Duties of Excise (**Textiles and Textile Articles**) Act, 1978 (40 of 1978); and*

*(iii) the **additional duty of excise** under section 3 of the Additional Duties of Excise (**Goods of Special Importance**) Act, 1957 (58 of 1957); and*

*(iv) the **additional duty** under section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to :-*

(a) the duty of excise specified under (i) above;

(b) the duty of excise specified under (ii) above; and

(c) the duty of excise specified under (iii) above

(hereinafter referred to as "specified duty") paid on inputs, described in the corresponding entry in column (2) of the said Table, shall be allowed as credit when used in or in relation to the manufacture of the said final products and the credit of duty so allowed shall be utilised for payment of duty leviable on the said final products, or as the case may be, on such inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules:

xxx xxx xxx xxx

*Provided further that the **credit of specified duty** in so far as it relates to the **additional duty of excise** specified under (iii) above or the additional duty specified under (iv)(c) above, **allowed** in respect of inputs shall be **utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act**, 1957 (58 of 1957), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules :……*

CENVAT Credit Rules, 2002 (w.e.f. 01.03.2003)

RULE 3. CENVAT Credit.

A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(vi) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above,

paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of

Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th/March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002...

xxx xxx xxx xxx

(6) Notwithstanding anything contained in sub-rule (1),-…

(b) CENVAT credit in respect of -

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;

*(ii) the **additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act**, 1957;*

(iii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001; and

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii) and (iii) above,

*shall be **utilized only towards payment of duty of excise** leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, or under the said **Additional Duties of Excise (Goods of Special Importance) Act,** or the National Calamity Contingent duty leviable under section 136 of the Finance Act,2001 **respectively**, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed;*

Extract of Notification No.13/2003-C.E. (N.T.) dated 01.03.2003

In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules to amend the CENVAT Credit Rules, 2002, namely:-

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2003.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette…..

(3) In the said rules, in rule 3,-
….
(d) in sub-rule (6)-
(A) for clause (b), the following shall be substituted, namely:-

"(b) CENVAT credit in respect of -

*(i) the additional duty of excise leviable under section 3 of the **Additional Duties of Excise (Textiles and Textile Articles)** Act, 1978 (40 of 1978);*

*(ii) the **National Calamity Contingent duty** leviable under section 136 of the Finance Act, 2001 as amended by clause 161 of the Finance Bill, 2003, which clause has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of law; and*

*(iii) the **additional duty leviable under section 3 of the Customs Tariff** Act, equivalent to the duty of excise specified under clauses (i) and (ii) above,"*

*shall be **utilized only towards payment of duty of excise** leviable under the said **Additional Duties of Excise (Textiles and Textile Articles)** Act, or the **National Calamity Contingent duty** leviable under section 136 of the Finance Act,2001 as amended by clause 161 of the Finance Bill, 2003, which clause has by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of Law, respectively, on any final produces manufactured by the the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed;*

Explanation. - For removal of doubts, it is clarified that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Act, 1944:"

CENVAT Credit Rules, 2002
As amended by clause 144 of the Finance Bill, 2003

***RULE 3. CENVAT credit. -** (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-*
(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by clause 161 of the Finance Bill, 2003, which clause has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law; and

(vi) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above,

paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002.

xxx xxx xxx xxx

(3) The CENVAT credit may be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed or such capital goods are removed as such:….

xxx xxx xxx xxx

(6) Notwithstanding anything contained in sub-rule (1),-….

Explanation. - For removal of doubts, it is clarified that the credit of the ***additional duty of excise leviable*** *under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957),* ***may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule*** *of the Central Excise Tariff Act, 1985…"*

CENVAT Credit Rules, 2004

"Rule 3. CENVAT credit. (1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of—

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;……

xxx xxx xxx xxx

paid on—

(i) any input or capital goods received in the factory of manufacture of final product or by the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004 :

xxx xxx xxx xxx

(7) Notwithstanding anything contained in sub-rule (1), sub-rule (1a) and sub-rule (4),—

(b) CENVAT credit in respect of—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

xxx xxx xxx xxx

shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),…..

xxx xxx xxx xxx

Explanation.—For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act;"

7.4 On perusal of the erstwhile provisions of Central Excise Rules, 1944 and at the initial phase of CENVAT scheme under CENVAT Credit Rules, 2002, the following facts would transpire:

(i) until 16.03.1995, the additional duty of excise paid on inputs under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) were not allowed to be taken credit as MODVAT/CENVAT Credit;

(ii) credit of additional duty of excise (Goods of Special Importance), was allowed w.e.f. 16.03.1995 in respect of inputs and it was allowed with a restriction that such credit shall be utilised for the limited purpose i.e., only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), on the final products;

(iii) In terms of CENVAT Credit Rules, 2002 introduced through Notification No.5/2002-C.E. (N.T.) dated 01.03.2002, the existing position allowed w.e.f. 16.03.1995 was continued by way of sub-rule (6)(b) to Rule 3, CENVAT credit in respect of AED (GSI) paid on input was allowed to be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), on the final products as a non obstante clause, despite sub-rule (3) ibid providing that CENVAT credit may be utilized for payment of any duty of excise on final products;

(iv) In terms of amendments introduced to the CENVAT Credit Rules, 2002 through Notification No.13/2003-C.E. (N.T.) dated 01.03.2003 i.e., CENVAT Credit (Second Amendment) Rules, 2003, by way of sub-rule (6)(b) to Rule 3, CENVAT credit in respect of AED (Textiles and Textile Articles) and NCC duty paid on input was allowed to be utilised only towards payment of respective duty i.e., AED (T&TA), NCC duty leviable on the final products, under the respective acts. Further, explanation clause to sub-rule (6)(b) to Rule 3, allowed CENVAT credit in respect of AED (GSI) paid on input to be utilised towards payment of duty of excise leviable under the First Schedule or Second Schedule to the CETA, 1985.

(v) The position as explained in above clause (iv) with respect to AED(GSI) was continued in the revised CENVAT Credit Rules, 2004 introduced w.e.f. 10.09.2004, i.e. the use of CENVAT credit in respect of AED (GSI) paid on input being allowed to be utilised towards payment of duty of excise leviable under the First Schedule or Second Schedule to the CETA, 1985, subject to the restriction that the inputs are received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

7.5 On careful analysis of the above and from plain reading of above legal provisions given under an Explanation to sub-rule (1) of Rule 3 of CENVAT Credit Rules, 2004, it clearly transpires that CENVAT credit of duties specified in clause (i) to (xi) paid on inputs or capital goods could be taken, if such inputs or capital goods are received in the factory of manufacture or after the date specified therein i.e., 10.09.2004. Therefore, it can be concluded that receipt of input or capital goods after 10.09.2004, is one of the condition to be fulfilled for taking of CENVAT credit of AED (GSI) under the CENVAT Credit Rules, 2004. If we consider the fact that the disputed duty have been confirmed vide Order-in-Original dated 28.02.2006 and the same has been paid by the appellants on 05.06.2006, and therefore the issue of taking of CENVAT credit on AED (GSI) paid on 05.06.2006 and utilized for payment of basic excise duty on final products during April/May, 2007, shall be governed by the provisions of CENVAT Credit Rules, 2004, then the essential condition for receipt of inputs on or after 10.09.2004 should be tested for its eligibility to utilise the same for payment of AED(GSI). Since the disputed duty paid on 05.06.2006 relates to AED (GSI) payable on the input i.e. NTCDF manufactured during 16.03.1995 to 02.06.1998, and such goods/inputs having been already captively consumed in further manufacture of final product i.e., tyres during that period, the essential condition that the inputs should have been received in the factory of manufacture on or after 10.09.2004, for utilizing the CENVAT Credit on AED (GSI) is not fulfilled in this case.

7.6 Further, if we have to take into account the legal provisions of CENVAT Credit Rules, 2002 as the relevant rules applicable in this case, since the said rules was issued in supersession of the CENVAT Credit Rules, 2001, and since it had transitional provisions under Rule 14 – 'supplementary provisions' for validating the CENVAT Credit Rules, 2001; and that the erstwhile CENVAT Credit Rules, 2001 in turn also had a transitional provision for moving from MODVAT regime to CENVAT regime under Rule 9 ibid – 'transitional provision' which permitted any amount of credit earned by a manufacturer under the erstwhile Central Excise Rules, 1944 as they existed prior to the 1st day of July, 2001 and remaining unutilised on that day shall be allowable as CENVAT credit to such manufacturer under these rules, and be allowed to be utilised in accordance with these rules, then we need to examine more closely the relevant provisions of CENVAT Credit Rules, 2002 i.e., Rule 3 ibid, as certain amendments were also made through Finance Acts of 2004 and 2005. The

relevant rules are sub-rule (1) of Rule 3 ibid that specified various duties of excise paid on inputs or capital goods, which can be taken as CENVAT credit; and its utilization was provided under sub-rule (3) to Rule 3 ibid and sub-rule (6) to Rule 3 ibid along with its explanation, the extracts of which are given in the paragraph 7.3 above.

7.7 On plain reading of the above legal provisions, it transpires that sub-rule (1) to Rule 3 ibid *inter alia* provide for taking CENVAT credit of AED (GSI) paid on any inputs or capital goods; further, sub-rule (3) to Rule 3 ibid provide for utilizing such CENVAT credit for payment of duty of excise on any final products; and furthermore, sub-rule (6) to Rule 3 ibid, which is a non-obstante clause provided through an explanation, that credit of AED (GSI) shall be utilised only towards payment of duty of excise leviable under the said Additional Duties of Excise (Goods of Special Importance) Act, 1957. However, vide Notification No.12/2003-C.E. (N.T.) w.e.f. 01.03.2003, clause (b) to sub-rule (6) of Rule 3 ibid and explanation provided under sub-rule (6) was amended, so as to omit the item (ii) relating to credit of AED (GSI) from the items listed under (i) to (iv) provided earlier, which covered taking of credit in respect of AED (TTA) under item (i); AED (GSI) under item (ii); NCCD under item (iii) and CVD/additional duty of customs under item (iv) and allowed taking credit of AED (GSI) only for payment of such duty on final products through the explanation that the AED (GSI). Therefore, under the new provision provided w.e.f. 01.03.2003 utilization of credit is permitted only for AED (TTA), NCCD and CVD under renumbered (i), (ii) and (iii) and providing an explanation for utilization of AED (GSI) paid on input for payment of duty of excise on final product which is leviable under First Schedule or Second Schedule of Central Excise Act, 1944. This explanation was also subsequently amended vide Finance Act, 2004 providing retrospective effect from 01.03.2003. Therefore, we carefully look at these two versions of the explanation, one as introduced on 01.03.2003 vide Notification No.13/2003-C.E. (N.T.) dated 01.03.2003 and the other as amended by Section 88 of the Finance Act, 2004 as follows:

Explanation to clause(b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002	
As introduced vide Notification No. No.13/2003-C.E. (N.T.) dated 01.03.2003	***As amended through Section 88 of the Finance Act, 2004 with retrospective effect from 01.03.2003***
*Explanation .— For removal of doubts, it is **clarified** that the **credit of the additional duty of excise leviable** under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957),*	*Explanation.—For removal of doubts, it is **hereby declared** that the **credit of the additional duty of excise leviable** under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) **and paid on or***

Explanation to clause(b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002	
As introduced vide Notification No. No.13/2003-C.E. (N.T.) dated 01.03.2003	***As amended through Section 88 of the Finance Act, 2004 with retrospective effect from 01.03.2003***
may be utilised *towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Tariff Act, 1985 (5 of 1986)*	***after the 1st day of April, 2000, may be utilised*** *towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Tariff Act, 1985 (5 of 1986)*
Date of publication of the notification in the Official Gazette i.e., 1st March, 2003.	*Date of effect of amendment as given under Section 88(1) of Finance Act, 2004 is 1st March, 2003.*

7.8 On careful perusal of the amendments made to the legal provisions given under an Explanation to clause (b) to sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002, under the Finance Act, 2004 and 2005, it also transpires that CENVAT credit of AED (GSI) is allowed to be taken only in respect of AED (GSI) which is leviable and paid on or after 01.04.2000; such credit alone is permissible for utilizing it towards payment of any duty of excise under the First or the Second Schedule to the Central Excise Tariff Act, 1985. From the above analysis of legal provisions and discussions, it transpires that this forms the primary condition with respect to taking and availment of CENVAT credit of AED (GSI) subsequent to the amendment introduced through the Finance Act, 2004.

7.9 In the present case, it is an undisputed fact on record that the payment of AED (GSI) is on the NTCDF manufactured by the appellants in their factory during to the period 16.09.1995 to 02.06.1998, and which was also consumed in the manufacture of final product which is manufactured in their factory. NTCDF was emerging as a distinct excisable goods at the factory of manufacture of the appellants on undergoing the process of dipping of nylon tyre cord fabrics, and the appellants did not pay the AED (GSI) on such goods and disputed the same. Therefore, the Department had initiated show cause proceedings and the demands were confirmed on the appellants vide Order dated 28.02.2006. The appellants has agitated the issue before various appellate forums, and it was ultimately settled at the highest level of Hon’ble Supreme Court, and the appellants paid the disputed AED (GSI) on 05.06.2006, after the said case was finally settled by the Hon'ble Supreme Court ruling in favour of the revenue. Thereafter, the appellants took CENVAT credit of such AED (GSI) paid on 05.06.2006, and utilised the same for payment of basic excise duty in April/May, 2007. The above facts clearly prove that the AED (GSI) was leviable on DNTCF during 16.09.1995 to 02.06.1998 and the same was paid by the appellants on 05.06.2006. Therefore, the payment of AED (GSI) does not meet the

requirements of Explanation to clause (b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002.

7.10 From the above facts, it could be clearly concluded that even though the appellants had paid the AED (GSI) after 01.04.2000, since it related to the AED (GSI) leviable on the excisable goods that was cleared between 16.09.1995 to 02.06.1998, the conditions introduced through the Finance Act, 2004 are not fulfilled by the appellants. In other words, the two conditions precedent to which credit of AED(GSI) shall be allowed are, one (i) the additional duty of excise shall be leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), on or after the 1st day of April, 2000; and, the other (ii) such additional duty of excise leviable under Section 3 ibid shall be paid, on or after the 1st day of April, 2000. Further, in terms of the amendments introduced through Section 124 of the Finance Act, 2005 recovery of such AED (GSI) irregularly used for payment of BED/SED was also provided for in terms of the procedure prescribed therein, over a period of 36 months, in equal instalments. Since these conditions were not fulfilled by the appellants in the present case, in terms of Section 88 of the Finance Act, 2004 providing retrospective amendment of Explanation to clause (b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002, we are of the considered view, that CENVAT credit of AED (GSI) paid by the appellants do not satisfy the pre-requisites of the CENVAT statue and therefore the appellants are not eligible to avail/utilize the CENVAT credit towards payment of duties of excise on final product i.e., tyres.

8.1 Further we find that the Ministry of Finance had issued a clarification in respect of the issue regarding whether the credit of additional duty (GSI) accrued earlier i.e., prior to 1-3-2003, can be used for payment of Cenvat duty vide Circular No. 700/16/2003-CX dated 06.03.2003.

8.2 The extract of the said instructions is as follows:

"Circular No. 700/16/2003-CX,
dated 6-3-2003

F. No. 334/1/2003-TRU
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Sub : Budget 2003-04

Kindly refer to my D.O. letter of even no. and dated 28-2-2002 and the Budget instructions regarding changes in excise duty structure. In the context of these changes certain clarifications have been sought for. Points raised and comments thereon are given below.

Point No. 2

Whether credit of additional duty (GSI) accrued earlier (prior to 1-3-2003) can be used for payment of Cenvat duty.

Comments :

In Budget 2003, Cenvat Credit Rules were amended to allow credit of AED (GSI) for payment of Cenvat duty. Prior to 1st March, utilization of credit of AED (GSI) was restricted to payment of AED (GSI) only. The said amendment was carried out consequent to the deletion of Article 272 of the Constitution of India vide Constitution (8th Amendment) Act, 2000 (sic) and the issuance of Constitution (Distribution of Revenue) No. 5 Order, 2000, dated 10-10-2000 by the President. As per this order, 1.5% of the total sharable taxes and duties are to be distributed to the states in lieu of AED (GSI) instead of the earlier system of AED (GSI) being distributed amongst the States as per the pattern recommended by the Second Finance Commission. Under the new dispensation the requirement of separate accounting of the AED (GSI) no longer exists since 10-10-2000. As the reason for the amendment to Cenvat Credit Rules existed even prior to 1st March, 2003, it was considered appropriate not to put any cap on the use of the AED (GSI) credit accruing prior to 1-3-2003 in the said credit rules. It is accordingly clarified that credit of additional duty (GSI) accrued earlier (prior to 1-3-2003) can be used for payment of Cenvat duty as well as AED (GSI).”

8.3 If we examine the relevant Constitution (Distribution of Revenues) Order, legal provisions of the Constitution of India, referred to in the above clarification, it transpires that the various revenues of the Government collected as duty/ tax, levied under the authority of respective law, is to be assigned in the manner provided for its distribution between the Union/Central Government and States, as given in the respective legal provisions covering the relevant duties/taxes and relevant recommendations of the respective Finance Commission and the orders issued thereunder. However, since the prerequisite of separate accounting for AED (GSI) was done away with the above Order, the requirement of utilising credit of AED (GSI) taken in inputs, towards payment of AED (GSI) alone in respect of final product, was also not needed. Therefore, the explanation to clause (b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002, provided for CENVAT credit of AED (GSI) paid to be utilized for payment of any duty of excise on final products leviable under First Schedule or Second Schedule to the CETA, 1985.

8.4 Further, it is also seen that the aforesaid clarification was subsequently withdrawn by the Ministry of Finance, while explaining the above issue in the Budget instructions for the Union Budget 2004-05, vide F. No. 334/3/2004-TRU dated 08.07.2004. The extract of the relevant portion of the said TRU letter is as follows:

"5. Amendments in Customs and Central Excise Act and Rules:

5.1 Credit of AED (GSI)

5.1.1 Amendments have been made in the Cenvat Excise Rules, 2002 with retrospective effect from 1.4.2003, so as to provide that AED (GST) paid on inputs on or after 1.4.2000 alone would be eligible for utilization towards payment of Cenvat duty. This amendment would come into effect on enactment of the Finance Bill. Effect of this amendment is that the credit of AED(GST) against BED will be applicable only if the AED(GSI) was paid on or after 1.4.2000, the date from which separate accounting for AED (GSI) was dispensed with. If any credit has been taken on inputs on which duty has been paid prior to this date, the same would be liable to be recovered, On the other hand, if any assessee has not taken credit, he would be entitled to do so if the AED (GSI) was Paid on or after 1.4.2000. For details, relevant clause of the Finance Bill may be referred to. The Circular No.700/16/ 2003-CX dated 6.3.2003 is consequently withdrawn."

8.5 The above issue was further explained in the Union Budget 2005-06, when recovery provisions was introduced for collecting the AED (GSI) is improper utilization of AED(GSI) involved towards payment of excise duty on final products, which could not have been recovered on account of the retrospective amendment to explanation to clause (b) of sub-rule (6) of Rule 3 of CENVAT Credit Rules, 2002. The extract of the said instructions of the Ministry of Finance issued vide D.O.F. No. 334/1/2005-TRU dated 28.02.2005 is given below:

"The Finance Minister has introduced the Finance Bill, 2005 in the Lok Sabha on 28th February, 2005. Changes in excise, customs and service tax have been made through the Finance Bill [clauses 65 to 88, 116, 118 to 120 and 122 to 124] and through notification Nos. 11/2005-Customs to 25/2005-Customs, 4/2005-C.E to 13/2005-C.E, 11/2005-C.E (N.T.) to 14/2005-C.E. (N.T) and 4/2005-S.T to 8/2005-S.T, all dated 1st March, 2005. Details of the changes are available in the Explanatory Notes. For full details, relevant provisions of the Finance Bill, 2005 and the notifications may be referred to. Salient features of some of these proposals in respect of excise, customs and service tax are indicated below:

xxx xxx xxx xxx

19. Proposal for recovery of credit of AED(GSI) paid prior to 1st April, 2000, which was utilized for payment of CENVAT duty

19.1 In the Finance (No.2) Act, 2004, a provision was made {vide section 88 read with the Second Schedule of the said Act} to restrict utilization of credit of Additional Duty of Excise (Goods of Special Importance) Act i.e. AED (GSI) paid prior to 1st April, 2000. With this amendment, the credit of AED(GSI) paid on or after the said date alone is available for utilization towards payment of CENVAT duty. Suitable amendment is being made to section 88 of the Finance (No.2) Act, 2004, so as to provide how the credit of AED(GSI) along with interest payable

should be realised. For details, kindly refer to the relevant provisions of the Finance Bill, 2005. Briefly, the salient features are as under:

(a) A manufacturer who is required to reverse the credit would be allowed to do so, in not more than 36 equated monthly instalments (EMIs). For this purpose, the amount of credit wrongly availed and the interest thereon shall be determined by the jurisdictional officer in the following manner,-.

(i) The Central Excise Officer would, by the 25th May 2005, serve notice on the assessee asking him to declare the amount of the CENVAT credit wrongly availed.

(ii) The assessee is required to furnish the details by the 31st May 2005 failing which he would be debarred from the scheme, and the credit and interest would be recovered in the manner, as existed prior to this amendment.

(iii)The interest payable would be @ 13% for the period between each date of utilization of wrongly availed credit and 10th September 2004. It has been deemed that the wrongly availed credit has been utilized first before utilizing the credit of AED (GSI) paid after 1st April 2000.

(iv) The Central Excise Officer would determine the total credit with interest, and inform the assessee, in writing, the EMI with bifurcation of amounts of credit and the interest, by 15th June 2005.
For example, for assessee 'A',

(a) if the total credit availed of AED (GSI) availed prior to 01.04.2000 =Rs. 10 crores; and

(b) if the interest calculated as per above method is =Rs. 1.2 crores. Then the total dues would be Rs.10 crores + Rs. 1.2 crores= Rs. 11.2 crores and the EMI would be Rs.11.2/36= Rs. 31.11 lakhs (Rs.27.77 lakhs credit +Rs.3.34 lakhs interest)

(v) The payment of monthly instalments would commence from the month following the month of the determination. The date of payment would be the same as the due date for paying excise duty i.e. 5th of a month.

(vi) An assessee can pay up the entire dues or a part thereof, before the due dates. Non-payment of any instalment resulting in any arrears would debar him from the scheme prospectively. (vii)After all the EMIs have been paid, an order shall be issued closing the proceedings.

19.2 The assessee is however free to give all the above details even before the due date of 31st May 2005, and can make advance payments, if they so desire.

19.3 Keeping in view the time-bound nature of the provisions, the field formations are requested to take necessary preparatory steps much before the enactment of the Finance Bill, 2005. The concerned assessees may be suitably informed about the above procedure immediately so as to enable them to meet the above requirements well in time."

8.6 On comprehensive reading of the various legal provisions and the clarifications issued by the Ministry of Finance, we are of the considered view that though the AED (GSI) was paid by the appellants subsequent to 01.04.2000, since the said AED (GSI) does not relate to such duty leviable on or after 01.04.2000, the utilization of such credit for payment of duty of excise on final products is in contravention to the said Explanation under clause (b) of sub-rule (6) of Rule 3 ibid.

9.1 In the arguments made by the learned Advocate for the appellants he had relied upon the order of the Co-ordinate Bench of the Tribunal in the case of Goodyear India Limited (supra) which was upheld by the Hon'ble High Court of Punjab & Haryana at Chandigarh in CEA No.140 of 2006. The relevant paragraph of the said order of the Tribunal is extracted and given below:

> ***"7.*** *In view of the above circular a manufacturer was entitled to utilize the credit in respect of the AED (GSI) towards payment of Central Excise duty. This rule was amended retrospectively with effect from 1-3-03. As per the amended provisions the Cenvat credit Rules credit could be taken only in respect of the AED (GSI) paid on or after 1-4-2000. In the present case as the duty was paid on 24-1-04 and credit was taken on the same date and was utilized towards payment of Central Excise Duty, therefore, the impugned order whereby the credit was disallowed on the ground that credit was taken in respect of duty payable prior to 1-4-2000 is not sustainable. As the credit has been taken on 24-4-04, therefore, the retrospective amendment or explanation of Rule 3(6) of Cenvat Credit Rules will not adversely affect the rights of the appellant. It is also contended that show cause notice was issued prior to the retrospective amendment and the Revenue has not issued any amendment to the show cause notice for asking for denial of the credit on this ground. Therefore, Commissioner wrongly relied upon the amendment while denying the credit, therefore, adjudication order is beyond the scope of show cause notice. In view of the fact that we are allowing the appeal on merit. We are not going into other issues raised by the appellant. The impugned order is set aside and the appeal is allowed."*

9.2 In an appeal against the above order of the Tribunal, preferred by the department before the Hon'ble High Court of Punjab and Haryana at Chandigarh vide judgement CEA No.140 of 2006 dated 25.01.2007, the revenue's appeal was dismissed. Further, in one another similar case of the same appellants, the Co-ordinate Bench of the Tribunal at Chandigarh had held that AED (GSI) paid prior to 01.03.2003 can be used for payment of CENVAT duty as well as AED (GSI). In the appeal filed by the department, the Hon'ble High Court of Punjab and Haryana at Chandigarh vide judgement CEA No.5 of 2020 (O&M) dated 25.01.2023, have referred to their earlier

judgement dated 25.01.2007 and dismissed the appeal preferred by Revenue on the basis of factual position presented before the Hon'ble High Court. The relevant paragraph in which the said factual position of the order of the Tribunal was recapitulated and relevant paragraph of the said judgement is given below:

> The proceedings initiated pursuant to the above mentioned show cause notice was dropped by the Adjudicating Officer, vide order dated 20.03.2009 (A-2). The department filed an appeal against the above said order before the Tribunal and the same was also dismissed, vide order dated 20.02.2019.The operative part of the order reads as under:-
>
> *7. Moreover, as per the explanation to Rule 3(7)(b) of Cenvat Credit Rules, 2004 which is expected herein below for ready reference:-*
>
> *"Explanation - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act."*
>
> *8. We find that, it is fact on record, the appellant has paid AED(GSI) through debit entry on 31.12.2004 and the said explanation allowed the AED(GSI) paid on or after 01.04.2000 can be utilized towards payment of basic excise duty or special*
>
> Neutral Citation No:=2023:PHHC:014685-DB
>
> CEA-5-2020 (O&M) 6
>
> *excise duty. Therefore, the respondent is correctly availed the cenvat credit of AED(GSI) which has been used for payment of basic excise duty/special excise duty."*

In the facts of the present case, no substantial question of law arises for consideration as with respect to this very assessment, show cause notice has already been dropped by this Court on 25.01.2007 in CEA No. 140-2006 and even SLP filed against this order has also been dismissed.

In view of the above factual position, the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

25.01.2023
G Arora

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

9.3 On careful reading of the above judgement, it is noticed that the explanation to clause (b) of sub-rule (7) to Rule 3 of the CENVAT Credit Rules, 2004 have been relied upon by the Tribunal and the same fact has been placed before the Hon'ble High Court. However, in the present case before us the relevant explanation for consideration is with respect to clause (b) of sub-rule (6) to Rule 3 of the CENVAT Credit Rules, 2002. Further, in terms of supplementary provisions under Rule 20 of CENVAT Credit Rules, 2004, in the present case the applicable explanation is as per sub-rule (6)(b) of Rule 3 of CENVAT Credit Rules, 2002. Further, the facts of the case of Goodyear India Limited (supra) relied upon by the appellants, at paragraph 7, mentions that the show cause notice was issued prior to the retrospective amendment made in the Finance Act, 2004. However, in the present case before us, the show cause notice has been issued on the appellants after the amendment was made through Section 88 of the Finance Act, 2004 i.e., on 29/30.08.2007. Therefore, it is clearly proved that the facts of the present case are distinguishable from the relied upon case law referred by the learned Advocate for the appellants. Further, the said judgement dated 25.01.2023 of the Hon'ble High Court of Punjab and Haryana at Chandigarh was appealed before the Hon'ble Supreme Court and vide judgement dated 02.09.2024, the Special Leave Petition preferred by the Revenue was dismissed on monetary limit as per litigation policy issued vide Circular dated 06.08.2024, keeping the question of law open. The extract of the said judgement dated 02.09.2024 is given below:

ITEM NO.24 COURT NO.9 SECTION IV-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.41222/2023

(Arising out of impugned final judgment and order dated 25-01-2023 in CEA No.5 /2020 passed by the High Court Of Punjab & Haryana at Chandigarh)

COMMISSIONER OF CENTRAL EXCISE Petitioner(s)

VERSUS

GOOD YEAR INDIA LIMITED Respondent(s)

**(IA No. 226966/2023 - CONDONATION OF DELAY IN FILING
IA No. 226967/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)**

Date : 02-09-2024 These matters were called on for hearing today.

**CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH**

**For Petitioner(s) Mr. N. Venkatraman, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Rupesh Kumar, Sr. Adv.
Mr. Udai Khanna, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Kartikeya Asthana, Adv.
Mr. G.s Makker Aor Adv, Adv.**

**For Respondent(s) Mr. Ajay Aggarwal, Adv.
Mr. Naveen Bindal, Adv.
Mr. Adarsh Aggarwal, Adv.
Mr. Rajan Narain, AOR**

UPON hearing the counsel the Court made the following
O R D E R

In view of the latest circular of the Ministry of Finance, Government of India dated 06.08.2024, this special leave petition is dismissed owing to the fact that the subject matter of the dispute is less than Rs.5 Crore, keeping open the question of law, if any, which arises in this matter.

Pending application(s), if any, shall also stand disposed of.

(KRITIKA TIWARI) (DIVYA BABBAR)
SENIOR PERSONAL ASSISTANT COURT MASTER (NSH)

9.4 We had also examined the judgement of the Hon'ble High Court of Kerala in the case of *Appollo Tyres Limited* (supra), relied upon by the learned Advocate for the appellants. The relevant paragraphs of the said judgement is extracted and given below:

13.Learned counsel for the appellants relied on explanation added to Rules 3(7)(b) of the CENVAT Credit Rules 2004 and contended that the utilization of accumulated credit on AED for payment of AED is regular. To answer this contention, reference to Explanation to the Rule has to be made and the explanation added reads thus:

> "Explanation - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1956 (58 of 1957) paid on or after 1st day of April, 2000, may be utilized towards payment of duty of excise leviable under the first schedule or the second schedule to the Excise Tariff Act".

14.Reading of the above explanation shows that credit of AED paid on or after 01.04.2000, is permitted to be utilized towards payment of duty of excise leviable under the first schedule or the second schedule to the Excise Tariff Act. In other words, the restriction introduced by the explanation was only in the utilization of the accumulated credit of

> AED towards payment of duty under the schedules of Excise Tariff Act. This means that this restriction applied only in the payment of BED and SED, which alone is payable under the Excise Tariff Act and not to AED payable under Section 3 of Act 58 of 1957. Therefore, this contention raised by the counsel for the appellants cannot be accepted.

9.5 On careful examination of the said judgement, we find that the learned counsel for the appellants had only brought to the attention of the Hon'ble Court the explanation provided under clause (b) of sub-rule (7) to Rule 3 of the CENVAT Credit Rules, 2004 and on that basis, the judgement has been delivered. However, he has not brought to the notice of the Hon'ble High Court the relevant explanation which is provided under clause (b) of sub-rule (6) to Rule 3 of the CENVAT Credit Rules, 2002 And the amendment made in Section 88 of the Finance Act, 2004, and hence there was no occasion for the Hon'ble High Court to examine the said explanation. On the above aspect, the judgement delivered in that relied upon case is distinguishable from the set of facts dealt by us in the present case. In other words, in the present case the demand of CENVAT Credit has been made in the show cause notice on the grounds that the amendment introduced through Section 88 of the Finance Act, 2004 and the recovery proceedings introduced in Section 124 of the Finance Act, 2005, does not permit the appellants to utilize the CENVAT credit on AED (GST) paid with respect of the duty liability arising for the period 16.03.1995 to 02.06.1998 towards payment of duty of excise on final product. Further, we find that the this aspect in the present case is not covered in the said relied upon case, and therefore to this extent the law laid down in that case is distinguishable.

10.1 As regards the contention of the appellant that the Cenvat Credit Rules were amended in 2003 so as to provide for availing of the credit of AED (GSI) and its utilisation for payment of basic excise duty, the same applies to such AED (GSI) which were paid on or after 01.04.2000. The amendments made in the CENVAT Credit Rules, 2002 vide section 88 of the Finance Act, 2004 read with the Second Schedule and Section 124 of the Finance Act, 2005 make this position absolutely clear and beyond doubt. It would be useful to see the Explanation added in sub-rule (6) of

Rule 3 of Cenvat Credit Rules, 2002 at this place as extracted below to appreciate the fact.

> *"Explanation.—For removal of doubts, it is **hereby declared** that the **credit of the additional duty of excise leviable** under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) **and paid on or after the 1st day of April, 2000**, **may be utilised** towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Tariff Act, 1985 (5 of 1986)"*

10.2 The question for consideration is what is the meaning that can be attributed to the expressions "leviable" and "paid" occurring in the said Explanation. A more or less identical question arose for consideration before the hon'ble Apex Court in the case of *N.B. Sanjana, Asst. Collector of Central Excise, Bombay and Ors. Vs. The Elphinstone Spinning and Weaving Mills Co. Ltd.* [1978 (2) E.L.T. (J399) (S.C.)] while interpreting Rule 10 of the erstwhile Central Excise Rules, 1944, which read as follows:-

> *"10. Recovery of duties or charges short- levied, or erroneously refunded- When duties or charges have been short-levied, through inadvertence, error, collusion or mis- construction on the part of an officer, or through misstatement as to the quantity, description or value of such goods on the part of the owner, or when any such duty or charge, after having been levied, has been owing to any such cause, erroneously refunded, the person chargeable with the duty or charge, so short-levied, or to whom such refund has been erroneously made, shall pay the deficiency or pay the amount paid to him in excess, as the case may be, on written demand by the proper officer being made within three months from the date on which the duty or charge was paid or adjusted in the owners account-current, if any, or from the date of making the refund".*

The Hon'ble Supreme Court have held as follows:-

> *"18. ... … …. …. In our opinion, the expression "paid" should not be read in a vacuum and it will not be right to construe the said word literally, which means actually paid. That word will have to be understood and interpreted in the context in which it appears in order to discover its appropriate meaning. If this is appreciated and the context is considered, it is apparent that there is an ambiguity in the meaning of the word "paid". It must he remembered that rule 10 deals with recovery of duties or charges short levied or erroneously refunded. The expression "paid" has been used to denote the starting point of limitation of three months for the issue of a written demand. The Act and the Rules provide in great detail the stage at which and the time when the excise duty is to be paid by a party. If the literal construction that the amount should have been actually paid is accepted, then in case like the present one on hand when no duty has been levied, the Department will not be able to take any action under rule 10. Rule 10-A cannot apply when a short-levy is made. through error or misconstruction on the part of an officer, as such a case is specifically provided by rule 10, Therefore, in our opinion, the proper interpretation to be placed on the expression "paid" is "ought to have been paid".*

The said ratio was followed by the Hon'ble Gujarat High Court in the case of Tata Chemicals Ltd. vs. Excise Authorities [2000 (124) E.L.T. 65 (Guj)].

10.3 A similar question arose for consideration before the Larger Bench of this Tribunal in *Lucas TVS Ltd.* [2009 (233) ELT 192 (Tri.-LB)]. One of the issues for consideration in the said case was "whether, on the amount of duty paid under the supplementary invoice, interest is leviable under section 11AB from the first date of the month succeeding the month in which duty was paid in the first instance in terms of the original invoice". Section 11AB (1) as it stood at the relevant time was as follows:-

> *"11AB. Interest on delayed payment of duty. (1) Where any duty of excise have not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2), or has paid the duty under sub-section (2) (B), of section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent. and not exceeding thirty six per cent. per annum, as for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2) or sub-section (2B), of section 11A till the date of payment of such duty."*

The Larger Bench had answered the question as follows:-

> *"6(d). The provisions of Section 11AB also shall have to be construed so as to avoid anomalous situations. Under sub-section (1) of Section 11AB, where any duty of excise has been short-paid, the person who has paid the duty under sub-section (2B) of Section 11A shall, in addition to the duty, be liable to pay interest at such rate from the first day of the month succeeding the month in which the to duty ought have been paid under this Act, but for the provisions contained in sub-section (2) or sub-section (2B) of Section 11A, till the date of payment of such duty. It was with reference to the italicized expression (duty ought to have been paid) that a learned advocate came up with the defence of impossibility by citing a maxim. We shall now proceed to address this point. We find a situational analogy between the finalization of provisional assessment under Rule 7 of the Central Excise Rules 2002 and the ascertainment of differential duty under Section 11A(2B) of the Act. A manufacturer who, at the time of removal of excisable goods, foresees or anticipates price revision, normally resorts to provisional assessment at the time of removal of the goods and, when the assessment is finalized on the basis of the price increase at a later point of time, he pays differential duty along with interest vide Rule 7(4). In doing so, he accepts the fact that there is a short-levy or short-payment and deems that the differential duty is a duty which ought to have been paid at the time of removal of the goods. Where, instead of following this normal statutory procedure, he ascertains the differential duty (payable on account of price enhancement) and pays it up under Section*

> *11A(2B), is he not liable to pay interest? In our view, he is liable under Section 11AB construed harmoniously with the corpus juris of Central Excise. If the differential duty which is found payable on finalization of provisional assessment under Rule 7 is a duty which ought to have been paid at the time of removal of the goods, so is the differential duty which is found payable on ascertainment under sub-section (2B) of Section 11A. Therefore, the demand of interest under Section 11AB on the amount of duty paid under Section 11A(2B) from the first day of the month succeeding the month in which the duty ought to have been paid cannot be resisted.*

10.4 A similar issue came up for consideration before a Special Bench (3 member bench) of this Tribunal in Tata Iron & Steel Co. Ltd. vs. CCE, Jamshedpur [1996 (81) E.L.T. 338]. The issue for consideration and the decision made is evident from the following extracts from the said order.

> *"4. We have examined the records of the case and considered the submissions made of both sides. It is seen that the only question that arises for consideration in this case is whether steel tubes manufactured and cleared by the appellants for captive consumption in their Tubes Division on 'nil' duty under Chapter X procedure and in terms of Notification No. 217/86-C.E., dated 2-4-1986 could be deemed as eligible for the benefit of Notification No. 175/88-C.E., dated 13-5-1988 as amended by Notification No. 63/91-C.E., dated 75-7-1991 which exempted steel tubes manufactured from the payment of duty in excess of Rs. 800/- PMT if they were made from hot rolled strips and Rs. 1000/- PMT if they were made from cold rolled strips on which duty of excise leviable under the Schedule to the Central Excise Tariff Act, 1985 or the additional duty leviable under the Customs Tariff Act, 1975 as the case may be, had already been paid.*
>
> *5. We find that in the case of Tata Yodogawa Limited v. Union of India (supra) the Patna High Court has held that the benefit of the Notification No. 66/73-C.E., dated 1-3-1973 which exempted the ingots manufactured from fresh unused steel metal scrap on which the appropriate duty of excise leviable had already been paid was admissible to the assessee even when the Ingots were manufactured out of steel melting scrap which was exempt under Notification No. 150/77-C.E., dated 18-6-1977* ***since the expression "already paid" has to be interpreted to mean "contracted to be paid" or "ought to have been paid."***

10.5 If we apply the ratio of the above decisions to the facts of the present case, it can be seen that the expressions ***"leviable under section 3*** of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ***and paid*** on or after the 1 day of April, 2000" used in the Explanation to sub-rule (6) of Rule 3 of the CENVAT Credit Rules, 2002, should be construed and interpreted **as duty ought to be leviable under Section 3 of the AED (GSI) Act and ought to have been paid on or after the 1st day of April, 2000.** In the present case the duty payment pertained

to the period from 16.09.1995 to 02.06.1998 and therefore, the appellant cannot utilize the said credit for payment of basic excise duty on the final product for the period after 01.04.2000 and we hold accordingly. In other words, having declared that the AED (GSI) leviable after 01.04.2000 and paid on or after 01.04.2000 alone is eligible to be used for payment of duties of excise on the final product, under Section 88 of the Finance Act, 2004 by suitably amending the CENVAT Credit Rules, 2002; the new explanation provided under clause (b) of sub-rule (7) of Rule 3 of CENVAT Credit Rules, 2004 cannot be pressed into make a claim that subsequently the same should be permitted under this explanation clause.

10.6 The reliance placed by the appellants in the Goodyear India Ltd. case does not help the case of appellants for the following reasons. The ratio laid down in those decisions are not final as in the SLP filed by the department in the said case before the Hon'ble Supreme Court, it was held that "question of law is kept open". Secondly, the said decisions did not take into consideration the meaning ascribed to the expression "paid" by the Hon'ble Apex Court in the Elphinstone Spinning Mills case and of the Hon'ble High Court of Gujarat in the Tata Chemicals case. Thirdly, the Tribunal also overlooked the decision of the Special Bench decision in the Tata Iron & Steel Company Ltd. case. Fourthly, a larger Bench of the Tribunal in the Lucas TVS Ltd. case held that the expression "paid" should be construed as "ought to have been paid" or "contracted to be paid". Since these two decisions failed to consider the decisions of the Hon'ble Apex Court and of the Hon'ble Gujarat and Patna High Courts, they have to be considered as "*per incuriam*" or "Stare decisis". Further, it is noted that the Goodyear case dealt with a situation where AED (GSI) was paid on 24.01.2004 and credit was taken immediately thereafter, that is, before the Cenvat Credit Rules, 2004 came into existence. As per the Rules 2004, credit could be taken only in respect of AED (GSI) paid on inputs received on or after 10.09.2004. Thus factual matrix of the present case differs from Goodyear case that involved in the present appeal. For all the aforesaid reasons, we are of the considered view that no reliance can be placed on the *Goodyear India Ltd*. case in the appeal before us. Thus the appellant has not made out any prima facie case in respect of their claim that they are entitled to use the credit of AED (GSI) taken in June, 2006 as the said credit pertained to payment of duty on dipped nylon tyre cord fabrics captively consumed prior to 01.04.2000.

10.7 There is one more reason why the claim of the appellants for credit of AED(GSI) can not be permitted. An honest tax payer who discharged the additional excise duty liability in accordance with law during 1995-98 would not have been eligible to take credit of the said duty paid in terms of the Modvat/CENVAT Credit Rules as they stood at the relevant time. If that be so, how can another assessee, merely because he chose to contest the levy and did not discharge the duty liability, be allowed to take credit after he was directed by the competent authority, the Hon'ble Apex court in this case, to make the duty payment. That would amount to doing injustice to an honest tax payer and encouraging litigation/evasion of taxes. Law can not be interpreted in such a way so as to grant benefit to a dishonest tax payer. A similar issue came up for consideration before the hon'ble apex Court in the case of *Maddi Venkataraman and Co. (P) Ltd. vs. Commissioner of Income Tax 1998 (229) ITR 534 (SC)* and the Hon'ble Apex court held that evasion of tax cannot be a trade pursuit and it would be against public policy to allow the benefit under one statute when such a benefit accrues on account of violation of another statute. The Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax vs. *Jayaram Metal Industries 2002 (220) ELT 56 (Kar.)* considered a similar situation in respect of a redemption fine paid to Central Excise. The question was whether redemption is a legitimate business expenditure and the hon'ble High Court held as follows:

> ***"All these judgments would show that violation of a provision of law cannot be taken advantage of by an assessee for the purpose of claiming deduction by way of business expenditure. Principle of law is that those who violate a provision of law has to suffer, and that violation cannot be made use of in any other proceedings and make gain out of it****. If deduction is permissible, then there are chances of people taking advantage of the violation of a statute at least for the purpose of getting some benefit in the matter of payment. We are not prepared to provide any such opportunity to the assesses."*

10.8 In the facts of the case before us, the appellants chose not to comply with the requirements of AED(GSI) Act, 1957 and later on was compelled to fall in line on account of the amendments brought through Finance Act, 2004 and Finance Act, 2005. Therefore, such misdemeanour cannot be allowed to be taken advantage by way of availment of credit under the CENVAT Credit Rules for utilizing the same towards payment of duty of excise on final product, when the same was not permitted by specific amendment made in the Finance Act, 2004 and provisions made in Finance Act, 2005 for recovery of improper utilisation of such AED(GSI), if

any, by ignoring the same and by applying the ratio laid down in the aforesaid judgments and quoting the explanation provided under clause (b) of sub-rule (7) of Rule 3 of the CENVAT Credit Rules, 2004.

11.1 Furthermore, it is also noticed that on the issue of the appellants claiming that the CENVAT Credit Rules which was amended in 2003 so as to provide for availing of the credit of AED (GSI) and its utilisation for payment of basic excise duty, shall be allowed w.e.f. 01.04.1996, when the constitutional changes were brought into effect from that date, and not from 01.04.2000 have been discussed at length by the Hon'ble Bombay High Court in Writ Petition No.9996 of 2014. The judgement dated 23.12.2014 of the Hon'ble Bombay High Court had discussed the above issues in detail and have not accepted the contentions raised by the appellant M/s CEAT Limited. The relevant paragraphs of the said judgement in the case of self-same appellants *CEAT Limited Vs. Union of India* – 2016 (332) E.L.T. 481 (Bom.) is extracted and given below:

> ***"2.*** *By this writ petition under Article 226 of the Constitution of India the petitioners seek a declaration that classification made by Section 88 of the Finance (No. 2) Act, 2004 disallowing utilization of the credit of Additional Excise Duty (GSI) on goods of special importance paid after 1st April, 1996, but prior to 1st April, 2000 for payment of duty for First and Second Schedules to Central Excise Tariff Act, 1985, but at the same time allowing utilization of credit of Additional Excise Duty on the same goods paid on or after 1st April, 2000 is violative of Article 14 of the Constitution of India and hence invalid.*
>
> *xxx xxx xxx xxx*
>
> ***3.*** *By prayer clause (b), a declaration is sought so as to declare the cut-off date of 1st April, 2000 mentioned in the Second Schedule of the said Finance Act read with Section 88(1) thereof as violative of Article 14 of the Constitution of India.*
>
> *xxx xxx xxx xxx*
>
> ***10.*** *The petitioners rely on an Explanation to Rule 3(6)(b) of Cenvat Credit Rules, 2002 and which has been brought into effect from 1st March, 2003. It is their case that they utilized this accumulated credit on AED (GSI) lying unutilized as on 28th February, 2003 for payment of Basic Excise Duty (BED) and Special Excise Duty (SED) on tyre under Section 3 of the Act cleared during the period from March, 2003 to May, 2003. Conflicting circulars were issued by Central Board of Excise and Customs and according to the petitioners with regard to the true scope of the explanation. One view was that benefit applied only to AED (GSI) paid after 1st March, 2003 and another was that the benefit applied whenever duty was paid on inputs. The petitioners rely upon Section 88 of the Finance (No. 2) Act, 2004 and by which the amendment was made to the Explanation retrospectively. They rely upon this amendment and urged that the Central Excise Authorities took the view that only credit relatable AED (GSI) paid on or after 1st April, 2000 is available for utilization. Hence, the credit relatable to period prior to 1st April, 2000, but utilized during March to May, 2003 cannot be granted was the stand of the Department/Revenue. The matter must be read, according to the*

petitioners, in the light of the amendment to Section 88(5) of the Finance Act, 2005. The amendment provided for manner of recovery of amount of Cenvat credit of the above duty, which was utilized for payment of BED and SED, which could not have been utilized in view of the amendment made by Section 88 of the Finance (No. 2) Act, 2004. The 2005 Finance Act amendment requires the assessee to pay back the excess amount of credit in 36 monthly instalments together with interest thereon. The petitioners claimed to have paid Rs. 20.50 crores approximately in 36 equal instalments and that is how the alleged excess utilization of credit of duty of prior to 1st April, 2000 along with interest is a closed matter according to them. They, therefore, proceeded to restore the credit of AED (GSI) in their books and reflected the same in their ER-1 returns filed for the months of July, 2005 to June, 2008. The petitioners submit that an order adjudging liability was passed by the Commissioner on 28th February, 2006. Thereunder the duty of Rs. 6.60 crores approximately was confirmed as amount of AED (GSI) on dipped nylon fabrics consumed during the period 16th March, 1995 to 1st June, 1998. Utilizing the restored credit of AED (GSI), the petitioners paid Rs. 6.60 crores approximately on 5th June, 2006. Since, this constitutes AED (GSI) paid on or before 1st April, 2000, the petitioners relying upon the Explanation to Rule 6(3)(b) as amended retrospectively, claimed credit of the same for utilization of BED on tyres cleared in April, 2007. Such utilization of the AED (GSI) for payment of BED on tyres cleared in April, 2007 is incorrect according to the Department. It is in these circumstances that the petitioners have instituted the present petition contending that the date chosen namely 1st April, 2000 in Section 88 of the Finance (No. 2) Act of 2004 is arbitrary and violative of the mandate of Article 14 of the Constitution of India. The date ought to be 1st April, 1996.

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16. *Mr. Sridharan submits that there is absolutely no rationale for not allowing AED (GSI) paid on inputs after 1st April, 1996 for payment of BED. There could be such rationale for not allowing same prior to 1st April, 1996. It is submitted that the restriction in the Cenvat Credit Rules that AED (GSI) taken as credit can be utilized for payment of AED (GSI) only on the final product had some relevance till the time AED (GSI) collected by the Central Government was not part of the Central pool of taxes, but entirely distributed to the States. After 1st April, 1996 all the Central taxes including amounts collected as Additional Duty, but save and except exclusion stipulated in the Constitutional Scheme, formed a part of the central pool. The recommendations of the Finance Commission was to share the taxes thus with the States. That is effective from 1st April, 1996. Therefore, the restriction that Cenvat credit of AED (GSI) paid on inputs can be utilized for payment of only AED (GSI) does not have any meaning or relevance after 1st April, 1996. Relying upon the affidavit filed in reply to this writ petition, it is submitted that separate accounting of AED (GSI) dispensed with effect from 1st April, 2000 cannot be a reason to choose the date on which the Amendment Act namely Finance Act (No. 2) of 2004 ought to be brought into effect. An accounting procedure and which is required to be followed can never govern the bringing into effect of the Amendment is thus the submission. That is elaborated by relying on the Finance Commission recommendations contained in the Report of the 10th Finance Commission dated 25th November, 1994 as also tried to be supported*

from the Report of the 11th Finance Commission. The classification between utilization of credit on AED (GSI) paid after 1st April, 1996 but before 1st April, 2000 on one hand and utilization of AED (GSI) paid on or after 1st April, 2000 contained in Section 88(1) is, therefore, termed as having no nexus whatsoever with the object sought to be achieved. A final attempt is made to support the argument of irrational and arbitrary classification by pointing out that all the recommendations of the 10th Finance Commission particularly to amend the Constitution and particularly Article 270 and deletion of Article 272 are effective from 1st April, 1996, and therefore, there is no justification for denying benefit of utilization of credit of AED (GSI) paid on or after 1st April, 1996, but before 1st April, 2000.

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39. *It is not as much a matter of issuance of Presidential order or the date thereof, but the underlying distinction. Though the petitioners have in the additional affidavit pointed out that the basis and foundation of the respondents' version is the separate accounting of AED (GSI) being dispensed with, we do not find that the said issue needs to be gone into, once the difference in the constitutional scheme and the Act under which the duty was imposed, levied, assessed and collected, is noted. In the affidavit-in-reply, it has been pointed out as to how the original Rule 3(6)(b) of the Cenvat Credit Rules read. The petitioners have been availing of Cenvat credit of Basic Excise Duty, namely Cenvat Duty payable under Section 3 of the Act as well the AED (GSI) payable under the 1957 Act paid on their inputs received on or after 16th March, 1995. Availment of and utilization of Cenvat credit as in force at the material time from 16th March, 1995 to 28th February, 2003 enabled the credit of AED being utilized for payment of AED on the finished goods. The said credit was not allowed to be utilized for payment of any other duties, including the Excise duty under Section 3 of the Act. The Rule was amended namely Rule 3(6)(b) with effect from 1st March, 2003 and thereby the utilization of AED for payment of Cenvat duty on the finished goods was allowed. The amended Rule with effect from 1st March, 2003 has permitted utilization of the Cenvat credit in respect of Act of 1957 for payment of duty of excise leviable under the First or the Second Schedule of the Tariff Act, 1985. Thus, as per the amended Rule, credit of Additional Excise Duty leviable under Section 3 of the 1957 Act may be utilized towards the payment of duty of Excise leviable under the First or Second Schedule of the Tariff Act. There is substance in the contention of the respondents that in the Amendment Act no date was prescribed for availing and utilization of the Cenvat credit of the additional duty of Excise paid. With the result that number of manufacturers had utilized Cenvat credit lying with them as on 1st March, 2003, for payment of Cenvat credit duty payable on finished products/goods under Section 3 of the 1957 Act. On realizing this, the Government amended the provision of the Cenvat Credit Rules, 2000 retrospectively with Section 88 of the Finance (No. 2) Act allowing utilization of Cenvat credit of AED paid on or after 1st April, 2000. That is how the explanation was substituted. We do not see how we can uphold the argument of the petitioners that the restrictions placed by the Explanation should be interfered with any other stipulation as desired by them so as to make the provision operational from 1st April, 1996. We have amply clarified as to how the issue of Cenvat credit has been dealt with and in terms of the law made by the Parliament and*

which enables the availment. We find that the explanation which is set out in the affidavit of the respondents and from para 12 onwards justifies giving retrospective effect to the Rules from 1st April, 2000. Apart therefrom, we find that the petitioners have raised the issue of constitutional validity only after they were served with the demand and which eventually was adjudicated, but being still under consideration in the pending appeal. The issue of legality and validity of the demand and the order in relation thereto can be gone into in the appeal. The contentions based on that and the merits of the said order challenged in the appeal is not required to be gone into in this writ petition. The matter is still before the Tribunal and equally against the order of the Tribunal it is pending in this Court. The reliance may be placed in the affidavit-in-reply on the Presidential order, but what we find and relevant for the present purpose is that the Constitutional Amendments were made on account of the events narrated in the Statement of Objects and Reasons to the Constitutional Amendment Bill. It was decided that the distribution and allocation of taxes for the States must meet the recommendations. Hence, the further justification that has been provided in the affidavit and particularly para 36 onwards, would justify as to why there is no substance in the challenge and based on the cut-off date.

40. *We are of the opinion that this is not as much a matter of cut-off date but of the distinction noted above. Even in the matters of cut-off date the Hon'ble Supreme Court has held that for any provision or any prescription to be brought into effect a date has to be chosen. The choice of a date can be termed as arbitrary, particularly because the fixation has to be by the authority or the agency which is making the rule, prescription or legal provision. It is that authority alone which is empowered to select the date. In that matter and choice thereof the argument of it being arbitrary has been noted particularly in cases where beneficial provisions like pensionary benefits, etc. were admissible. There, the argument that the cases falling within and those left out being identical the exclusion of similarly placed persons must have a definite nexus with the object sought to be achieved. In such matters to benefit a class of retired persons or those who would suffer hardship post-retirement some date or time period is chosen. The choice of the date or the cut-off date is interfered with when it is established that equals have been treated unequally. Those retiring before or after the date are pensioners. They are entitled to same benefits and under a single scheme. Hence, the distinction between them is artificial and irrational. How-ever, even in these matters, the judgments of the Supreme Court after D.S. Nakara and Ors. v. Union of India, (AIR 1983 SC 130) clarify the position. A scheme or a prescription or a rule, which is operational or made operative for the first time cannot be equated with the existing one. If it is a new or fresh scheme, then, even if it is beneficial it is not intended to cover those employees who have retired earlier. Hence, the Supreme Court has clarified that in such matter as well those retiring prior to new pension scheme being promulgated and brought into force, would not derive any benefits. In Krishna Kumar v. State of Rajasthan and Ors., AIR 1992 SC 1789 all this has been amply clarified and commented upon extensively.*

41. *In the present case, once the co-relation could not be established, then the petitioners derive no benefit of the constitutional provisions and*

selection of the date, namely, 1st April, 1996 for they being brought into effect. We have noted as to how the argument based on this is misconceived and untenable.

42. *In such circumstances, we need not refer to and extensively the judgments which have been relied upon by Mr. Sridharan, learned Senior Counsel for the petitioners. They narrate the settled principles and reiterate them. Suffice it to note that in the judgment rendered by the Hon'ble Supreme Court and relied upon by the learned Addl. Solicitor General [Union of India v. Nitdip Textile Processors Pvt. Ltd., 2011 (273) E.L.T. 321], the Hon'ble Supreme Court has reiterated the principles as to how in matters of this nature and particularly taxing statutes, the tests adopted to determine whether a classification is reasonable or not are, that the classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the Statute in question (see : para 30). It is the same principle which has been relied upon by Mr. Sridharan. Therefore, in taxing provisions or in matters where a stipulation pertaining to payment or availment of credit under the Rules/Special Legislation under taxing Statute is involved, the Court will have to find out whether there is indeed any group or class. In terms of the constitutional provisions dealing with powers to distribute the net tax proceeds the beneficiaries cannot be equated. Taxing Statutes deal with levy and collection of Revenue. For the purposes of collecting the tax, the law must authorize imposition and levy thereof. After the imposition/levy, there is a mechanism in place for assessment and collection thereof and these provisions are termed as machinery provisions. Thus, there is a charging section, there is a machinery provision and thereafter the provisions as to how taxes are collected and recovered. The Parliamentary stipulation and as contained in the Constitutional Amendment Act is dealing with the distribution of the net collected taxes for and on behalf of the Union between the Union and the States. It is in such circumstances that we do not find any substance in the arguments canvassed before us."*

Since, the Hon'ble High Court had found that the plea of the appellants that the restriction placed in the explanation should be interfered, was misconceived and untenable, it did not entertain the writ petition filed by the appellants and dismissed the same.

11.2 In an appeal filed against the above said order of the Hon'ble High Court before the Hon'ble Supreme Court, in Special Leave to Appeal No.19079/2015, though the leave was granted in that matter by admitting it, but the case is yet to be listed before the Hon'ble Court. Inasmuch as the jurisdictional High Court i.e., Hon'ble Bombay High Court had decided the issue in favour of Revenue, and did not accede to the plea made by the appellants, and that there is no order of the Apex Court suspending such decision, we are unable to take a different view than the one decided by the Hon'ble Bombay High Court.

11.3 In this regard, I find that Hon'ble Supreme Court have held in the case of *Union of India Vs. Kamlakshi Finance Corporation Limited* - 1991 (55) E.L.T. 433 (S.C.) that judicial discipline is required to be followed in proper administration of tax laws. The relevant paragraph of the said order is as follows:

> *"6……..The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."*

In view of the above decision of the Hon'ble Supreme Court, we are not deviating from the judgement dated 23.12.2024 of the Hon'ble Bombay High Court, in not extending the benefits of utilization of CENVAT credit of AED (GSI) for payment of duties of excise on final product, beyond the prescribed period, as discussed in paragraphs 7.2 to 8.6 above.

12. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal and judgements delivered by the higher judicial forum, the total duty of CENVAT credit of Rs. 6,59,36,795/- along with interest adjudged as confirmed demands in the impugned order dated 01.11.2013 is sustained.

13. In the result, the impugned order dated 01.11.2013 passed by the learned adjudicating authority is upheld and the appeal filed by the appellants is dismissed.

(Order pronounced in open court on 16.06.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha