CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

Excise Early Hearing Application No. 50228 of 2020
in
Excise Appeal No. 51032 of 2019

(Arising out of Order-in-Appeal No. 44-45(SM)EC/JPR/2019 dated 20.02.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur.)

Commissioner of Central Excise And Customs, Central Goods And Service Tax, Jaipur I.
Statue Circle, C-Scheme,
Jaipur(Raj) 302005 — **Appellant**

VERSUS

M/s Shree Cement Ltd
Bangur Nagar, Anderi Deori,
Beawar, Ajmer,
Rajasthan — **Respondent**

APPEARANCE:

Mr. Rakesh Agarwal, Authorised Representative for the Appellant
Mr. Arjun Raghavender, Advocate for the Appellant

WITH

Excise Early Hearing Application No. 50226 of 2020
in
Excise Appeal No. 52699 of 2019

(Arising out of Order-in-Appeal No. 780/(CRM)/CE/JDR/2019 dated 29.08.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.)

Commissioner of Central Excise And Customs, Central Goods And Service Tax, Jodhpur
G-105, Gali No.-05,
New Jodhpur
Industrial Area, Jodhpur,
Rajasthan-302003 — **Appellant**

VERSUS

M/s Shree Cement Ltd
Bangur City, Ras,
Distt-Pali (Raj) — **Respondent**

APPEARANCE:

Mr. Rakesh Agarwal, Authorised Representative for the Appellant
Mr. Arjun Raghavender, Advocate for the Respondent

WITH

Excise Early Hearing Application No. 50255 of 2020
in
Excise Appeal No. 52743 of 2019

(Arising out of Order-in-Appeal No. 716(CRM)CE/JDR/2019 dated 26.07.2019 passed by the Commissioner (Appeals), Central Excise & CGST,Jodhpur.)

Commissioner (Appeals) Central Excise And Central Goods And Service Tax, Udaipur — **Appellant**
142-B, Sector-11, Hiran Magri,
Udaipur, Sector-11,
Rajasthan-313002

VERSUS

M/s Trinetra Cement Ltd — **Respondent**
(now known as M/s India Cement Ltd)
Village: Vajwana
Banswara, Rajasthan

APPEARANCE:

Mr. Rakesh Agarwal, Authorised Representative for the Appellant
Mr. Arjun Raghavender, Advocate for the Respondent

AND

Excise Early Hearing Application No. 50227 of 2020
in
Excise Appeal No. 52802 of 2019

(Arising out of Order-in-Appeal No. 715(CRM)CE/JDR/2019 dated 26.07.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.)

Commissioner of Central Excise And Central Goods And Service Tax, Udaipur — **Appellant**
142-B, Sector-11, Hiran Magri,
Udaipur, Sector-11,
Rajasthan-313002

VERSUS

M/s Nuvoco Vistas Corp Ltd — **Respondent**
(previously known as M/s Lafarge India Pvt Ltd), Village:
Bhawaliya,
PO: Arniya Joshi, Mangrol,

Tehsil: Nimbahera, Chittorgarh

APPEARANCE:

Mr. Rakesh Agarwal, Authorised Representative for the Appellant
Mr. Saurabh Suman Sinha & Ms. Chitra Y, Parande, Advocates for the Respondent

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50630-50633 / 2022

Date of Hearing: 20.04.2022
Date of Decision: 21.07.2022

AJAY SHARMA:

These Appeals have been filed by Revenue assailing four different orders passed by the learned Commissioner (Appeals) in four Appeals by which the learned Commissioner (Appeals) allowed the appeals filed by the assessee and set aside the orders of Adjudicating Authority disallowing the Cenvat credit. Since the issue involved in these appeals are common therefore we are deciding these appeals by this common order.

2. The issue involved in these Appeals is whether Cenvat credit of 2% CVD paid on import of steam coal is admissible or not to the assessee/respondents in accordance with Notification No. 12/2012-Cus dated 17/03/2012 as amended, in terms of embargo contained under Rule 3 of the Cenvat Credit Rules, 2004?

3. It is a case of Revenue that the assessee have availed Cenvat credit of additional duty paid @ 1% or 2% on imported coal leviable under Section 3 of Customs Tariff Act, 1975 (CVD) under Notification No. 12/2012-Cus dated 17/03/2012 as amended by Notification No.

12/2013-Cus dated 01/03/2013 which is not available to the manufacture importer under Cenvat Credit Rules, 2004 as the same is not specified rate of duty prescribed under Central Excise Tariff Act, 1985 r/w the notification issued under the Central Excise Act, 1944 or rules made thereunder.

4. Now, we will place the fact briefly in each of the appeals before us:-

i) **E/51032/2019-** In this appeal, the assessee who are manufacturing clinckers and cement, availed Cenvat credit on CVD paid on imported coal as per Notification No. 12/2012-Cus dated 17/03/2012 as amended by Notification No. 12/2013-Cus dated 01/03/2013 which according to Revenue was not available to the manufacture/importer under Cenvat Credit Rules, 2004 as a same is not specified rate of duty under Central Excise Tariff Act, 1985. Thus, according to the Revenue, the appellants have contravened the provisions of Cenvat Credit Rules, 2014 and therefore by, invoking the extended period of limitation a show-cause notice was issued and the Adjudicating Authority disallowed the credit and ordered for its recovery alongwith interest and penalty.

ii) **E/52699/2019-** The assessee herein are engaged in the manufacture of clincker and cement and it has been alleged that they have wrongly availed and utilised Cenvat credit of the additional duty of Customs paid by them on import of steam coal amounting to Rs. 1,97,57,279/- during the period October, 2012 to June 2017 which otherwise was not admissible to them under the relevant provisions of Cenvat Credit Rules, 2004 r/w Notification No. 12/2012-CE dated 17/03/2012 and therefore a show-cause notice dated 03/11/2012 was issued to the assessee for duty demand alongwith interest and penalty

which was upheld by the Adjudicating Authority who ordered for recovery of Cenvat credit alongwith interest and penalty.

iii) **E/52743/2019-** Here also the assessee are engaged in manufacture of cement and during the scrutiny of their documents, it was observed that they have availed Cenvat credit of 1%/2% of additional duty of Customs (CVD) paid by them on the imported coal during the period 2012-2013 to 2015-2016 which according to Revenue is in contravention of Rule 3 of Cenvat Credit Rules, 2004. Accordingly, a show-cause notice dated 17/10/2017 was issued to the Appellants denying the credit and the same was upheld by the Adjudicating Authority by disallowing the credit and ordering for recovery of the same alongwith interest and penalty.

iv) **E/52802/2019-** In this Appeal, the assessee who are engaged in manufacturing cement, have availed Cenvat credit of 2% of additional duty of Customs (CVD) paid by them on the imported coal during the period 30/09/2013 to 20/03/2014. The said credit of Rs. 54,76,888/- was objected by the department being in contravention of Rule 3 of Cenvat Credit Rules, 2004 and accordingly a show-cause notice dated 26/04/2017 was issued, denying the credit to the assessee and the Adjudicating Authority disallowed the said credit and ordered for recovery of the same alongwith interest and penalty.

5. On Appeals preferred by the respective assessee/respondent, the learned Commissioner (Appeals) *vide* impugned orders of different dates, allowed the respective appeals filed by the assessee/respondents.

6. We have heard learned Authorised Representative appeared for Revenue and learned Counsel for respective assessee/respondents and

perused the case records including the written submissions alongwith the case laws placed on record. The assessee herein have availed Cenvat credit, in respect of 1%/2% CVD paid as per Notification No. 12/2012-Cus. The specific bar on which the Revenue is harping upon is provided under Rule 3 (1) (i) (a) (b) *ibid* for availing Cenvat credit in respect of goods exempted from payment of excise duty under Notification No. 1/2011-CE and 12/2012-CE but in our view, there is no such bar in respect of CVD paid under Customs Notification No.12/2012-Cus, therefore the assessee/respondents are eligible for Cenvat credit in respect of 1% or 2% CVD, as the case may be, paid under Notification No. 12/2012-Cus. Otherwise also, the issue involved in these appeals is no more *res integra* and is covered in favour of assessee in view of various decisions of this Tribunal on the identical issue. Recently in Excise Appeal No. 52928 of 2019 titled as *M/s Hindustan Zing Ltd* vs. *Commissioner, CGST*, on similar facts the Tribunal vide final order no. 50855-50856/2020 dated 28/09/2020 held that the manufacturing company was justified in taking the Cenvat credit. The relevant paragraphs of the aforesaid decision is extracted as under:-

"xxxx xxxx xxxx

> 9. It is not in dispute that both Hindustan Zinc and Ultratech Cement paid additional duty of Customs under section 3 (1) of the Customs Tariff Act, after availing the benefit of the Customs Notification dated March 17, 2012 and that they also availed CENVAT credit of the additional duty of customs so paid under rule 3(1)(vii) of the CENVAT Credit Rules. This availment of CENVAT credit has been denied to them for the reason that the additional duty of customs paid @ 2% was not the duty of excise as specified in the Excise Tariff Act and so CENVAT credit of the additional duty of customs paid under the Customs Notification dated March 17, 2012 have been wrongly availed.

xxx xxx xxx

12. It would be appropriate to reproduce rule 3 of the CENVAT Credit Rules and it is as follows:

> **"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:
>
> **Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods-
>
> (a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or
> (b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed.
>
> (ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise 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);
>
> (vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);
> (via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);
> (vii) 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), (v), (vi) and (via):"

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13. A bare perusal of rule 3(1)(i) indicates that a provider of output service shall be allowed to take CENVAT credit of the duty of excise specified in the First Schedule to the Excise Tariff Act specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act subject to the two conditions mentioned in proviso (a) & (b). However, rule 3(1)(vii) provides that a provider of output service

shall be allowed to take credit of 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), (v), (vi) and (via).

14. The Commissioner has mixed up rule 3(1)(i) and rule 3(1)(vii) of rule 3 of the CENVAT Credit Rules. It is for this reason that the conditions specified in rule 3(1)(i) have also been imported into rule 3 (1)(vii) of the CENVAT Credit Rules. In the first instance, Hindustan Zinc had not paid duty of excise specified in the First Schedule of the Excise Tariff Act, nor it had availed the benefit of the Central Excise Notification dated March 1, 2011 or that specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Central Excise Notification dated March 17, 2012 had been availed. In fact, Hindustan Zinc had paid additional duty of customs by availing the benefit under serial number 122A/123 of the Customs Notification dated March 17, 2012. It is because of this misreading of rule 3(1) of the CENVAT Credit Rules that led the Commissioner to commit an error.

15. The Regional Advisory Committee of Hyderabad Zone, in its meeting held on February 9, 2015 considered this very issue at point No. 1 and concluded that CENVAT credit of additional duty of customs paid on imported goods under Customs Notification dated March 17, 2013 (and not under Central Excise Notification) is available for credit. The relevant portion of the minutes is reproduced below:

MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE, HYDERABAD ZONE HELD ON FEBRUARY 09, 2015.

Point No. 1 – Credit on imported coal:-

Many manufactures are importing steam coal on payment of duties. As per Customs Notification No. 12/2012-Cus. They are availing concessional CVD @ 2%. Audit is of the view that since CVD has been paid @ 2% on imported coal, the credit under Cenvat Credit Rules, is not available. Audit is taking a view that CVD in lieu of Excise duty and if 2% duty has been paid on imports the credit is not admissible because a manufacturer who is procuring coal domestically where excise duty has been paid @ 2%, the credit is not available.

Board has issued a circular No.41/2013-Cus. dated 21.10.2013 where it has been clarified that 2% of CVD is "general applied" rate and

therefore it is industry's view that credit of CVD is available as per rule 3(1) (vii) of CENVAT credit rules. Please clarify.

Reply:

Since the subject goods were levied at reduced rate of 2% CVD on their importation in terms of section 3 of Customs Tariff Act, 1975 read with Notification issued therein i.e under Notification No. 12/2012-Cus. dated March 17, 2013 (and not under Notification No. 1/2011 CE) which was not excluded from the purview of Rule 3 of CENVAT credit rules, 2004, it appears that the CENVAT credit of CVD paid on imported coal (i.e. 2% adv.) under Notification No. 12/2012-Cus. dated 17.03.2013 is eligible for credit."

16. A Division Bench of the Tribunal in **Hindalco Industries Ltd.** considered this precise issue and held that if additional duty of customs has been paid after taking into consideration the Customs Notification dated March 17, 2012, there would be no bar for availment of CENVAT credit in terms of rule 3(vii) of the CENVAT Credit Rules. The relevant paragraph of the decision is reproduced below:

> **"5.** On careful consideration of the submissions made by both the sides, I find that the sole reason to deny Cenvat credit to the appellant is that the authorities below has taken into consideration Notification No. 12/2012-CE., dated 17-3-2012. The authorities below have not considering the Notification No. 12/2012-Cus., dated 17-3-2012. If same is taken into consideration and duty paid under the said notification, there is no bar for availment of cenvat credit in terms of Rule 3 (vii) of Cenvat Credit Rules, 2004. Therefore, I hold that authorities below has applied wrong provision to deny Cenvat credit to the appellant. Therefore, Cenvat credit cannot be denied to the appellant. In that circumstances, I hold that the appellant has correctly availed the Cenvat credit of CVD paid on imported coal in terms of Rule 3(7) of Cenvat Credit Rules, 2004. Further, I find that the show cause notice has been issued by invoking extended period of limitation. As the Revenue itself has applied wrong provisions of law, therefore, the extended period of limitation is not invokable. In that circumstances, the impugned order is set aside."

17. This decision of the Tribunal was subsequently followed by the Tribunal in **Jaypee Sidhi Cement Plant** and the relevant portion of the decision is reproduced below :

> **"4.** It is submitted on behalf of the appellant that adjudicating authority below has wrongly made applicable the Notification No. 12/2012-C.E., dated 17-3-2012 to the facts and circumstances on a wrong presumption that the levy of CVD in dispute is since equal to the Excise duty leviable on the similar goods and manufactured in India, that the benefit of Customs Notification No. 12/12 has wrongly been denied vide Order**. Learned Counsel has relied upon the decision of this Tribunal in the case of M/s. Hindalco Industries Ltd. vs. GST, Bhopal** as was pronounced in

Appeal No. E/50179/2018-SM vide Final Order No. 50876/2018, dated 8-3-2018 [2018 (363) E.L.T. 1085 (Tri.-Del.)]. Reliance has also been placed on another decision of the Tribunal in the case of Asahi Songwon Colors Ltd. v. CCE & ST, Vadodara Appeal No. E/10635/2017-SM vide Final Order No. A/11585/2018 (Ahmd.), dated 9-7-2018. Therefore, the order in challenge is prayed to be set aside and appeal is prayed to be allowed.

5. Learned Departmental Representative justified the orders.

6. After hearing both the parties and perusing the record, we are of the opinion as follows:
It is admitted that the appellants have imported coal consequent thereto they have paid 1%/2% on CVD in addition to Basic customs duty. The CVD has been paid at the said exempted rate taking the benefit of Sl. No. 123 of Customs Notification No. 12/2012-Cus., dated 17-3-2012.
It is apparent from the order in challenge that Department has denied the payment of CVD on exempted rate and the availment of Cenvat credit thereupon relying upon the S. No. 67 of Excise Notification No. 12/2012, dated 17-3-2012.

7. Perusal of both these notifications reveal that the Customs notification is applicable to the imported coal whereas the Excise Notification is applicable to the domestically manufactured goods. The Condition No. 25 of Excise notification which denies availment of Cenvat credit on imports of coal manufactured by the supplier of coal, as has been taken the basis in the order-in-original, shall therefore be applicable for domestically manufactured goods only and not on the imported coal. Perusal of Excise Notification No. 67 further reveals that no such condition is applicable in case of import of coal.

8. The narrow compass of the adjudication, therefore, remains as to whether under Customs notification against S. No. 67 i.e., while importing the coal, the appellants were entitled to avail the Cenvat credit on the amount of CVD paid. The Cenvat credit is applicable as per Rule 3(1) of the Cenvat Credit Rules, 2004. Clause 7 thereof entitles the appellants to avail the Cenvat credit in the given circumstances.

The said Rule itself clarifies that the Cenvat credit of duty of excise is not allowed to be taken when paid on any goods specified under S. Nos. 67 and 128 of Excise Notification No. 12/2012, dated 17-3-2012. Admittedly, the notification relied upon by the department for denying the impugned benefit to the appellant is Customs Notification No. 12/2012, dated 17-3-2012. The restriction of Rule 3 is not applicable to the said notification. Above all, the Hon'ble Supreme Court in the case of SRF Ltd. v. CC Chennai (2015 (318) E.L.T. 607 (S.C.)) has held that Excise Notification No. 12/2012 is applicable only in respect of any digged or manufactured coal and not in respect of imported coal. The import whereof is allowed to have exempted rate of CVD vide Customs Notification No. 12/2012-Cus.

9. In view of the entire above discussion, we are of the firm opinion that the adjudicating authority has committed a legal error while denying the benefit of reduced CVD on imported coal while

placing reliance upon the Excise notification for manufacture of coal."

(emphasis supplied)

18. The same view was taken by the Tribunal in **Asahi SongwonColors** and the relevant paragraph is reproduced below:

"From the above Rule, it is observed that even if any duty is paid by availing exemption Notification No. 12.2012-CE dated 17.03.2012, the same will not be available as Cenvat credit for the user of the goods. **In the present case, admittedly, the appellant have imported Coal and CVD of 2% is leviable in terms of Customs Notification No. 12/2012-Cus. There is no restriction provided in Rule 3 as regards duty paid under Customs notification. This restriction is applicable only in case of indigenous goods on which the excise duty @ 2% was paid availing Notification No. 12/2012-CE, which is not a case here. Therefore, the appellant is entitled for Cenvat credit in respect of CVD paid under Notification No. 12/2012-Cus**. Moreover, since the Notification No. 12/2012-CE is applicable only in respect of indigenously manufactured coal and not in respect the imported coal as held by the Hob'ble Supreme Court in the case SRF Limited vs. CC, Chennai- 2015 (318) ELT 607 (SC). Therefore, even if the importer wants to avail the exemption of Notification No. 12/2012-CE for payment of CVD, the same will not be available to the importer. Therefore, in any case, in the case of import the Notification No. 12/2012-CE is not relevant."

19. Learned Authorized Representative of the Department has, however, placed reliance upon the decision of the Gujarat High Court in **Lonsenkiri Chemicals Industries.**

20. This decision is clearly distinguishable on facts. The appellant therein had availed the benefit of serial numbers 67 and 128 of the Central Excise Notification dated March 17, 2012. It is for this reason that the High Court held that because of the condition set out in proviso (b) of rule 3(1)(i) of the CENVAT Credit Rules that the appellant would not be entitled to avail CENVAT credit. The relevant portion of the judgment of Gujarat High Court is reproduced below:

"2. The appellant imports coal on which ordinarily countervailing duty in the nature of excise duty would be payable. However, by virtue of notifications 1 of 2011 dated 01.03.2011 and Sr. No. 67 and 128 of exemption notification 12 of 2012 dated 17.03.2012, the assessee would either pay duty at the reduced rate or Nil rate of duty. In this context, the question of allowing the assessee to claim CENVAT credit arose. The Revenue authorities and the Tribunal held that by virtue of proviso to rule 3(1) of CENVAT credit Rules, 2004, ('the Rules' for short) in view of the benefit availed by the assessee and the said exemption notifications, CENVAT credit would not be allowable. It is this view which the assessee has challenged before us. ********

3. It is not in dispute that the assessee has availed of the benefit of exemption notification 1 of 2011 and also the benefits under Sr. 67 and 128 of exemption notification 12 of 2012. In that view of

the matter, the above noted proviso of the Rules, would disentitle the assessee from claiming CENVAT credit. Counsel for the assessee however submitted that this proviso refers to CENVAT credit of "such duty of excise". In the present case, what the assessee has paid was the countervailing duty. The same may have been computed in terms of excise duty payable on local manufacturers, nevertheless, the same cannot be treated as duty of excise perse. He however candidly a greed that facility for getting CENVAT credit in the case of the present assessee flows from rule 3 of the Rules. As per subrule (1) of rule 3, a manufacturer or producer of a final product or a provider of output service would be allowed to take the CENVAT credit on the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act. Sub rule (1) rule 3 which gives the concession of availment of CENVAT credit of the duty paid, also uses the same expression "duty of excise" as is used in the proviso which restricts or limits the right of availment of such facility under certain circumstances. The expression "duty of excise" used in clause (i) of subrule (1) of rule 3 and the above noted proviso to the said rule, must receive same interpretation. The term "duty of excise" cannot have different connotations for the purpose of subrule (1) of rule 3 and for the purpose of proviso to the rule 3. Thus, if we accept the contention of the counsel for the assessee that the countervailing duty would not be included in the expression "duty of excise" for the purpose of the said rule, the assessee's very foundation of claiming the benefit of CENVAT credit would disappear."

21. This decision of the Gujarat High Court in **Lonsenkiri Chemicals Industries** was also distinguished by the Tribunal in **Aarti Industries Limited** and the relevant portion is reproduced below:

"As regard, the judgement cited by the Ld. AR in the case of Lonsenkiri Chemicals Industries (supra), I find that in the said case Cenvat Credit was availed on the CVD paid under the Notification No. 12/12-CE which was barred from availing the Cenvat Credit in terms of Rule 3(1) proviso (a) and (b) whereas in the present case in Rule 3(1) there is no bar provided for CVD paid under Notification No. 12/12-Cus., therefore, the judgement of Hon'ble High Court in Lonsenkiri Chemicals Industries (supra) is not applicable to the facts of the present case."

22. The Commissioner, therefore, committed an illegality in denying the benefit of CENVAT credit to Hindustan Zinc.

23. On the other hand, the Commissioner (Appeals), in the matter of Ultratech Cement, after considering the provisions of rule 3 of the CENVAT Credit Rules and the decision of the Tribunal in **Hindalco Industries Limited** and the **Minutes of the Meeting of the Regional Advisory Committee of Hyderabad Zone held on February 9, 2015**, held that Ultratech Cement was justified in taking the CENVAT credit. The Commissioner (Appeals) also found that the judgment of the Gujarat High Court in **Lonsenkiri Chemicals Industries** would not be applicable to the facts of the case and in this connection placed reliance on the decision of the Tribunal in **Aarti Industries Limited**.

24. For the reasons also discussed above, there is no error in the order passed the Commissioner (Appeals) in the matter of Ultratech Cement."

7. Very recently, the aforesaid decision of the Tribunal was followed by the Ahmedabad Bench of the Tribunal in Excise Appeal No. 11990 of 2019-DB titled as *Shri Arihant Tradlinks India Pvt Ltd* vs. *CCE, Kutch (Gandhi Dham)* and the Tribunal vide Final Order No. A/12611-12612/2021 dated 14/12/2021 held that the appellants/assessee therein are eligible for Cenvat credit in respect of 2% CVD paid under Notification No. 12/2012-Cus. The relevant paragraphs of the said decision is extracted as follows:-

"xxx xxxx xxx

5. We have carefully considered the submissions made by both the sides and perused the record. We find that appellant have availed Cenvat credit in respect of 2% CVD paid as per Notification No. 12/2012-Cus. Specific bar was provided under Rule 3(1)(i)(a) and (b) for availing Cenvat credit in respect of goods exempted from payment of excise duty under Notification No. 1/2011-CE and 12/2012-CE. However, there is no bar provided in respect of CVD paid under Customs Notification No. 12/2012-Cus. For this reason itself, the Cenvat credit availed by the appellant in respect of CVD cannot be denied. We find that Revenue has disallowed Cenvat credit to the appellants in respect of CVD paid on imported Coal at the rate of 2% in terms of Notification No. 12/2012-Cus dated 17.03.2012. Only on the ground that the appellant have not paid CVD equivalent to the excise duty leviable on the Coal specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via) and applied clause (vii) of Rule 3 of Cenvat Credit Rules. The Revenue"s contention is incorrect that as per clause (vii) of Rule 3(1) additional duty leviable under Customs Tariff Act is equivalent to duty of excise duty specified under clause (i) of Rule 3(1) is paid. Rule 3 of the Cenvat Credit Rules, 2004 is reproduced as under:-

Rule -3
(1) A manufacturer or producer of final products or a provider of taxable 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 :

PROVIDED that CENVAT credit of such duty of excise **shall not** be allowed to be taken when paid on any goods –

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-CE, dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE, dated the 17th March, 2012 is availed;
….. …..

(vii) **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), (v) [, (vi) and (via)]:

(viii) **…..** “

6. We find that in terms of clause (vii) of Rule 3(i) of Cenvat Credit Rules, Cenvat credit is allowed in respect of the additional duty leviable under Section 3 of Customs Tariff Act, 1975 equivalent to the duty of excise specified under clause (i). As per clause (i) of Rule 3(1), the duty of excise specified in the first schedule to the Central Excise Tariff Act, 1985 leviable under the Excise Act. In the present case, there is no dispute that the duty of excise is indeed specified in first schedule of Central Excise Tariff Act, 1985 which is leviable under the Excise Act. It is only by Customs Notification, the concession in rate of duty was provided i.e. @ 2% under Notification No. 12/2012-Cus. Only since the concessional rate is provided under Customs Notification, the nature of excise duty specified in the first schedule to the Central Excise Tariff Act does not get altered. The Adjudicating Authority has ignored the fact that there is not the rate of CVD provided in the Customs Tariff Act and the rate of duty is provided in Central Excise Tariff Act. Therefore, in our view, even the 2% which is nothing but a concessional CVD in lieu of excise duty and the same is specified in the first schedule of Central Excise Tariff Act. Therefore, whenever CVD is paid, it flows from the Central Excise Tariff Act and not from the Customs Tariff Act and is not as per the duty specified in the Customs Tariff Act. Therefore, the entire basis of the interpretation made by the Adjudicating Authority regarding levy of CVD is erroneous and on that basis, the case of the department does not sustain. A very identical issue has come up in various cases before this Tribunal and this Tribunal has taken consistent view that Cenvat credit in respect of 2% concessional CVD paid on Coal is admissible.

7. The above decision of the Tribunal has considered various decisions given by the different benches and also distinguished the decisions relied upon by the Revenue and concluded that the appellant is entitled for Cenvat credit in respect of 2% CVD paid under Notification No. 12/2012-Cus.

8. On the issue of limitation, we find that the issue involved is purely of interpretation of Cenvat Credit Rules, levy of CVD in terms of Customs Tariff Act. It is also the fact that on identical issue many cases were made out by the department across the country in respect of different assessees which clearly shows that the issue involved is of interpretation of law. In this situation, malafide intention cannot be attributed to the appellant. The appellant have been declaring availment of Cenvat credit in respect of 2% CVD and the same were reflected in monthly ER-1 returns. Therefore, there is absolutely no suppression of facts or mis-declaration etc. on the part of the appellant. Accordingly, the demand for extended period is not sustainable on the ground of time-bar also.

9. As per our above discussion and findings, supported by Tribunal"s decision in the case of **Hindustan Zinc Limited (supra)** and various decisions referred therein, the appellants are eligible for Cenvat credit in respect of 2% CVD paid under Notification No. 12/2012-Cus."

8. Since a consistent view has been taken by this Tribunal in favour of assessee on this issue from time to time, we see no reason to take a contrary view, and therefore we find no merits in the appeals filed by Revenue and the same are hereby dismissed. Early hearing applications are disposed off accordingly.

(pronounced in the open court on 21.07.2022)

(AJAY SHARMA)
Member(Judicial)

(P.V. SUBBA RAO)
Member(Technical)

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