

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

C.M.A.Nos.1449 and 1450 of 2009
M.P.Nos.1 of 2009

M/s.Arun Smelters Ltd.,
No.B-16 & 17, SIPCOT Industrial Complex,
Gummidipoondi 601 201. ... Appellant

versus

1. The Customs Excise and Service
Tax Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe, Chennai.
2. The Commissioner of Central Excise,
Chennai II Commissionerate,
No.692, MHU Complex, Anna Salai,
Chennai 600 035. Respondents

Prayer: Civil Miscellaneous Appeals are filed under Section 35G of Central Excise Act, 1944, against the Final Order Nos.614 and 615 of 2008, dated 24.06.2008, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Regional Bench, Chennai, 1st respondent.

For Appellant : Mr.K.Jayachandran

For 1st Respondent : Tribunal

For 2nd Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel for
Central Excise

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the Final Order Nos.614 and 615 of 2008, dated 24.06.2008, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Regional Bench, Chennai, 1st respondent herein.

2. Facts leading to the appeals are that the appellant is engaged in the manufacture of non-alloy steel ingots and billets, falling under Chapter Sub-Heading No.7206.90 of the Schedule to the Central Excise Tariff Act, 1985, covered under Section 3A of the Central Excise Act, 1944, during compounding levy scheme. Two show cause notices were issued to the appellant on 24.03.1999, one for recovery of duty for the month of September, 1998 and the other, for recovery of duty for the period, from October, 1998 to February, 1999, both in terms of annual capacity of production and the consequential monthly duty liability fixed by the jurisdictional Commissioner. Both the notices also proposed penalty under Rule 96ZO(3) of the Central Excise Rules, 1944 (hereinafter referred to "the Rules"). Proposals were contested.

3. For the show cause notice issued for recovery of duty for the period from October, 1998 to February, 1999, the Commissioner of Central Excise, vide Order-in-Original No.15/CLS/2001-Tech, dated 27.03.2001, confirmed the demand of duty, to an extent of Rs.16,06,507/-, after dropping the demand for the earlier period, by granting abatement of duty during the period of closure of the furnace. The said order has been challenged in Appeal No.E/632/2001 before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Regional Bench, Chennai, 1st respondent.

4. The Commissioner of Central Excise, passed another Order-in-Original No.28 of 2002, dated 16.09.2002, confirming the demand of duty under show cause notice dated 27.03.2001, on the appellant, under Section 96ZO(3) of the Rules, which was challenged in Appeal No.E/644/2002 before the Tribunal.

5. After considering the rival submissions, vide Final Order Nos.614 and 615 of 2008, dated 24.06.2008, the Tribunal held that Rule 96ZO(3) of the Rules, was couched in a mandatory language and therefore, the assessee cannot escape its liability. The Tribunal further held that the assessee is liable to pay duty, at the prescribed rate and interest, on the amount of duty demanded. Thus, the appeals filed against the levy of duty, have been dismissed. As regards the portion of the order imposing penalty, the appeal has been partly allowed. Being aggrieved by the same, the appellant has preferred the present Civil Miscellaneous Appeal.

6. Record of proceedings shows that on 24.06.2009, both the appeals have been admitted on the following substantial questions of law,

"(i) Whether on the facts and circumstances of the case, the Tribunal is right in holding that the

appellant is not entitled to utilize the CENVAT Credit available for payment of duty on the products cleared under the compounding levy scheme?

(ii) Whether the Tribunal is right in not appreciating the legal position that in terms of Rule 2(7) of Central Excise Rules, duty means duty payable under Sections 3 and 3A of the Act and in Rule 57AB (1B) of the Central Excise Rules, there is no prohibition to utilise the available CENVAT credit amount?

(iii) Whether the order of the Tribunal is right in holding that penalty is leviable in the facts and circumstances of the case and the quantum alone reduced?"

7. By inviting the attention of this Court to a decision of the Supreme Court in *Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise* reported in 2015 (326) ELT 209 (SC), Mr.K.Jayachandran, learned counsel for the appellants submitted that insofar as penalty is concerned, the Hon'ble Supreme Court has struck down the same. His submission is placed on record.

8. On the substantial questions of law 1 and 2, extracted supra, learned counsel for the appellants submitted that the Central Excise Act, 1944, provides for levy of duty of excise on the activity, amounting to manufacture, as defined in Section 2 (f) of the Act. He further submitted that the Central Excise Tariff Act, 1985, prescribes rates of duty for various goods chargeable to duty of excise. Section 3 of the Central Excise Act, 1944, is a charging Section, which imposes duty. The taxable event in terms of Section 3 of the Act is manufacture of goods and excise duty is payable at the time of removal.

9. Learned counsel for the appellant further submitted that the Finance Act, 1997, brought about certain changes in the schedule of levying excise duty, in steel industry. A new provision, Section 3A came to be inserted in the Act, as an alternative method of taxation, for certain notified goods, keeping in mind, the likelihood of evasion by the manufacturers of such goods. He further submitted that the above provision changed the method of levy from quantity of goods actually manufactured to a method based on annual capacity of production fixed for the factory to be determined by the Commissioner of Central Excise, in the manner prescribed.

10. Learned counsel for the appellant further submitted that Section 3A did not provide for any exemption, incentive or benefit for any industries like, industries situated in backward

areas, small scale industries, etc., and it merely provided for another mode of determination of the quantum of duty payable. He further submitted that the scheme was applicable to two products, with effect from 1st September, 1997, viz., (i) ingots and billets of non-alloy steel manufactured in an Induction Furnace and (ii) hot rolled products of non-alloy steel manufactured or produced in a hot re-rolling steel mill.

11. Learned counsel for the appellant further submitted that as per the scheme, any unutilised balance of input credit and capital goods lying with manufacturers working under Section 3A, as on 1st September, 1997, shall lapse forthwith. He further added that notifications have been issued, specifying the rate of duty, applicable to the notified products and laying down separate formulae for determining their annual capacity in each mill. Induction Furnace Annual Capacity Determination Rules, 1997, were framed by Notification No.24/97-CE(NT), on 25.07.1997. He also submitted that Rule 96ZO has been incorporated in the Central Excise Rules, 1994, laying down the procedure for paying duty, by the manufacturers.

12. Inviting the attention of this Court to Rule 2(7) of the Central Excise Rules, 1944, learned counsel for the appellant submitted that as per the abovesaid Rules, "duty" means, the duty payable under Section 3 or as per the Finance Act, Section 3A of the Central Excise Act, 1944. According to him during the period upto 15.07.2000, Rule 57AB(1b) of Cenvat Credit Rules, was in force. He further added that there was no prohibition in payment of duty, through CENVAT account.

13. He further submitted that as per Section 3A of the Act, 1944, assesseees were only prohibited from taking or availing cenvat credit, during the period from 01.09.1997 to 31.03.2000 and that there was no bar for utilizing the credit earned after the lapse of the scheme, for discharging the arrears of duty during the period, covered under the Scheme. According to him, both the Commissioner of Central Excise, Chennai and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Regional Bench, Chennai, have erred in holding that the appellant should pay duty through PLA (Personal Ledger Account) and thereafter, can utilize the same amount as Cenvat credit. According to him, the duty demanded under the compounded levy scheme, can be paid through cenvat credit account on 15.07.2000, as there was no prohibition, under the Central Excise Rules, for such mode of payment.

14. He also submitted that on the date, when the compounded levy scheme was in force, there was arrears of duty and after the expiry of the scheme, the appellant earned cenvat credit, on

the manufacture of goods. According to him, in the light of Section 3 of Central Excise Act, 1944, there was no prohibition for payment of duty by cenvat credit, during the period upto 15.07.2000. The assesseees were prohibited in availing cenvat credit only during the period between 01.09.1997 and 31.03.2000.

15. Placing reliance on the decision of the Punjab and Haryana High Court in Commissioner of Central Excise, Ludhiana v. Punjab Casting Pvt. Ltd., reported in 2014 (306) ELT 612 (P & H), Mr.K.Jayachandran, learned counsel for the appellant submitted that before the Punjab and Haryana High Court, appellant therein assailed the correctness of the order of the Tribunal, which held that the benefit of cenvat credit cannot be availed by the respondents/assesseees, after the period covered under the compounded levy scheme and that they were required to discharge their liability only through Personal Ledger Account (In short "PLA"). By observing that the assesseees have adhered to the rules, a Hon'ble Division Bench of Punjab and Haryana High Court dismissed the appeals filed by the revenue. He further submitted that as against the said decision of the Punjab and Haryana High Court, no appeal was filed by the department to the Hon'ble Supreme Court. It has become final, and therefore to be applied to the case on hand.

16. Placing reliance on a judgment in Lloyds Steel Industries Ltd., v. Union of India reported in 2005 (183) ELT 351 (Bom.), learned counsel for the appellant further submitted that the Bombay High Court has also held that the payment of duty is only procedural and utilizing cenvat credit for payment of central excise duty, is only revenue neutral. Referring to the orders of the Tribunal, impugned before this court, he submitted that when the appellant was permitted to avail cenvat credit and utilise the same, for payment of duty, demanded by the Commissioner of Central Excise, on the final product manufactured on or after 01.04.2000, provided of course, it is clear that the authorities have restricted payment of duty, through cenvat credit, only during the abovesaid specified period, and arrears of duty, if any, during the relevant period, can always be paid, from out of cenvat credit account earned, after the period, under the scheme.

17. It is the submission of the learned counsel for the appellant that unlike in Rule 97ZO(1) of the Central Excise Rules, 1944, debiting the amount in the Personal Ledger Account, maintained by the manufacturer, there is no such stipulation in Sub-Rule (3) of Rule 96ZO of the Central Excise Rules, 1944. It is also the submission that Sub-Rule (3) of Rule 96ZO of the said Rules, is a code by itself, which provides for payment of duty of Rs.5,00,000/- per month, in two equal instalments, the

first instalment latest by the 15th day of each month and the second instalment latest by the last day of each month. According to him, Sub-Rule 3 of Rule 96ZO does not impose any condition of debiting the amount, in the current account and therefore, arrears of duty, if any, during the period of compounded levy scheme, can always be paid through cenvat credit account, after the period of scheme. Thus, on the above submissions, learned counsel for the appellant seeks for an answer, on the substantial questions of law, in favour of the assessee.

18. Per contra, placing reliance on a decision of this Court in Kalaimagal alloys Steel Pvt. Ltd., v. CESTAT, Chennai reported in 2014 (303) ELT 44 (Mad.), Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent submitted that during the period of compounded levy scheme, the question of adjusting cenvat credit, does not arise. He further submitted that when the scheme has taken away the right of the manufacturers to avail cenvat credit, the consequences thereof, is to make payment of duty only in cash, within the period provided therefor, under Rule 96ZO of the Central Excise Rules, 1944.

19. Placing reliance on the decision of the Hon'ble Apex Court in Hans Steel Rolling Mill v. Commissioner of Central Excise, Chandigarh reported in 2011 (265) ELT 321 (SC), it is the further submission of the learned counsel for the respondent that the compounded levy scheme, introduced in the Central Excise Act, 1944, is a comprehensive scheme, wherein, Rule 96ZO of the Rules, applicable to the case on hand, stipulate the method, time and the manner of payment and it also contains provisions, relating to payment of interest and penalty, in the event of delay, in payment of duty.

20. Inviting the attention of this Court to the decision in Hans Steel Rolling Mill's case (cited supra), learned counsel for the revenue submitted that when the scheme has been declared by the Apex Court as a comprehensive scheme in itself, and when the general provisions of the Central Excise Act, 1944 and the rules made thereunder, regarding method, determination of duty and mode of payment of such duty, are excluded, during the relevant period, it is not open to the appellant to claim that cenvat credit earned after the scheme can be availed, for clearing the arrears of duty. According to the learned counsel for the revenue duty is payable should be by remitting the same during the relevant period.

21. It is also his submission that Section 3 of the Central Excise Act, 1944 is not applicable, during the period of

operation of compounded levy scheme, ie., between 01.09.1997 and 31.03.2000, duty assessed, on the annual production capacity plan, less than the actual production has to be paid by remitting in the Personal Ledger Account maintained by the manufacturer. It is therefore, his submission that when the scheme has been declared by the Hon'ble Apex, the assessee's contention contrary to the scheme and the decision of the Hon'ble Apex Court, has to be rejected.

22. With reference to the above said submissions, learned counsel for the revenue also invited the attention of this Court to the relevant provisions. He further submitted that between the period, from October, 1998 to February, 1999, credit earned by the assessee would lapse and therefore, payment of excise duty on the production capacity, should be made only through PLA.

23. Distinguishing the judgment of the Punjab and Haryana High Court in Commissioner of Central Excise, Ludhiana v. Punjab Casting Pvt. Ltd., reported in 2014 (306) ELT 612 (P & H), it is the submission of the learned counsel for the revenue that the said judgment cannot be made applicable to the case on hand, as there was no reference to the judgment of the Hon'ble Apex Court in Hans Steel Rolling Mill's case (cited supra). For the reasons, stated supra, he prayed for dismissal of the Civil Miscellaneous Appeals.

Heard the learned counsel appearing for the parties and perused the materials available on record.

24. Before adverting to rival contentions, let us have a cursory look at the relevant rules and the Compounded Levey scheme, operational from 01.09.1997 to 31.03.2000. As per Rule 2 (7) of the Central Excise Rules, "duty" means, duty payable under Section 3 of the Central Excise Act, 1944. Section 3 of the Central Excise Act, 1944, is as follows:

"Section 3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, to be levied:-

1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT)] on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on

excisable goods excluding goods produced or manufactured in special economic zones specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,-

(i) Omitted.

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1:- Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2:- In this proviso, -

(i) Omitted.

(ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.;

(iii) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles

enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed -

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description -

(i) produced or manufactured by different classes of producers or manufacturers; or

(ii) sold to different classes of buyers :

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

By Finance Act, 1997, Section 3A has been introduced, and it reads thus:

Section 3A. Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods:

(1) Notwithstanding anything contained in section 3, where the Central government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,-

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory; or

(b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

Provided that where a factory producing notified goods is in operation only during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be redetermined on a proportionate basis having regard to such alteration or modification.

(3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:

Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) The provision of this section shall not apply to goods produced or manufactured, by a hundred per cent export - oriented undertaking and brought to any other place in India.

Explanation 1: For the removal of doubts, it is hereby clarified that for the purposes of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any notification for the time being in force.

Explanation 2: For the purposes of this section the expressions "hundred per cent export - oriented undertaking" shall have the meanings assigned to it in section 3.

Explanation 3: For the purposes of sub-section (2) and (3), word "factor" includes "factors".

25. Between 3 and 3A of the Act, indisputably, there is a change in the method of arriving at the duty payable by the assessee. When Section 3 of the Act, speaks about excisable manufactured, in contrast, Section 3A, introduced by Finance Act, 1997, speaks about the annual production capacity of the manufacturer, determined by the Commissioner with reference to the rules framed. Section 3A, introduced by the Finance Act, 1997, starts with an opening sentence, "Notwithstanding anything contained in Section 3A of the Act."

26. Rule 57AB of the Central Excise Rules, 1944, deals with cenvat credit and the same is extracted hereunder:

"(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 Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said First Schedule), leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985, leviable under the Central Excise Act, 1944 in relation to the goods falling under sub-heading Nos. 2401.90, 2404.40, 2404.50, 2404.99, 5402.20, 5402.32, 5402.42, 5402.43, 5402.52, 5402.62, 5703.90, 8415.00, 8702.10, 8703.90, 8706.21, 8706.39 and 8711.20 of the said First Schedule;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles 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); and

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

(v) the additional duty leviable under section 3 of the Customs Tariff Act, 1975, equivalent to the duty of excise specified under clauses (i), (ii), (iii) and (iv) above, paid on any inputs or capital goods received in the factory on or after the first day of April, 2000.

Explanation. -For removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under Chapter heading No. 98.01 of the First Schedule to the said Customs Tariff Act.

(b) The CENV AT credit may be utilised for payment of any duty of excise on any final products manufactured by the manufacturer 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.

Explanation. -When inputs or capital goods are removed from the factory, the manufacturer of the final products shall pay the appropriate duty of excise leviable thereon as if such inputs or capital goods have been manufactured in the said factory, and such removal shall be made under the cover of an invoice prescribed under rule 52A.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) credit of duty in respect of inputs or capital goods produced or manufactured-

(i) in a free trade zone and used in the manufacture of the final products in any other place in India; or

(ii) by a hundred per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software Technology Parks and used in the manufacture of the final products in any place in India, shall be restricted to the extent which is equal to the additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975 paid on such inputs;

(b) credit in respect of-

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

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

(iii) the additional duty under section 3 of the Customs Tariff Act, 1975, equivalent to the duty of excise specified under clauses (i) and (ii) above shall be utilised 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, 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.

(c) CENVAT credit of the duty paid on the inputs shall not be allowed in respect of texturised yarn (including draw-twisted or draw-wound yarn) of

polyesters falling under heading No. 54.02 of the said First Schedule, manufactured by an independent texturiser, that is to say, a manufacturer engaged in the manufacture of texturised yam (including draw-twisted or draw-wound yam) of polyesters falling under heading No. 54.02, who does not have the facility in his factory (including plant and machinery) for manufacture of partially oriented yam of polyesters falling under sub-heading No. 5402.42 of the said First Schedule.

(d) credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall be allowed to the extent of thirty rupees per square meter.

Explanation. -Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non-availability of credit of duty paid on any input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of the rules made under this section."

27. The issue involved in the instant appeals, is whether, the Commissioner of Central Excise, was right in demanding a sum of Rs.16,06,507/-, as duty, for the period from October, 1998 to February, 1999 and imposing penalty. Compounded levy scheme, under Section 3-A was in force, during the period from 01.09.1997 to 31.03.2000 and it was revoked from 01.04.2000. As per the submission of the learned counsel for the appellant, the total amount of duty payable for the period between October' 1998 and February' 1999, under the 2nd show cause notice, dated 24.03.1999, was Rs.43,12,500/-. Out of this, a sum of Rs.27,25,000/- was paid through Personal Ledger Account and the balance amount of Rs.16,06,507/- can be through CENVAT account.

28. The Commissioner of Central Excise, Chennai II Commissionerate, Chennai, 2nd respondent, has accepted the payment of duty, by utilizing the cenvat credit, on the inputs received in the factory, on or after 01.04.2000. For payment of duty, on the final products manufactured, and cleared under the compounded levy scheme, the 2nd respondent, has also accepted the payment made through PLA, but disapproved the payment of Rs.16,06,507/-, made through cenvat credit. Therefore, vide order, dated 27.03.2001, the 2nd respondent has demanded a sum of Rs.16,06,507/-. By a separate order, dated 16.09.2002, the Commissioner of Central Excise, Chennai II Commissionerate, 2nd

respondent, has imposed a penalty of Rs.16,06,507/- on the appellant. Two things, the 2nd respondent has done. One, that the payment of excise duty should be, by remittance through PLA, maintained by the manufacturer and the other is imposition of penalty.

29. Being aggrieved by the demand of duty, Appeal No.E/632/01, has been preferred. Similarly, Appeal No.E/644/02, has been preferred against the penalty. Both the appeals have been heard together and by a common Final Order, dated 24.06.2008, while reducing the penalty to Rs.2,00,000/-, dismissed Appeal No.E/636/01, relating to duty, with a direction that the appellant has to pay the said amount only through Personal Ledger Account and then, equal amount can be availed as cenvat credit.

30. The substantial question of law, raised before us, relating to penalty as to, whether the order of the Tribunal is right in holding that penalty is leviable on the facts and circumstances of the case, and that the quantum should be reduced. In a decision of the Hon'ble Apex Court in Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise reported in 2015 (326) ELT 209 (SC), the issue, which came up for consideration before the Hon'ble Supreme Court, was to the correctness of the judgments of High Courts, which struck down Rules 96ZO, 96 ZP and 96 ZQ of the Central Excise Rules, 1994, relating to penalty, as ultra vires of a parent Act and violative of Articles 14 and 19(1)(g) of the Constitution of India. Insofar as penalty is concerned, the Hon'ble apex Court held that it is ultra vires. In other respects, the Apex Court upheld the scheme.

31. Mr.A.P.Srinivas, learned Senior Standing Counsel for Central Excise submitted that the law laid down by the Hon'ble Supreme Court in Shree Bhagwati Steel Rolling Mills's case (cited supra), is binding. Recording the said submission, the appellant stand to succeed in C.M.A.No.1450 of 2009, on the substantial question of law, extracted supra, as regards penalty. Respectfully following the above decision, the third substantial question of law, viz., "Whether the order of the Tribunal is right in holding that penalty is leviable in the facts and circumstances of the case and the quantum alone reduced?" framed by this Court, on 24.06.2009, is answered in favour of the appellant. Consequently, C.M.A.No.1450 of 2009 is allowed.

32. The other two substantial questions of law, framed by this Court, on 24.06.2009, are as follows:

"(i) Whether on the facts and circumstances of

the case, the Tribunal is right in holding that the appellant is not entitled to utilize the CENVAT Credit available for payment of duty on the products cleared under the compounding levy scheme?

(ii) Whether the Tribunal is right in not appreciating the legal position that in terms of Rule 2(7) of Central Excise Rules, duty means duty payable under Sections 3 and 3A of the Act and in Rule 57AB (1B) of the Central Excise Rules, there is no prohibition to utilise the available CENVAT credit amount?

33. On the above, it is the case of both the parties that during the period between 01.09.1997 to 31.03.2000, when the compounded levy scheme was in force, the duty assessed under Section 3-A of the Central Excise Act, is on the basis of the annual capacity of production (ACP), determined by the Commissioner of Central Excise. Two show cause notices in O.C.No.Nil, dated 24.03.1999, dated 24.03.1999, for the period September' 1998 and O.C.No.166/99, dated 24.09.1999, for the period, October' 1998 to February' 1999, have been issued, demanding to pay a total sum of Rs.43,12,500/- and thereafter, a sum of Rs.27,25,000/-, has been paid through the Personal Ledger Account maintained by the assessee. According to the appellant, admittedly there was arrears of Rs.16,06,500/- to be paid, during the period, when the compounded levy scheme was in force.

34. Rule 96Z0 of the Central Excise Rules, 1944, operational during the scheme, deals with the procedure to be followed, by the manufacture of ingots and billets, and the said rule is extracted hereunder:

"(1) A manufacturer of non-alloy steel ingots and billets falling under sub-heading Nos. 7206.90 and 7207.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall debit an amount calculated at the rate of Rs. 750 per metric tone at the time of clearance of ingots and billets of non-alloy steel from his factory in the account-current maintained by him under sub-rule (1) of rule 173G of the Central Excise Rules, 1944, subject to the condition that the total amount of duty liability shall be calculated and paid in the following manner :-

I. Total amount of duty liability for the period from the 1st day of 1 September, 1997 to the 31st day of March, 1998

(a) a manufacturer shall pay a total amount calculated at the rate of Rs. 750 per metric tonne on capacity of production of his factory for the period

from 1st day of September, 1997 to the 31st day of March, 1998, as determined under the Induction Furnace Annual Capacity Determination Rules, 1997. This amount shall be paid by 31st day of March, 1998;

(b) the amount of duty already paid, together with on-account amount paid by the manufacturer, if any, during the period from 1st day of September, 1997 to the 31st day of March, 1998, shall be adjusted towards the total amount of duty liability payable under clause (a);

(c) if a manufacturer fails to pay the total amount of duty payable under clause (a) by the 31st day of March, 1998, he shall be liable to pay the outstanding amount (that is the amount of duty which has not been paid by the 31st day of March, 1998) along with interest at the rate of eighteen percent per annum on such outstanding amount calculated for the period from the 1st day of April, 1998 till the date of actual payment of the outstanding amount :

Provided that if the manufacturer fails to pay the total amount of duty payable under clause (a) by the 30th day of April, 1998, he shall also be liable to pay a penalty equal to the outstanding amount of duty as on 30th day of April, 1998 or five thousand rupees, whichever is greater.

II. Total amount of duty liability for a financial year subsequent to 1997-98

(a) a manufacturer shall pay a total amount calculated at the rate of Rs. 750/- per metric tonne on the annual capacity of production of his factory as determined under the Induction Furnace Annual Capacity Determination Rules, 1997. This amount shall be paid by the 31st day of March of the financial year;

(b) the amount of duty already paid, together with on-account amount paid by the manufacturer, if any, during the financial year shall be adjusted towards the total amount of duty liability;

(c) if a manufacturer fails to pay the total amount of duty payable under clause (a) by the 31st day of March, of the relevant financial year, he shall be liable to, -

(i) pay the outstanding amount of duty (that is the amount of duty which has not been paid by the 31st day of March of the relevant financial year) along with interest at the rate of eighteen per cent. per annum on such outstanding amount, calculated for the period from the 1st day of April of the immediately succeeding financial year till the date of actual payment of the whole of outstanding amount; and

(ii) a penalty equal to such outstanding amount of duty or five thousand rupees, whichever is greater.

(1A) If any manufacturer removes any of the non-alloy steel ingots and billets specified in sub-rule (I) without complying with the requirements of the provisions of that sub-rule, then all such goods shall be liable to confiscation and the manufacturer shall be liable to a penalty not exceeding three times the value of such goods, or five thousand rupees, whichever is greater.

(2) Where a manufacturer does not produce the ingots and billets of non-alloy steel during any continuous period of not less than seven days and wishes to claim abatement under sub-section (3) of section 3A of the Central Excise Act, 1944, the abatement will be allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order, subject to the fulfillment of the following conditions, namely-

(a) the manufacturer shall inform in writing about the closure to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, either prior to the date of closure or on the date of closure;

(b) the manufacturer shall intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, immediately after the production in his factory is stopped along with the closing balance of stock of the ingots and billets of non-alloy steel;

(c) the manufacturer, when he starts production again, shall inform in writing about the starting of production to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, with a copy to the Superintendent of Central Excise, either prior to the date of starting production or on the date of starting production;

(d) the manufacturer shall on start of production again along with the closing balance of stock on restarting the factory, intimate the reading of the electricity meter to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, with a copy to the Superintendent of Central Excise;

(e) the manufacturer shall while sending intimation under clause (c), declare that his factory remained closed for a continuous period starting from

--hours on -(date) to --hours on -(date).

(3) Notwithstanding anything contained elsewhere in these rules, if a manufacturer having a total furnace capacity of 3 metric tonnes installed in his factory so desires, he may, from the first day of September, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, pay a sum of rupees five lakhs per month in two equal installments, the first installment latest by the 15th day of each month, and the second installment latest by the last day of each month, and the amounts so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition that the manufacturer shall not avail of the benefit, if any, under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944):

Provided that for the month of September, 1997 the Commissioner may allow a manufacturer to pay the sum of rupees five lakhs by the 30th day of September, 1997:

Provided further that if the capacity of the furnaces installed in a factory is more than or less than 3 metric tonnes, or there is any change in the total capacity, the manufacturer shall pay the amount, calculated pro rata:

provided also that where a manufacturer fails to pay the whole of the amount payable for any month by the 15th day or the last day of such month, as the case may be, he shall be liable to, -

(i) pay the outstanding amount of duty along with interest thereon at the rate of eighteen per cent per annum, calculated for the period from the 16th day of such month or the 1st day of next month, as the case may be, till the date of actual payment of the outstanding amount; and

(ii) a penalty equal to such outstanding amount of duty or five thousand rupees, whichever is greater.

Provided that if the manufacturer fails to pay the total amount of the duty payable for each of the months from September, 1997 to March, 1998 by the 30th day of April, 1998, he shall also be liable to pay a penalty equal to the outstanding amount of duty as on 30th day of April, 1998 or five thousand rupees, whichever is greater.

Explanation - For removal of doubts it is hereby clarified that sub-rule (3) does not apply to an induction furnace unit which ordinarily produces

castings or stainless steel products but may also incidentally produce non-alloy steel ingots and billets.

(4) In case a manufacturer wishes to avail of discharging his duty liability in terms of sub-rule (3), he shall inform the Commissioner of Central Excise, with a copy to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, in the following proforma:

"We(name of the factory), located at(address) hereby wish to avail of the scheme described in sub-rule (3) of rule 9620, for full and final discharge of our duty liability for the manufacture of ingots and billets of non-alloy steel under section 3A of the Central Excise Act, 1944 (1 of 1944).

Dated.....

Sd.....

Name and Designation
(With Stamp)"

35. Reading of the rules, extracted supra, makes it clear that a manufacturer of non-alloy steel ingots and billets, falling under sub-heading Nos. 7206.90 and 7207.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall debit an amount calculated at the rate of Rs.750 per metric ton, at the time of clearance of ingots and billets of non-alloy steel from his factory in the account-current maintained by him under sub-rule (1) of rule 173G of the Central Excise Rules, 1944, subject to the condition that the total amount of duty liability shall be calculated and paid in the manner, stated above. At this juncture, we have taken note of the undisputed fact, as to the method of calculation of duty and the manner, in which, payment of duty has to be made.

36. As per Rule 9620(I), the total amount of duty liability for the period from 1st September, 1997 to 31st March, 1998, as determined under the Induction Furnace Annual Capacity Determination Rules, 1997, shall be paid by 31st March, 1998. Similarly, as per Rule 9620(II), the total amount of liability for a financial year, subsequent to 1997-98, shall be paid by 31st March of the financial year. As per Rule 9620(II)(3), notwithstanding anything contained elsewhere in these rules, if a manufacturer having a total furnace capacity of 3 metric tonnes installed in his factory so desires, he may, from the first day of September, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, pay a sum of rupees five lakhs per month in two equal installments, the first installment latest by the 15th day of each month, and the second installment latest by the last day of each month, and the

amounts so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition that the manufacturer shall not avail of the benefit, if any, under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944). Here again, we have taken note of the stipulation, as to, when the duty has to be paid.

37. Reading of the provisions, when the Compounded Levy Scheme, was in force, in entirety, makes it clear, as to how, the manufacturer of non-alloy steel ingots and billets, have to make the payment, in the current account, maintained by the manufacturer, under sub-rule (1) of rule 173G of the Central Excise Rules, 1944. As per the scheme, any unutilised balance of input credit and capital goods, lying with the manufacturer, shall lapse forthwith. Therefore, from 1st September' 1997 till 31st March' 2000, duty has to be paid and cenvat credit cannot be availed. Compounded levy scheme also stipulates the time for payment of duty. The then existing provision also provided for imposition of penalty for failure to pay the total amount of duty, payable within the period provided therefor, in the manner, as provided therefor, under the compounded levy scheme.

38. Method of arriving at the duty payable by the manufacturer of non-alloy steel ingots, during the scheme, manner of payment, ie., in the account maintained by the manufacturer, under sub-rule (1) of rule 173G of the Central Excise Rules, 1944, time for such payment and the consequences thereof, resulting in penalty for failure to pay duty, within the prescribed period, are morefully detailed in the scheme. Therefore, the compounded levy scheme in force between 01.09.1997 to 31.03.2000, has to be held as a comprehensive scheme, which has carved provisions for payment of excise duty, on the products, (i) ingots and billets of non-alloy steel manufactured in an Induction Furnace and (ii) hot rolled products of non-alloy steel manufactured or produced in a hot re-rolling steel mill and accordingly, held by the Apex Court.

39. Though Mr.K.Jayachandran, learned counsel for the appellant submitted that sub-Rule (3) of Rule 96ZO(II) of the Central Excise Rules, 1944, opens with a notwithstanding clause and therefore, arrears of duty, payable between 01.09.1997 to 31.03.2000, can be paid through cenvat credit, earned after 31.03.2000 and that payment through personal ledger account, is not specifically provided for, in sub-rule (3) of rule 96ZO(II) of the Central Excise Rules, if the manufacturer desires to pay a sum of Rs.5,00,000/- per month, in two equal installments, the first installment latest by the 15th day of each month, and the

second installment latest by the last day of each month, and the amounts so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition contained therein, this Court is not inclined to accept the said contentions, for the reason that the duty payable during the period September, 1998 and also for the period, from October, 1998 to February, 1999, ought to have been paid, within the specific dates, mentioned in Rule 96ZO of the Central Excise Rules, 1944 and failure of which, entails penalty. Of course, by virtue of the judgment, penalty alone has been struck down. When the time for payment, the manner therefor, are specifically provided in the rules, the same has to be done, as per the scheme and not otherwise. If the statutory provision enacted by the Legislature prescribes a particular mode, it has to be done not only in that manner alone and it cannot be done in any manner. The principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that the other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of compounded levy scheme. Therefore, neither the assessee nor the department can act in variance with the terms of the compounded levy scheme.

40. The Hon'ble Supreme Court in State of Jharkhand v. Ambay Cements reported in 2005 (1) CTC 223, at Paragraph 27, held as follows:

"27. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation and where a statute is penal in character, it must be strictly construed and followed."

41. Thus, after recording a categorical finding that the appellant has not paid the entire duty amount of Rs.43,12,500/-, through personal ledger account and taking note of the payment of Rs.27,25,000/- through Personal Ledger Account, the Commissioner of Central Excise, has demanded a sum of Rs.16,06,507/-, to be paid through the personal ledger account.

42. Now let us consider the decisions relied on by the learned counsel appearing for both the parties. The main thrust of the appellant is on the decision of the Punjab and Haryana High Court in Commissioner of Central Excise, Ludhiana v. Punjab Casting Pvt. Ltd., reported in 2014 (306) ELT 612 (P & H), wherein, the respondent therein was engaged in the manufacture of non-alloy steel ingots. The assessee debited the Cenvat Credit Account of inputs for discharging their liability of payment of excise duty for the period under the Compounded Levy Scheme. The appellant therein contended that the respondent therein could not have made use of Cenvat Credit Account and the duty had to be paid only through Personal Ledger Account and finding fault with the procedure in payment of duty, the Adjudicating Authority i.e., the Joint Commissioner, Customs & Central Excise confirmed the demand and also imposed interest. He disallowed the duty discharged through Cenvat account. Penalty of equal amount was also confirmed. When the correctness of the same was tested by the respondent therein, the appellate authority confirmed the decision, excluding the levy of interest, and imposition of penalty. In the second appeal, decisions stated supra, were reversed. Thus, being aggrieved, the Commissioner of Central Excise, Luthiana, went on appeal to Punjab and Haryana High Court. Though the Department contended that when strict compliance of rules was to be made by the respondents therein, in discharging their duty liability and payment was to be made only through PLA, it has been conceded that there is neither evasion of duty nor any loss in availing the cenvat credit. After extracting the finding of the Tribunal, the Punjab and Haryana High Court, in Punjab Casting Pvt. Ltd., 's case (cited supra), at Paragraph 10, held as follows:

"10. It is evident from these findings that both the appellate authorities had found no fault with the mode of payment of excise duty by the respondents. Cenvat account of the respondents had sufficient credit and they discharged their duty liability through the same instead of making payment through PLA; there is neither loss to the revenue nor there is evasion of duty."

43. Though Mr.K.Jayachandran, the learned counsel for the appellant has contended that when the revenue has not chosen to file an appeal against the abovesaid judgment, as there was no revenue loss and that the said decision can be made applicable to the facts of the instant case, we are not inclined to accept the said contention for the reason that in the above reported judgment, there is no occasion for the Punjab and Haryana High Court to consider the decision of the Hon'ble Supreme Court in Hans Steel Rolling Mill v. Commissioner of Central Excise, Chandigarh reported in 2011 (265) ELT 321 (SC). The Hon'ble Apex

Court, after going through the scheme and the material on record, at Paragraphs 12 to 14, held as follows:

"12. On going through the records it is clearly established that the appellants are availing the facilities under the Compound Levy Scheme, which they themselves, opted for and filed declarations furnishing details about annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of production under Section 3 of the Act and Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 is a separate scheme from the normal scheme for collection of central excise duty on goods manufactured in the country. Under the same, Rule 96P of the Rules stipulate the method of payment and Rule 96P contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and Rules are excluded.

13. The judgments of this court in the cases of Commissioner of C.Ex & Customs v. Venus Castings (P) Ltd., reported in 2000 (117) ELT 273 (SC) and Union of India v. Supreme Steels and General Mills reported in 2001 (133) ELT 513 (SC), has clearly laid down the principle that the, compound levy scheme is a separate scheme altogether and an assessee opting for the scheme is bound by the terms of that particular scheme. It is settled matter now that Section 11A of the Act has no application for recovery under different schemes.

14. In the case of Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd reported in 2000 (118) ELT 311 (SC), this court has categorically stated that Section 11A of the Act is not an omnibus provision which stipulates limitation for every kind of action to be taken under the Act or Rules. An example can be drawn with the Modvat Scheme, because even in that particular scheme, Section 11A of the Act had no application with regard to time limit in the administration of that scheme."

44. When the judgment of the Hon'ble Supreme Court has declared that the compounded levy scheme as a comprehensive scheme and also categorically held that the general provisions of the Act and the Rules, are excluded, and further held that

the assessee opting for the scheme, is bound by the terms of that particular scheme, reliance made on the decision of the Punjab and Haryana High Court in Punjab Casting Pvt. Ltd., 's case (cited supra), is not tenable, as the law of the land is binding on us.

45. The contention of the learned counsel for the appellant, based on the Bombay High Court judgment that payment of duty is only procedural and by utilizing cenvat credit for payment of central excise duty, is only revenue neutral and the other contentions on general principles, also cannot be accepted in the light of the subsequent decision of the Hon'ble Supreme Court in Hans Steel Rolling Mill's case (cited supra), which has exclusively dealt with the compounded levy scheme.

46. In Kalai Magal Alloys Steel Pvt. Ltd., v. CESTAT, Chennai reported in 2014 (303) ELT 44 (Mad.), the assessee therein was issued, with a show cause notices, for payment of duty, for Rs.14,68,564/- for the period from September, 1997 to March, 1998 and Rs.26,38,800/- for the period from April, 1998 to March, 1999 and in all, a demand was made for Rs.41,07,364/- together with interest, in terms of Rule 96ZP. The assessee did not submit any reply to the show cause notices, but participated in the adjudication proceedings. The Original Authority and the Tribunal confirmed the proposal made in both the show cause notices, against which, the assessee filed an appeal to this Court, raising a substantial questions of law. The department placed reliance on the decision of the Hon'ble Supreme Court in Hans Steel Rolling Mill's case (cited supra). Submissions have been advanced that compounded levy scheme is a separate scheme, by which, a procedure for determining the payment, has been made and the question of applying Section 11A to such scheme, does not arise.

47. Reading of Kalai Magal Alloys Steel Pvt. Ltd., 's case (cited supra) shows that contentions have been made that the Hon'ble Supreme Court has held that the time limit prescribed under one scheme, could be unwarranted for another scheme and the time limit under Section 11A is not an exception and hence, the substantial questions of law, "whether the Tribunal was justified in upholding the demand contrary to Section 11A of the Central Excise Act, 1994 on the ground that Rule 96ZP of the Central Excise Rule, 1944" contained where no period of limitation is prescribed? Should be answered as against the assessee. Yet another substantial question of law, raised therein was, "whether Rule 96ZP of Central Excise Rule, 1944 and Section 3A of the Central Excise Act, 1944 are the charging provisions and also provide for machinery for recovery of due?" Dealing the above substantial questions of law and on the facts

and circumstances of the said case, a Hon'ble Division Bench of this Court, in Kalai Magal Alloys Steel Pvt. Ltd., 's case (cited supra), at Paragraph 8, held as follows:

"The Hon'ble Supreme Court held that the appellant therein is availing facilities under the compounded levy scheme (as that of the case on hand) under Rule 96ZP of the Rules. It has been further held that the appellant therein opted for and filed declarations furnishing details about the annual capacity of production and duty payable on such capacity of production. The Supreme Court pointed out that it has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity production under Section 3 of the Act and Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997, is a separate scheme from the normal scheme for collection of central excise duty on goods manufactured in the country and under the same Rules, Rule 96P stipulates the method of payment of duty and it contains a provision regarding time and manner of payment and it also contains provisions regarding the payment of interest and penalty in the event of delay in payment or non-payment of the dues and this being a comprehensive scheme in itself, the general provisions in the Act and Rules are excluded. The Hon'ble Apex Court took note of its earlier decision in the case of Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd., reported in 2000 (118) E.L.T. 311, wherein, it was held that Section 11A of the Act is not an omnibus provision, which stipulates limitation for every kind of action to be taken under the Act and Rules, and an example was cited with regard to the Modvat Scheme and was further held that even in that particular scheme, Section 11A of the Act had no application with regard to the time limit in the administration of that scheme. The Hon'ble Supreme Court further took note of the decision in the case of Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd., (supra) and held that it has squarely laid down the principle that compounded levy scheme is a separate scheme altogether and the assessee opting for the scheme, is bound by the terms of that particular scheme and Section 11A of the Act has no application for recovery under the different schemes."

48. Though the learned counsel for the appellant made an attempt to distinguish the judgment in Kalai Magal Alloys Steel

Pvt. Ltd., 's case (cited supra) and contended that in the abovesaid judgment, this Court only held that unutilized cenvat/modvat credit, cannot be adjusted against the liability under Rule 96ZO of the erstwhile Central Excise Rules, 1944 and no where, in the judgment, it is stated that the duty accrued, during the period under the compounded levy scheme, should be paid by cash through PLA, this Court is not inclined to accept the said contention, for the reason that Kalai Magal Alloys Steel Pvt. Ltd., 's case (cited supra), is certainly a decision applicable to the case on hand, on the dictum that the scheme is comprehensive, as regards payment of duty, time and manner of payment. The said judgment is also applicable, on the grounds of exclusion of the general provisions of the Act and the Rules, during the period of the compounded levy scheme. When the general provisions of availing cenvat credit are excluded, consequences thereof, is to make payment through PLA, which means remittance in cash.

49. In the light of the discussion and decisions considered, this Court is not inclined to accept the contentions of the appellant. Hence, first and second substantial questions of law, as regards payment of duty, are answered against the assessee. However, as held above, the third substantial question of law, as regards penalty, is answered in favour of the assessee.

50. In the result, the Civil Miscellaneous Appeal No.1449 of 2009 is dismissed and Civil Miscellaneous Appeal No.1450 of 2009 is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

skm

To

1. The Customs Excise and Service
Tax Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Chennai.

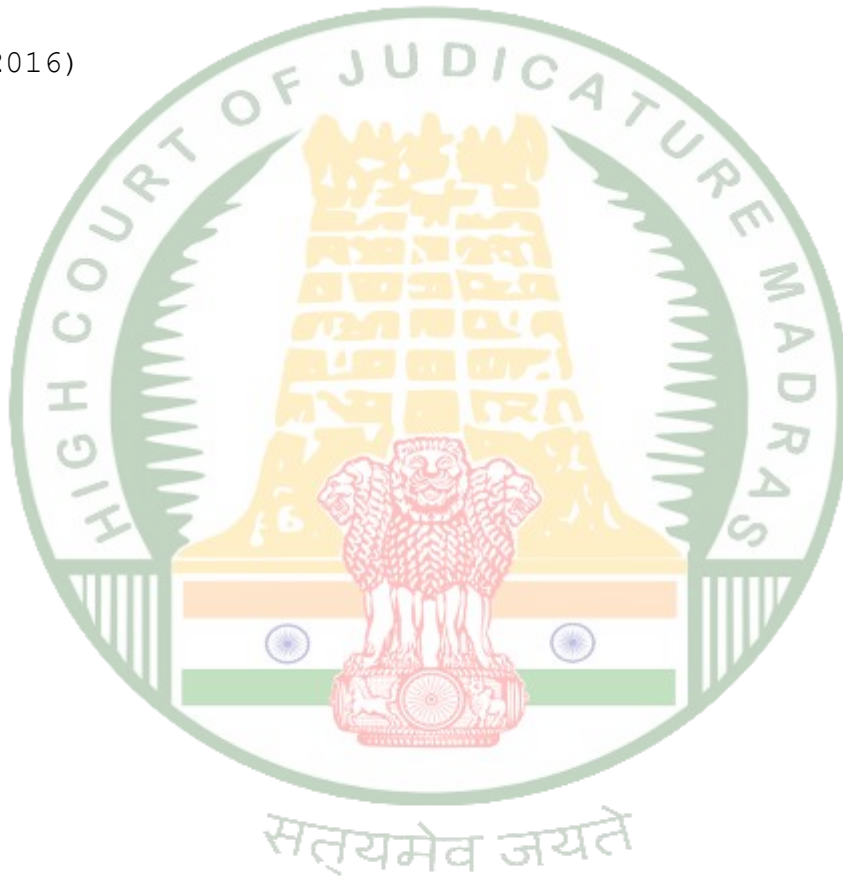
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2. The Commissioner of Central Excise,
Chennai II Commissionerate,
No.692, MHU Complex, Anna Salai,
Chennai 600 035.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.40551
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.41471

C.M.A.Nos.1449 and 1450 of 2009

PPA (CO)
CA(20/09/2016)



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