IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

Coram

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1122 to 1125 of 2017
and
CMP.Nos.5565 to 5571 of 2017

M/s. Indian Additives Limited
Express Highway
Manali, Chennai 600 068. ...Petitioner/Appellant in all CMAs.

Vs.

The Commissioner of Central Excise,
Chennai I Commissionerate
Chennai. ...Respondent in all CMAs.

Prayer:

Civil Miscellaneous Appeals have been filed under Section 35-G of the Central Excise Act, 1944 against the final order Nos. 40149, 40150, 40151 and 40152 of 2015 dated 13.02.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, against the order in Original Nos, 4 & 5/2006 dated 30.01.2006 on the file of the Commissioner of Central Excise, Chennai.

For Petitioner in all CMAs. : Mr.V.S.Manoj
for
Mr.K.Vaitheeswaran

For Respondent in all CMAs. : Mrs.R.Hemalatha

COMMON ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

These Appeals have been filed under Section 35-G of the Central Excise Act, 1944 as against the final order Nos. 40149, 40150, 40151 and 40152 of 2015 dated 13.02.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai

2. Brief facts of the case of the appellant are as follows:-

The appellant is engaged in the manufacture of additives for lubricating oil classifiable under Chapter 38 of the Central

Excise Tariff Act, 1985. The appellant availed CENVAT credit in respect of excise duty paid on inputs and capital goods and service tax paid on input service. Show Cause Notices dated 01.02.2005, 06.05.2005 and 27.10.2009, were issued by the Commissioner of Central Excise, Chennai demanding a sum of Rs.31,30,637/-, Rs.5,94,724/-, Rs.2,74,481/- respectively being the MODVAT/CENVAT credit taken on inputs, which were not used in the manufacture of final products, during the periods from January 2000 to March 2004, April 2004 to January 2005 and March 2009 respectively. The appellant sent replies to the said Show Cause Notices stating that the shortage was due to heat, evaporation and differences in measurement methodologies. After considering the reply of the appellant, the jurisdictional Commissioner and the Commissioner (Appeals), passed orders confirming the demand made in the Show Cause Notices, with applicable rate of interest and also imposing penalty. Aggrieved against the same, the appellant is before this Court with the present Appeals.

3. Heard the learned counsel for the appellant and the learned counsel for the respondent. Perused the materials available on record.

4. Perusal of records would show that the appellant is engaged in manufacture of additives for lubricating oil classifiable under Chapter 38 of the Central Excise Tariff Act, 1985. The appellant availed CENVAT credit in respect of excise duty paid on inputs and capital goods and service tax paid, on input service. The Show Cause Notices were issued by the Commissioner of Central Excise, Chennai on the ground that during the course of verification of MODVAT/CENVAT credit accounts, and connected records, it was noticed by the Jurisdictional Range officer that the appellant was conducting physical stock taking of inputs on monthly basis and the quantity of inputs were found to be short and adjusted in the internal records, as consumption. Further, it was stated by the Range officer that these shortages were not reflected, in the statutory records viz., RG23A Part I account and adjusted stock alone was shown, as new opening balance for each month, without reversing the MODVAT/CENVAT credit taken, on the said shortages of inputs. In the Show Cause Notice, it is also stated that it appeared that these adjustments were made by suppressing the facts, in order to retain the credit involved on the said shortages with an intention to evade payment of duty. Thus, a Show Cause Notice dated 01.02.2005, demanding a sum of Rs.31,30,637/- being the MODVAT/CENVAT credit taken on the inputs not used in the manufacture of final products during the period from January 2000 to March 2004, was issued under Rule 13 (2) of the Cenvat Credit Rules 2001 & 2002 and under erstwhile Rules 57 I(4), 57 AH(2) of Central Excise Rules, 1994 read with Section 11AC of the Central Excise Act, 1944, in respect of the

contravention of the above Rules. During the pendency of the adjudication proceedings, another Show Cause Notice dated 06.05.2005 was served, demanding a sum of Rs.5,94,724/- for similar shortages noticed, in stock of inputs, for the subsequent period from April 2004 to January 2005.

5. The appellant sent reply notices dated 03.05.2005 and 06.06.2005 respectively, for the above said Show Cause Notices. In the reply notices, the appellant has contended that the raw materials, which are liquid in nature with very high viscosity, were received in their factory in tankers/ISO containers and credit was taken only on actual quantity received. The raw materials were duly measured by using a weighbridge and credit was taken only in respect of the quantity, determined through the weighbridge. According to the appellant, raw materials are stored in various storage tanks located in the factory and by the very nature of the materials, there will be a physical change, through thickening, based on the temperature level. The appellant further submitted that it is not possible for them to use the raw materials as such, and the tanks are equipped with heating facility and a temperature gauge, to monitor and measure the temperature. After heating the tank, they draw the material and the quantity drawn for consumption is measured by mass-flow meter, before using in production. Since only weighbridge was used at the time of receipt, and a different measurement device viz. mass flow meter was used for flowing liquids, a reconciliation was done, at the end of every month. The appellant also contended that Cenvat Credit Rules do not provide for reversal of credit, based on the difference in measurement methodologies.

6. It is contended by the appellant before the authorities that shortage was inevitable due to the nature of inputs, the process involved in the manufacture, when huge volume of materials handed. Before the authorities below, to substantiate their claim, the appellant has cited various decisions of the Tribunal viz., P.K.P.N.Spinning Mills Vs. Collector of Central Excise, Coimbatore reported in (1997) 89 ELT 568 (T); CCE .vs. Bombay Dyeing & Mfg. Co. Ltd. reported in (1998) 97 ELT 101 (T); Mardia Chemicals Ltd. Vs. Commissioner of Central Excise, Rajkot reported in (2003) 158 ELT 378 (T); and Gharda Chemicals Ltd. vs Commissioner Of Central Excise reported in 2004 (167) ELT 359 : 2004 (167) ELT 359 Tri Mumbai; and also stated the credit has been properly taken and that there was no fraud, wilful misstatement, collusion or suppression of facts to evade payment of duty.

7. Said decisions have been analysed in detail by the Commissioner, who came to the conclusion that those decisions are different and distinguishable, from the present case on hand, in all aspects.

8. The Commissioner by its common Order-in-Original Nos.4 & 5 dated 30.01.2006 has stated that if shortage was due to weighment difference, there will be some variations, during all the months of a year, or there must be a pattern. However, on perusal of the Month wise Stock Taking Report, the Commissioner has opined that there was no shortage or excess in respect of various inputs and book stock, and physical stock was tallying exactly, during majority of the months, and variations were only for a particular period. The Commissioner has also taken 3 products out of 22 inputs for illustration purpose, as they account for more than 50% to 60% of the credit, availed by the appellant. For example, the Commissioner has taken the following 3 inputs, which accounted for around 54% out of Rs.8.08 Crores of Cenvat Credit availed during the year 2001-02:-

Sl.No	Input	Qty. Received (MT)	Credit Taken (Rs.)
1	Glissopal 1000	1338.790	1,08,51,304
2	OLOA 200	1927.415	1,45,68,117
3	OLOA 262	1009.100	1,81,59,830
		4275.305	4,35,79,251

9. Monthwise variations between the physical stock and book stock, in respect of the above inputs, for the year 2001-2002 are tabulated below:-

2001-02 Qty in MT

A. GLISSOPAL 1000 (Poly Iso Butene)												
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Physical Stock	117.808	108.185	189.766	56.626	56.626	206.086	284.466	193.000	55.161	79.690	120.964	0.000
Book Stock	117.808	108.185	191.844	59.470	56.626	206.086	284.466	193.000	50.161	79.690	120.964	0.000
Variation	0.000	0.000	-2.078	-2.844	0.000	0.000	0.000	0.000	5.000	0.000	0.000	0.000
B.OLOA 200												
Physical Stock	70.226	137.999	195.745	71.863	170.632	146.261	177.863	77.962	119.607	222.767	182.925	145.158

A. GLISSOPAL 1000 (Poly Iso Butene)												
Book Stock	70.226	137.999	195.745	76.389	170.632	146.261	177.863	77.962	121.498	235.425	182.925	146.433
Variation	0.000	0.000	0.000	-4.526	0.000	0.000	0.000	0.000	-1.891	-12.658	0.000	-1.275

B.OLOA 262												
Physical Stock	193.913	151.349	101.482	49.526	96.932	92.555	35.684	21.627	56.165	106.120	58.042	39.141
Book Stock	193.913	151.349	101.482	49.526	97.507	92.555	35.774	23.827	55.663	104.442	58.042	39.274
Variation	0.000	0.000	0.000	0.000	-0.575	0.000	-0.090	-2.200	0.502	1678	0.000	-0.133

10. It is seen from the above table that for more than 70% of the months, physical stock exactly tallies with book stock and not even, a meager variation is reported. The above position indicates that there are no problems or shortcomings in the measuring system adopted by the appellant.

11. During the year 2004-05 also, similar picture emerges, and the details are reproduced below:-

2004-05 Qty in MT

A. GLISSOPAL 1000										
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan
Physical Stock	65.457	44.033	6.882	6.734	127.824	63.260	80.228	84.124	100.807	16.200
Book Stock	66.158	42.657	7.719	5465	127.824	62.850	80.228	84.124	101.207	18.940
Variation	-0.701	1.376	-0.837	1.269	0.000	0.410	0.000	0.000	-0.400	-2.740

B.OLOA 200										
Physical Stock	60.091	223.995	141.523	199.249	203.870	104.813	101.527	3.171	33.556	31.046

B.OLOA 200										
Book Stock	60.091	223.995	141.253	200.455	203.870	103.103	101.527	6.571	33.556	32.726
Variation	0.000	0.000	0.000	-1.206	0.000	1.710	0.000	-3.400	0.000	-1.680

B.OLOA 262										
Physical Stock	89.981	54.151	21.988	12.071	89.519	99.062	99.871	73.569	86.319	19.118
Book Stock	89.981	54.151	21.988	12.071	89.519	99.062	99.871	73.569	86.319	19.130
Variation	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	-0.012

12. The above tabular column would go to show that shortages noticed, during the monthly stock takings, during some of the months, cannot be attributed to the difference in measurement methodology. When there is no variation in majority of the months, shortages as detailed below, which are substantial, in terms of quantity, does not substantiate the argument of the appellant.

OLOA 200 (in MT)		
Sl.No	Month	Shortage
1	Mar '00	5.244
2	Oct '00	3.130
3	Jul '01	4.526
4	Jan '02	12.658
5	Apr '03	3.807
6	Nov '04	3.400

GLISSOPAL 1000 (in MT)		
Sl.No	Month	Shortage
1	Feb '00	5.238
2	Apr '00	3.304
3	May '00	13.510
4	Jul '00	6.031

GLISSOPAL 1000 (in MT)		
5	Oct '00	6.061
6	Jan '01	10.453
7	Feb '01	5.282

13. In the above said circumstances, the Commissioner held that the argument of the appellant that shortages were due to calibration errors, parallax errors, difference in weighment methodology, etc., have been advanced, to cover up the shortages. Therefore, the Commissioner rejected the reasons given by the appellant for the shortage of inputs and held that the shortages shown in the monthly stock taking report as the actual shortages, have not been used in the manufacture of final products.

14. Finally, the Commissioner by his common Order-in-Original Nos.4 & 5 dated 30.01.2006 has given a finding that the appellant had suppressed the facts, in order to retain the credit involved on the said shortages with an intention to evade payment of duty and therefore, the extended time limit, as provided under the erstwhile Rules 57 I and 57 AH of Central Excise Rules, 1944 and Rule 12 of Cenvat Credit Rules 2001/2002 read with proviso to Section 11A(1) of Central Excise Act, 1944, is invokable for demand of credit of duty, taken on the shortages of inputs covered under the Show Cause Notices dated 01.02.2005 and 06.05.2005; and held that the appellant is also liable for penalty under Rule 13 or Rule 15 of Cenvat Credit Rules, 2002, as the case may be, for the period from January 2000 to March 2004 and April 2004 to January 2005. Since the inputs/shortages were not used by the appellant in the final products, the Commissioner held that the appellant is liable to reverse the MODVAT/CENVAT Credit availed on the said shortages and passed an order of demand of Rs.37,25,361/- as detailed in the annexure to the Show Cause Notices dated 01.02.2005 and 06.05.2005 and also imposed penalty of Rs.31,30,637/- for the period from 01.01.2000 to 31.03.2004 and penalty of Rs.40,000/- for the period from 01.04.2004 to 31.01.2005. He also ordered that the appellant is liable to pay interest, at the appropriate rate under the relevant provisions.

15. Further more, there was another Show Cause Notice dated 27.10.2009 by the Deputy Commissioner of Central Excise, on similar facts, for an amount of Rs.2,74,481/- being the cenvat credit taken on the shortage of inputs. In response to the same, the appellant has sent a reply stating the same reasons, viz., difference in methodology etc., The Deputy Commissioner of Central Excise vide Order-in-Original No.12/2010 dated 28.05.2010 passed an order, demanding a sum of Rs.2,74,481/-, as detailed in the Show Cause Notice dated

27.10.2009, with applicable interest. Penalty of Rs.2000/- was also imposed. Against which, the appellant has preferred an appeal before the Commissioner of Central Excise (Appeals), Chennai. The Commissioner (Appeals), vide order dated 20.02.2013 made in Order-in-Appeal No.28/2013 (M-I), allowed the appeal, in respect of penalty, and dismissed the appeal in respect of the demand and interest.

16. Aggrieved against the Order-in-Original Nos.4 and 5/2006 passed by the jurisdictional Commissioner of Central Excise, Chennai, and also the Order-in-Appeal No.28/2013 (M-I) passed by the Commissioner (Appeals), Chennai, the appellant has filed Appeals (E/337/2006, E/381/2006 and E/41246/2013) before the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Chennai,. The appellant has also filed another appeal (E/141/2006) against the denovo order of the Commissioner (Appeals) dated 30.09.2005 made in No.90 and 91 (M-I), wherein the demand of Rs.4,46,330/- and Rs.12,811/- respectively were confirmed.

17. The Appellate Tribunal, by its common order dated 13.02.2015 passed final order No.40149 - 40152/2015, dismissed the above appeals E/141/2006, E/337/2006, E/381/2006 and E/41246/2013 and upheld the orders, disallowing credit in respect of all the four appeals and also upheld the order imposing equivalent penalty, under Section 11AC in respect of Appeals E/381/2006 and E/337/2006. However, the Appellate Tribunal set aside the penalty imposed, in respect of Appeals arising from E/141/2006, E/381/2006 and E/337/2016. Aggrieved against the common order passed by the Appellate Tribunal, Appeals in CMA.Nos.1122 to 1125 of 2017 have been filed before this Court.

18. Perusal of material on record would further go to show that the demand made by the authorities was for the reason that the inputs were not utilized fully, in the manufacturing process and the percentage of loss was, from 5.56 to 5.58%. It is also clear from the records that the appellant themselves have recorded such shortage of input, after the receipt of the inputs to their factory. While determining the shortage, it is clear from the records that the inputs found short, were not consumed, in the manufacturing process. When the inputs were not at all used in the process of manufacture, cenvat credit is not allowable.

19. Contention of the appellant is that the shortage and loss are due to evaporation, due to reduction of viscosity and volatile nature of the inputs also. While using the inputs for the manufacture of final products, storage tanks are heated to reduce the viscosity, so as to facilitate the flow of inputs in the pipelines. Since inputs are in high viscosity condition,

there shall be always quantity of inputs remained in the pipeline. The appellant has further contended that while heating and transferring the materials from storage tanks through pipelines within the factory, there is considerable amount of loss of material due to evaporation, which resulted in maximum loss of approximately 5.58% of input materials.

20. The said contentions of the appellant cannot be countenanced for the reason that there cannot be continuous shortage of inputs for every month. Since liquid inputs have high viscosity and not volatile in nature, there cannot be any evaporation loss, even while heating the material in the storage tanks. Moreover, the appellant has never advanced any ground of evaporation before the adjudicating authority, but only argued that the difference was due to weighment methods. The stand taken by the appellant that inputs remained in the pipeline during the process of transit, cannot be accepted, for the reason that, if the raw materials remained in the pipeline, in the continuous process, the shortage should be at one time, as in the first-in first-out, and there cannot be continuous shortage during the process of transit. Further, it is seen from the material on records that on verification of physical stock and book stock for the year 2001-02, there was no shortage between the physical stock and the book stock, for more than 70% of the period, whereas, only for few months and for particular inputs, there had been differences in the physical stock and book stock. The appellant has not substantiated his contention that the shortage was due to weighment methodologies. The appellant has neither recorded the shortage in RG-23 and part-1 and part-2 nor intimated the shortage to the department, instead the appellant has deliberately shown it as the consumption at the end of the month. Therefore, the adjudicating authority has rightly invoked the extended period.

21. It could be seen from the material on record that not even a single variation is recorded in the stock, for more than 70% of the period, whereas, for particular inputs, there is a huge shortage for a specified period i.e., from April 2001 to March 2002, which is reproduced hereunder:-

"A. GLISSOPAL 1000 (Poly Iso Butene)

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Physical Stock	117.808	108.185	189.7661	56.626	56.626	206.086	284.466	193.000	55.161	79.690	120.964	0.00

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Book Stock	117.808	108.185	191.844	59.470	56.626	206.086	284.466	193.00	50.161	79.690	120.964	0.00
Variation	0.000	0.000	-2.078	-2.844	0.000	0.000	0.000	0.000	5.000	0.000	0.000	0.000
B.OLOA 200												
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Physical Stock	70.226	137.999	195.745	71.863	170.632	146.261	177.863	77.9620	119.607	222.767	182.925	145.158
Book Stock	70.226	137.999	195.745	76.389	56.625	206.086	284.466	193.000	121.498	235.425	182.925	146.433
Variation	0.000	0.000	0.000	-4.526	0.000	0.000	0.000	0.000	-1.894	-12.658	0.000	-1.275
B.OLOA 262												
Physical Stock	193.913	151.349	101.482	49.526	96.932	92.555	35.684	21.627	56.165	106.120	58.042	39.141
Book Stock	193.913	151.349	101.482	49.526	97.507	92.555	35.774	23.827	55.663	104.442	58.042	39.141
Variation	0.000	0.000	0.000	0.000	-0.575	0.000	-0.090	-2.200	0.502	1.678	0.000	-0.133

If there was shortage of physical stock, due to evaporation while heating (or due to weighment methods), the appellant could have explained the same, in their reply to the Show Cause Notice. But it is clear that the appellant has neither explained the same before the officials nor before the Tribunal. From the above table, it is seen that for the input OLOA 200, there was highest shortage of 12.658 MT in the month of January 2002 and 5.244 MT, in the month of March 2000. Similarly, in the case of Glissopal 1000, the highest shortage of 13.510 MTs was noticed in the month of May 2000 and 10.453 Mts, in the month of January 2001. The inputs have high viscosity and not volatile in nature. Considering the fact that shortage of inputs has been accounted only for specific months, and not in a continuous manner, it is established that shortage of inputs, is not on account of mere difference in variation of weighment methodology, but the said quantity of inputs have not been used in the manufacture of final products, after the receipt of inputs to the appellant factory. The shortage noticed is not a negligible quantity and that the appellant themselves have stated that the shortage is 5.58%.

22. In the case of Bhuwalka Steel Industries Ltd., reported in (2010) 249 ELT 218, the larger Bench of the Tribunal has clearly laid down the guidelines for allowing credit on shortage of inputs. The relevant portions of the said decision are reproduced below:-

> "12. Considering arguments from both sides and the case laws cited by both sides which have been extracted above, we are of the considered view that different types of shortages cannot be dealt with according to any one inflexible and fixed standard for the purpose of allowing credit under Rule 3 (1) of the Cenvat Credit Rules. Decision to allow or not to allow credit in any particular case will depend on various factors such as the following:-
>
> (i) Whether the inputs/capital goods have been diverted enroute of the entire quantity with the packing intact has been received and put to the intended use at the recipient factory.
>
> (ii) Whether the impugned goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc.
>
> (iii) Whether the impugned goods comprise countable number of pieces or packages and whether all such packages and pieces have been received and accounted for at the receiving end.
>
> (iv) Whether the difference in weight in any particular case is on account or weighment on different scales at the dispatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and

Measures Act, 1976.

> (v) Whether the recipient assessee has claimed compensation for the shortage of goods either from the supplier or from the transporter or the insurer of the cargo.
>
> 13. All these factors listed above and any other relevant factor has to be kept in view in deciding any particular case as to whether the entire consignment has been received at the end of the recipient assessee without any diversion. Tolerances in respect of hygroscopic, volatile and such other cargo has also to be allowed as per industry norms excluding, however, unreasonable and exorbitant claims. Similarly, minor variations arising due to weighment by different machines will also have to be ignored if such variations are within tolerance limits. In our view, each case has to be decided according to merit and no hard and fast rule can be laid down for dealing with different kinds of shortages.

23. In the said decision, the Larger bench of the Tribunal has clearly laid down the conditions and held that while complying the above tolerance limit for each entry is to be allowed, if there are any minor violations due to weighment method should be ignored, provided such violations are within the tolerance limit. Whereas, in the present case, the shortage is neither attributed due to volatile nature nor the percentage of shortage is negligible, as the appellant themselves have stated that the shortage is 5.58%. The appellant has failed to put forth any justifiable reason that the shortage was purely due to the difference in actual weighment, and mass-flow meter. In the present case, very high abnormal shortage of inputs ranging from 3.0 Tons to 12.658 Tons, in respect of OLOA 200 and in the case of Glissopal 1000, from 3.3 Tons to 13.51 Tons. The appellant has deliberately adjusted the shortage in their internal records, as consumption of inputs, at the end of the month. It is a clear case of suppression of facts where the appellant has deliberately adjusted the shortage, as if it was used in the manufacture of final products, at the end of every month and created fresh opening balance at every month, without making reversal of credit on the shortage of inputs. By applying the above said decision, the Commissioner came to the conclusion that MODVAT/CENVAT credit is not applicable on shortage of inputs, after the receipt into the factory, as they are not used in or in relation to the manufacture of final

products. Therefore, in such circumstances, the authorities below have rightly rejected the reasons given by the appellant for the loss/shortage of inputs and ordered as demanded in the Show Cause Notice.

24. Learned counsel for the appellant relied on the Judgment reported in 2015 (324) E.L.T 295 (Mad) between Rupa & Co. Ltd., ..vs.. CESTAT, Chennai, wherein, yarn was converted into fabric for making garments and the assessee claimed about 5% of quantity and value of yarn was lost, while making it into fabric and that they were entitled to take credit for the entire quantity and value of input that had actually produced fabric that was lying in store. In the said decision, it is held that since the Department had not disputed the loss to the extent of 5% of total quantity of finished product, the assessee therein was entitled to Cenvat Credit on total quantity and value of inputs that went into making of fabric. The relevant portions are as follows:-

> "12. Keeping the above in mind, if we get back to the scope of Rule 9A, it is seen that there are three expressions used. They are 6 (i) inputs of such finished product (ii) lying in stock or in process and (iii) contained in finished product. 13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product' contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety. 14. If the purport of Rule 9A is not understood in this manner, every manufacturer will have to pay excise duty on the quantity and value of inputs, which go to the making of a finished product, whose weight will never be equivalent to the sum total of the weight of all the inputs. Therefore, this is not the way to understand Rule 9A. 15. Right from the stage of issue of show cause notice upto the

stage of the order of the Tribunal, the claim of the appellant that they incur a manufacturing loss to the extent of 5% of the total quantity of the finished product, has not been disputed by the Department. In cases where there is a dispute about the existence of a loss and in cases where there is a dispute with regard to the quantum of loss, the questions may have to be left open. But, in cases where the quantum of manufacturing loss claimed at 5% by the appellant is never disputed by the Department from the stage of issue of the show cause notice upto the stage of the order of the Tribunal, the interpretation given to Rule 9A cannot be accepted.

25. In the above said decision, 5% loss of total quantity in fabric was claimed and the Court ordered that the assessee is entitled to take credit for the value that was lost while making the finished product. However, in the present case, there was no loss during the heating of input materials and the claim of loss due to evaporation has not also been properly substantiated. The Judgment cited by the appellant cannot be taken equated for the present case. The authorities below have rightly decided the issue and there is no infirmity in the orders passed by the respondent.

26. For the reasons stated supra, all the above four Civil Miscellaneous Appeals in CMA.Nos.1122 to 1125 of 2017 are dismissed and the final order Nos. 40149, 40150, 40151 and 40152 of 2015 dated 13.02.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai are confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

raja/mra

To

1. The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench
Chennai.

2. The Commissioner of Central Excise,
Chennai I Commissionerate
Chennai.

+ 4 cc to Mrs.R.Hemalatha Advocate,SR.5425(06/03/2018)

+ 1 cc to Mr.K.Vaitheeswaran Advocate,SR.5261

C.M.A.Nos.1122 to 1125 of 2017
and
CMP.Nos.5565 to 5571 of 2017

mr(co)
nr 27/02/2018