IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1335 of 2018

NGA Steels Private Limited,
Pappankadu,
Kankanpalayam Village,
Maur-637 304 (Near),
Palmadai. .. Appellant/Plaintiff

Vs.

1.Union of India, rep. by Secretary,
to Ministry of Finance,
Rep. of Revenue, New Delhi.

2.Commissioner of Central Excise,
Coimbatore-18.

3.Superintendent of Central Excise,
Tiruchengode Range.

4.Assistant Commissioner of Central Excise,
Erode. .. Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 11.03.2009 made in W.P.No.4437 of 1998.

Prayer in W.P.No.4437 of 1998:-
Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring the notification No.33/97 CE (NT) dated 01.08.1997 issued by the first respondent as ultravires and unconstitutional in so far as the petitioners are concerned.

For Appellant : Mr.S.Balaji

For Respondents : Mr.V.Sundareswaran

JUDGMENT

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

Instant writ appeal is filed against the order, dated 11.03.2009, made in W.P.No.4437 of 1998, by which, the writ Court dismissed the writ petition, seeking Declaration, declaring Notification No.33/97 CE(NT), dated 01.08.1997, as ultravires and unconstitutional.

2. Short facts leading to the appeal are as follows:

The appellant is a manufacturer of MS Bars, MS Rods and MS Angles, falling under Chapter 72 of the Schedule to the Central Excise Tariff Act (1985) (Act 5 of 1986), obtained Central Excise licence, bearing No.R(NE)I/96, on 01.02.1996, from the Superintendent of Central Excise, Tiruchengode Range, Erode Division, third respondent herein. With a view to promote industries, the Secretary to the Government, Ministry of Finance, Union of India, New Delhi, first respondent herein, has issued Notification No.4/94, framing Rules 57Q to 57U of Central Excise Rules, providing Modvat Credit facility, for duty paid on the capital goods, used for the manufacture of specified goods.

3. The appellant had purchased lands in Mayur in Sankaru Taluk, Salem District, for manufacturing steels. Construction work was commenced during the year 1995 and completed in the year 1997. At the time of manufacturing, the appellant had approached SIPCOT, Tamil Nadu and obtained a loan of Rs.125.00 lakhs. The total cost of the project was Rs.247.00 lakhs and the balance amount was obtained through sale of properties, belonging to its directors and private loans. The construction and other allied works were completed, in the month of August' 1997, and the appellant started regular commercial production in the month of September' 1997.

4. While so, Secretary to the Government, Ministry of Finance, Union of India, New Delhi, first respondent herein, issued Notification No.33/97, dated 01.08.1997, which inter alia provided that a manufacturer of inputs, shall not be entitled to utilise accumulated balance of excise duty for payment of duty, on any excisable goods. As a result, the appellant has been denied the right to utilize the accumulated balance of Rs.9,10,899.70. Thereafter, the appellant has been called upon to pay excise duty on the manufactured steel goods, from 01.08.1997, without taking credit for the accumulated duty of Rs.9,10,899.70. Being aggrieved by the same, the appellant has filed W.P.No.4437 of 1998, seeking for a writ of declaration, declaring Notification No.33/97 CE(NT), dated 01.08.1997, issued

by the first respondent, as ultravires and unconstitutional.

5. Before the writ Court, the Deputy Commissioner of Central Excise, Legal Headquarters, Coimbatore, has filed a counter affidavit, contending inter alia that Section 3 of the Central Excise Act, 1944, has empowered the Central Government, to levy duties specified in the schedule to the Central Excise Tariff Act, 1985 and further, Section 3A empowers the Central Government with the emergency power, to increase the duties of excise, taking into various factors, like public interest etc.

6. Respondents have further submitted that in exercise of the above emergency power, to increase the duties of excise, under Sub-Section 1(3) of Section 3A and in view of the fact that, the Central Government felt that there is large scale evasion of excise duty existed in respect of certain commodities like Bars, rods, billet, ingot etc., falling under chapter 72, Central Government have introduced the compounded levy scheme, for these products, with a view to safe guard the interest of revenue, as per Notification No.30/97 CE (NT) and 31/97-CE (NT), dated 01.08.1997.

7. It was the further case of the respondents that as per Section 37(1) of the Central Excise Act, 1944, the Central Government, may make rules to carry into effect the purpose of the Act and accordingly, with a view to safeguard the interest of revenue, Notification No.33/97-CE(NT) dated 01.08.1997 was introduced with effect from 01.08.1997.

8. Furthermore, as per section 37(2)(v), the Central Government may make Rules to regulate the production/manufacture, if such regulation is essential for proper levy and collection of duty, since there is exorbitant evasion of duty, on the products manufactured by the manufacturer and these goods have been notified and specified under Section 3A and compounded levy has been fixed based, on the production capacity of the manufacturer, and in fact, even in the Act, the fact that these areas are prone to evasion of duty are put in black and white. It is also the submission of the respondents before the writ Court that it is pertinent to note that the petitioner has not challenged constitutional vires of the provision in the Act and as such, is bound by the Act.

9. Respondents have further contended that revenue to the exchequer, can be achieved by other means also i.e. by plugging out the irregular availment of Modvat credit on inputs and Captial Goods. In view of the above, Modvat Credit facility granted to these units have been withdrawn. The assessee's contention is that the action of taking back the Modvat credit is not proper. In view of the fact that this facility was given to them, only to avoid the cascading effect of duty imposed on

the products is not tenable, since capital goods, on which Modvat credit is taken, do not get duty levied on them subsequently and hence, the question of cascading effect of duty, does not arise at all.

10. Before the writ Court, the respondents have further submitted that, as a result of large scale evasion of excise duty, the new scheme of compounded levy had been introduced under Section 3A, in respect of Steel units and because of the introduction of this new scheme, modvat credit have been withdrawn, granting concession and later withdrawing the same, on the basis of various factors, is a policy decision and hence there is no violation of any fundamental right, in such areas. All the manufacturers and the manufacturing activity, cannot be treated as same, and hence the question of violation of Articles 14 and 19(1)(g) does not arise. Considering the above facts and circumstances of the case, a learned single Judge held as follows:-

> "4. Notwithstanding the fact there was an amendment to the Rules, Mr.K.Ramagopal, learned counsel for the petitioners insisted on proceeding with the hearing of the writ petitions. It was the contention of the learned counsel for the petitioners that the Government cannot in the guise of framing Rules under Section 37 of the Central Excise Act, 1944 deny the petitioners their right to use the accumulated MODVAT credit provided under Rule 57Q and 57U of the Central Excise Rules. In view of the same, their contention was that the said Rule violates Articles 14 and 19(1)(g) of the constitution.
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> 5. It is the stand of the respondents that Section 3A of the Central Excise Act, 1944 has empowered the Central Government with the emergency power to increase the duties of excise, taking into account various factors like public interest etc. The Central Government felt that there was large scale evasion of excise duty existed in respect of certain commodities like Bars, rods, billet, Ingot etc. falling under Chapter 72 and therefore it introduced a compounded levy scheme for these products with a view to safeguard the revenue in terms of the impugned order. It was also done with a view to augment the revenue to the exchequer by plugging out the irregular availment of Modvat credit on inputs and Capital goods. Therefore the Modvat credit facility given to the petitioner units were withdrawn.
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> 6. In Paragraph No.6 of the counter, it was averred as follows:
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> "The assesee's contention that the action of taking back the Modvat credit is not proper in view of

the fact that this facility have been given to them only to avoid the cascading effect of duty imposed on the products is not tenable since capital goods, on which Modvat credit is taken, do not get duty levied on them subsequently and hence the question of cascading effect of duty does not arise at all. I submit that as a result of large scale evasion of excise duty the new scheme of compounded levy had been introduced under Section 3A in respect of Steel units and because of the introduction of this new scheme. Modvat credit have been withdrawn and granting a concession and later withdrawing the same on the basis of various factors are all in the real, of policy decisions and hence there is no violation of any fundamental right, in such areas. All manufacturers and the manufacturing activity cannot be treated as same and hence the question of violation of Articles 14 and 19(1)(g) does not arise."

7. Though the learned counsel for the petitioners placed reliance upon the Judgment of the Supreme Court in Southern Petrochemeical Industries Co. Ltd v. Electricity Inspector & Etio and Others reported in (2007) 5 SCC 447, it is not clear as to how the said judgment is of any assistance to the petitioners. In that judgment itself the Supreme Court had rejected the defence of the legitimate expectation on the ground that such a principle would have no application where the legislature has enacted a statute. Even the concept of doctrine of promissory estoppel though was uphled and are available, it is clearly stated that the same can be expressly taken away by the state. The petitioners have also not denied that there was a subsequent amendment on the very same issue as noted by this Court in W.P.No.17899 of 1997.

8. In the light of the above, both the writ petitions are misconceived. Accordingly, the same are dismissed. However, there will be no order as to costs."

11. Aggrieved by the same, instant writ appeal has been filed on the following grounds,

(i) Writ Court is not justified in disposing of the writ petition without considering all the contentions of the appellant merely because one of the contentions raised by the petitioner had been rejected in W.P.No.17889/1997 and other writ petitions and the parties therein had conceded that their writ petitions had become infructuous.

(ii) Writ Court has overlooked the fact that the appellant had established the Steel Rolling Mill relying on the benefits offered by notification 4 of 1994 framing Rules 57Q to 57 U providing Modvat Credit facility on capital goods purchased by it and utilized in its steel rolling mill had had an accumulated credit of Rs.9,10,899.70. This had been withdrawn by notification 33 of 1977 by the Central Government. The learned Judge should have held that the withdrawal was in exercise of rule making powers of the State principles of promissory estoppel and legitimate expectation are attracted and declared that the withdrawal of Modvat Credit of Rs.9,10,899.70 by notification 33 of 1997 was illegal and with jurisdiction.

(iii) Writ Court has overlooked the principles laid down by the Supreme Court in the case of State of Punjab Vs. Nestles India (P) Ltd., reported in (2004) 136 STC 35 which are fully applicable to the case of the appellant.

(iv) Writ Court has not fully appreciated the principles laid in the judgment of Supreme Court in the case of Southern Petro Chemical Industries Co. Limited Vs. Electricity Inspector and ETIO and others reported in 2007 (5) SCC 947.

(v) Writ Court has overlooked that in the above judgment, the Supreme Court had considered the principles of promissory estoppel and legitimate expectation. It had held the principles of promissory estoppels are applicable to statutory notifications and the principles of legitimate expectation are applicable to legislative enactments. It had also held that the principles of Promissory estoppel will not apply to legislative enactments. The learned Judge erred in assuming that the appellant's claim was against a legislative enactment.

(vi) Writ Court has overlooked that the Notification No.33/1997 Central Excise NT dated 01.01.1997 was notified in exercise of rule making power of the Central Government and hence, the Appellant is entitled invoke the principles of promissory estoppel and legitimate expectation and claim the benefits of Modvat Credit of Rs.9,10,891.70 and utilize the same to meet its liabilities for payment of excise duty.

(vii) Writ Court has overlooked the decisions of the Division Benches of this Hon'ble Court in the case of Union Bank of India V. Chakra Tyres reported in 1990 (45) ELT 3, Madras Vanaspathi Ltd. Vs. Union of India reported in (1991) 61 ELT 6 and the decisions in Amrit Banaspati Co. Ltd. Vs. Union of India [(1990) 50 ELT 64] and Modern Mills Ltd. Vs. Union of India [1991 55 ELT 148] which had held that the principles of promissory estoppel will apply to notifications issued in exercise of rule making power and the benefits obtained under the respective notifications cannot be withdrawn by the exercise of the rule making of powers.

(viii) Writ Court has overlooked the fact that the decision of Supreme Court in the case of Collector of Central Excise Vs. Kankaria Ltd., reported in (1999) (7) SCC 448 which held that Credit taken under Modvat Scheme is an indefeasible right and is as good as taxes paid.

(ix) Writ Court has erred in accepting the contention of the respondent that there has been no violation of Article 14 and 19(1)(g) of the constitution.

(x) Writ Court has overlooked that similar notifications had been considered and interpreted by the Supreme Court in the case of Eicher Motors Limited Vs. Union of India (1999) 106 E.L.T. 3 (SC) and Samtel India Limited Vs. CEE (2003) 11 SCC 324 and the Supreme Court had held that the accumulated Modvat Credit could not be withdrawn and was available to the manufacturers to meet their subsequent liabilities for excise duty.

(xi) Writ Court has overlooked the fact that no valid reasons have been given for withdrawal of accumulated modvat credit available to the petitioner.

(xii) The bald allegations made in paragraph 6 of the counter should not have been accepted by the learned Judge as valid reasons for withdrawal of Modvat Credit earned by the appellant.

(xiii) Even assuming that the allegations made in the counter affidavit are true, the allegations cannot justify the withdrawal of the accumulated credit earned and determined prior to the notification after full verification of records.

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

12. The issue involved in the instant appeal, is whether, the Commissioner of Central Excise, was right in demanding a sum of Rs.9,10,899.70, as duty, on the manufactured steel goods from 1st August, 1997.

13. Before going into the said issue, let us consider few provisions relevant for the case on hand, and the notifications issued.

(i) Chapter II of the Central Excise Act, 1944, deals with levy and collection of duty. Section 3 of the said Act, dealing with duties specified in first schedule and the second schedule to the central excise tariff Act, 1985 to be levied, is extracted hereunder:

"(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.

(ii) Section 3A deals with the power of the Central Government to charge excise duty on the basis of capacity of production in respect of notified goods and the said Section is extracted hereunder:

"(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 0f 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".

(iii) Section 37 of the Central Excise Act, 1944, deals with the power of Central Government to make rules and the same is extracted hereunder:

"(1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may -

(i) provide for determining under Section 4 the nearest ascertainable equivalent of the normal price;

(ia) having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under Section4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;

(ib) provide for the assessment and collectionof duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;

(ibb) provide for charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalisation of all or any class of provisional assessments;

(ic) provide for the remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same excisable goods or for different areas or for different seasons;

(id) provide for the amount to be paid for compounding and the manner of compounding under sub-Section(2) of Section9A;

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;

(iii) prohibit absolutely, or with such exceptions, or subject to such conditions, as the Central Government thinks fit, the [****] transit of excisable goods from any part of India to any other part thereof;

(iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;

(v) regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, or of any other excisable goods, or of any component parts or ingredients or containers thereof;

(vi) provide for the employment of officers of the Government to supervise the carrying out of any rules made under this Act;

(vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;

(viii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;

(ix) provide for the distinguishing of goods which have been manufactured after registration, of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;

(x) impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collectionof the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xi) require that excisable goods shall not be sold or offered or kept for sale in India except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xii) provide for the issue of registration certificate and transport permits and the fees, if any, to be charged therefor:

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed, in the case of each such licence, the following amounts, namely :-

	Rs.
Licence to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining....	50
Licence to manufacture saltpetre	2
Licence to manufacture sulphate of soda (Kharinun) by solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (Kharinun) by artificial heat ...	2
Licence to manufacture other saline substances ...	2

(xiii) provide for the detention of goods, plant, machinery or material for the purpose of exacting the duty, the procedure in connection with the confiscation, otherwise than under Section10 or Section28, of goods in respect of which breaches of the Act or rules have been committed and the disposal of goods so detained or confiscated;

(xiiia) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on manufacture or exporter or suspension of registration of dealer, for dealing with evasion of duty or misuse of CENVAT credit;

(xiv) authorise and regulate the inspectionof factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspectionor search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collectionof the duties imposed by this Act, of any other excisable goods;

(xv) authorise and regulate the composition of offences against, or liabilities incurred under this Act or the rules made there under;

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;

(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to the manufacture of excisable goods ;

(xviaa) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994 (32 of 1994) paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;

(xvib) provide for the giving of credit of sums of money with respect to raw materials used in the manufacture of excisable goods ;

(xvic) provide for charging and payment of interest as the case may be on credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods where such credit is varied subsequently;

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act;

(xviia) provide incentives for increased production or manufacture of any goods by way of remission of, or any concession with respect to, duty payable under this Act;

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) define an area round any other place in which salt is manufactured and regulate the possession, storage and sale of salt within such area;

(xx) authorise the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) or Commissioners of Central Excise appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this Section;

(xxi) provide for the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder;

(xxii) provide for the charging of fees for the examination of excisable goods intended for export out of India and for rendering any other service by a Central Excise Officer under this Act or the rules made thereunder;

(xxiii) specify the form and manner in which application for refund shall be made under Section11B;

(xxiv) provide for the manner in which money is to be credited to the Fund;

(xxv) provide for the manner in which the Fund shall be utilised for the welfare of the consumers;

(xxvi) specify the form in which the account and records relating to the Fund shall be maintained;

(xxvii) specify the persons who shall get themselves registered under Section6 and the manner of their registration.

(xxviii) provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.

(2A) The power to make rules conferred by clause (xvi) of sub-Section(2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs.

(3) In making rules under this Section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding five thousand rupees.

(4) Notwithstanding anything contained in sub-Section(3), and without prejudice to the provisions of Section 9, in making rules under this Section, the Central Government may provide that if any manufacturer, producer or licensee of a warehouse -

a) removes any excisable goods in contravention of the provisions of any such rule, or

b) does not account for all such goods manufactured, produced or stored by him, or

c) engages in the manufacture, production or storage of such goods without having applied for the registration required under Section6, or

d) contravenes the provisions of any such rule with intent to evade payment of duty, then, all such goods shall be liable to confiscation and the manufacturer, producer or licensee shall be liable to a penalty not exceeding the duty leviable on such goods or two thousand rupees, whichever is greater;

(5) Notwithstanding anything contained in sub-Section(3), the Central Government may make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows

or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding the duty leviable on such goods or two thousand rupees, whichever is greater."

(iv) Notification No.33/97-CE(NT), dated 01.08.1997, introduced with effect from 01.08.1997, is extracted hereunder:

Central Excise Rules — Seventh Amendment of 1997

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

1. (1) These rules may be called the Central Excise (Seventh Amendment) Rules, 1997.

(2) They shall come into force on the 1st day of August, 1997.

2. In the Central Excise Rules, 1944, -

(i) in rule 57F, in sub-rule (17), after clause (b), the following clauses shall be inserted, namely, -

"(c) on the first day of August, 1997, with the manufacturer of ingots and billets of non alloy steel falling under heading Nos. 7206.90 and 7207.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and who is required to pay duty under section 3A of the Central Excise Act, 1944 (1 of 1944), shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export;

(d) on the first day of August, 1997, with the manufacturer of hot re-rolled products of non-alloy steel falling under heading Nos. 7211.11, 7211.19, 7211.30, 7211.52, 7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and who is required to pay duty under section 3A of the Central Excise Act, 1944 (1 of 1944), shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export";

(ii) in rule 57Q, in sub-rule (1), in the Table, in column (3), after item (ii) and the entries relating thereto, the following item and entries shall be added, namely :-

"(iii) ingots and billets of non-alloy steel falling under sub-heading Nos. 7206.90 and 7207.90, manufactured in an induction furnace unit, whether or not any other goods are produced in such induction furnace, and hot re-rolled products of non-alloy steel falling under sub-heading Nos. 7211.11, 7211.19, 7211.30, 7211.52, 7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 on which duty is paid under section 3A of the Central Excise Act, 1944 (1 of 1944).";

(iii) in rule 57S, after sub-rule (10), the following sub-rule shall be inserted, namely :-

"(11) Notwithstanding anything contained in sub-rule (3) of rule 57Q, any credit of specified duty lying unutilised, -

(a) on the first day of August, 1997, with the manufacturer of ingots and billets of non-alloy steel falling under sub-heading Nos. 7206.90 and 7207.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and who is required to pay duty under section 3A of the Central Excise Act, 1944 (1 of 1944), shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export.;

(b) on the first day of August, 1997, with the manufacturer of hot re-rolled products of non-alloy steel falling under sub-heading Nos. 7211.11, 7211.19, 7211.30, 7211.52, 7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), and who is required to pay duty under section 3A of the Central Excise Act, 1944 (1 of 1944), shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export.";

(iv) in Chapter V, after section E - X, the following section shall be inserted, namely :-

"E - XI Non-alloy steel ingots and billets/hot re-rolled products

96ZO. Procedure to be followed by the manufacturer of ingots and billets. - (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 tonne 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 August, 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 August, 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 August, 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 along with interest at the rate of eighteen per cent. per annum on the outstanding amount, calculated for the period from the 1st day of April, 1998 till the date of actual payment of the whole of the outstanding amount.

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 31st day of March, of the relevant financial year he shall be liable to pay the outstanding amount along with interest at the rate of eighteen per cent. per annum on the 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 the outstanding amount.

(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 fulfilment of the following conditions, namely:-

(a) the manufacturer shall inform in writing about the closure to the Assistant 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, 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, 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, with a copy to the Superintendent of Central Excise;

(c) 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, in the beginning of each month from 1st day of August, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, and latest by the tenth of each month, pay a sum of rupees five lakhs and the amount so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of August, 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 proviso to sub-section (3) or under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944) : Provided that for the month of August, 1997 the Commissioner may allow a manufacturer to pay the sum of rupees five lakhs the 31st day of August, 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 the month of August, 1997 by the 31st day of August, 1997 or for any other month by the tenth of each month, as the case may be, he shall be liable to pay the outstanding amount along with interest thereon at the rate of eighteen per cent. per annum, calculated for the period from the 1st day of September, 1997 or the tenth of the month, as the case may be, till the date the actual payment of the whole of the outstanding amount.

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, 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 96ZO, 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)"

96ZP. Procedure to be followed by the manufacturer of hot re-rolled products. - (1) A manufacturer of non-alloy steel hot re-rolled products falling under sub-heading Nos. 7211.11, 7211.19, 7211.30, 7211.52, 7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall debit an amount calculated at the rate of Rs. 400/- per metric tonne at the time of clearance of hot re-rolled products 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 August, 1997 to the 31st day of March, 1998

(a) a manufacturer shall pay a total amount calculated at the rate of Rs.400/- per metric tonne on capacity of production of his factory for the period from 1st day of August, 1997 to the 31st day of March, 1998, as determined under sub-rule (3) of rule 3 of the Hot Re-rolling Mills 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 August, 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 along with interest at the rate of eighteen per cent. per annum on the outstanding amount, calculated for the period from the 1st day of April, 1998 till the date of actual payment of the whole of the outstanding amount.

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.400/- per metric tonne on capacity of production of his factory as determined under sub-rule (3) of rule 3 of the Hot Re-rolling Mills 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 31st day of March of the relevant financial year, he shall be liable to pay the outstanding amount along with interest at the rate of eighteen per cent. per annum on the 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 the out-standing amount.

(2) Where a manufacturer does not produce the hot re-rolled products 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 fulfilment of the following conditions, namely :-

(a) the manufacturer shall inform in writing about the closure to the Assistant 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, 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 hot re-rolled products 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, 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, 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, a manufacturer may, in the beginning of each month from 1st day of August, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, and latest by the tenth of each month, pay a sum equivalent to one-twelfth of the amount calculated at the rate of Rs. 300/- multiplied by the annual capacity in metric tonnes, as determined under sub-rule (3) of rule 3 of the Hot Re-rolling Mills Annual Capacity Determination Rules, 1997, and the amount so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of August, 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 the proviso to sub-section (3) or under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944) :

Provided that in respect of the non-alloy steel hot re-rolled products, manufactured or produced by a re-rolling mill in which the nominal diametre on last stand does not exceed 200 millimetres, the sum payable under this sub-rule shall be calculated as if for the letters and figures "Rs.300/-", the letters and figures "Rs. 150/-" were substitued :

Provided further that for the month of August, 1997, the manufacturer may pay the amount due for the said month by the 31st of August, 1997:

Provided also that if a manufacturer makes a change in the capacity of re-rolling installed in his factory, or there is any change in the total re-rolling capacity installed, he shall pay the amount, calculated pro rata:

Provided also where a manufacturer, fails to pay the whole of the amount payable for the month of August, 1997 by the 31st day of August, 1997 or for any other month by the tenth of each month, as the case may be, he shall be liable to pay the outstanding amount along with interest thereon at the rate of eighteen per cent. per annum, calculated for the period from the 1st day of September, 1997 or the tenth of the month, as the case may be, till the date the actual payment of the whole of the outstanding amount :

Provided also that where a manufacturer has paid the amount during any month on the basis of provisional determination of annual capacity and subsequently the annual capacity is determined on final basis, the manufacturer shall pay the whole of the differential amount recoverable for the relevant months by the tenth of the month succeeding the month in which the annual capacity is determined on final basis.

(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, 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 96ZP, for full and final discharge of our duty liability for the manufacture of hot re-rolled products on non-alloy steel under section 3A of the Central Excise Act, 1944

(1 of 1944).

Dated______________ Sd_____________________

Name and Designation
(with Stamp)"

[Notification No. 33/97-C.E. (N.T.), dated 1-8-1997]

14. In Hans Steel Rolling Mill v. Commissioner of Central Excise, Chandigarh reported in 2011 (265) ELT 321 (SC), the Hon'ble Apex Court, after considering 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.”

15. In the above reported case, the Hon'ble Supreme Court has declared the law that the compounded levy scheme is a comprehensive scheme and also categorically held that the general provisions of the Act and Rules, are excluded, and further held that the assessee opting for the scheme, is bound by the terms of that particular scheme.

16. In Kalai Magal Alloys Steel Pvt. Ltd., v. CESTAT, Chennai reported in 2014 (303) ELT 44 (Mad.), the assessee therein was issued, with 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.

17. 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 the compounded levy scheme is a separate scheme, by which, a procedure for determining payment, has been made and that the question of applying Section 11A to such scheme, does not arise.

18. Reading of Kalai Magal Alloys Steel Pvt. Ltd.,'s case (cited supra) shows that contentions have been made by the assessee therein that the Hon'ble Supreme Court has held that the time limit prescribed under one scheme, could be unwarranted, for another scheme, and that 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”, does not prescribe a period of limitation. 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 a machinery for recovery of due?”

19. Dealing with 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-roling 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."

20. In Kalai Magal Alloys Steel Pvt. Ltd.,'s case (cited supra), this Court held that unutilized cenvat/modvat credit, cannot be adjusted against the liability under Rule 96ZO of the erstwhile Central Excise Rules, 1944. At Paragraph 14, this Court further held as follows:

"14. Learned Standing Counsel appearing for the Department, contended that the compounded levy scheme being a special scheme, the question of adjusting the said credit does not arise. While disputing the averment of the assessee that they had credit in their hand by way of Modvat credit. Learned Standing Counsel placed reliance on the decision of the Division Bench of this Court in the case of Commissioner of Central Excise, Pondicherry v. Sharadhara Castings (P) Ltd., reported in 2012 (277) ELT 37 (Mad.), wherein, the Division Bench, after referring to Rule 57H(7) of the erstwhile Central Excise Rules, 1944, which refers to the manufacturer, who opts for exemption from payment of whole of the duty and states that such manufacturer shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of the inputs lying in the stock, observed that the case of the Department is not that the respondent therein is a manufacturer, who opted for exemption from payment of whole of the duty, and with that observation, upheld the order of the Tribunal, which held that the assessee had come under the compounded levy scheme with effect from 1997 and when they switched over to this, the credit lying unutilized, be in the inputs or in the final products, lapsed in terms of sub-rule (17) of Rule 57F."

21. It is clear from the material on record and the Hon'ble Apex Court in Kalai Magal Alloys Steel Pvt. Ltd.,'s case (cited supra), the compounded levy scheme, introduced in the Central Excise Act, 1944, is a comprehensive scheme, wherein, Rule 96ZO of the Rules, stipulate the method, time and the manner of payment and also contains provisions, relating to payment of interest and penalty, in the event of delay, in payment of duty and when the scheme has been declared by the Hon'ble 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 accumulated balance of excise duty for payment of duty. When the scheme, as held by the Hon'ble Apex Court, has taken away the right of the manufacturers to avail cenvat credit, the consequences thereof, is to make payment of duty, within the period provided therefor.

S.MANIKUMAR, J.
AND
SUBRAMONIUM PRASAD, J.

skm

22. In view of the above, we are not inclined to interfere with the order of the writ Court, dated 11.03.2009.

23. In the result, instant Writ Appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

skm

To

1.The Secretary, Union of India,
Ministry of Finance,
Rep. of Revenue, New Delhi.

2.Commissioner of Central Excise,
Coimbatore-18.

3.Superintendent of Central Excise,
Tiruchengode Range.

4.Assistant Commissioner of Central Excise,
Erode.

+1 cc to Mr.S.Balaji, Advocate Sr.NO.40659
+1 cc to Mr.V.Sundareswaran, Advocate Sr.No.41053

W.A.No.1335 of 2018

GJ-II(CO)
CSL/24.01.2019