

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.11.2017
Judgment Delivered on : 12.04.2018

CORAM

THE HONOURABLE MR. JUSTICE S. MANIKUMAR
and
THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

C.M.A. (Central Excise) No.469 of 2012
and M.P.No.1 of 2012

M/s.Annapoorna Re-rolling (P) Ltd.,
F-80, SIPCOT Industrial Complex,
Gummidipoondi-601 201,
Tiruvallur District.

...Appellant/Appellant

Vs.

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

2.The Commissioner of Central Excise,
Chennai II Commissionerate,
Nandanam,
Chennai-600 035.

...Respondents/Respondents

Prayer: Appeal filed under Section 35G of the Central Excise Act, against the Final Order No.1021/2011 dated 18.08.2011 in Appeal No.E/489/2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.Jayachandran

For Respondent : R1-Deleted

Mr.A.P.Srinivas

Standing Counsel for R2

JUDGMENT

(Judgment of the Court was delivered by R. SURESH KUMAR, J.)

This Civil Miscellaneous Appeal is arising out of the order passed in Final Order No.1021/2011 dated 18.08.2011 in Appeal No.E/489/2009 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (in short, CESTAT, Chennai).

2.The necessary facts which are required to be noticed for the disposal of this appeal are as follows:

The case of the Revenue is that, the assessee had engaged in the manufacture of MS Rounds/CTD Bars, MS Flats, etc., falling under Chapter Sub-heading 72142090, 72111410 and 72162100, respectively, of the I Schedule to the Central Excise Tariff Act, 1985.

3.The assessee, being a SSI Unit, had availed the benefit of exemption under Notification No.8/2003-C.E., dated 01.03.2003, as amended every year, since the inception of the Unit. Like that, during the years 2004-2005 and 2005-2006, though the assessee had availed the SSI exemption under notification as mentioned above, it had failed to pay the amount of duty under Rule 11(2) of Cenvat Credit Rules, 2004, equivalent to Cenvat credit availed by them on inputs and finished goods lying in stock as on 31.03.2005 and 31.03.2006.

4.Because of such alleged non payment of duty or for reversal of Cenvat credit under Rule 11(2) of Cenvat Credit Rules, 2004, the revenue issued a show cause notice on 28.03.2007, requiring the assessee to show cause as to why the amount of duty and education cess, should not be demanded with interest from the assessee under Rule 14 of Cenvat Credit Rules, 2004.

5.It is the claim of the assessee that during February and March, 2006, the assessee crossed the limit of claiming exemption under SSI notification. Hence, the assessee started to pay excise duty on their clearances in February and March, 2006.

6.For the inputs/raw materials purchased and received under invoices, dated 03.02.2006 to 08.02.2006, the assessee availed cenvat credit on 04.02.2006, 07.02.2006 and 13.02.2006, respectively.

7.All these credits were availed by the assessee before 31.03.2006. Therefore, he would be entitled to avail Cenvat credit in terms of Rule 3(2) of Cenvat Credit Rules, 2004.

8.It is the further case of the assessee that, the Audit Wing of the Central Excise Department verified the records and documents of the assessee on 29.02.2006 and on 30.03.2006. Based on such verification and scrutiny, they had given a Report No.41/2005-2006, wherein it was pointed out that there was non-reversal of Cenvat credit available on the stock as on 31.03.2005 and worked out the amount payable and the said amount had been paid by the assessee on 05.04.2006.

9.It is the further case of the assessee that subsequently, the Preventive Wing Officials of the revenue visited the factory of the assessee on 22.12.2006, basing on their report and the allegation of wrong availment of Cenvat credit, the Revenue issued a show cause notice as referred to above, on 28.03.2007.

10.It is the further case of the assessee that prior to the issuance of show cause notice, the assessee paid the said sum pointed out by the Audit Wing of the revenue on 05.04.2006 itself, relates to the period 2004-2005. The assessee also paid some amount on 03.01.2007 relates to the period 2005-2006. The said payment had been specifically mentioned in the show cause notice that it would be appropriated towards the amount payable by the assessee as on 31.03.2006.

11.The further case of the assessee is that, inspite of a detailed reply given by the assessee to the show cause notice, the Adjudicating Authority, by his Order-in-Original No.30/2007, dated 03.07.2007, confirmed the proposals for the years 2004-2005 and 2005-2006 and demanded the duty for the years 2004-2005 as well as 2005-2006.

12.Aggrieved over the said order, the assessee preferred an Appeal before the Commissioner (Appeals). The said Appellate Authority, by order dated 21.05.2009 in the said appeal, set aside the demand for the period 2004-2005, as barred by limitation and also, set aside the demand for the period 2005-2006 on merits by applying a number of decisions in this regard in a detailed order.

13.It is the further case of the assessee that, against the said order passed by the Commissioner (Appeals) dated 21.05.2009, the revenue preferred an Appeal before the CESTAT, Chennai, the CESTAT, in its order dated 18.08.2011, reversed the said decision of the Commissioner (Appeals) and allowed the appeal filed by the Revenue.

14.Aggrieved over the said Final Order passed by the CESTAT, Chennai, in Final Order No.1021/2011 dated 18.08.2011 in Appeal No.E/489/2009, the assessee preferred this Civil Miscellaneous Appeal before this Court.

15.We have heard Mr.K.Jayachandran, learned counsel appearing for the appellant/assessee and Mr.A.P.Srinivas, learned Standing Counsel appearing for the Revenue.

16.The instant appeal had been admitted on 13.02.2012 with the following substantial questions of law:

- (a)"Whether in the facts and circumstances of the case, Rule 11(2) of Cenvat Credit Rules, 2004,

provides the manufacturer shall be required to pay an amount equivalent to the Cenvat Credit allowed to him in respect of inputs lying in stock or in process or contained in final product lying in stock?

- (b) Whether the Tribunal is right in holding that the credit of duty paid on inputs utilized in the manufacture of exempted goods is recoverable, as the credit was correctly taken when the inputs were brought into the factory and the same were correctly utilized in terms of Rule 3(2) of Cenvat Credit Rules, 2004 and that the provisions of Rule 11(2) of Cenvat Credit Rules, 2004 would not apply?
- (c) Whether while demanding the duty on the inputs/finished products lying in stock during the exemption period, allowance to the duty credit on imported inputs/inputs contained in the finished goods lying in stock during the dutiable period can be given or not under Rule 11(2) of Cenvat Credit Rules, 2004?
- (d) Whether the limitation for issue of show cause notice to be reckoned from the date of utilization of credit or the financial year?"

17. Mr. K. Jayachandran, learned counsel appearing for the appellant/assessee would submit that, though show cause notice was issued and Order-in-Original was passed with regard to the duty in respect of the years 2004-2005 and 2005-2006, the Commissioner (Appeals) set aside the Orders in respect of both the years, but insofar as the year 2004-2005 is concerned, on the ground of limitation, and set aside the order of demand passed by the Authority in Original, for the year 2005-2006 on merits. However, the Department had not preferred any appeal against the order passed by the Appellate Authority before the CESTAT, insofar as the order, setting aside the order of Original Authority in respect of the year 2004-2005. Therefore, the only appeal filed before the CESTAT, by the revenue, is in respect of the year 2005-2006.

18. Therefore, the issue now rest with before this Court in the present appeal is only with regard to the year 2005-2006.

19. The learned counsel would further submit that the Tribunal in the impugned order has ignored to take into account the provision of Rule 3(3) of the Cenvat Credit Rules, 2004, which reads as under:

"Notwithstanding anything contained in Sub-rule (1), the manufacturer or producer of final products shall be allowed to take Cenvat credit of the duty paid on inputs lying in stock or in process or

inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable."

20.The learned counsel has raised a ground that, though the Appellate Commissioner, having considered a number of decisions in this regard, had allowed the appeal filed by the assessee, the CESTAT, by simply following the decisions made in Albert David Limited of the Principal Bench of CEGAT, New Delhi, dated 28.11.2002, stating that the same has been confirmed by the Hon'ble Apex Court. However, the fact remains that when the order of the CEGAT was appealed by the assessee in that case before the Hon'ble Apex Court, there was no detailed finding given and it was a summary disposal of the appeal by the Hon'ble Apex Court and therefore, the said decision ought not to have been pressed into service by the CESTAT. The learned counsel appearing for the assessee would further argue that, the decision of the High Court of Himachal Pradesh at Shimla in the matter of Commissioner of Central Excise, Chandigarh v. Tyre Tops reported in 2010 (250) E.L.T. 338 (H.P.), should have been taken into account, which is exactly on the point raised in this case.

21.The learned counsel appearing for the assessee would further submit that, since nowhere in the show cause notice, it was stated about the invocation of proviso to Section 11A of the Customs and Central Excise Act, for demanding the duty for the extended period, such an exercise would be wholly unjustifiable and therefore, the same ought to have been considered by the CESTAT, before dwell into the issue raised by the revenue against the order of the Commissioner (Appeals).

22.Per contra, Mr.A.P.Srinivas, learned Standing Counsel appearing for the revenue would submit that, the assessee had been in the process of manufacturing steel products. Being a SSI Unit, it availed the benefit conferred under the SSI exemption Notification No.8/2003-C-E, dated 01.03.2003 as amended from time to time, since its inception.

23.Learned Standing Counsel appearing for the revenue would further submit, that Rule 6 of the Cenvat Credit Rules, 2004, should be read with Rule 3. The SSI exemption provided under the notification would be based on the quantum basis of the products and once the SSI Unit, like the assessee, crossed the exemption limit, certainly, it has to pay the duty. Here in the case in hand, admittedly, since the assessee crossed the exemption limit in January 2006, it is an admitted fact that during February and March 2006, the assessee was not in the category of SSI Unit, availing the benefit under the notification and therefore, it has to pay the duty.

24.The learned Standing Counsel would further submit that, the issue before this Court in the appeal, is to testify as to whether the demand of duty equivalent to the Cenvat credit availed by the assessee on the finished goods and inputs lying in stock as on 31.03.2006 was correct, as they were availing exemption under Notification No.8 of 2003 dated 01.03.2003.

25.In order to testify the said issue, the learned Standing Counsel appearing for the revenue would submit that, along with the show cause notice, Annexure-A under the heading "Grounds Leading To Allegation" was served on the assessee, which contains the entire details of the transaction at the relevant period, taken place at the assessee's Unit.

26.The learned Standing counsel appearing for the revenue would further submit that, the stock remains as on 31.03.2006 received as inputs or raw materials, for which, the assessee claimed Cenvat credit, had been whether fully utilized during that period, or the stocks were used beyond 31.03.2006 is the crucial test to be undertaken in this regard. After 31.03.2006, the assessee, admittedly, was once again reverted back to the position of claiming exemption under SSI Notification, 2003. The learned counsel would also submit that the decision taken by the CESTAT in the order impugned fully relying upon the decision of the Tribunal's Principal Bench in Albert David's case, is fully justifiable, because the said case of the Tribunal has been confirmed by the Hon'ble Apex Court in 2003 (157) E.L.T. A.81, (SC).

27.The learned Standing counsel would further submit that, in the said decision, the Hon'ble Apex Court has held that, the credit taken on inputs used in the manufacture of goods, which were subsequently exempted, had recoverable, when the demand raised only in respect of inputs lying unutilized. By raising these points, the learned Standing Counsel would submit that, the order of the CESTAT is fully sustainable, in view of the said decision in Albert David's case, which is holding the field and therefore, the impugned order of the CESTAT, does not require any interference from this Court.

28.We have considered the said rival submissions made by the learned respective counsel appearing for the parties and also perused the materials placed before this Court.

29.As has been rightly pointed out by Mr.A.P.Srinivas, learned Standing counsel appearing for the revenue, the only issue arises for consideration in the present Civil Miscellaneous Appeal is as to whether the demand of duty equivalent to the Cenvat credit availed by the assessee on the

finished goods and inputs lying on stock as on 31.03.2006 was correct, as they have admittedly availed the SSI exemption Notification No.8 of 2003 dated 01.03.2003.

30.The admitted facts need not be controverted. Accordingly, the assessee is the steel manufacturing unit and it claimed exemption under Notification No.8 of 2003 dated 01.03.2003 as amended every year, from its inception. Though a show cause notice was issued and a demand was made and the proposal was confirmed by the Original Authority for the years 2004-2005 and 2005-2006, the Appellate Commissioner set aside the demand for both the years, but insofar as 2004-2005 is concerned, on the ground of limitation, as against which, since no appeal was filed by the revenue before the CESTAT, the only issue, which was decided by the CESTAT, was with regard to the demand of duty, on the basis of the reversal of the Cenvat credit for the finished goods and inputs lying in stock as on 31.03.2006.

31.In order to meet this point on the side of the revenue, we must look into the order impugned, which originally emanated from the show cause notice, dated 28.03.2007. Along with the said show cause notice, Annexure-A under the heading "Grounds leading to allegation" has been annexed. We have perused the said Annexure carefully. At Para 9, the details were given as to how the assessee has escaped in paying the duty or escaped in paying the short levy of duty, insofar as the stock available as on 31.03.2006 is concerned. Admittedly, the assessee had again returned back to the exemption limit for the benefit available under the SSI Unit exemption notification. In order to appreciate the same, Para 9 of the Annexure-A to the show cause notice in its entirety is extracted hereunder:

"9.Further, the duty amount to be reversed on inputs and finished goods as on 31.3.2006 is also taken up and the details are given below.

a) Imported Scrap: 400.85MTS
Qty in MTS

Period	OB	Receipt	Issued	CB	Remarks
Apr. 2005 to Jan. 2006	405.94	611.48	668.43	348.99	Exempted Period
Feb.2006 to March 2006	348.00	72.46	20.6	400.85	Dutiable Period

From the above table it could be seen that the assessee has a balance stock of 400.85 MTS as on 31.3.2006. The assessee has commenced paying full rate of duty after availing cenvat credit from Feb 2006. The assessee has purchased imported scrap of 72.46 MTS during Feb 2006 to March 2006. The assessee has issued

20.600 MTS towards production. In as much as the assessee had a balance of 348.99 MTS of imported scrap on which cenvat was not availed by them, it has to be reckoned that the issue of 20.60 MTS was from the balance of stock as on 31.3.2006 according to First in First Out Principle. Hence, it is clear that the closing stock of 400.85 MTS contains 72.40 MTS of imported scrap on which cenvat credit has been availed. The cenvat credit availing being Rs.1,56,090/- duty & Rs.3,122/- Education Cess vide BE No.970758 dated 28.2.06.

b)Cenvat Scrap Stock: NIL

Qty. in MTS

Period	OB	Receipt	Issued for prodn	Second sales	CB	Remarks
Apr. 2005 to Jan. 2006	4.45	1050.815	4.450	1050.815	0	Exempted Period
Feb.2006 to March 2006	0	90.87	90.87	0	0	Dutiable Period

In as much as the cenvat scrap is NIL as on 31.03.2006 no duty is reversible/payable by the assessee on this account.

c)Cenvat contained in Finished Good Stock of MS Rounds 695.68 MTS, MS Flats 28.14 MTS, Misrolls 7.415 MTS has to be computed.

Finished Goods

Qty. in MTS.

Period	OB	Production	Issued	CB	Remarks
Apr. 2005 to Jan. 2006	552.465	624.415	449.73	727.15	Exempted Period
Feb.2006 to March 2006	727.15	106.125	109.455	723.82	Dutiable Period

Mis Rolls

Qty.in MTS.

Period	OB	Production	Issued	CB	Remarks
Apr. 2005 to Jan. 2006	14.615	26.11	29.4	11.325	Exempted Period
Feb.2006 to March 2006	11.325	4.39	8.3	7.415	Dutiable Period

It is seen that out of the closing balance 723.82 MTS of finished goods as on 31.03.2006, the quantity produced during Feb 2006 & March 2006 after the assessee started paying full rate of duty is 106.125 MTS of finished goods and 4.39 MTS of Misrolls, in which as seen from the tables of imported scrap & 90.87 MTS of Cenvat Scrap has been utilized towards manufacture of the same. It is noticed that 20.06 MTS of imported scrap has

come from the existing closing balance of 31st Jan 2006 of 348.99 MTS on which cenvat credit has not been availed by the assessee. However, the stock of 90.87 MTS has been procured afresh on which credit has been availed by the assessee. Hence, 90.87 MTS is the cenvat availed scraps contained in the finished goods, were available with the assessee. The details of the invoices against which cenvat credit availed for 90.87 MTS are given below:

Sl.No	Invoice No. & Date	Qty. in MTS	Duty (Rs.)	E.Cess(Rs.)
1	00167 dated 08.02.06	11.360	21508	430
2	00166 dated 07.02.06	11.250	21300	426
3	00165 dated 06.02.06	11.380	21546	430
4	00164 dated 06.02.06	11.350	21489	430
5	00163 dated 04.02.06	11.210	21224	424
6	00162 dated 04.02.06	11.500	21773	435
7	29 dated 03.02.06	11.075	20543	411
8	28 dated 03.02.06	11.745	21804	436
	Total	90.87	171187	3422

Thus 90.87 MTS is the cenvat availed inputs (scrap) contained in the finished goods & misrolls stock as on 31.03.2006 and the duty to be reversed thereon works out to Rs.1,71,187/- besides Edu Cess of Rs.3,482/-.

d) The total duty payable as on 31.03.2006 is given below:

Sl.No	Description	Duty (Rs)	Edu.Cess (Rs.)
a)	Duty payable on imported scrap of 400.85 MTS. As per Sl.No.9(a) of this notice	156090	8122
b)	Duty payable on cenvat availed scrap of 90.87 MTS contained in the finished goods & Misrolls available on stock as on 31.03.2006 as per Sl.No.9(c) of this notice	171187	3482
d)	Total	327277	11604
e)	Less Closing Balance in Cenvat Account RG23A Part II	17315	339
f)	Amount to be paid by the assessee as on 31.03.2006	309962	11265

Sl.No	Description	Duty (Rs)	Edu.Cess (Rs.)
g)	Less payment made by the assessee in this regard vide GAR-& challan dated 3.1.07	53294	1087
h)	Balance Amount payable by the assessee	256668	10178

It is stated that the assessee had not reversed any cenvat credit as on 31.03.2006. After the visit of Officers of Headquarters Preventive Unit on 22.12.2006, the assessee has hurriedly calculated the lying stock credit to be paid and an amount of Rs.60,000/- vide GAR-7 challan dated 3.1.07. However, as per the findings of the preventive Unit an amount of Rs.3,09,962/- duty and Rs.11,265/- Education Cess should have been paid by the assessee on 31.03.2006. The assessee has stated that the challan includes an amount of Rs.53,294/- duty and 1,087/- education cess towards cenvat reversal payable by them on the inputs and finished goods available with them as on 31.03.2006. This amount paid by them has to be appropriated towards the amount payable by the assessee as on 31.03.2006."

32. When the order of the Original Authority was appealed to the Commissioner (Appeals), he had come to a conclusion that the show cause notice dated 28.03.2007 was issued invoking the extended period, alleging suppression of fact, which was not correct and therefore, the demand relating to the period 2004-2005 was time barred by limitation and unsustainable.

33. Against the said finding, since no appeal was filed before the CESTAT, there was no quarrel with regard to the year 2004-2005. Insofar as the year 2005-2006 is concerned, the revenue's contention was that, even though the assessee crossed the limit for claiming exemption under SSI notification in January 2006 and started paying the duty on the clearances for February and March 2006, it was found by the revenue, on perusal of the records and Stock Registers, there had been stock lying at the assessee's premises/factory as on 31.03.2006 and only based on such a factual finding and assessment, the reversal of Cenvat credit was sought for and therefore, there can be no quarrel in the line of proceeding issued by the revenue to claim the unpaid duty or short paid duty by reversing the wrongly availed Cenvat credit either during the exemption period or for the stocks available as on 31.03.2006, which would be naturally utilized for manufacturing beyond 31.03.2006, i.e., the regime of the exemption period under SSI notification.

34. We have also perused the impugned Judgment of the CESTAT, which mainly relied upon the decision of the Principal Bench of the Tribunal in Albert David Limited vs. Commissioner of Central Excise, Meerut, in 2003 (151) E.L.T. 443 (Tri.-Del.).

35.The Tribunal, in the said decision had considered the decisions in (1)Collector v. Dai Ichi Karkaria, [1999 (112) E.L.T. 353 (S.C.)], (2)Collector v. Premier Tyres Limited, [2001 (130) E.L.T. 417 (Ker.)], (3)Commissioner v. Ashok Iron and Steel Fabricators, [2002 (140) E.L.T. 277 (Tribunal-LB)], and

(4)Super Cassettes Industries Limited v. UOI, 1997 (94) E.L.T. 302 (All.)

36.The case in the said Albert David Limited was that, the assessee in that case has taken a Cenvat credit in their books of account, on the I.V. Fluids, which were chargeable to duty and subsequently, the said I.V. Fluids, were exempted from payment of duty and the revenue seems to have sought for demand only in respect of unutilized inputs, which were lying at the assessee's premises on the date, it became duty free.

37.Considering these aspects, the Tribunal has given its finding in the said Albert David's case, which are extracted herein for easy reference:

"5.We have considered the submissions of both the sides. The undisputed facts are that the Cenvat credit was taken by the Appellants in their books of account when the I.V. Fluids were chargeable to duty. Subsequently, the I.V.Fluids were exempted from payment of duty. The Revenue has sought demand only in respect of the inputs which were lying unutilized. It is also not in dispute that these inputs are being used in the manufacture of I.V.fluids which are wholly exempted from payment of duty. The Cenvat Credit Scheme is a scheme to remove the cascading effect of the Central Excise duty as the same is levied at each stage of manufacture. The credit is available only and only if the final product suffers the Excise Duty. If no excise duty is payable in respect of any final product, the question of availing the Cenvat credit does not arise as there is no duty of excise at more than one level. A harmonious reading of Rules dealing with Cenvat Scheme and particularly Rule 57AC and 57AD of the Central excise Rules, 1944, makes it very evident that Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods. We agree with the findings in the impugned order that the decision in Premier Tyres Ltd., and consequently deviation in Ashok Iron and Steel case, is not applicable as these decisions were passed on the ground that there was no provision for reversal of credit. Now there is a specific provision in Rule 57AD which clearly

provides that "Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods." Rule 57AH contains the provision for the recovery of Cenvat credit utilized wrongly. As the inputs have been utilized in the manufacture of wholly exempted goods credit taken in respect of such inputs is recoverable. The demand is not hit by the time limit as the recovery is related in the instant matter to utilization of inputs for manufacture of exempted goods. As the show cause notice has been issued within one year of such utilization, demand is within the time limit specified in the Act and Rules. We are, however, of the view that in the facts and circumstances of the case, no penalty is imposable on the Appellants. We order accordingly.

6.The Appeal stands disposed of in above terms."

38.When the said decision of the Tribunal was appealed to the Hon'ble Apex Court, the Hon'ble Apex Court has held, while dismissing the said appeal filed by the assessee that, after taking note of the fact that the Tribunal in Albert David's case, that the credit taken on inputs used in the manufacture of goods which were subsequently, exempted be recoverable, as the demand was raised in respect of input lying and utilized (Albert David Limited v. Commissioner-2003 (157) E.L.T. A81 (S.C.)).

39.So, the crux of the issue, which was decided in Albert David's case, in our opinion, is that, whether the revenue is entitled to recover the credit taken by the assessee on inputs, which used in manufacture of goods, during the time of exemption in respect of input lying unutilized.

40.Here in the case in hand, it is an admitted fact that from the inception, the assessee had been availing the SSI Unit exemption. The said exemption under Notification No.8 of 2003,- C.E., dated 01.03.2003 had been given based on the quantum, and once the Unit exceeds the quantum, it will automatically lose the exemption facility and again, if it comes back within the quantum, it can start seeking exemption. On this basis, it is the assessee's own case that the assessee crossed the SSI Unit exemption limit. Therefore, it loses the exemption under notification. Therefore, admittedly, in February and March 2006, the assessee was not in the zone of SSI exemption and therefore, it started to pay the excise duty.

For the SSI Unit claiming exemption, if at all any Cenvat credit claimed, the same is reversable during the exemption period.

41.However, the fact remains that as per the stock available based on the Stock Register and other documents, which were verified by the revenue that, on closing of stock of 400.85 MTS contains 72.46MTS of import scraps on which Cenvat credit was availed and therefore, from 01.04.2006, since the assessee has become once again eligible to get exemption under SSI exemption notification, naturally, the assessee has to be subjected to Cenvat credit reversal, as the stock lying as on 31.03.2006 unutilized, certainly, would go for manufacturing or utilisation beyond the date.

42.Therefore, the law laid down in the aforesaid cases, especially, in Albert David's case, if it is applied on the facts of this case, as the facts are similar, certainly, the answer would be that, the Cenvat credit availed by the assessee, even during the period from February to March 2006, insofar as the lying stock as on 31.03.2006 is concerned, shall be certainly reversible and accordingly, the demand made by the revenue for duty to be payable as calculated in their show cause notice as confirmed in the Order-in-Original, certainly, would be wholly justifiable in consonance with the relevant provisions of the Cenvat Credit Rule as well as the Central Excise Act. In that view of the matter, in our opinion, the order of CESTAT, which is appealed herein, is justifiable and it is therefore warranting no interference.

In view of the aforesaid discussion, the substantial questions of law raised in this appeal is answered in favour of the revenue and against the assessee and with the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

mps

To

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

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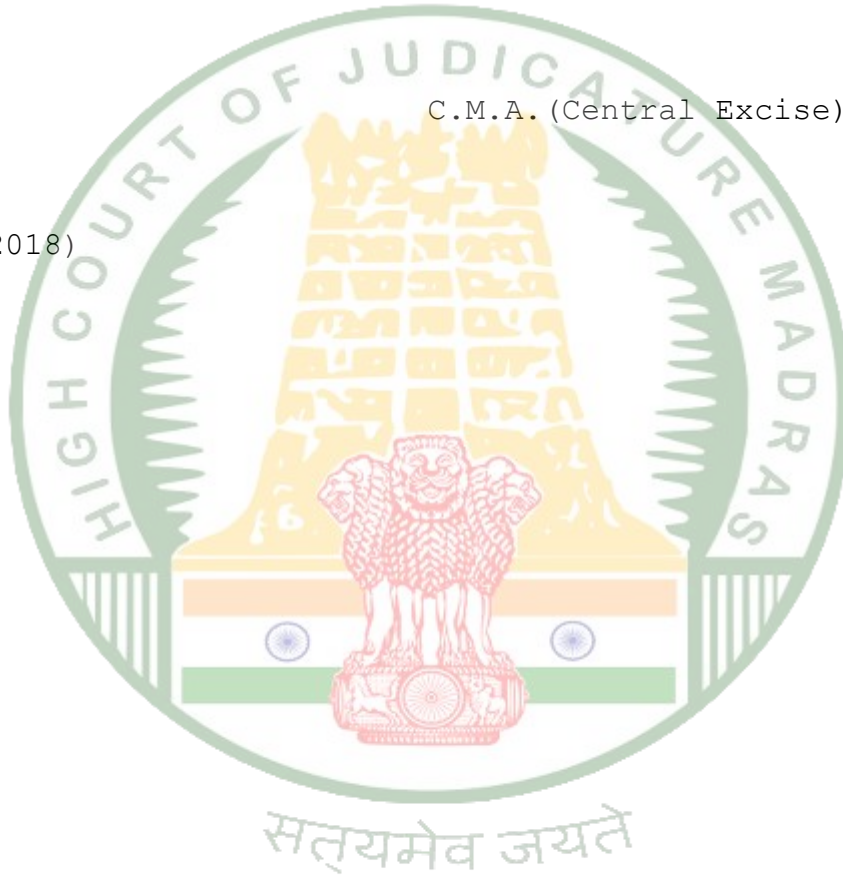
2.The Commissioner of Central Excise,
Chennai II Commissionerate,
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C.M.A. (Central Excise) No.469/2012

BR (CO)
SP (04/05/2018)



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