

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.07.2019

DATE OF DECISION : 24.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.22090 to 22099, 22201 to 22203 and 23547 to 23551 of 2018

and

W.M.P.Nos.25888 to 25897, 26017 to 26019, 27497 to 27501 of 2018
W.P.No.22090 of 2018 :

M/s.Premier Cotton Textiles,
represented by its Senior Manager,
Mr.S.Vaidyanathan,
Poolankinar Post,Udumalpet-642 122.

..Petitioner in WP No.22090 to 22099/2018

2. M/s.Premier Mills(P) Ltd.,
represented by its Senior Manager,
Mr.S.Vaidyanathan,
Poolankinar Post,
Udumalpet-642122

..Petitioner in WP No.22201 to

22203/2018

3.M/s.Prima Product Pvt Ltd.,
represented by its Company Secretary,
Mr.S.Ganesh

P.B.No.5210, 1 Nava India Road,
Coimbatore -641028

..Petitioner in WP No.23547 to 23551/2018

Vs.

1.The Commissioner of Central Goods
& Service Tax,
Coimbatore Commissionerate,
GST Bhavan, No.6/7, A.T.Devaraj Street,
Race Course Road, Coimbatore-641 018.

2.The Assistant Commissioner of Central Goods
& Service Tax,
Pollachi Division,
Jothi Nagar 'D' Colony,
Pollachi-642 001.

..Respondents in all WPs

R2 The Assistant Commissioner of Central
Goods and Service Tax, Tirupur Division,
1st Floor, Kumaran Shopping Complex,Tirupur-641 601
(R2 in WP No.23547/18 to 23551/18]

W.P.No. 22090 of 2018 is filed under Article 226 of
the Constitution of India praying to issue a Writ, Order or
Direction more particularly in the nature of Writ of Prohibition to
prohibit the second respondent from proceeding further pursuant to
the impugned show cause notice No.25 / 2017 (AC) dated 27.07.2017
bearing C.No. V / 52 / 15 / 09 /2017 C.Ex.Adjn. and pass such

further or other orders as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case and thus render justice.

WP No.22091/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 28/ 2017 (AC) dated 11.10.2017 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22092/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 31/2017 (AC) dated 15.11.2017 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22093/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 01/2018 (AC) dated 24.01.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22094/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 05/2018 (AC) dated 20.02.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22095/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 07/2018 (AC) dated 04.04.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22096/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 08/2018 (AC) dated 05.04.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22097/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice

No. 09/2018 (AC) dated 06.04.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22098/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 10/2018 (AC) dated 16.04.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22099/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 11/2018 (AC) dated 17.04.2018 bearing C.No. V/52/15/09/2017 C.Ex.Adjn.

WP No.22201/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 20/2017 (AC) dated 13.04.2017 bearing C.No. V/52/18/05/2017 C.Ex.Adjn.

WP No.22202/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 26/2017 (AC) dated 27.07.2017 bearing C.No. V/52/ 15/14/2017 C.Ex.Adjn.

WP No.22203/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 32/2017 (AC) dated 15.11.2017 bearing C.No. V/52/ 15/14/2017 C.Ex.Adjn.

WP No.23547/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 07/2017 dated 29.03.2017 bearing C.No. V/52/ 15/07/2017 C.Ex.Adjn.

WP No.23548/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 08/2017 dated 29.03.2017 bearing C.No. V/52/ 15/08/2017 C.Ex.Adjn.

WP No.23549/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 09/2017 dated 29.03.2017 bearing C.No. V/52/ 15/09/2017 C.Ex.Adjn.

WP No.23550/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 10/2017 dated 29.03.2017 bearing C.No. V/52/ 15/10/2017 C.Ex.Adjn.

WP No.23551/2018 is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction more particularly in the nature of Writ of prohibition to prohibit the 2nd respondent from proceeding further pursuant to the impugned Show Cause Notice No. 11/2017 dated 29.03.2017 bearing C.No. V/52/ 15/11/2017 C.Ex.Adjn.

For Petitioners : Mr.T.Mohan
for Mr.Christopher Manoharan
in all Writ Petitions

For Respondents : Mr.T.R.Senthil Kumar,
Senior Standing Counsel for Customs
in W.P.Nos.22090 to 22099 and
22201 to 22203 of 2018

Mr.A.P.Srinivas,
Senior Standing Counsel for Customs
in W.P.Nos.23547 to 23551 of 2018

COMMON ORDER

This common order will dispose of these 18 writ petitions.

2 Mr.T.Mohan, learned counsel appearing on behalf of counsel on record for writ petitioners in all 18 writ petitions, Mr.A.P.Srinivas, Senior Standing Counsel on behalf of all respondents in W.P.Nos.23547 to 23551 of 2018 and Mr.T.R.Senthil Kumar, Senior Standing Counsel on behalf of respondents in W.P.Nos.22090 to 22099 and 22201 to 22203 of 2018 were before this Court.

3 All three aforesaid learned counsel before this Court submitted without any disputation or disagreement that the central theme or in other words, the core issue in these 18 writ petitions is the same and therefore, a common order is being passed. Though obvious, it is made clear that all 18 writ petitions were heard

together.

4 These writ petitions have been filed assailing 'Show Cause Notices' ('SCNs' in plural and 'SCN' in singular for brevity) issued to writ petitioners. Though these writ petitions have been filed assailing SCNs, the prayer is not necessarily for issue of writs of certiorari. The prayers are couched in a language wherein and whereby writs of prohibition have been sought qua second respondent (to be noted, second respondent issued the SCNs, which shall hereinafter be referred to as 'impugned SCNs' in plural and 'impugned SCN' in singular). In other words, prayers seek issue of writ of prohibition prohibiting second respondent from proceeding pursuant to impugned SCNs. As it was submitted that these writ petitions may please be treated as petitions assailing impugned SCNs issued by second respondent, this court deems it appropriate to not to delve further into the aspect of language in which prayers are couched. In other words, the hearing proceeded on the basis that impugned SCNs have been assailed.

5 Impugned SCNs have admittedly been issued under section 11A of 'The Central Excise Act, 1944 (Act 1 of 1944)' which shall hereinafter be referred to as 'CE Act' for the sake of brevity.

6 Writ petitioners have Central Excise registration certificates under CE Act besides registrations qua Goods and Service Tax under the relevant statute. It is the case of writ petitioners that they manufacture cotton yarn and the same is being cleared under CE Act, both for domestic consumption as well as export.

7 It is submitted without any dispute by writ petitioners that they availed benefit of exemption under notification No.30/2004-CE dated 09.07.2004 with regard to domestic sales without availing CENVAT credit on input services. Besides this, writ petitioners also made exports by paying excise duty wherein recourse was taken to Notification No.29/2004-CE dated 09.07.2004, wherein and whereby rebate was claimed under Rule 18 of 'The Central Excise Rules, 2002' ('CER' for brevity).

8 As far as exports are concerned, they were made by payment of duty, however such duty payment was from capital goods CENVAT credit account of writ petitioners. Thereafter, writ petitioners made rebate claims under Rule 18 of CER in respect of consignments that were exported on payment of duty albeit by way of payment from their CENVAT capital goods credit account.

9 These claims for rebate qua excise duty so paid were processed and 'Orders-in-Original' ('OIO' for brevity) were passed by second respondent inter-alia acceding to such rebate claims. Such orders were passed under Section 35E of CE Act. Thereafter, impugned SCNs were issued and as mentioned supra, impugned SCNs were issued by second respondent under section 11A of CE Act.

10 Vide impugned SCNs, writ petitioners who are noticees qua impugned SCNs were called upon to show cause as to why the rebate sanctioned should not be treated as erroneous rebate and

recovered from writ petitioners. Writ petitioners noticees were also called upon to show cause as to why interest should not be charged and as to why penalty should not be imposed under relevant rules of CER for making what according to second respondent is willful mis-declaration while claiming the rebate. With regard to this willful mis-declaration, it is to be noticed that it is the case of second respondent that writ petitioners had availed higher drawback by not striking off inapplicable portions relating to CENVAT credit. Vide impugned SCNs, it has been averred that this claim without striking off inapplicable portion has been done willfully with the intention of misdeclaring and misleading which was intended to avail the benefit of higher rate of drawback from the department.

11 This takes us to the central theme / core issue. The central theme / core issue emanating from rival submissions have been captured by this court in proceedings dated 05.07.2019 and the same reads as follows :

"All these 18 writ petitions go together.

2.This Court is informed that the facts are similar. More importantly, this Court is informed that the central theme / core issue which falls for consideration in these 18 writ petitions is the same.

3.Mr.T.Mohan, learned counsel appearing on behalf of counsel on record for petitioners in these 18 writ petitions, Mr.A.P.Srinivas, learned Senior Standing Counsel (Income Tax) appearing for the two official respondents in some of the writ petitions and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing on behalf of both respondents in some other writ petitions, are before this Court.

4.Mr.A.P.Srinivas and Mr.T.R.Senthil Kumar, together therefore represent the respondents in these 18 writ petitions. In other words all the parties are represented.

5.From preliminary submissions, it comes to light that the central theme / core issue is that Show cause notices (hereinafter referred as 'SCNs' and 'SCN' in singular for brevity) issued by the 2nd respondent in these writ petitions namely jurisdictional Assistant Commissioner of Central Excise purportedly under Section 11 A of the Central Excise Act (hereinafter referred as 'CE Ac' for brevity) have been called in question by the writ petitioners.

6.Suffice to say that the writ petitioners are manufacturing Cotton yarn and with regard to certain consignments exported by them they claim rebate i.e., claim duty that had already been paid on raw materials that have been imported. Request for rebate was acceded to either in part or in full by the 2nd respondent. Thereafter impugned SCNs came to be issued.

7. According to the learned counsel for writ petitioners, proposition that falls for consideration is the request for rebate having been acceded to by the 2nd respondent is an appealable order (appeal under Section 35 E(2) of CE Act). No appeal having been filed by the respondents, a SCN cannot be issued under the garb of 11 A as that amounts to a review of the order in original, wherein prayers for rebate were acceded to either in part or in full.

8. In response, Revenue counsel would contend that Section 11 A provides for issuing SCN under 5 different situations and in the instant case, the duty is 'erroneously refunded' situation. Therefore, whether SCN issued under Section 11 A of CE Act on the ground that duty has been erroneously refunded, is vitiated by a jurisdictional fact issue or lack of jurisdiction, as the orders granting rebate, pursuant to which refund was made, have either attained finality or not assailed as on the date of SCN.

List these matters on 08.07.2019."

12 To be noted, all three learned counsel before this court submitted that rival submissions in a nutshell and central theme / core issue in 18 writ petitions is as encapsulated and captured by this court in the aforesaid proceedings dated 05.07.2019.

13 As the pivotal rival submissions and core issue as captured in the earlier proceedings have been reproduced supra, the crux and gravamen of these petitions have been set out. Therefore, this court now embarks upon the exercise of dispositive reasoning in paragraphs to follow. In dispositive reasoning, rival submissions made with little elaboration (wherever it is considered imperative) and case laws pressed into service shall also be referred to at relevant places.

14 Learned counsel for writ petitioners placed enormous reliance on a Division Bench judgment of this court in Eveready Industries India Ltd. Vs. CESTAT, Chennai reported in 2016 (337) E.L.T. 189 (Mad.). According to learned counsel, Eveready Industries principle is to the effect that a SCN under section 11A of CE Act cannot be issued without assailing relevant refund order made under section 35E of CE Act. It was specifically submitted that order of refund / rebate made under Section 35E of CE Act is appealable under Section 35E(2) of CE Act and therefore, without preferring a statutory appeal, impugned SCN cannot be issued.

15 Adverting to circulars issued by the Central Board of Excise and Customs, New Delhi being circulars dated 22.09.1998 and 16.5.2008, learned counsel for writ petitioners submitted that said circulars make it clear that Sections 35E(2) and 11A of CE Act operate in such a manner that a SCN under section 11A is to be issued within the time frame prescribed therein without waiting for finality of appeal under section 35E(2) of CE Act. In other words, it was submitted that a reading of circulars reveals that the Board itself has recognised the obtaining legal position that different

periods of limitation / time frames have been prescribed for statutory appeal under section 35E(2) and for issue of SCN under Section 11A of CE Act. If a SCN can be issued without preferring an appeal wherein claimant's request for refund / rebate has been acceded to, there was no need for circulars to the effect that SCN under Section 11A has to be issued (within prescribed time frame) without waiting for finality of appeal under section 35E(2) of CE Act, is learned writ petitioners' counsel's further say.

16 In response, learned Revenue counsel submitted that circulars are only guiding principles and in the instant case, owing to judgment of this Court in Raghav Industries Ltd. Vs. Union of India reported in 2016 (334) E.L.T. 584 (Mad.), what writ petitioners had done is clearly a case of availing double benefit and therefore, second respondent was justified in issuing impugned SCNs.

17 Furthering submissions in this direction, learned Revenue counsel placed huge reliance on a judgment of Hon'ble Supreme Court in Asian Paints (India) Ltd. Vs. Collector of Central Excise, Bombay reported in 2002 (142) E.L.T. 522 (S.C.). Elaborating his submission in this direction, learned Revenue counsel pointed out that (142) E.L.T. 522 Asian Paints case was rendered by a Larger Bench of Hon'ble Supreme Court constituted by Three Hon'ble Judges of Hon'ble Supreme Court, wherein it was held that the order of 'Customs, Excise and Gold (Control) Appellate Tribunal' ('CEGAT' for brevity), more particularly an order made by a Larger Bench of CEGAT with regard to interplay between Sections 35E and 11A of CE Act is correct. This takes us to the order of Larger CEGAT Bench. The order of Larger CEGAT Bench has been reported in 1994 (73) E.L.T. 433 (Tribunal). Larger CEGAT Bench principle is to the effect that Sections 35E and 11A of CE Act operate in different realms and they are being invoked for different purposes.

18 In (142) ELT 522 (SC) Asian Paints, Larger Bench of Hon'ble Supreme Court while returning a verdict that CEGAT Larger Bench view is correct repelled the contention that recovery of excise duty cannot be made pursuant to an appeal filed after invoking the provisions of section 35E, if the time limit provided under section 11A has expired. In this regard, it was specifically submitted by learned Revenue counsel that it is axiomatic that the converse will also operate. In other words, it was specifically submitted by learned Revenue counsel that a SCN under section 11A can certainly be issued though time limit for preferring an appeal under section 35E(2) had expired.

19 There was also a reference to Madurai Power Corpn. (P.) Ltd. case reported in 2008 (229) E.L.T. 521 (Mad.), but there is no disputation that civil appeal against Madurai Power Corpn. case is pending in Hon'ble Supreme Court vide Civil Appeal No.1858/2009. In other words, this principle is res integra.

20 As already alluded to supra, learned counsel for writ petitioners placed huge reliance on Eveready principle. Learned Revenue counsel submitted that Eveready principle is

distinguishable on two aspects. First aspect according to learned Revenue counsel is that on facts, Eveready is a case where assessee's requests for refund was disallowed / rejected. Assessee carried it to Commissioner (Appeals) and the appellate authority set aside the OIO. Thereafter, a SCN was issued and therefore, the principle is to the effect that the department should have only approached the Tribunal against the order of appellate authority. The second distinguishing feature is that Eveready order is dated 03.03.2016, but the judgment of Hon'ble Supreme Court in Grasim Industries Ltd. Vs. Commissioner of Central Excise, Bhopal reported in 2011 (271) E.L.T. 164 (S.C.) which was rendered on 18.8.2011 was not brought to the notice of Hon'ble Division Bench which rendered Eveready order. To be noted, in Grasim Industries, Hon'ble Supreme Court held that Section 11A of CE Act provides for right of issuance of SCN if duty has been erroneously refunded to a party without taking recourse to filing of appeal.

21 With regard to Grasim Industries order of Hon'ble Supreme Court and Eveready Industries case of Hon'ble Division Bench, this Court finds that paragraph 13 of Grasim Industries and paragraph 41 of Eveready Industries are of utmost importance and the same read as follows :

Paragraph 13 of Grasim Industries :

"13. Section 11A provides for a right of issuance of show cause notice, if, according to the Department, duty of excise has been erroneously refunded to a party. In the event of such erroneous refund of excise duty, the competent authority may then issue such a show cause notice as provided for under Section 11A, in which case the assessee has to show cause as to why the aforesaid amount of refund, which is erroneously refunded, should not be recovered from him. In such a case, there is no question of filing any appeal, as appropriate remedy as provided under Section 11A is available. "

Paragraph 41 of Eveready Industries :

"41. Insofar as the decision of the Full Bench of the Tribunal in Asian Paints (India) Limited is concerned, the difficulty faced by the Tribunal was the different periods of limitation prescribed under Sections 11A and 35E. The case before the Full Bench of the Tribunal in Asian Paints (India) Limited was on the reverse. As seen from Paragraph 1 of the decision of the Full Bench, the only issue referred for the consideration of the Larger Bench revolved around the limitation prescribed in Section 35E(3) and Section 11A. We are not dealing with a case where there is a logjam between two different provisions. Therefore, the said decision, which was also confirmed by the Supreme Court in Asian Paints (India) Limited [2002 (142) E.L.T. 522], cannot be of any application."

22 By way of reply to this distinction on two aspects, learned counsel for writ petitioners submitted that whether an OIO has been given finality as in the instant case or whether OIO went against the assessee who succeeded by carrying it in appeal to appellate authority does not make any difference to the principle. With regard to second aspect of distinction qua Eveready which was projected by Revenue counsel, learned counsel for writ petitioner submitted that Grasim Industries no doubt was not brought to the notice of Hon'ble Division Bench of this Court which passed Eveready order, but Eveready Industries case refers to Panyam Cements case being The Commissioner Customs & Central Excise Vs. Panyam Cements & Minerals Industries Ltd. reported in 2016 (331) E.L.T. 206 (A.P.), which is a judgment of Andhra Pradesh High Court and Panyam Cements in turn refers to Grasim Industries.

23 Eveready principle being sheet anchor of writ petitioners' case, this Court has carefully considered the aforesaid two aspects regarding Eveready order. With regard to first aspect, this court is unable to accept the distinction which was attempted to be made by Revenue counsel. Whether writ petitioners succeeded before original authority in OIO or whether they succeeded before appellate authority is of no consequence. The principle is the interplay between Sections 35E and 11A of CE Act to test the question as to whether SCN under section 11A can be issued without assailing the order of refund under Section 35E irrespective of whether it was made by the original authority or by the appellate authority.

24 However, with regard to the second aspect, this court is unable to accept the submission of learned counsel for writ petitioners that because Grasim Industries case has been referred to in Panyam Cements case, which is a judgment of Andhra Pradesh High Court and as Panyam Cements case has been referred to in Eveready case, it should be construed that Grasim Industries case has also been considered in Eveready case.

25 When there is direct judgment of Hon'ble Supreme Court on interplay between Sections 35E and 11A of CE Act, it ought to have been brought to the notice of this Hon'ble Court while Eveready case was argued. To be noted, as already mentioned supra, Grasim Industries case is dated 18.8.2011 and Eveready was rendered only on 03.03.2016. More over, a perusal of Eveready order reveals that Panyam Cements was referred to in the order, but there is no mention about Grasim Industries case in Eveready case. If the submission of learned counsel for writ petitioners is to be accepted, Eveready order should have referred to Grasim Industries. Grasim Industries being an order of Hon'ble Supreme Court, this court considers it appropriate to follow Grasim Industries order and Asian Paints principle laid down by a Larger Bench of Hon'ble Supreme Court.

26 Grasim Industries principle and Asian Paints principle are to the effect that Sections 35E and 11A of CE Act operate in different fields and are being invoked for different purposes.

27 A close perusal of Section 11A reveals that a SCN can be issued under five different situations, namely (a) duty not levied, (b) duty not paid, (c) duty short levied, (d) duty short paid, and (e) duty erroneously refunded. They are five distinct and different situations and circumstances.

28 If the argument of writ petitioners are to be accepted, then the fifth scenario contemplated by Section 11A would be rendered otiose. Provisions of law cannot be read in such a manner. Whereas on the contrary, a constructive and harmonious reading of sections 35E and 11A of CE Act and interplay between the two in a manner understood by a Larger CEGAT Bench which has been held to be correct by Hon'ble Supreme Court as well as Grasim Industries case would not render the fifth limb of Section 11A, i.e., 'duty erroneously refunded' situation otiose. Therefore, this Court is convinced that Section 11A should necessarily be read in the manner instructively laid down by Hon'ble Supreme Court in Grasim Industries as also Larger Bench of CEGAT. To be noted, the view of Larger Bench of CEGAT reported in (73) E.L.T. 433, for all practical purposes, becomes Hon'ble Supreme Court ratio owing to the doctrine of merger. A perusal of Larger Bench order of Hon'ble Supreme Court reported in (142) E.L.T. 522 Asian Paints reveals that the order has been passed post leave under Article 136 of the Constitution of India or in other words, in a Civil Appeal. Whenever an order is passed by Hon'ble Supreme Court post leave under Article 136 of the Constitution of India, Kunhayammed principle being a principle laid down in judgment of Hon'ble Supreme Court [Kunhayammed and others Vs. State of Kerala and another reported in (2000) 6 SCC 359] operates and therefore, the order carried to Supreme Court merges with that of the order of Hon'ble Supreme Court. Therefore, the Larger CEGAT Bench view in Asian Paints owing to doctrine of merger is clearly a ratio and rationale of Hon'ble Supreme Court.

29 When a Hon'ble High Court judgment and order of Hon'ble Supreme Court are placed before this Court, no elaboration is required to say that the view of Hon'ble Supreme Court is the one which has to obviously be followed. However, a closer reading of Eveready case reveals that Eveready itself refers to Asian Paints case, but Asian Paints was distinguished on facts. This comes out very clearly from paragraph 41 of Eveready case which has been extracted and reproduced supra.

30 In paragraph 41, it has been clearly held that Eveready is not a case where the court was dealing with a logjam between sections 35E and 11A. In the considered view and opinion of this Court, the instant cases on hand are clearly those where writ petitioners' case is predicated on a logjam between the two provisions. In other words, writ petitioners are protagonists of this logjam between sections 35E and 11A of CE Act as these writ petitions are predicated on this sheet anchor submission as alluded to supra.

31 With regard to aforementioned Raghav Industries case and

with regard to double benefit, this Court refrains itself from expressing any view as this Court is inclined to sustain impugned SCNs. If any view is expressed by this Court with regard to double benefit theory flowing from Raghav Industries, it would bind the second respondent and impact the adjudication pursuant to impugned SCNs and therefore, this Court refrains itself from treading into that arena.

32 This Court has already extracted and reproduced 05.07.2019 proceedings, wherein the rival submissions in a nutshell and narrowed down the core issue that emanates from the same, have been captured.

33 This takes us to the scope of exercise of writ jurisdiction when SCNs are challenged. No elaboration is required to say that the scope of interference in writ jurisdiction is very limited when SCNs are called in question. The exceptions to this rule are very few and in the instant case, as alluded to supra, the exception was projected on the basis of jurisdictional fact. As jurisdictional fact, i.e., preferring an appeal against OIO has been answered against writ petitioners, it follows as a sequiter that this case does not fall in any of the exceptions to the rule of limited and restricted exercise of writ jurisdiction when SCNs are assailed in writ jurisdiction.

34 This Court also reminds itself of a judgment of Hon'ble Supreme Court in Kunisetty Satyanarayana case being Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28, wherein Hon'ble Supreme Court has held that interference in SCNs in writ jurisdiction should be in rare and exceptional cases. Relevant paragraphs are paragraphs 15 and 16 and the same read as follows :

"15.Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16.No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter. "

(underlining made by this court to supply emphasis and highlight)

35 Owing to the narrative thus far, in the considered view of this Court, instant cases on hand certainly do not fall under rare and exceptional cases warranting interference in impugned SCNs. Though obvious, it is made clear that when adjudication pursuant to impugned SCNs proceed, it will be open to writ petitioners to submit that they have not availed double benefit and obviously, this aspect will also be adjudicated upon on merits. As already alluded to supra, this is one of the main reasons as to why

this court has refrained and restrained itself from expressing any opinion on this aspect of the matter. Suffice to say that this Court is informed that Raghav Industries case has been carried in appeal, i.e., intra court appeal vide W.A.No.429 of 2016 and that the same is pending, but there is no disputation that Raghav Industries case has not been stayed.

36 Sum totality of the narrative thus far and dispositive reasoning set out supra leaves this court with the considered view that impugned SCNs do not deserve to be interfered with and that impugned SCNs have to be carried to their logical end.

37 Consequently, all writ petitions fail and all 18 writ petitions are dismissed. As a result, all writ miscellaneous petitions are dismissed. Considering the nature of the matter, parties are left to bear their respective costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

vvk

To

- 1.The Commissioner of Central Goods
& Service Tax,
Coimbatore Commissionerate,
GST Bhavan,
No.6/7, A.T.Devaraj Street,
Race Course Road,
Coimbatore-641 018.
- 2.The Assistant Commissioner of Central Goods
& Service Tax,
Pollachi Division,
Jothi Nagar 'D' Colony,
Pollachi-642 001.
- 3.The Assistant Commissioner of Central Goods
& Service Tax, Tirupur Division,
1st Floor, Kumaran Shopping Complex,
Tiruppur-641 601.

+18ccs to Mr.R.Anishkumar, Advocate SR.No.63775

+2ccs to Mr.T.R.Senthil Kumar, Advocate SR.No.64146

+1cc to Mr.A.P.Srinivas, Advocate SR.No.63941

W.P.Nos.22090 to 22099,
22201 to 22203 and
23547 to 23551 of 2018

RP(CO)
GMY(30/08/2019)
GMY(16/10/2019)