

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.7.2019

Delivered on : 6.8.2019.

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.Nos.2280 and 3023 of 2017
and C.M.P.Nos.12222 and 18168 of 2017

M/s.Stanadyne Amalgamations Pvt. Ltd.,
(Now known as Stanadyne India Pvt. Ltd.)

Thiruvallur. ...Appellant/Petitioner in CMA 2280/2017

(Cause title accepted as per order dated
04.07.2017 in CMP.No.10190 of 2017 in
CMA.SR.No.46880/2017)

M/s.AVO Carbon India Pvt. Ltd.,

No.25/A2, Diary Plant,

SIDCO Industrial Estate,

Ambattur, Chennai-98.

...Appellant/Petitioner in CMA 3023/2017

Vs.

Commissioner of Central Excise,

Chennai II Commissionerate,

Chennai.

...Respondent/Respondent in CMA 2280/2017

The Commissioner of Central Excise,

Chennai II North Commissionerate,

No.26/1, Mahatma Gandhi Road,

Nungambakkam,

Chennai 600 034.

...Respondent/Respondent in CMA 3023/2017

Prayer: Civil Miscellaneous Appeals filed under Section 35G of
Central Excise Act, 1962 against the Final Order Nos.40275 and
40274 of 2017 dated 14.2.2017 passed by the Customs, Excise and
Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant in CMA 2280/17 : Mr.Arvind Datar,
Senior Counsel for
Mr.R.Raghavan

For Appellant in CMA 3023/17 : Mr.M.Karthikeyan for
Mr.S.Jaikumar

For Respondent in both cases : Mr.A.P.Srinivas

COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

These two Appeals arise from the order of CESTAT dated 14.2.2017 and are being disposed of by this common Judgment.

2. The facts are illustratively taken from C.M.A.No.2280 of 2017 (M/s.Stanadyne Amalgamations v. Commissioner of Central Excise), which, in brief, are as under:-

The Assessee, M/s.Stanadyne Amalgamations started off its 100% Export Oriented Unit (EOU) for manufacture of Carbon Brushes, but, subsequently, they surrendered their EOU status on 23.2.2012 by adopting De-bonding procedure and became a Domestic Tariff Area (DTA) Unit. At the time of De-bonding, the Appellant/Assessee paid appropriate Duty and Countervailing Duty (Additional Excise Duty) on the imported/indigenously procured raw materials lying in Stock and capital goods on depreciated value as per Rules which were procured and imported without payment of duty when it was 100% EOU and after De-bonding on 23.2.2012, it became liable to pay such Duties in accordance with Notification No.22/2003-CE(NT) dated 31st March 2003.

3. The question involved in the present cases is as to whether such Duties paid by the Assessee upon De-bonding can be availed as Cenvat Credit under Rule 3(1) of Cenvat Credit Rules 2004 against its Output Duty liability, or not in terms of para 8 of Notification No.22/2003 dated 31.3.2003.

4. The Tribunal, by its impugned order, upheld the order passed by the Adjudicating Authority and held against the Assessee that the Assessee was not so entitled to avail the benefit of Cenvat Credit under Rule 3(1) of Cenvat Credit Rules 2004. Aggrieved by the same, the Assessee has preferred the aforesaid two Appeals before this court.

5. Mr.Arvind P.Datar, learned Senior Counsel appearing for the Assessee in C.M.A.No.2280 of 2017 and Mr.M.Karthikeyan, learned counsel appearing for the Assessee in C.M.A.No.3023 of 2017 have submitted that Rule 3 of the Cenvat Rules 2004 allows the Manufacturer to take the Cenvat Credit in respect of 11 types of Duties including Excise Duties specified in the first Schedule to the Excise Tariff Act, Additional Excise Duty, Additional Excise Duty under Section 3 of the Exempted Tariff Act (Countervailing), Service Tax, Education Cess, etc and when such Duties are paid upon De-bonding by a 100% EOU converted into a DTA, such Duties paid on Input or Capital Goods are eligible for Cenvat Credit against Output Tax liability of the Assessee. The learned Senior Counsel drew our attention to the Proviso inserted in Rule 3 by the Notification No.35/2008 CE (NT) dated 24.9.2008 which has been misinterpreted and mis-applied by the Adjudicating Authority as well as the learned

CESTAT to restrict such claim of the Assessee for Cenvat Credit only in respect of the amount equal to Central Excise Duty paid on the Capital Goods at the time of De-bonding of the Unit. They submitted that since the Exemption of Duty under the Notification No.22/2003 CE 31st March 2003 was available subject to Bond furnished by the 100% EOU which the Assessee was at the relevant point of time of procurement of raw material or Capital Goods from the foreign country as well as domestic market and upon De-bonding procedure adopted when it had been declared as DTA with effect from 23.2.2012 and it paid such Duties, the Cenvat Credit in respect of the same cannot be disallowed by the Revenue. They relied upon the decision of Mumbai Bench of CESTAT in the case of CCE v. Rajdhani Fab. Pvt. Ltd (2008 (221) ELT 435) which was affirmed by the Bombay High Court by dismissal of the Appeal of the Revenue in limine on 24.9.2008, as reported in 2009 (237) ELT A47 (Bom.). They also relied upon the decision of Privy Council in the case of The Madras and Southern Mahratta Railway Co. Ltd. v. The Bezwada Municipality (57 LW 422). Mr.Datar, therefore, urged that the present Appeals of the Assessee deserve to be allowed and the order of the learned Tribunal deserves to be set aside.

6. Per contra, the learned Standing Counsel Mr.A.P.Srinivas appearing for the Revenue submitted that actually, the Proviso inserted in Rule 3 by Notification No.35/08-CE (NT) dated 24.9.2008 is the only enabling provision of law for allowing the Cenvat Credit to the Assessee to be taken which would be the 'amount equal to Central Excise Duty paid on the capital goods at the time of de-bonding' and therefore, the Assessee is not entitled to the Cenvat Credit in respect of Central Excise Duty and other Duties paid at the time of De-bonding and therefore, the learned Tribunal was justified in dismissing the Appeals of the Assessee. He further submitted that since the amounts of duties in question were not paid through the prescribed documents viz., Challans in the Form TR6, Rule 4 of the Cenvat Credit Rules, 2004 which provides that Cenvat Credit can be availed only subject to fulfilment of conditions for allowing the same and that requires the filing of the prescribed documents including the proof of payment in the prescribed Challan TR6 Form, which was not produced in the instant case and therefore, also, the Tribunal was justified in denying the Cenvat Credit to the Assessee. This submission is controverted by Appellant/Assessee in their written submission by saying that such payments were made only through Challan in TR6 Forms upon De-bonding.

7. We have heard the learned counsel on both the sides and perused the relevant statutory provisions and case laws cited in the Bar. In our clear and considered opinion, the present Appeals of the Assessee deserve to be allowed. The reasons are as follows.

8. Rule 3 of the Cenvat Rules, 2004 to the relevant extent, is quoted below for ready reference:-

"RULE 3. CENVAT credit. - (1) A manufacturer or producer of final products or a provider of taxable service] shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act :

[Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under Notification No.1/2011-C.E., dated the 1st March, 2011 is availed;]

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

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

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

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

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

[(vii) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(viii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v), [(vi) and (vii)]:

[Provided that CENVAT Credit shall not be allowed in excess of eighty-five per cent of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff

Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;]

[(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act

[* * *] :

Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;]

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; [* * *]

[(ixa) the service tax leviable under section 66A of the Finance Act;]

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004);

[(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]

[(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),]] :

[Provided that the CENVAT Credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of notification No.22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R.265(E), dated 31st March, 2003.] (This Proviso was inserted by Notification No.35/2008 CE(NT) dated 24.9.2008)

paid on-

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the

manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R.547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act."

9. The Notification No.35 of 2008 dated 24.9.2008 inserting the aforesaid Proviso in question is also, in extenso, extracted hereunder:-

"In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1.(1) These rules may be called the CENVAT Credit (Amendment) Rules, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004, in rule 3, in sub-rule (1), after clause (xi), the following proviso shall be inserted, namely :-

Provided that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated, the 31st March, 2003.

(Notification
24.9.2008)"

No.35/2008-CE(N.T.)

dated

10. The exempted Duties under the respective enactments viz., Central Excise Duties, Additional Excise Duties and Additional Customs Duties availed by the 100% EOU Assessee at the relevant point of time, were admittedly paid by Assessee on 23.12.2002 when, it appears that it became a Domestic Tariff Area (DTA) Unit.

11. There is also no dispute that the Duties in question were paid by the Assessee on such De-bonding on 23.2.2012, however, not adopting the procedure for payment through TR 6 Challan Forms. A careful reading of Rule 3 would establish that the purpose of giving Cenvat Credit for which various Duties paid as enumerated in 11 Clauses of Rule 3 is to give set off for the Duties paid on Inputs or Inputs Services including the Duties, Taxes or Cess as enumerated in 11 Clauses is to remove the cascading effect of duties which concept is at the bottom of Cenvat Credit Rules 2004.

12. We are of the opinion that the insertion of the Proviso which is below the 11 clauses of Rule 3(1) is also a Draftsman's slip and error as the said Proviso appears to be more in the form of an Explanation which was inserted later on with effect from 24.9.2008 and not to curtail the benefit of Cenvat Credit, but to clarify the situation that the Cenvat Credit should be allowed in respect of Duties paid on Inputs or Capital goods received in the Factory for manufacture or Input Services received by the Manufacturer. The said Proviso, in our opinion, should have been inserted as an Explanation or at least now deserves to be read as one. In the last part of such Proviso, it seems that unintentionally, a restrictive language was used in the said Proviso and all the types of Duties and Cess described in clauses (i) to (xi) of Rule 3(1) which included the Excise Duty and other Duties and Countervailing Duties or Educational Cess, etc., paid on the purchase of Inputs from foreign countries or domestic market which were intended to be allowed to be given a Cenvat Credit were restricted to capital goods. The emphasis on the Cenvat Credit is based upon these Duties 'paid on' in Rule 3(1) on any Inputs or Capital Goods received in the factory. Therefore, just before the words 'paid on' the insertion of the Proviso vide Notification No.35/2008 dated 24.9.2008 appears to be a Draftsman's slip which has resulted in the erroneous view on the part of the Tribunal as well as the Adjudicating Authority in the present case.

13. Obviously since the Tribunal could not examine the validity of the said Proviso nor in the writ jurisdiction, the same has been challenged before us, therefore, we are not called upon to examine the validity or legality of the said Proviso but, upon a harmonious consideration of the said Proviso with

the object and purport of Rule 3 of the said Rules, we are of the clear view that the benefit of Cenvat Credit was entitled to be allowed in respect of all the Duties including Excise Duty, Educational Cess, Countervailing Duty paid by the Assessee on De-bonding. The said Proviso could not have restricted the Cenvat Credit only in respect of the amount equal to Central Excise paid on capital goods at the time of De-bonding. We cannot accept the said contention of the learned counsel for the Revenue that the Proviso is in fact only an enabling provision to allow Cenvat Credit or rather the only provision for that purpose.

14. The whole of the Rule 3(1) is the enabling provision for giving such Cenvat Credit and the Proviso therein inserted later on by Notification No.35 of 2008 dated 24.9.2008 cannot be said to be a stand alone enabling power to provide such Cenvat Credit to the Assessee. Such a novel and out of context interpretation of the said Proviso, which, we feel is not only not happily worded, but also, placed at the wrong place in Rule 3(1), cannot be accepted to defeat the very purpose of Rule 3(1) upon an 100 EOU, when converted upon De-bonding to a DTA.

15. The view of Bombay Bench of Tribunal in this regard in the case of Commissioner of Central Excise, Pune v. Rajdhani Fab. Pvt. Ltd. (2008 (221) ELT 435 by a short order, as approved by the Bombay High Court by dismissal of the Appeal is opportune to quote here:-

"This appeal is directed against the order-in-appeal No.PII/KS/303/2006 dated 17.11.2006.

2. Considered the submissions made by both sides and perused the records.

3. The issue involved in this case is whether the appellant after debonding himself from EOU to DTA is eligible to avail the credit of the amount of duty paid on indigenously procured capital goods or not.

4. Ld. Commissioner (Appeals) while holding in favour of the respondents came to the following finding:-

"I have carefully gone through the records of the case and considered the submissions of the appellants. The adjudicating authority has confirmed the demand on the ground that Rule 3 of Cenvat Credit Rules 2002 nowhere mentions of taking credit of amount equal to Central Excise Duty and therefore, the disputed amount being an amount equal to excise duty is not eligible to be availed by the appellants.

The contention of the appellants in this regard is that from plain reading of para 8 of the Notification No.22/2003-C.E. and para 6.20 of Chapter 6 of Export Import Policy 2002-07 and para 29.1 of Appendix 14.1; to the Handbook of Procedure, 2002-07, it is sufficient to prove that the 100% EOU at the time of debonding is bound to pay Central Excise duty on the indigenously procured capital goods; that if the above said paras of Export Import Policy and Handbook of Procedure are read together with para 8 of Notification No.22/2003-C.E., it can be realized that they have correctly availed the credit of the said Central Excise duty. In this regard, it is seen that the Board vide Circular No.185/19/96-CX dated 19.3.96 has clarified that Modvat credit can be allowed to the extent of CVD paid on imported capital goods or procured from domestic market and this does not talk of denial of Modvat credit of the amount equal to the Central Excise duty paid at the time of debonding of capital goods. At the time of debonding the amount equal excise duty which is paid has to be treated as payment of excise duty only. This is sufficiently clear on a combined reading of para 6.20 of Exim Policy 2007-07 and para 29.1 of Appendix 14.1 of Exim Policy 2002-07. There is therefore no merit in the stand of the department. In view of the above, the appellants are entitled to Cenvat credit of Central Excise duty paid at the time of debonding of the capital goods. As the demand does not survive interest and penalty also do not survive".

5. As against the above said finding, it is the contention of the ld. SDR that the appellant is allowed to take credit on duty paid on amount as CVD. The said contention of the SDR is correct, if the appellants had paid the CVD and other duties applicable on the imported goods. In this case it is not so. This being the factual matrix, the finding arrived at by the Commissioner (Appeals) in allowing the appeal and setting aside the order-in-original is correct

and does not require any interference. It is also seen that the issue is squarely covered by the decisions of the Division Bench as reported at 2007 (210) E.L.T. 241 (Tri.Bang.) in favour of the respondent.

6. Accordingly, I find that the impugned order is correct and does not require any interference. The appeal filed by the revenue is rejected."

Order of Bombay High Court (News Report published in ELT)

"Cenvat/Modvat credit of duty paid by EOU while debonding

The Bombay High Court Bench comprising Hon'ble Mr. Justice D.K. Deshmukh and Hon'ble Mr. Justice J.P. Devadhar on 24.9.2008 rejected the Central Excise Appeal No.176 of 2008 filed by Commissioner of Central Excise, Pune-II against the CESTAT Final Order No.A/1530/2007-WZB/C-IV (SMB), dated 26.10.2007 as reported in 2008 (221) E.L.T. 435 (Tri-Mum.) (Commissioner v. Rajdhani Fab. Pvt. Ltd.). While rejecting the appeal, the High Court passed the following order:

"It is clear from the record that at the time of debonding, amount equal to excise duty was paid by the respondent and, therefore, after debonding the appellant would be entitled to avail credit of that amount. The learned counsel appearing for the respondent, has rightly relied on the Circular No.185/19/96-Ces dated 19.3.1996. No question of law arises in this appeal. Hence, rejected."

The Appellate Tribunal in its impugned order while relying on an earlier order in the case of Gokak Mills Ltd. (2007 (210) E.L.T. 241 (Tribunal)) had held that Cenvat Credit was admissible on duty paid on indigenously procured capital goods after debonding of EOU into DTA Unit.

The Tribunal upheld the Commissioner (Appeals) order holding that the credit was admissible as amount equal to Excise duty paid at the time of debonding was to be treated as Excise duty only.

(Commissioner v. Rajdhani Fab. Pvt. Ltd. - 2009
(237) E.L.T. A47 (Bom.))."

16. Similarly, the Privy Council in the case of The Madras and Southern Mahratta Railway Co. Ltd. v. The Bezwada Municipality (57 LW 422) dealt with Section 82(2) of the Madras District Municipalities Act, 1920 in the following manner:-

"Section 82 (1). Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings only, of ten per centum of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever :

Provided that

(a) in the case of

(i) any Government or railway building or

(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the executive authority, be estimated the annual value of the premises shall be deemed to be six per cent, of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost:

* * * *

By a resolution dated 29th January, 1932, the respondents resolved to levy property tax within their Municipality at certain specified rates. The terms of this resolution give rise to some questions, but the assessment on the Appellants was not challenged by them before their Lordships on the ground that there had been no effective resolution to levy property tax.

It will be observed that under Section 81(2) the property tax, save as otherwise provided in the Act, is to be levied at a percentage of "the annual value of lands or buildings or both." Sub-section (3) otherwise provides inasmuch as it permits, but

does not enjoin, the levying of the tax "in the case of lands which are not used exclusively for agricultural purposes and are not occupied by or adjacent and appurtenant to buildings" either at a percentage of the capital value of such lands or at such rates with reference to the extent of such lands as the Municipal Council may fix, subject to compliance with the proviso to the sub-section. If either of the alternative methods permitted by Sub-section (3), is adopted, the assessment is not on annual value. Appropriate as this sub-section was to the case of the Appellants' lands, the respondents did not in fact avail themselves of it in making the assessment complained of. In particular, they did not levy the tax at a percentage of the capital value of the Appellants' lands; they levied it at a percentage on their annual value.

Section 82(2) prescribes how the annual value of lands and buildings is to be ascertained. It is to be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year, less 10 per cent, in the case of buildings. The spectre of the hypothetical tenant, so familiar an apparition in English rating law, is here invoked. The Appellants did not dispute that, if this sub-section had not had a proviso appended to it, it would have been open to the Respondents to resort to any of the recognised methods of arriving at the rent which a hypothetical tenant might reasonably be expected to pay for the lands in question, including the method of taking a percentage of their capital value. But the proviso, they say, makes all the difference. It expressly enjoins resort to this last mentioned method of arriving at annual value in the case of two specified classes of buildings. Therefore, they say, resort to this method is by necessary implication prohibited in every other case, and in particular in the case of their lands. The respondents contest this reading and maintain that the proviso does not impliedly prohibit resort to capital value as a means of getting at annual value in every case not covered by the proviso, and that the chief purpose of the proviso is to be found in the limitation to six per cent, which it contains.

Their Lordships cannot accept the appellants' argument which in their opinion involves a misinterpretation of the effect of the proviso. The

proviso does not say that the method of arriving at annual value by taking a percentage of capital value is to be utilised only in the case of the classes of buildings to which the proviso applies. It leaves the generality of the substantive enactment in the sub-section unqualified except in so far as concerns the particular subjects to which the proviso relates. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."

17. Both the learned counsels in their additional Written Submissions and compilation of case laws have referred to the recent decision of Hon'ble Supreme Court in the case of Bhaskar Shrachi Alloys Ltd. v. Damodar Valley Corporation ((2018) 8 SCC 281) and an earlier decision in S.Sundaram Pillai v. V.R.Pattabi Raman (1985 (1) SCC 551) and have sought to rely upon them. Therefore, the relevant extract from these two Judgments are also quoted below:-

Bhaskar Shrachi Alloys Ltd case:-

"Held, the latter part of the fourth proviso to S.14 of Electricity Act i.e. ... and the provisions of the Damodar Valley Corporation Act, 1948 insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation...", is a substantive provision to lay down something more than what a proviso generally deals with and is to bring in the continued application of some of the provisions of the 1948 Act which are not inconsistent with the provisions of the 2003 Act -- Also, a comparative reading of the third and the fourth provisos to S.14 of Electricity Act clearly indicates the intention of the legislature that the second part of the fourth proviso is to bring in the continued application of some of the provisions of the 1948 Act which are not inconsistent with the provisions of the 2003 Act -- Moreover, a comparison of S.14 fourth proviso with S.173 of the 2003 Act leads to the same result-- Thus, held, Pt.IV of the 1948 Act, not being inconsistent with the provisions of the 2003 Act, can be taken into account for determination of tariff.

.....

On the fourth proviso to S.14 of the 2003 Act and the applicability of the provisions of Ss.32, 37, 38, 39 and 40 contained in Pt.IV of the 1948 Act in the matter of tariff determination under the 2003 Act.

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section.

Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha (1962) 2 SCR 159: AIR 1961 SC 1596, relied on

Insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before."

Sundaram Pillai case:-

"35. A very apt description and extent of a proviso was given by Lord Oreburn in Rhodda Urban District Council v. Taff Vale Railway Co. where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings add Another v. Kelly where it was observed thus:

"We must now come to the proviso, for there is, I think, no doubt that in the construction of the section, the whole of it must be read, and a consistent meaning if possible given to every part of it. The words are: ... "provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place...". There seems to be no doubt that the words "such

increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section."

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself."

18. There is no dispute or quarrel on the legal proposition on how to interpret a later on inserted Proviso in an enactment. But, what we are looking at is the insertion of Proviso in Rule 3 of Cenvat Credit Rules 2004 which we find it to be more in the nature of an Explanation clarifying what was in doubt earlier viz., about allowing of Cenvat Credit in respect of capital goods earlier. The allowing of Cenvat Credit on raw material was never in doubt whether on de-bonding or otherwise on procurement of raw material. Rule 3 does not make any such distinction. Therefore, these Judgments cited at Bar do not deflect the position of the Proviso inserted in Rule 3 by Notification No.35/2008 on 24.9.2008.

19. In view of the aforesaid legal position, we are of the view that the learned Tribunal has erred in denying such benefit of Cenvat Credit to the Assessee in the present cases and therefore, the present Appeals filed by the Assessee deserve to be allowed. Accordingly, they are allowed and the impugned order passed by the Assessing Officer as well as the Appellate Authority below are set aside. No order as to costs. The connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Commissioner of Central Excise,
Chennai II Commissionerate,
Chennai.

2. The Commissioner of Central Excise,
Chennai II North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

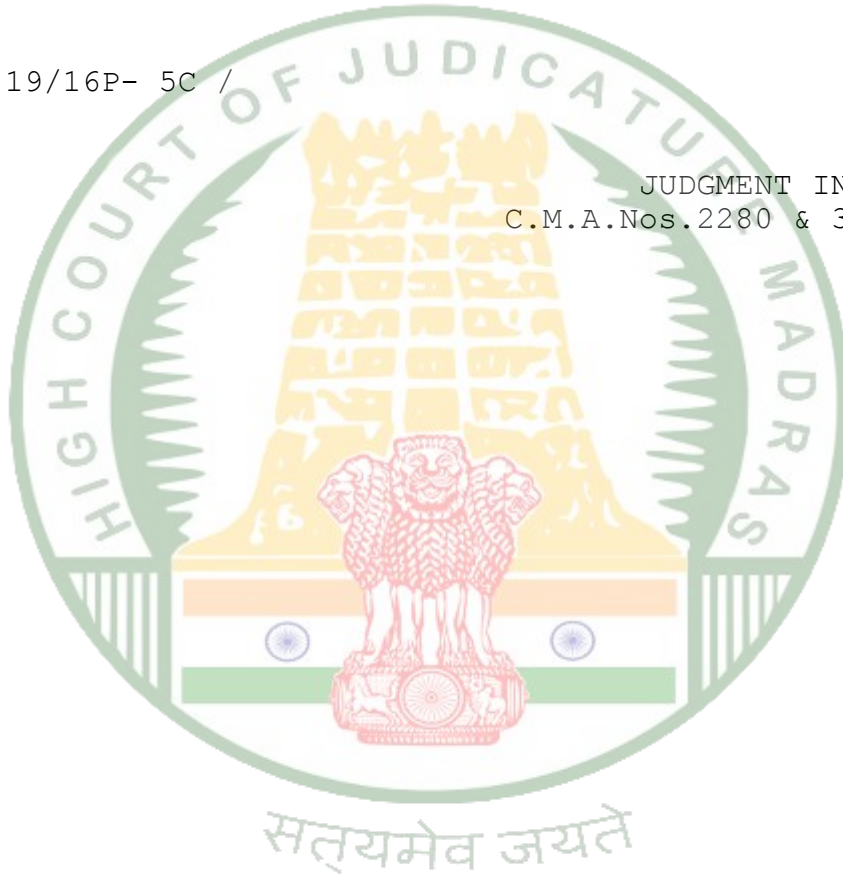
3. The Customs and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

+1 cc to M/s.R.Raghavan, Advocate Sr.No. 66944

+2 cc to Mr.A.P.Srinivas, Advocate SR.No.67401 & 67402

AKM/24.09.19/16P- 5C /

JUDGMENT IN
C.M.A.Nos.2280 & 3023 of 2017



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