BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)Nos.4922 of 2011 & 4086 to 4107 of 2012
and
M.P.(MD)No.1 of 2011 &
M.P.(MD)Nos.1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1 and 1 of 2012

M/s.Sudan Spinning Mills (P) Ltd.,
A Private Limited Company represented by its authorized signatory,
Mr.K.Sellamuthu, Thadicombu – 624 709,
Dindigul, Tamilnadu State.
... Petitioner in in WP(MD).4922/ 2011

M/s Adisankara Spinning Mills (P) Ltd., A Private Limited Company,
Rep by its Director, Mr.K. Shanmigavel, Ottanaganpatti 624 710,
Dindigul , Tamil Nadu State
... Petitioner in WP(MD). 4086/ 2012

M/s. Sri Matha Spinning Mills (P) Ltd.,
A Private Limited Company, Rep. by Director, Mr.K. Sivaraj,
Lakshmanapuram - 624 710, Dindigul, Tamilnadu State.
... Petitioner in WP(MD). 4087/ 2012

M/s. Prabhu Spinning Mills Ltd, A Private Limited Company, Repd. by
Director, Mr.K.Sivaraj, Nagampatti-624 710, Dindigul,
Tamilnadu State.

... Petitioner in WP(MD). 4088/ 2012

M/s Prabhu Spinning Mills (P) Ltd., Open End Division, A Private
Limited Company, Rep. by Director, Mr.K.Sivaraj,
Thadicombu - 624 709, Dindigul , Tamil Nadu
... Petitioner in WP(MD). 4089/ 2012

M/s. Prasanna Spinning Mills (P) Ltd.,
A Private Limited Company, Rep. by Director, Mr.D.
Rathinasabhapathy, Vedasandur, Dindigul, Tamilnadu State.
... Petitioner in WP(MD). 4090/ 2012

M/s. Sivaraj Spinning Mills (P) Ltd., A Private Limited Company, Repd. by Director, Mr.K.Sivaraj, Thadicombu-624 709, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4091/ 2012

M/s Sri Siddivinayaga Tex India (P) Ltd., A Private Limited Company, Rep. by Director, Mr.T. Sivakumar, Vedasandur 624 710, Dindigul, Tamil Nadu

... Petitioner in WP(MD). 4092/ 2012

M/s. Sri Sankari Yarns (P) Ltd., A Private Limited Company, Rep. by Director, Mr.S.M.K. Sudhan, Thadicombu, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4093/ 2012

M/s. Vedha Spinning Mills (P)Ltd., A Private Limited Company, Repd. by Director, Mr.K.Sivaraj, Thadicombu-624 709, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4094/ 2012

M/s Velayudhaswamy Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr. K. Shanmugavel, Nagampatti, 624 710, Dindigul , Tamil Nadu

... Petitioner in WP(MD). 4095/ 2012

M/s. Velayudhaswamy Spinning Mills (P) Ltd., (Unit-II), A Private Limited Company, Rep. by Director, Mr.K. Shanmugavel, Thadicombu, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4096/ 2012

M/s. Sri Matha Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K.Sivaraj, Lakshmanapuram-624 710, Dindigul , Tamil Nadu.

... Petitioner in WP(MD). 4097/ 2012

M/s Adisankara Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K.Shanmugavel, Ottanaganpatti 624 710, Dindigul, Tamil Nadu

... Petitioner in WP(MD). 4098/ 2012

M/s. Prabhu Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K. Sivaraj, Nagampatti, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4099/ 2012

M/s. Prabhu Spinning Mills (P) Ltd., (Open End Division) A Private Limited Company, Rep. by Director, Mr.K.Sivaraj, Thadicombu-624 709, Dindigul , Tamil Nadu

... Petitioner in WP(MD). 4100/ 2012

M/s Prassanna Spinning Mills (P) Ltd., A Private Limited Company, Rep by Director, Mr.D. Rathinasabapathy, Vedasandur 624 710, Dindigul, Tamil Nadu

... Petitioner in WP(MD). 4101/ 2012

M/s. Sivaraj Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K. Sivaraj, Thadicombu, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4102/ 2012

M/s. Sri Sankari Yarns (P) Ltd, A Private Limited Company, Rep. by Director, Mr.S.M.K.Sudhan, Thadicombu-624 709, Dindigul , Tamil Nadu

... Petitioner in WP(MD). 4103/ 2012

M/s Sri Siddivinayaga Tex India (P) Ltd., A Private Limited Company, Rep. by Director Mr.T. Sivakumar, Vedasandhur 624 710, Dindigul, Tamil Nadu

... Petitioner in WP(MD). 4104/ 2012

M/s. Vedha Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K. Sivaraj, Thadicombu, Dindigul, Tamilnadu State.

... Petitioner in WP(MD). 4105/ 2012

M/s. Sri Velayudhaswamy Spinning Mills (P) Ltd., A Private Limited Company, Rep. by Director, Mr.K.Shanmugavel, Thadicombu-624 709, Dindigul, Tamil Nadu.

... Petitioner in WP(MD). 4106/ 2012

M/s Velayudhaswamy Spinning Mills (P) Ltd(Unit-II) A Private Limited Company, Rep. by its Director, Mr.K. Shanmugavel, Thadicombu 624 709, Dindigul, Tamil Nadu

... Petitioner in WP(MD). 4107/ 2012

/Vs./

1. The Commissioner of Central Excise,
   Central Revenue Building, No.4, Lal Bahadur Shastri Road,
   Bibikulam, Madurai - 625 002.

: Respondent in WP(MD)Nos.4097 to 4107 of 2012

2. The Assistant Commissioner of Central Excise,
   Dindigul I Division, No.68, Nehruji Nagar,
   R.M.Colony Road, Dindigul - 624 001.

: Respondents 1 & 2 in WP(MD)No.4922 of 2011 & WP(MD)Nos.4086 to 4096 of 2012

Prayer in WP(MD). 4922/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under article 226 of the Constitution of India and quash the impugned show cause notice in C.No.V/52/15/117/2009 Adjn. dated 30.03.2011 as illegal and without jurisdiction.

Prayer in WP(MD). 4086/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent to issue a writ of certiorari, , under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/32/2011 Adjn dated 10.01.2012 disallowing the credit of Rs. 2,90,303/- taken during July 2009 to November 2010 on the input services and capital goods received during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4087/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/19/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.3,49,375/- taken during July 2009 to December 2009 and April 2010 on the input service and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4088/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/33/2011 Adjn. dated 10.01.2012 disallowing the credit of Rs.4,90,870/- taken during July 2009 to July 2010 on the input services and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4089/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent , in the nature of certiorari, , under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/22/2011 Adjn dated 05.01.2012 disallowing the credit of Rs. 2,67,422/- taken during July 2009 to October 2009 and April 2010 and the input services and capital goods received during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction .

Prayer in WP(MD). 4090/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/26/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.73,068/- taken during July 2009 and April 2010 on the input service and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4091/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/24/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.1,43,361/- taken during July 2009 to September 2009 and April 2010 on the input services and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4092/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent , in the nature of certiorari, , under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/31/2011 Adjn dated 10.01.2012 disallowing the credit of Rs. 96,672/- taken during July 2009 to April 2010 and the input services and capital goods received during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction .

Prayer in WP(MD). 4093/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/27/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.35,540/- take/availed and utilized during July 2009 and April 2010 on the input service and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4094/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/25/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.59,464/- taken during July 2009 to December 2009 and April 2010 on the input services and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4095/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent , in the nature of certiorari, , under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/30/2011 Adjn dated 05.01.2012 disallowing the credit of Rs.3,02,272/- taken during July 2009 to July 2010 on the input services and capital goods received during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction .

Prayer in WP(MD). 4096/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/16/2011 Adjn. dated 05.01.2012 disallowing the credit of Rs.4,59,009/- take/availed and utilized during July 2009 to September 2009 and April 2010 on the input service and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4097/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/128/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 23,60,200/- taken/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4098/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in C.No.V/52/15/126/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 43,89,187/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4099/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/133/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs.14,66,601/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4100/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/132/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 15,17,135/- taken/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4101/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/136/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 11,42,716/-take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4102/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/130/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs.17,16,903/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4103/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/139/2009 Adjn. dated 07.12.2011 disallowing the credit of Rs. 6,74,458/- taken/availed and utilized during July 2009 to April 2010 on the input service and capital goods received during the period 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4104/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/134/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 13,06,235/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4105/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/138/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs.9,23,816/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4106/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the first respondent and issue a writ, direction or order in the nature of CERTIORARI or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/131/2009 Adjn. dated 09.12.2011 disallowing the credit of Rs. 15,40,411/- taken/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

Prayer in WP(MD). 4107/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records on the file of the respondent and issue a writ, direction or order in the nature of Certiorari or any other appropriate writ application or order under Article 226 of the Constitution of India and quash the impugned order in V/52/15/124/2009 Adjn. dated 08.12.2011 disallowing the credit of Rs. 30,92,184/- take/availed and utilized during 07.12.2008 to 06.07.2009 as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman in all WPs.
For Respondents : Mr.R.Aravindan in all WPs.

COMMON ORDER

Orders-in-original passed by the Commissioner of Central Excise are impugned in this batch of 23 writ petitions.

2. Submissions of the learned counsel for the petitioners, Mr.R.Sivaraman and the learned standing counsel for the respondents, Mr.Aravindan have been heard in full and a common order is passed, bearing in mind the commonality of the issue involved.

3. The petitioner is a manufacturer and exporter of yarn in terms of Chapter 52 of the first Schedule to the Central Excise Tariff Act, 1985.

4. The Central Board for Excise & Customs (CBEC) had issued a Notification bearing No.29/2004-CE, dated 09.07.2004 granting exemption in regard to the payment of duty on yarn. Simultaneously, Notification No.30/2004-CE was also issued on 09.07.2004 which prescribed the rate of duty at 4% along with rebate. On 17.12.2008, Notification No.29/2004 was amended by Notification No.58/2008-CE, dated 07.12.2008 prescribing 'nil' rate of duty. Notification No.30/2004-CE, dated 09.07.2004 continued to be in force. Simultaneously, Notification No.59/2008-CE was issued prescribing the rate of duty at 4% with rebate. The petitioner had made payment of duty at 4% in terms of Notification No.59/2008-CE, dated 07.12.2008 and claimed consequential rebate.

5. This has been denied by the respondents. The assessing officer was of the view that since, in the period in question, ie., 07.12.2008 to 06.09.2009, Notification No.58/2008-CE, dated 07.12.2008 prescribed 'nil' rate of duty, such Notification, read with provisions of Section 5A(1A) of the Central Excise Act, 1944, would be applicable and the petitioner is not eligible to the claim of rebate.

6. Mr.Sivaraman, learned counsel for the petitioner relied on a decision of the High Court of Gujarat at Ahmedabad in the case of *Arvind Ltd., vs. Union of India* [2014 (300) E.L.T.481 (Guj.)] which deals with the identical issue as before me holding the matter in favour of the petitioner. At Paragraph No.9, the Bench states as follows:

> *'On, thus, having heard both the sides and on examination of the material on record, the question that involves in these petitions is the wrong availment of the benefit of concessional rate of duty vide Notification No.59/2008 dated December 07, 2008. Admittedly, the final products were exempted from payment of duty by original Notification No.29/2004-C.E., dated July 09, 2004 as further amended vide Notification No.59/2008-C.E., dated December 07, 2008. The fact is not being disputed by the respondents that the petitioner availed Notification No.59/2008 for clearance made to export and thereafter filed various rebate claims. It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No.59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat Credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No.29/2004 as amended by Notification No.59/2008-C.E., read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.'*

7. This decision has been confirmed by the Supreme Court in the case of *Union of India and others vs. Arvind Ltd.*, SLA (Civil Case) Nos.5441 and 5442 of 2014, dated 01.03.2016.

8. Mr.Aravindan, for his part, relies on the provisions of Section 5A(1A) of the Central Excise Act, 1944 and upon two Circulars viz., Circular No.937/27/2010-CX dated 26.11.2010 and Circular No.940/1/2011-CX dated 14.01.2011 to the effect that where there are two Notifications holding the field simultaneously, an assessee is bound to avail only the one extending an unconditional exemption. This, proposition, if accepted would mean that the petitioner, in this case, could avail only of benefit under Notification No.29/2004.

9. Circular No.937/27/2010-CX dated 26.11.2010 is extracted below:

> '*References had been received from the field formations as well as trade to clarify the ambiguity arising out of simultaneous prevalence of two exemption Notifications namely 29/2004-C.E., dated 9-7-2004 as amended by notification No.58/2008-C.E., dated 7-12-2008 and another notification 59/2008-C.E., dated 7-12-2008. The period of dispute is from 7-12-2008 to 6-7-2009. During this period while one Notification No.29/2004-C.E., as amended granted full exemption to certain items of Textile Sector without any condition, the second notification 59/2008-C.E., prescribed a concessional rate of duty of 4% on these items, with the benefit of Cenvat Credit.*
>
> *2. The dispute was with regard to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under notification No.20/2004-C.E., as amended, during the period under dispute in terms of the provisions of Section 5A(1A) of the Central Excise Act, 1944.*
>
> *3. The matter was examined in the Board. As a substantial question of law was involved, the matter was referred to the Law Ministry for its opinion. The Ministry of Law has opined that the language used in said Section 5A(1A) is unambiguous and principles of harmonious construction cannot be applied in the instant case in view of specific provision under sub-section (1A) of Section 5A of the Central Excise Act. The Law Ministry has accordingly concluded that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise*

Act, the manufacturer cannot opt to pay the duty under notification 59/2008-C.E., dated 7-12-2008 and he can not avail the Cenvat Credit of the duty paid on inputs.

4. The aforesaid opinion of Law Ministry has been accepted by the Board. Pending issues, if any, may be decided accordingly.'

10. In direct contradiction to the above, the Board has issued Circular No.99/2008, dated 11.12.2008 in response to a query by the Southern India Mills' Association, Coimbatore, clarifying that where the levy of duty is covered by more than one Notification, the rate more beneficial to the assessees will have to be extended, subject to the assessee satisfying all conditions imposed thereunder. The aforesaid Notification reads as follows:

ALL MEMBER MILLS:

Sub: Fiscal Stimulus package – central excise duty – Reg.,

Ref: Association Circular No.95/2008 dated December 08, 2008

<><><>

Member mills may be aware that the Central Government had amended Notification No.29/2004-C.E., dated 09.07.2004 by way of Notification No.58/2008-CE dated 07.12.2008 thereby reducing the rate of duty on cotton yarn and pure cotton fabrics to zero percent from 4 per cent. A query therefore arose with regard to the utilisation of the accumulated credit. The validity of Notification No.59/2008-CE dated 07.12.2008 was also questioned.

In reply to the Association's query as to whether the textile mills are still eligible to clear their goods utilising both the Notifications i.e., at zero per cent and 4 per cent simultaneously, the Commissioner of Central Excise, Coimbatore has clarified by way of a Trade Notice on the following lines:

> *'Due to issue of these notifications, there may be cases where same product / commodity is being covered by more than one notification. In such a situation, it is clarified that the rate beneficial to the assesses would have to be extended if they fulfill the attendant conditions of the exemption.'*

A copy of the Trade Notice No.14/2008 dated 11.12.2008 issued by the Commissioner of Central

Excise, Customs and Service Tax, Coimbatore is reproduced below for your information and guidance.'

11. The aforesaid two Circulars are in direct contradiction with each other. Circular No.99/2008, dated 11.12.2008 makes it clear that where there are multiple Notifications operating simultaneously in respect of the same commodity and extending different benefits, an option must be given to the assessee to elect and choose the Notification that would be most beneficial to it. Circular No.937/2010, dated 26.11.2010 on the other hand, limits the choice to only the Notification granting unconditional exemption.

12. This does not stand to reason. All the Notifications providing multiple choices to an assessee for tax treatment of the same commodity have been issued by one and the same Department and continued to operate simultaneously. The rationale behind this cannot be fathomed and it was incumbent upon the authorities to withdraw the Notifications that would be unavailable such that the remaining Notifications would prevail. This, not having been done, I am of the view that the assessee has to be permitted to elect and choose the Notification of its choice and the Department cannot thrust a Notification of its choice upon the assessee.

13. I am supported in this view by two judgments of the Supreme Court in the case of *H.C.L.Limited vs. Collector of Customs, New Delhi*, [2001 (130) E.L.T. 405 (S.C.)] and *Collector of Central Excise, Baroda vs. Indian Petro Chemicals* [1997 (92) E.L.T. 13 (S.C.)] where the Full Bench and Division Bench of the Supreme Court respectively have categorically confirmed the position that the option to elect and select the benefits provided under Notification is clearly within the realm of choice of an assessee. Circular No.937/27/2010-CX dated 26.11.2010, thus does not set out the correct position in law.

14. In the light of the above discussions, this Writ Petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Commissioner of Central Excise,
   Central Revenue Building, No.4,
   Lal Bahadur Shastri Road,
   Bibikulam,
   Madurai – 625 002.

2. The Assistant Commissioner of Central Excise,
   Dindigul I Division, No.68,
   Nehruji Nagar,
   R.M.Colony Road,
   Dindigul – 624 001.

+1 CC to M/s.R.ARAVINDAN, Advocate SR-79304.
+1 CC to M/s.R.SIVARAMAN, Advocate SR-79339.

Common Order made in
W.P.(MD)No.4922 of 2011 & 4086 to 4107 of 2012

Dated:
01.08.2019

CS(23.10.2019) 14P 5C