IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.02.2021
Pronounced On	15.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20293 & 20294 of 2014

(Through Video Conferencing)

M/s.Restile Ceramics Limited,
Malakpur Village, Hatnoora Mandal,
(via) Ismail Jhanpet, Medak District,
Andhra Pradesh - 502 296.
Rep by its Managing Director T.S.Rathod. ..Petitioner in W.P.No.20293/14

T.S.Rathod
Managing Director of M/s.Restile Ceramics Limited,
Malakpur Village, Hatnoora Mandal,
(via) Ismail Jhanpet, Medak District,
Andhra Pradesh - 502 296. ... Petitioner in W.P.No.20294/14

Vs.

1.The Customs and Central Excise Settlement Commission,
Additional Bench, II Floor,
Narmada Block, Custom House,
Rajaji Salai, Chennai - 600 001.
2. The Commissioner of Central Excise,
Hyderabad I Commissionerate,
Hyderabad, Andhra Pradesh. ... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the 1st respondent/Settlement Commission made in Final Order No.20/2014-C.Ex. dated 15.04.2014 in Settlement Application Nos.SA(E)/65/2013-SC and SA(E)/68/2013-SC in F.No.V/15/65/2013-C and F.No.V/15/68/2013-C and quash same with consequent benefit, in so far as, the same has been passed in total violation to the principles of natural justice in respect of imposition of interest, fine and penalty.

For Petitioner : Mr.N.Viswanathan in both W.Ps.
For Second Respondent: Mr.A.P.Srinivas
Senior Standing Counsel in both W.Ps.

COMMON ORDER

By this common order, both the writ petitions are being disposed of.

2. The petitioners are aggrieved by the impugned common order dated 15.4.2014 passed by the first respondent Settlement Commission.

3. By the impugned order 15.04.2014 in Final Order No.20/2014-C.Ex. in Settlement Application No.SA(E)/65/2013-SC in F.No.V/15/65/2013-SC, the first respondent Settlement Commission has called upon the petitioner in W.P.No.20293 of 2014 to pay interest for a balance amount of Rs.22,44,953/- as interest after adjusting the amount of Rs.8,07,015/- paid towards interest by the petitioner company during the pendency of the case before the first respondent Settlement Commission apart from imposing token penalties under the provisions of the CENVAT Credit Rules, 2004 as a condition for settling the case and for granting immunity to the petitioner from prosecution under the provisions of the Central Excise Act, 1944.

4. By the impugned order 15.04.2014 in Final Order No.20/2014-C.Ex. in Settlement Application No.SA(E)/68/2013-SC in F.No.V/15/68/2013-SC, the Managing Director of the said company has been called upon to pay a sum of Rs.25,000/- as penalty under Rule 26 of the Central Excise Rules, 2002. Therefore, W.P.No.20294 of 2014 has been filed.

5. The operative portion of the impugned common order reads as under:-

> 6.1 In the light of the above, the Bench settles the case under the Central Excise Act, 1944 on the following terms and conditions:-
>
> a) The additional amount of Central Excise Duty is settled at Rs.1,23,56,697/- (Rupees one crore twenty three lakhs fifty six thousand six hundred and ninety seven only) under the Central Excise Act, 1944. This amount has already been paid therefore no further liability subsists in this regard.
> b) The interest is settled at Rs.30,51,968/- (Rupees - thirty lakhs fifty one thousand nine hundred and sixty eight only). The

applicant has paid an amount of Rs.8,07,015/- towards interest. The balance interest amount of Rs.22,44,953/- shall be paid by the applicant within 30 days of receipt of this order and proof of payment furnished to Jurisdictional Commissioner.

c) In the fact and circumstances of the case, the Bench imposes a penalty of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) on the applicant under the provisions invoked in the Show Cause Notice and grants immunity from penalty in excess of that amount.

d) The Bench imposes penalty of Rs.25,000/- (Rupees twenty five thousand only) on Shri T.S.Rathod, Managing Director, the co-applicant, under the provisions invoked in the Show Cause Notice.

e) The amounts of penalty imposed in para 7(c) and 7(d) should be paid by applicant and co-applicant within 30 days of receipt of this order and proof of payment be furnished to Jurisdictional Commissioner.

f) The Bench imposes a fine of Rs.5,00,000/- (Rupees five lakhs only) in lieu of confiscation. The amount should be paid within 30 days of receipt of this order and compliance reported to the Jurisdictional Commissioner.

g) The applicant and the co-applicant are granted immunity from prosecution under the Central Excise Act, 1944.

6. The impugned common order of the first respondent Settlement Commission is challenged insofar as it seeks to levy interest and impose penalties on the petitioners primarily on the ground that when the petitioners company had removed the capital goods from its factory in Medak, AP to its factory in Baroda, Gujarat, there was no provision for recovering the amounts payable under Rule 3(5) of the CENVAT Credit Rules, 2004.

7. It is therefore submitted that the impugned common order seeking to levy interest and impose penalty based on the subsequent amendment to the provisions of the aforesaid Rules was contrary to law and therefore to that extent, the impugned common order was liable to be set aside as the petitioner has paid the amount required to be reversed under Rule 3(5) of the CENVAT Credit Rules, 2004 though belatedly.

8. I have heard the learned counsel for the petitioner and second respondent.

9. While the petitioner has challenged the impugned common order insofar as it seeks to levy interest and penalty on the petitioner as a condition for granting immunity from prosecution, the second respondent has challenged the jurisdiction of this Court to entertain the present writ petitions on the ground of "*forum non conveniens*".

10. The learned counsel for the second respondent places reliance on the decision of the Honourable Supreme Court in Union of India Vs. Indo Swift Laboratories, (2011) 4 SCC 635 and that of the decision of this Court in Zeenath International Supplies Vs. Commissioner of Customs, 2014 (304) ELT 491 (Mad).

11. The learned counsel for the second respondent also places reliance on a recent decision of this Court rendered in W.P.Nos.23702 and 23703 of 2012 vide order dated 30.11.2020 in the case of Anshuai Electronics Vs. The Settlement Commission, wherein, placing reliance on the decision of the Hon'ble Supreme Court in Kusum Ingot and Alloys Ltd Vs. Union of India (2004) 3 CTC 365, and a decision of the Full Bench of this Court in Sanjos Jewellers Vs. Syndicate Bank And Others, 2007 (5) CTC 305, the writ petitions were dismissed on the ground of "*forum non conveniens*".

12. Before dealing with the merits of the submission of the learned counsel for the petitioner and the submission of the learned counsel for the second respondent, it would be apt to refer to be relevant facts leading to the filing of the present writ petitions. The petitioner company is from Andhra Pradesh. Barring the first respondent, second respondent is also from the State of Andhra Pradesh.

13. The petitioner company had imported capital goods during 2007-2008 and 2008-2009 and had installed them at its factory in Medak, in Andhra Pradesh. The petitioner company availed CENVAT credit on the CVD equivalent to additional excise duty payable on the like goods paid at the time of import of these capital goods.

14. The petitioner thus availed capital goods credit for an amount of Rs.1,96,18,317/- under the provisions of the CENVAT Credit Rules, 2004.

15. The petitioner company subsequently removed these credits availed on capital goods to its Unit II in Baroda, Gujarat between 22.11.2011 and 14.03.2012 vide delivery Challan Nos.1 to 96.

16. It is the case of the petitioner company that it had become a sick company and therefore it had to shut down its operation in Medak District, Andhra Pradesh and therefore to

consolidate its manufacturing activity, it removed these capital goods to its own factory in Baroda, Gujarat. However, it failed to pay an amount equivalent to the credit availed on these capital goods under Rule 3(5) of the CENVAT Credit Rules, 2004 due to the financial constraints. It is submitted that though as per Rule 3(5) of the CENVAT Credit Rules, 2004 the petitioner was required to pay amounts, it was neither duty nor a recovery mechanism was prescribed under the Rules so as to levy interest or impose penalty.

17. Statements were recorded on 12.09.2012 from the Managing Director of the company. During the pendency of the investigation, an amount of Rs.5 lakhs was paid while undertaking to pay the balance.

18. The second respondent thereafter issued Show Cause Notice dated 14.12.2012 to the petitioner company and called upon the petitioner to show cause as to why the petitioner should not be called upon to pay an amount of Rs.1,23,56,697/- as detailed in the Annexure to the Show Cause Notice under Rule 14 of the CENVAT Credit Rules 2004 read with Section 11A(4) of the Central Excise Act, 1944.

19. The Show Cause Notice also called upon the petitioner company to show cause as to why interest on the aforesaid amount should not be recovered from the petitioner under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB and 11AA of the Central Excise Act, 1944 and why an equal amount of penalty should not be imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC on the petitioner.

20. The Show Cause Notice also called upon the petitioner to show cause as to why the capital goods under seized should not be confiscated in terms of Rule 15(1) of the CENVAT Credit Rules 2004.

21. The Show Cause Notice also called upon the Managing Director of the petitioner company (petitioner in W.P.No.20294 of 2014) to show cause as to why penalty should not be imposed on him under Rule 26(1) of the Central Excise Rules, 2002.

22. Under these circumstances, both the petitioners filed application before the first respondent Settlement Commission to settle the case under Chapter-V of the Central Excise Act, 1944.

23. During the proceedings before the first respondent Settlement Commission, the petitioner admitted a liability of Rs.1,23,56,697/- and paid the amounts. In the application filed before the first respondent Settlement Commission, it was also specifically stated that no interest was payable by the petitioner in terms of the CENVAT Credit Rules, 2004.

24. In the impugned common order, the first respondent Settlement Commission accepted the submission of the second respondent that the petitioner was liable to pay interest in terms of Explanation appended to Rule 8 of the Central Excise Rules, 2002 read with Rule 3(5) of the CENVAT Credit Rules, 2004.

25. The first respondent Settlement Commission also found that as per the report of the Jurisdictional Commissioner, the petitioner had already paid an amount of Rs.1,23,56,697/- and a sum of Rs.8 lakhs towards interest on 17.10.2013 as against Rs.8,07,015/- towards interest. It therefore held that the balance interest of Rs.22,44,953/- was to be paid by the petitioner.

26. It is submitted that the amount to be paid/reversed under Rule 3(5) of the CENVAT Credit Rules, 2004 as it stood was not a duty and therefore there is no question of payment of interest or penalties.

27. It is submitted that when the capital goods were removed between 22.01.2011 and 14.03.2012, there was no machinery provided under the provisions of the CENVAT Credit Rules, 2004 to either recover the amount or impose levy penalty on the petitioner.

28. It is submitted that Explanation to Rule 3(5) of the CENVAT Credit Rules, 2004 was amended for the first time vide Notification No. 1/2014-CE (NT) dated 08.01.2014. It is submitted that a machinery to recover the amount for failure to pay the amount under the provisions of the CENVAT Credit Rules, 2004, was introduced for the first time vide Notification No. 1/2014-CE (NT) dated 08.01.2014 under Rule 14 of the CENVAT Credit Rules, 2004.

29. The learned counsel for the petitioner submitted that Explanation to Rule 3(5) and Rule 3(5A) of the CENVAT Credit Rules, 2004 was inserted only vide Notification No. 1/2014-CE (NT) dated 08.01.2014 and these provisions cannot be made retrospectively applicable to the petitioner. Relevant portion of the said notification reads as under:-

> "Explanation 1.-*The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March*

Explanation 2.-*If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised."*

30. I shall first deal with the issue relating to jurisdiction of this Court to entertain the present writ petitions and whether at this point of time the writ petitions can be dismissed on the ground of "*forum non-conveniens*".

31. This doctrine of "*forum conveniens*" is a well-known doctrine in international law. The courts have held the question of "*forum conveniens / forum conveniens*" involves balancing the considerations of the interests of the parties involved (especially factors of costs and convenience), as well as wider concerns of convenience and justice to third parties involved in the litigation, wastage of resources, the risk of inconsistent judgments from different courts and justice in the broadest sense, as well as considerations of international comity, i.e., the respect for the jurisdiction of the courts of other countries.

32. In particular, while the claimant's advantages of having the trial in the forum have been downplayed in modern jurisprudence, the cumulative effect of the denial of the totality of such advantages could amount to a deprivation of substantial justice that would be a sufficient reason for the forum to hear the case even if another forum is the clearly more appropriate forum.

33. The doctrine pre-supposes that two or more courts have jurisdiction over the subject matter of the dispute but one among them is more appropriate and therefore the court would decline to pass any order in a court if it finds the other court to be more appropriate to decide the dispute as that court was a forum convenient to decide the lis between the parties.

34. "*Forum Conveniens*" has now been made applicable to Writ under Article 226 of the Constitution of India in terms of the decision of the Hon'ble Supreme Court in Kusum Ingot's case referred to *supra*. The Hon'ble Supreme Court in Kusum Ingot's case referred to *supra* has held that the court can decline to exercise its discretionary remedy on the ground of "*forum conveniens*".

35. It is to be underlined that this doctrine has to be invoked at the very threshold and not at the stage of final hearing. In this case, these writ petitions were filed in the year 2014. The objection is raised for the first time before

this Court in 2020 after a lapse of almost six years. The respondents have also not filed any petition at the earliest point of time questioning the jurisdiction of this Court to entertain the writ petitions on the ground of forum conveniens/ forum non-conveniens. No counter has also been filed.

36. The decision of the Division Bench of this Court in Zeenth International Supplies Vs. Commissioner of Customs, Visakhapatnam referred to *supra* cited by the learned counsel for the second respondent dealt with a statutory appeal against an order passed by the Customs, Excise And Service Tax Appellate Tribunal, Chennai.

37. There the jurisdiction of the Court was questioned at the very threshold. Whereas, in the present case, the doctrine of "*forum conveniens*"/ "*forum non conveniens*" has been raised for the first time at the time of final hearing.

38. That apart, against an order passed by the Tribunal, under the provisions of the Central Excise Act, 1944 and the provisions of the Customs Act, 1962, a statutory appeal is to be filed only before the jurisdictional High Court.

39. That apart, the Court in the above case found the petitioner therein was resorting to forum shopping. Therefore, the said decision cannot be cited as an authority to jettison the present writ petitions at the final stage of the cases particularly when there is no doubt that this Court also has jurisdiction to decide the case.

40. here are also no disputed questions of facts or any other inherent weakness that has been pointed out by the respondents for the Court to decide the case.

41. That apart, judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution as held by the Hon'ble Supreme Court in Minerva Mills Vs. Union of India, (1980) 3 SCC 625 and L.Chandra Kumar Vs. Union of India, (1997) 3 SCC 261.

42. Powers of the High Court to exercise its writ jurisdiction under Article 226 of the Constitution of India are subject to two clear principles. First, the decision to entertain or not entertain a particular action under its writ jurisdiction is fundamentally a discretion. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. Writ jurisdiction of a High Court cannot be completely excluded by statute.

43. The Hon'ble Supreme Court in Union of India Vs. Indo-Swift Laboratories Ltd., 2011 (265) ELT 3 (SC) has clearly laid

down the law. It has held that an order passed by the Settlement Commission can be interfered if the order was found to be contrary to any provision of the Act. So for as the findings of fact recorded by the Settlement Commission or question or facts are concerned, the Court held that it is not open for examination either by the High Court or by the Hon'ble Supreme Court.

44. Since there are no disputed questions of fact involved in the present cases and issue arises solely on account of interpretation of the provision, I am of the view that the challenge to the impugned common order of the first respondent Settlement Commission located within the jurisdiction of this Court is maintainable before this Court under Article 226 of the Constitution of India.

45. Since the question involved in these Writ Petitions is only relating to levy of interest and imposition penalty under the provisions of the Central enactment namely the Central Excise Act, 1944 and the Rules made therein, namely CENVAT Credit Rules, 2004 and Central Excise Rules, 2002, I am of the view that the present writ petitions can be decided on merits based on the available case laws instead of driving the petitioner to work out its remedy in the Andhra Pradesh High Court or Telangana High Court at this distant point of time.

46. It is not in dispute that the capital goods on which credit was availed, were removed between 22.11.2011 and 14.3.2012. During the relevant period, Rule 3(5) of the CENVAT Credit Rules 2004 contemplated payment of an amount equal to the credit availed in respect of such capital goods.

47. Rule 3(5A) of the CENVAT Credit Rules 2004 which was inserted into CENVAT Credit Rules, 2004 vide Notification No.27/2005-CE (NT) dated 16.05.2005 applied only to credit availed capital goods which were removed as waste and scrap. Rule 3(5A) read as under in 2005:-

> "(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value."

48. Only with effect from 01.04.2012, vide Notification No.18/2012-CE (NT) dated 17.03.2012, Sub-rule (5A) to Rule 3 of the CENVAT Credit Rules, 2004 was substituted which enjoined a manufacturer to pay an amount equal to the CENVAT Credit taken on capital goods where such capital goods were removed whether as capital goods or as waste or scrap.

49. Rule 3(5A) of the CENVAT Credit Rules 2004 as it stood during the material period when the capital goods were removed and when the show cause notice dated 14.11.2012 was issued to the petitioner, read differently. Both the amended and an amended provisions are reproduced below:-

Sub-Rule 5A of CENVAT Credit Rules 2004 as in force in terms of Notification No. 27/2005-CE (NT) dated 16.05.2005 at the time when the capital goods were removed between 22.11.2011 and 14.3.2012 by the petitioner.	Sub-Rule 5A of CENVAT Credit Rules 2004 after the show cause notice dated 4.11.2012 was issued to the petitioner as per Notification No. 18/2012-CA (NT), dated 17.3.2012 with effect from 1.04.2012.
If capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty of the "transaction value".	If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CEVAT Credit, namely:- (a) for computers and computer peripherals : • for each quarter in the first year @ 10% • for each quarter in the second year @ 8% • for each quarter in the third year @ 5% • for each quarter in the fourth and fifth year @ 1% (b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter: Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value

50. Thus, only after 01.04.2012, on removal of used capital goods, a manufacturer was liable to pay amount under Sub-Rule 5A to Rule 3 of CENVAT Credit Rules, 2004.

51. Rule 3(5) of the CENVAT Credit Rules 2004 read as under:-

Rule 3 : CENVAT Credit

(1).............

(2).............

....

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

PROVIDED that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service:

PROVIDED FURTHER that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products:

52. Under Rule 3(5) of the CENVAT Credit Rules, 2004 as it stood then, a manufacturer was required to pay an amount equivalent to the credit availed at the time of removal if the capital good was removed "as such".

53. In other words, it did not apply to a case where capital goods were removed after being put to use. Therefore, Rules 3(5) of the CENVAT Credit Rules 2004 was not attracted.

54. Rule 3(5A) was introduced into the CENVAT Credit Rules, 2004 vide Notification No.18/2012-CE(NT) dated 17.03.2012 with effect from 01.04.2012 as mentioned above.

55. As per the Rule 3(5A) of the CENVAT Credit Rules, 2004, removal of the used capital goods was to accompany a payment of amount equal to the Cenvat credit taken on the said capital goods reduced by percentage point calculated by straight line method.

56. The removals by the petitioner of the capital goods were between 22.11.2011 and 14.03.2012 and therefore strictly there was no liability to pay the amounts under Rule 3(5A) of

the CENVAT Credit Rules, 2004 as it did not exist in the aforesaid Rules.

57. That apart, only vide Notification No.3/2013 – CE (N.T.), dated 01.03.2013 w.e.f. 01.03.2013, an Explanation was introduced to Rule 3 of the CENVAT Credit Rules, 2004. Explanation read as under:-

> "Explanation – If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), 5(A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT Credit wrongly taken."

58. A further amendment to the aforesaid Rule was introduced vide Notification No.1/2014-CE (NT) dated 08.01.2014. The amount payable under the provision, namely Sub-Rules (5), (5A) and (5B) to Rules 3 of the CENVAT Credit Rules, 2004, were recoverable in the same manner provided under Rule 14 of the CENVAT Credit Rules, 2004.

59. Relevant portion of the amendment has already been extracted in paragraph No.29 of this order. However, for the sake of clarity, Notification No.1/2014-CE (NT) dated 08.01.2014 which substituted Notification No.3/2013-CE (N.T) dated 01.03.2013 is reproduced below:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Notification No. 01/2014-Central Excise (N.T.) New Delhi, the 8th January, 2014

G.S.R. (E).- 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 (First Amendment) Rules, 2014.

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

2. In rule 3 of the CENVAT Credit Rules, 2004, -

i. the Explanation occurring after the proviso to sub-rule (5B) shall be omitted;
ii. in sub-rule (5C), after the words “production of said goods”, the words “and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods” shall be inserted;
iii. after sub-rule (5C), the following explanations shall be inserted, namely: -

“Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.”
F. No. 267/126/2011-CX.8

(Pankaj Jain)
Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide Notification No. 23/2004 - Central Excise (N.T.) dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10thSeptember, 2004 and last amended vide Notification No. 18/2013-Central Excise (N.T.) dated the 31st December, 2013 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 808 (E), dated the 31st December, 2013.

60. The first amendment to Rule 3 of the CENVAT Credit Rules, 2004 for the purpose of recovery of amount came into force only on 01.03.2013 vide Notification No.3/2013-CE (NT) dated 01.03.2013 after the petitioner had started paying an amount of Rs.1,23,56,697/- in installments on various dates between 29.05.2012 and 07.10.2013 to the credit of the second respondent for removals made between 22.11.2011 and 14.03.2012. The above amendment was later substituted vide Notification No.1/2014-CE (NT) dated 08.01.2014. Therefore, question of imposing interest under Rule 14 of the Act cannot be sustained as the Rules did not exist at the time of removals.

61. Thus, the amount payable under Rules 3(5), (5A), (5B) and (5C) of the CENVAT Credit Rules, 2004 which were made

recoverable in the same manner provided under Rule 14 of the aforesaid Rules if no amount was paid at the time of removal came into force only w.e.f. 01.03.2013 for the first time.

62. Since the petitioner paid the aforesaid amount of Rs.1,23,56,697/- on various dates between 29.05.2012 and 07.10.2013 and a further sum of Rs.8 lakhs on 26.11.2013, the invocation of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 on the date of Show Cause Notice dated 14.11.2012 was without jurisdiction.

63. However, these interpretation are relevant only against levy of interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 on the petitioner in the impugned order and for not exonerating the petitioner from the liability to reverse the amount of Rs.1,23,56,697/-.

64. Since the removals were contrary to spirit of the provisions of the CENVAT Credit Rules, 2004, there are no merits in the submission of the learned counsel for the petitioners as far as the challenge to imposition of penalty or redemption fine under the impugned common order as a condition for granting immunity from prosecution under the provisions of the Central Excise Act, 1944 to the petitioners.

65. The amount of Rs.8,07,015/- already paid by the petitioner in W.P.No.20293 of 2014 towards interest shall be treated as amount paid by the petitioner as additional amount admitted by the petitioner for settling the case for granting immunity to the petitioners from prosecution under the Central Excise Act, 1944.

66. Invocation of Rule 8(3A) of the Central Excise Rules, 2002 in the impugned order of the first respondent was wholly misplaced. Rule 8(3A) of the Central Excise Rules, 2002 applies only to a situation where an assessee defaults in payment of "duty" beyond 30 days due date as prescribed in the said Rules. Then, notwithstanding anything contained in CENVAT Credit Rules, 2004, such an assessee was required to pay excise duty on each consignment at the time of removal, without utilising the Cenvat Credit till the outstanding amount including interest thereon was paid in cash; and in the event of failure, it shall be deemed that goods have been cleared without payment of duty and the consequence of penalties as provided in these Rules were attracted. This is not applicable to the facts of the cases.

67. Therefore, while upholding the impugned common order imposing penalty and redemption fine on the respective petitioners, I set aside the impugned common order insofar as it

seeks to direct the petitioners to pay the balance amount of Rs.22,44,953/- towards interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

68. The petitioners therefore are directed to remit the balance amount of penalty and redemption fine imposed in the impugned common order as a condition for settling the case and for granting immunity from prosecution within a period of 30 days from date of receipt of a copy of this order if the aforesaid amount has already not been paid by the petitioners.

69. Accordingly, these Writ petitions stand partly allowed in terms of the above observation. No cost.

Sd/-
Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

1.The Customs and Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, Rajaji Salai, Chennai - 600 001.

2. The Commissioner of Central Excise,
Hyderabad I Commissionerate, Hyderabad, Andhra Pradesh.

+1cc to Mr.A.P.Srinivas, Advocate SR.NO..8617

AKM/16.03.21/ 15P-4C/

common order
in W.P.Nos.20293 & 20294 of 2014
15.02.2021