IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2025

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR. JUSTICE C. KUMARAPPAN

W.P. Nos. 22048 of 2004, 21351 of 2005, 21352 of 2005 and 10147 of 2015

&

W.P.M.P. Nos 43/2015, 23276 of 2005 & W.M.P. No.17206 of 2017

W.P.No. 22048 of 2004

Salem Textiles Limited,
Attur, Salem District. ..Petitioner

Vs.

The Superintendent of Central Excise,
Attur Range, Attur, Salem District. ..Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the files of the respondent herein in O.C. No. 369/2004 dated 24.6.2004 and quash the proceedings of the respondent herein in O.C. No. 369/2004 dated 24.6.2004.

For Petitioner :: Mr.N. Prasad

For Respondent :: Mr.A.P. Srinivas,
Senior Standing Counsel

W.P. Nos. 21351 & 21352 of 2005

Salem Textiles Limited,
represented by its Managing Director,
R. Prabakaran,
Selliampalayam,
Narasingapuram – 636 108
Attur Taluk,
Salem District. ..Petitioner in both WPs

Vs.

1. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem – 636 001.

2. The Superintendent of Central Excise,
Attur Forward Sector,
Attur 636 102.

3. Union of India, represented
by the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi. ..Respondents in both WPs

Prayer in W.P. No. 21351 of 2005: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the files of the 1st respondent herein in C.No. V/52/15/405/2002-CX.Adj. (Order Sl.No.17/2005) (Commissioner) dated 16.05.2005 and quash the same.

Prayer in W.P. No. 21352 of 2005:Petition under Article 226 of the Constitution of India praying for issue of a Writ of Declaration declaring that Rule 8(4) of the Central Excise Rules, 2002, as it stood prior to its amendment by Notification No. 12/2003 CE

(NT) dated 01.03.2003 is inconsistent with Rules 3 and 4 of the Cenvat Credit Rules, 2002 and insofar as failing to permit utilization of the duty paid on inputs being Cenvat credit and accordingly, the words "The assessee shall be required to pay excise duty by debit to the account current" are liable to be declared ultra vires Section 37(xxviii) of the Central Excise Act, 1944 and unenforceable.

For Petitioner in both WPs	::	Mr.N. Prasad
For Respondents in both WPs	::	Mrs. Revathi Manivannan Senior Standing Counsel

<u>W.P. No. 10147 of 2015</u>
Salem Textiles Limited,
represented by its General Manager,
Mr.N. Harinarasimhan,
Selliampalayam,
Narasingapuram – 636 108
Attur Taluk,
Salem District. ..Petitioner

Vs.

1. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem – 636 001.

2. The Superintendent of Central Excise,
Attur Forward Sector,
Attur 636 102.

3. Union of India, represented
by the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Declaration declaring that Rule 8(4) of the Central Excise Rules, 2001, is inconsistent with Rules 3 and 4 of the Cenvat Credit Rules, 2001 and insofar as failing to permit utilization of the duty paid on inputs being Cenvat credit and accordingly, the words "assessee shall be required to pay excise duty by debit to the account current" are liable to be declared ultra vires Section 37(2)(xxviii) of the Central Excise Act, 1944, besides being arbitrary and violative of Article 14 of the Constitution of India and unenforceable.

For Petitioner	::	Mr.N. Prasad
For Respondents	::	Mrs. Revathi Manivannan, Senior Standing Counsel.

COMMON ORDER

(Made by DR. ANITA SUMANTH,J.)

A common order is passed in all these four writ petitions since the issue arising for consideration is one and the same.

2. In W.P. Nos. 21352 of 2005 & 10147 of 2015, the prayer is for a declaration to the effect Rule 8(4) of the Central Excise Rules, 2002 and 2001 respectively are inconsistent with Rules 3 and 4 of Cenvat Credit Rules, 2001 and on various other grounds and ultimately seeking that they should be declared ultra vires various Sections of the Central Excise Act, 1944, besides being arbitrary and violative of Article 14 of the Constitution of India.

3. Both Mr.N. Prasad, learned counsel for the petitioner, Mr.A.P. Srinivas, learned Senior Standing Counsel and Mrs. Revathy, learned Senior Standing Counsel for the respondents would accede to the position that this Court in the case of M/s. *Malladi Drugs & Pharmaceuticals Limited V. The Union of India, The Commissioner of Central Excise* (2015 (323) E.L.T 489 (Mad.)) had had occasion to consider a challenge to Rule 8(3A) of Central Excise Rules, 2002, which is in pari materia with Rule 8(4) of 2001 and 2002 Central Excise Rules. The Division Bench of this Court had accepted the stand of the assessees, quashing the Rules and allowing the writ petitions. The relevant portion of the said order at paragraph No.5 is extracted hereunder:

> *"5. Learned counsel Shri Oza for the revenue, however, submitted that during the pendency of this petition, the adjudicating authority passed the final order which has not been challenged. He drew our attention to the later portion of the said decision in case of Indsur Global Ltd. (supra) in which this Court even while striking down the portion of Sub Rule (3A) of Rule 8, did not disturb the orders passed by the revenue authorities as upheld by the Tribunal, since such dispute had achieved finality. Counsel would urge that in the present case also the same course should be adopted."*

4. Since there is no dispute on the position that the above reasoning would apply on all fours to the challenge in the present case as well, Rules 8(4) of 2001 and 2002 Central Excise Rules also, as a consequence, will be liable to be set aside and we do so. W.P. Nos. 21352 of 2005 and 10147 of 2015 are allowed.

5. W.P. No. 21351 of 2005 challenges an order-in-original dated 16.05.2005 for the first fortnight of April, 2021, first fortnight of July, 2021 and for the month of June, 2021. W.P. NO. 22048 of 2004 challenges an order of recovery dated 24.06.2004.

6. A portion of the demand thereunder would stand covered by the decision that we have taken in the Writs of Declaration that have been allowed. To this extent, the demand under order-in-original dated 16.05.2005 and recovery notice dated 24.06.2004 are set aside.

7. As regards the remaining demand and the impugned order-in-originaland recovery notice, learned counsel for the petitioner would submit that certain submissions are to be made. Let the submissions be made before the assessing authority.

8. Since the Department is agreeable to a hearing of the above afresh, the petitioner is directed to appear before 1st respondent, who now carries the designation *The Commissioner of Central Excise, Office of the Commissioner of CGST and Customs, Central Excise and Service Tax, No.1, Foulk's Compound, Anai Road, Salem – 636 001* on 17.04.2025 at 11a.m. without expecting any further notice in this regard.

9. Upon condition that the petitioner appears before the officer as aforesaid, ready to make his submissions, the impugned orders to the extent referred to in para 9 above are set aside. It is made clear that if the petitioner does not appear before the officer as aforesaid, the benefit extended under this order, will stand withdrawn unilaterally and without further reference to the parties. Let the petitioner be heard on 17.04.2025 and orders passed within a period of four weeks therefrom.

10. W.P. Nos. 22048 of 2004 and 21351 of 2005 stand disposed. No costs. Connected miscellaneous petitions are closed.

(A.S.M.J.) (C.K.J.)
04.04.2025

Index: Yes/No

Neutral Citation: Yes/No

Speaking Order/~~Non-Speaking Order~~

To

1. The Superintendent of Central Excise,
Attur Range, Attur, Salem District.

2. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem – 636 001.

3. The Superintendent of Central Excise,
Attur Forward Sector,
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4. The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

DR. ANITA SUMANTH,J.

AND

C. KUMARAPPAN,J.

nv

W.P. Nos. 22048 of 2004, 21351 of 2005,

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