

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 03.03.2025

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

**WA(MD)Nos.926 & 927 of 2020
and
CMP(MD)Nos.5087 & 5088 of 2020**

1.The Assistant Commissioner of Central Excise,
Virudhunagar Division, Virudhunagar.

2.Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam, Madurai – 2.

... Appellants/
Respondents Nos.3 & 4
in both cases

Vs.

1.M/s.Valli Textile Mills,
(A unit of Loyal Textile Mills Ltd),
Rep.by its AGM-Marketing
Mr.K.Lakshmana Sankar,
N.Venkateswarapuram,
N.Subbaiahpuram Post,
Sattur Taluk,
Virudhunagar District.

...1st respondent / petitioner

2.Joint Secretary to the Government of India,
Ministry of Finance,
Department of Revenue (R.A.Unit),
Hudco Vishala Bldg,
14, B-wing, 6th floor,
Bhikaji Cama Place, New Delhi – 110 066.



3. The Commissioner of Central Excise
(Appeals),

Central Revenue Building,
Bibikulam, Madurai – 625002.

...Respondents 2 and 3 /
Respondents 1 and 2
in both cases

Common Prayer : Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 01.11.2018 made in WP(MD)No.14522 of 2013.

In both cases : -

For Appellants : Mr.R.Nandakumar, Senior standing counsel

For Respondents : Mr.S.Murugappan for R1

Mr.Jeyasingh for R2

COMMON JUDGMENT

(Judgment of the court was delivered by G.R.SWAMINATHAN, J.)

“Every lady in this land

Hath twenty nails upon each hand

Five and twenty on hands and feet

And this is true, without deceit.”

Sir Robert Megarry borrows the above jingle from James Burrow's “Essay on Punctuation” and writes in ***Marshall v. Cottingham (1981) 3 WLR 235*** thus :

“Leave this unpunctuated, or with punctuation only at the end of the lines, and it seems plainly untrue. Insert a comma or semi-colon at the beginning and end of the phrase “Upon each hand five,” and nonsense becomes sense, albeit at the cost of some impairment of the rhythm.”



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We have opened this judgment with the above quotation since the case on hand can be resolved by giving effect to the punctuation mark found in the relevant statutory rule.

2.The revenue is the appellant in these writ appeals. The writ petitioner is a company engaged in manufacture of cotton yarn, cotton fabrics and knitted fabrics falling under Chapter 52 and 60 of Central Excise Tariff and polyester cotton blended knitted fabrics falling under Chapter 60. They have been clearing the same for home consumption as well as for exports. They filed rebate claims in one case for Rs.2,78,334/- and in another case for Rs.67,10,159/- for the duty paid on exported goods. In the first case, the rebate was originally sanctioned but in the second case, the rebate claim was rejected.

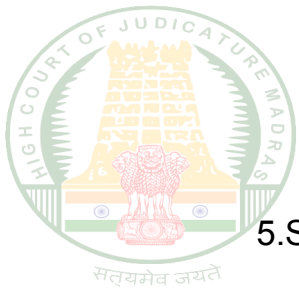
3.Show cause notices dated 25.11.2008 and 24.10.2008 were issued by the Assistant Commissioner of Central Excise, Virudhunagar Division taking the stand that in view of Rule 11(3)(i) of Cenvat Credit Rules, 2004, the assessee's cenvat credit had lapsed. The assessee offered their explanation. The Assistant Commissioner of Central Excise, Virudhunagar Division vide order dated 31.08.2009 in Order-in-Original No.18/2009 and the order dated 27.07.2009 in Order-in-Original No.14/2009 rejected the assessee's claim and



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confirmed the demand set out in the show cause notices. Aggrieved by the same, the assessee filed Appeal Nos.498 of 2010 and 480 of 2010 before the Commissioner of Central Excise (Appeals), Madurai. The appeals were allowed. Challenging the orders dated 26.10.2010 and 27.10.2010, the revenue filed revision applications under Section 35 EE of the Central Excise Act, 1944 before the Central Government. The revisions were allowed on 06.03.2013 by the Government and the order of the original authority was restored. Challenging the same, the assessee filed WP(MD)Nos.14522 and 14523 of 2013. The learned Single Judge vide order dated 01.11.2018 allowed both the writ petitions and the orders dated 06.03.2013 passed by the government in the revision applications filed by the revenue were set aside. Questioning the same, these intra-court appeals have been filed.

4. Heard the learned standing counsel for the appellants and the learned counsel for the writ petitioner/first respondent. While the standing counsel took us through the order passed by the original authority and the order passed by the government and tried to impress upon us to adopt the reasoning found therein, the learned counsel for the petitioner submitted that the order of the learned Single Judge does not call for interference. Both sides filed written arguments.



5. Section 5A(i) of the Central Excise Act, 1944 is as follows :

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“5A. Power to grant exemption from duty of excise.—(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured—

- (i) in a [free trade zone [* * *]] and brought to any other place in India; or
- (ii) by a hundred per cent export-oriented undertaking and [brought to any other place in India].”

In exercise of the power conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944, two notifications ie., Notification Nos.29/2004 and 30/2004 were issued on 09.07.2004. Under Notification No.29/2004, various textile products were partially exempted from payment of statutory duty. Under Notification No.30/2004, various textile products were fully exempted from payment of excise duty. However, it was made clear that the notification would apply only to the goods in respect of which no credit of duty on inputs had



been taken under the provisions of the Cenvat Credit Rules, 2002. It is not in dispute that while Notification No.30 provides conditional exemption, Notification No.29 gave absolute exemption. The assessee had been availing the benefits under both the notifications. As on 28.02.2007, the assessee had cenvat credit for a sum of Rs.92,17,111/-. The question that fell for consideration was whether this cenvat credit would lapse on account of the insertion of Rule 11(3) of cenvat rules with effect from 01.03.2007.

6.Rule 11(3) is as follows :

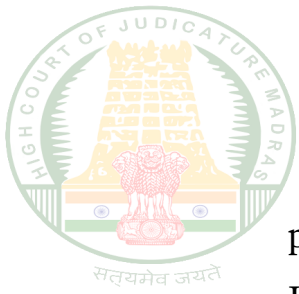
“RULE 11. Transitional provision.

....

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for

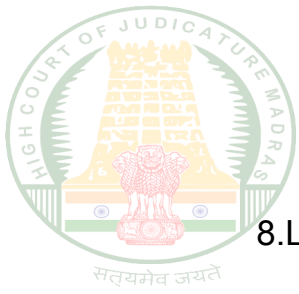


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payment of service tax on any output service, whether provided in India or exported.”

The appellants concede that the writ petitioner's case is covered under sub-rule 3(i) of Rule 11 of CCR, 2004.

7. Sub-rule 3 of Rule 11 has been extracted above. It has two sub-clauses. Sub-clause (i) ends with a semi-colon followed by “or”. In other words, a semi-colon and “or” separate the two sub-clauses. In ***Rajinder Singh v Kultar Singh (1979 SCC OnLine P&H 145)***, it was held that the punctuation (semi-colon) cannot be discarded as being inappropriate and that it had been put with a definite object of making the preceding and the succeeding topics distinct. In ***Saurav Jain v. A.B.P.Design (2022) 18 SCC 633***, the amended Order 41 Rule 22 of CPC was considered. The Hon'ble Supreme Court held that on account of the presence of semi-colon, the two parts of the sentence must be read disjunctively. The Madras High Court in ***Junglee Games India Private Limited v. State of T.N (2021 SCC OnLine Mad 2762)***, observed that where the punctuation semi-colon is used between two sets of matters, they may be allied or related fields but distinct nonetheless. The Hon'ble Division Bench in ***State of T.N. vs. Everest Industries Ltd., (2022 SCC OnLine Mad 8919)*** also held that the use of the semi-colon in the sub-clauses followed by the disjunctive “or” indicated that the legislature intended to treat the sub-clauses as distinct and capable of being treated independently.



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8. Let us now go back to sub-rule 3 of Rule 11. In view of the above discussion on the interpretative effect of a semi-colon, we have to hold that sub-clause (i) of sub-rule 3 of Rule 11 will have to be treated as distinct and separate from sub-clause (ii). Sub-clause (ii) alone provides for lapse of cenvat credit. Sub-clause (i) does not provide for lapse. The appellants have conceded that the case on hand falls only sub-clause (i) of sub-rule 3 of Rule 11 of CCR, 2004. The logical consequence is that the subject cenvat credit cannot be treated as having lapsed. We reject the argument of the learned standing counsel that sub-clause (ii) should be read integrally with sub-clause (i). We are not able to apply the provision for lapse set out in sub-clause (ii) in respect of the situation covered by sub-clause (i). We have adopted the approach taken in **2020 (6) TMI 59, CESTAT, New Delhi (The Commissioner, Central Excise & CGST, Alwar vs. M/s. Orient Syntex (Prop. Apm Industries Ltd))** and **2022 (1) TMI 259 (CESTAT, Ahmedabad (Synfab Sales and Industries Ltd v. C.C.E & S.T-Silvasa))** to which our attention was drawn by the learned counsel for the petitioner. It is for this reason, we decline to interfere with the order passed by the learned Single Judge allowing the writ petitions. In other words, we grant relief to the writ petitioner/assessee for the reason mentioned above.

9. There was considerable controversy at the outset as to whether these writ appeals are competent. The learned counsel for the writ petitioner



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submitted that since the amounts involved in these appeals are less than two crores, in view of the Instruction issued by the Central Board of Indirect Taxes and Customs, the appeals should be dismissed. The learned standing counsel on the other hand submitted that since the issue of refund is involved, the appeals have to be heard on merits. The latest Instruction dated 06.08.2024 reads that appeal shall not be filed in the CESTAT, High Court and Supreme Court if the case fell within the prescribed monetary limits. Exceptions have also been carved out. We notice that the direction is “appeal shall not be filed”. If in contravention of the instruction, an appeal is filed, the assessee can bring it to the notice of the concerned authority and seek withdrawal of the appeal. It may not be open to the tribunal or the High Court to dismiss the appeal filed by the revenue by citing the said Instruction. Once the appeal has been filed, we have to necessarily deal with the issue on merits.

10. In the case on hand, the Commissioner of Central Excise (Appeals) appears to have treated both the Notifications (29 & 30 dated 09.07.2004) on the same footing. Grant of relief to the writ petitioner would not mean that we have endorsed the view taken by the appellate authority. We have also not gone into the issue of retrospective application of Rule 11(3) of CCR, 2004.



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11. With the above observations, the writ appeals are dismissed. No costs. Connected miscellaneous petitions are closed.

(G.R.S, J.) & (M.J.R, J.)

03.03.2025

Index : Yes / No
Internet : Yes/ No
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To:

1. The Assistant Commissioner of Central Excise,
Virudhunagar Division, Virudhunagar.
2. Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam, Madurai – 2.
3. The Commissioner of Central Excise
(Appeals),
Central Revenue Building,
Bibikulam, Madurai – 6250021.
4. The Joint Secretary to the Government of India,
Ministry of Finance,
Department of Revenue (R.A.Unit),
Hudco Vishala Bldg,
14, B-wing, 6th floor,
Bhikaji Cama Place, New Delhi – 110 066.



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G.R.SWAMINATHAN, J.

AND

M.JOTHIRAMAN, J.

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