



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.04.2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

AND

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

CMA.(MD).No.825 of 2024

The Commissioner of Service Tax,
Central Excise and GST,
Office of Commissioner of Service Tax,
Central Excise and GST,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001.

.....Petitioner

Vs.

The Tamil Nadu Newsprint and Papers Limited,
Kagithapuram-639 136,
Karur District,
Tamil Nadu.

.....Respondent

Prayer : Appeale filed under Section 38 (G) of the Central Excise Act to set aside the final order No.42338 of 20121 dated 22.09.2021 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai and consequently restore the Order-in-Original No.TCP/EXCUS/007/2016 (C Ex.) dated 05.01.2016 passed by the Commissioner of Service Tax, Central Excise and GST, Trichirappalli.



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For Petitioner : Mr.K.Mohanamurali

For Respondent : Mr.S.Muthuvenkataraman

Judgment

(Judgemnt of the Court was made by N. ANAND VENKATESH,J.)

The present case has been filed by the Department under Section 35-G of the Central Excise Act, 1944, against the final order dated 22.09.2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai.

2. The respondent was engaged in the manufacture of printing and writing paper and they also hold Central Excise Registration. They import steam coal, which is used by them for generation of steam / electricity which is in turn used in relation to the manufacture of the final products. With effect from 01.03.2011, the steam coal was levied with central excise duty at the rate at 5% *ad valorem* vide Notification No.2/2011-CE dated 01.03.2011. However, the concessional rate at 1% *ad valorem* was available for steam coal as per the Notification No.1/2011-CE dated 01.03.2011 (Serial No.28) subject to the condition that such concessional rate of duty



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shall not apply to the goods in respect of which Central Excise Duty on inputs or Service Tax on input services has been taken under the provision of Cenvat Credit Rules, 2004.

3. The respondent paid 2% CVD on the imported coal and availed credit for the said CVD.

4. The Department was of the view that in terms of Rule 3 of the Cenvat Credit Rules (CCR) 2004, such credit is not eligible. Accordingly, show cause notice was issued proposing to recover the wrongly availed credit along with the interest and for imposing penalty. After getting the explanation, the authority confirmed the demand, interest and penalty. Aggrieved by the same, the appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal by the respondent.

5. The CESTAT through the impugned order dated 22.09.2021, allowed the appeal and set aside the order passed by the Commissioner of Central Excise and Service Tax dated 05.01.2016. Aggrieved by the same, the present appeal has been filed.



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6. When notice was ordered by this Court, no substantial question of law was framed. Hence, when the matter was taken up for hearing today, this Court heard both sides to ascertain as to whether any substantial question of law is involved in this case.

7. The learned Senior Standing Counsel appearing on behalf of the appellant submitted that the respondent was not eligible for the Cenvat Credit availed on the import of steam coal in terms of Sub Rule 1 of Rule 3(1) of the Cenvat Credit Rules 2004, since the Cenvat Credit is not allowed if exemption has been taken under the Notification No.12 of 2012 dated 17.03.2012. The learned counsel also relied upon Clause-VII of Rule 3 which deals with the additional duty leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise. The learned counsel submitted that the Tribunal did not take into consideration these specific provisions and had erroneously allowed the appeal.

8. Per contra, the learned counsel for the respondent placed before this Court the judgment of the Calcutta High Court in the case of ***Commissioner of CGST and C. Ex. Bolpur Commissionerate Vs. Shyam***



Steel Industries Limited reported in **2022 (382) ELT 329 (Calcutta)** and submitted that the issue involved is squarely covered by the judgment.

9. In the judgment that was relied upon by the learned counsel appearing for the respondent, the following substantial questions of law were framed by the Calcutta High Court:

“Whether the respondent is eligible to avail Cenvat Credit availed in respect of 1%/2% (concessional rate) Additional Duty of Customs (CVD) paid on imported coal in terms of Notification No. 12/2012-cus., dated 17.03.2012 and 12/2013-Cus., dated 01.03.2013, in view of restriction for availing Cenvat Credit in terms of the Notification No. 12/2012-CE dated 17.03.2012 (sl. No. 67 and condition no. 25)?

Whether the Learned Tribunal has misdirected itself by allowing the appeal of the respondent without appreciating that if no credit of excise duty at the concessional rate of 1% is available under the proviso to Rule 3(1)(i) of the Cenvat Credit Rules, the credit of CVD at the rate of 1%/2% is also be restricted?



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Whether the restricted as prescribed in respect of duty of excise in the Notification No. 1/2011 CE dated 01.03.2011 and in Notification No. 12/2012 C.E., dated 17.03.2012 read with Rule 3 of the Cenvat Credit Rules, 2004 is applicable to the countervailing duty?”

10. The above substantial questions of law were dealt with by considering the Cenvat Credit Rules 2004 and more particularly, Rules 3 and 4. The relevant portions are extracted hereunder:

“4. The question which falls for consideration in this appeal is whether the assessee is eligible to avail Cenvat Credit availed in respect of 1 % or 2 % (concessional rate) Additional duty of Customs (CVD) paid on imported coal in terms of Notification No. 12/2012-Cus., dated 17.03.2012 and Notification No. 12/2013-Cus., dated 01.03.2013 and as to whether there is any restriction for availing Cenvat Credit in terms of the said notification particularly as mentioned in Serial No. 67, Condition No. 25.

5. The case of the revenue is that Rule 3(1)(i) of the Cenvat Credit Rules, 2004, provides that a manufacture or producer of final products or a provider of taxable service shall be allowed to take credit (Cenvat Credit) of



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 specified in Serial Nos. 67 and 128 in respect of which the benefit of an exemption under Notification 12-2012-CE dated 17.03.2012 is availed. It is submitted that the adjudicating authority took note of the dictionary meaning of the word “equivalent” to mean a thing equal to another in value or measure or force or an effect or significance and the word “equivalent” occurring in sub-Rule (vii) of Rule 3 of the Cenvat Credit Rules, 2004 would indicate that countervailing duty (CVD) is equal to duty of excise in all respects and accordingly all the conditions prevailing on duty of excise is very much applicable to CVD though they are collected under different statutes but are same in respect of their nature and the purpose for levy. Further it is contended that the notifications dated 01.03.2011 and 17.03.2012 read with Rule 3 is applicable to CVD and if any other interpretation is given it will jeopardise the very purpose of imposition of countervailing duty.

6. The learned tribunal while allowing the appeal pointed out that there is no restrictions in the notifications dated 17.03.2012 and 01.03.2013 unlike Serial No. 67 of



Central Excise Notification No. 12 of 2012 dated 17.03.2012 in so far as the availment of CENVAT Credit on coal is concerned. Further it was held that the credit of CVD is available under Rule 3 (1) (vii) of the Rules and the proviso to Rule 3 (1) (i) restricting credit in case of coal cleared under Excise Notification No. 12/2012 dated 17.03.2012 cannot impliedly be read into when the rate of CVD has not been followed from the excise notification but as generally applied the rate on its opinion. Thus, the tribunal held that there is no room for any intendment in taxing statutes and they require strict interpretation. Further the tribunal held that even if generally applied rate of CVD which was 1 % up to 28.02.2013 and 2 % thereafter under the customs notification and the concessional excise duty read on domestically manufacture goods 1 % without Cenvat excise notification where not uniform and in any event the expression “equivalent” appearing in Rule 3 (1) (vii) of the Rules for modification of CVD could not be restricted including the tariff rate of excise duty of 6 % on the domestically manufacture goods. The tribunal also referred to one of its decisions in the case of Jaypee Sidhi Cement Plant Versus CCGST, Customs and Excise, Jabalpur 2019 (369) ELT 1673.



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7. *The Learned Senior Advocate appearing for the respondent assessee to explain meaning of the word “equivalent” referred to the decision in Chandrakala Trivedi Versus State of Rajasthan and Others (2012) 3 SCC 129 wherein it was held that the said word must be given a reasonable meaning and by using the expression “equivalent” one means that there are some degree of flexibility or adjustments which do not allow this rated requirements; there has to be some difference between what is equivalent and what is exact. The circular issued by CBEC in Circular No. 41/2013-Cus dated 21.10.2013 is also of relevance to the case on hand. The necessity to issue the circular arose as doubt was raised whether an importer, while availing the “Basic Customs Duty” (BCD) Exemption at 10 % under FTA can simultaneously avail of the concessional countervailing duty (CVD) at 2 % as per notification No. 12/2012-Customs or he has to pay the CVD at 6 %, which is rate of excise duty applicable on Steam Coal when Cenvat facility has not been availed. The issue was clarified on the following terms:-*

v In the present case, the excise duty applicable on Steam Coal is 6%, if Cenvat benefit is availed of an 1% if the Cenvat benefit is not availed of, Normally, Steam Coal will suffer 6% CVD, as the condition of non-availment of



cenvat benefit cannot be satisfied in respect of imported goods. However, in the Budget 2013-14, as a conscious policy decision, it was decided to levy 2% CVD both on steam coal and bituminous coal. This is the general applied rate of CVD on all imports of steam coal and bituminous coal regardless of the excise duty leviable on like domestic coal. No such condition has been laid down that an importer cannot avail of this concessional CVD of 2% if he has availed of the concessional BCD on steam coal under another notification.

It is therefore clarified that an importer while availing of BCD exemption on steam coal under FTA notification No. 46/2011-Cus can simultaneously avail of concessional CVD at 2% under notification No. 12/2012-Cus.

8. That apart, we find that the Regional Advisory Committee for Hyderabad zone which is the Committee consisting of 10 Members, 5 from the department who are all in the rank of Commissioners/Joint Commissioners and 5 Members representing the industry considered this issue. The question which has arisen in the case on hand was subject matter of discussion in Point No. 1 and in the Minutes of the Meeting of the Committee dated 09.02.2015 it was decided as follows:-



Since the subject goods were levied to reduced rate of 2% CVD on their importation in terms of Section 3 of Customs Tariff Act, 1975 read with Notification issued therein i.e. under Notification No. 12/2012-Cus., Dated 17.03.2013 (and not under Notification No. 1/2011 CE) which was not excluded from the purview of Rule 3 of Cenvat Credit Rules, 2004. It appears that the Cenvat Credit of CVD paid on importer coal (i.e. 2% adv.) under Notification No. 12/2012-Cus. Dated 17.03.2013 is eligible for credit.

9. Identical issue has been decided in favour of the assessee by the tribunal in Hindalco Industries Limited Versus GST, Bhopal 2018 (363) ELT 1085 (Tri.-Del), holding that taking into consideration Notification No. 12/2012-Cus there is no bar for availment of Cenvat Credit in terms of the Rule 3(7) where duty paid under Notification No. 12/2012-Cus and Cenvat Credit cannot be denied. Identical view was taken by the tribunal in CCE and ST, Surat-I Versus M/s Aarti Industries Limited 2019(3) TMI 240-CESTAT Ahmedabad, M/s. Asahi Songwon Colors Limited Versus CCE & ST, Vadodara 2018(9) TMI 159- CESTAT Ahmedabad, Commissioner of Central Excise, Customs & CGST, Jaipur-I & Ors, Versus



M/s. Shree Cement Limited 2022 (7) TMI 978- CESTAT New Delhi, SRF Limited Versus Commissioner of Customs, Chennai 2015 (318) ELT 607 (SC), and M/s. Tamil Nadu Newsprint & Papers Limited Versus Commissioner of GST & Central Excise, Tiruchirappalli 2021 (10) TMI 13-CESTAT Chennai. The above decisions rendered by the tribunal have not been shown to have been reversed or modified by the High Court.

11. In the above judgment specific reliance was placed upon the judgment passed by the Hon'ble Apex Court in the case of ***SRF Limited Vs. Commissioner*** reported in ***2015 (318) E.L.T 607***. In fact, that was the judgment which was also relied upon by the CESTAT, Chennai, while allowing the appeal filed by the respondent.

12. In view of the above, the issue involved is squarely covered by the above judgment and hence, the grounds raised by the Department does not require any re-consideration by this Court. Consequently, no substantial question of law is involved to be decided in this appeal.



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13. In the result, this Civil Miscellaneous Appeal stands dismissed.

(N.A.V.,J..) (K.K.R.K.,J.)
09.04.2026

Index : Yes / No
Internet : Yes / No
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To

1.The Customs, Excise and Service Tax Appellate Tribunal Southern Zonal Bench, Chennai.

2.The Commissioner of Service Tax,
Central Excise and GST,
Office of Commissioner of Service Tax,
Central Excise and GST,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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**N. ANAND VENKATESH,J.
AND
K.K.RAMAKRISHNAN,J.**

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