

**Customs, Excise & Service Tax Appellate Tribunal
Waste Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10863 of 2016 - DB

(Arising out of OIO-VLD-EXCUS-000-COM-0012-15-16 dated 12/01/2016 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

Themis Medicare Limited

.....Appellant

Plot No. 69-a,
GIDC Industrial Estate,
Vapi, Valsad- Gujarat

VERSUS

Commissioner of C.E & S.T.-Valsad

.....Respondent

Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat- 396191

APPEARANCE:

Shri Vinay Kansara, Advocate for the Appellant

Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11845/2024

DATE OF HEARING: 29.04.2024

DATE OF DECISION: 29.08.2024

RAMESH NAIR

The brief facts of the case are that in the appellant's factory the fire broke out on 26.01.2006 and inputs as such, and finished goods were destroyed. On the next working day, vide letter dated 27.01.2006, the jurisdictional range office was intimated about the fire and destruction of the raw materials, finished goods and some documents. The Range Superintendent visited the factory on 27.01.2006 and the panchnama dated 27.01.2006 was drawn. The appellant had also completed other formalities. The statement of the authorised signatory was recorded. Thereafter, the appellant had also filed application dated 08.08.2006 and 18.09.2006 for remission of Central Excise duty totally Rs. 60,78,682/- (57,85,561+2,93,121) to the Commissioner of Central Excise along with required details and documents. The show cause notice dated 08.01.2007

was issued proposing demand of Central Excise Duty of Rs. 60,54,137 on the finished goods destroyed and Cenvat Credit of Rs. 65,74,632/- (19,28,129 + 45,71,069) availed on inputs destroyed as such and contained in the finished goods destroyed. The appellant filed a detailed reply to the said show cause notice. Thereafter the letter dated 22.01.2007 was issued intimating the appellant that the request for remission of duty amounting to Rs. 60,78,683/- has not been considered as the conditions of this Commissionerate's Trade Notice No. 16/2005 dated 16-06-2005 were not fulfilled. Against the said letter dated 22.01.2007, the appellant had preferred an appeal against the said letter before the CESTAT. As regard the show cause notice dated 08.01.2007, the Commissioner of Central Excise had confirmed the demand of duty Rs.. 60,54,137/- in relation to the finished goods destroyed during fire; confirmed the demand of Cenvat Credit Rs. 65,74,632/- and Rs. 75,434/- availed on the inputs destroyed as such and inputs contained in the finished goods destroyed and also appropriated the amount Rs. 19,28,129/- and Rs. 45,71,069/- as already reversed, vide OIO dated 05-09-2008. The appellant had preferred appeal against the said Order-In-Original also before the CESTAT. The tribunal while disposing both the appeals has remanded both the matters back to the adjudicating authority by passing the common Order dated 02-01-2013. During the remand proceedings, the appellant had filed written submission dated 07-11-2014, additional written submissions dated 06-01-2015 & 10-12-2015 also submitted the details & documents related to precautions taken to safeguard the goods, copy of the certificate from the Insurance Company, particulars about the goods saved or salvaged etc. were submitted. The adjudicating authority in the de-novo adjudication did not consider the submissions made and rejected the application for remission of duty Rs. 60,78,682/- & confirmed the demand of duty Rs.

60,54,137/-; and also confirmed the demand of Cenvat credit totally Rs. 65,74,632/- (19,28,129+ 45,71,069+75,434), vide OIO dated 12-01-2016. Therefore, the present appeal is filed against the said OIO.

2. Shri Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that the learned Commissioner has erred in rejection of application of remission of duty as the fact regarding destruction of finished goods in fire is not in dispute as it has been admitted in the impugned order. Further, the fire accident was unavoidable, is also not in dispute. In such case appellant was legally entitled for the remission of the duty under the provisions of Rule 21 of Central Excise Rules, 2002.

2.1 He Further submits that , the Central Excise duty is levied on manufacture of the goods and the same is to be collected at the time of removal. In this case, the goods were not removed as destroyed and hence, the question of collection of duty does not arise particularly when there is no dispute regarding destruction of the goods.

2.2 He further submits that in the first round of litigation, the basic contention was that the conditions of the Trade Notice were not fulfilled, whereas, in the impugned order, it is not the case of the department the appellant has not fulfilled the requirements of Trade Notice as the appellant has proved that they fulfilled the conditions. Therefore, the applications for remission of duty ought to have been allowed. He submits that to reject the application for remission of duty, the Certificate issued by the Insurance Company has been relied upon. Based on this certificate, the adjudicating authority contended that the claim is settled for Rs. 6,72,71,819/- which includes Cenvat credit Rs. 19,28,129/- pertains to the inputs destroyed as such and Rs. 45,71,069/- pertains to the inputs contained in finished goods

destroyed and hence which is breach of condition-VIII of the Trade Notice. In this context, it is submitted that merely the Insurance company has sanctioned the claim of Cenvat credit reversed, application for remission of duty cannot be rejected. The fact that the Insurance company has approved the claim of Cenvat credit availed on inputs destroyed whether as such or contained in the finished goods destroyed, does not have any relevance so far as remission of duty is concerned.

2.3 He submits that the adjudicating authority has rejected the application for remission of duty on the ground that the appellant has not been able to establish Rs. 6,07,18,622/- as value of finished goods does not include Central Excise duty. On this he submits that the Certificate issued by the Insurance Company nowhere even remotely suggests that the amount of Central Excise duty for which application for remission of duty has been filed, has been sanctioned. Therefore, this contention of the Adjudicating Authority is based on assumption and presumptions.

2.4 He submits that in any case, even if it is assumed, but not admitted that the Insurance Company has sanctioned the amount of Central Excise duty, in such a situation also application for remission of duty cannot be rejected, in as much as, there is no bar provided in Central Excise Act, 1944, and Rules made there under. He submits that as regard the demand of Rs. 60,54,137/- since the appellant is eligible for remission of duty, this confirmation of demand of duty being consequential will not sustain.

2.5 As regard the demand of Cenvat credit Rs. 65,74,632/- (Rs. 19,28,129 + 45,71,069 + 75,434), the Cenvat credit of Rs. 19,28,129/- pertains to inputs destroyed as such and hence the same was reversed vide

PLA E. No. 12/6 dated 17-09-2006. This fact is not in dispute. Even the appellant do not dispute the said demand. Since, the appellant reversed the said amount the demand on this count was not supposed to be raised.

2.6 As regard the demand Rs. 46,46,503/- (Rs. 45,71,069 +75,434), it is submitted that since the inputs were consumed in the manufacturing process and the finished goods were also emerged and subsequently, such finished goods were destroyed, as per settled legal position, Cenvat credit cannot be denied. The fact regarding utilization of inputs in the manufacturing process of the finished goods destroyed, is not in dispute. Accordingly, the condition for the eligibility of the Cenvat credit in terms of Rule 3 of the Cenvat Credit Rules, 2004 stands complied with. He placed reliance on the following judgements:-

- UOI V/S Hindustan Zinc Limited - 2009 (233) ELT 61 (Raj.).
- M. Kumar Udhyog (P) Ltd. Vs. CCE-2014 (302) ELT 385 (T)
- CCE V/S M. Kumar Udhyog (P) Ltd. - 2014 (306) ELT 19 (All.)
- Lord Chloro Alkali Ltd. Vs. CCE-2013 (293) ELT 68 (T)
- Harinagar Sugar Mills Ltd. Vs. CCE-1992 (58) GSTL 270 (T)
- Voltamp Transformers Ltd. V/S CCE - 2010 (262) ELT 909 (T-Ahmd.)
- Grasim Industries V/S CCE-2007 (208) ELT 336 (T-LB)
- CCE V/S Intas Pharmaceuticals Limited - 2013 (289) ELT 256 (Guj.)
- CCE V/S BiopacIndia Corporation Ltd. 2010 (258) ELT 56 (Guj.)
- CCE V/S Hindalco Industries Ltd. 2011 (272) ELT 161 (Bom.)
- CCE V/S M. Kumar Udhyog (P) Ltd. 2014 (306) ELT 19 (All.)
- CCE V/S Joy Foam Pvt. Ltd. - 2015 (322) ELT 209 (Mad.)
- CCE V/S Indchem Electronics 2003 (151) ELT 393 (T.) [Against this judgement, the department had filed the SLP, but it was dismissed by

the Honourable Supreme Court reported in 2003 (157) E.L.T. A206 (S.C.)]

- Nectar Life Sciences Limited V/S CCE - 2013 (293) ELT 247 (T)
- M/s Tata Advanced Material Vs. CCE 2009 (241) ELT 92 (T)
- CCE Vs. M/s Tata Advanced Material - 2011 (271) ELT 62 (Kar.)
- Themis Medicate Limited V/S CCE reported in 2014 (303) ELT 141 (T-Ahmd.)
- Pragna Dyechem Pvt. Ltd Vs. CCE, Surat-II - 2013 (294) ELT 117 (T).
- Libra International Ltd Vs. CCE-2013 (293) ELT 63 (T).
- Barodia Plastics Pvt. Ltd. V/s CCE 2015 (315) E.L.T. 357 (P&H)
- Sarada Ply Wood Ind. Ltd. V/s CCE-1987 (32) ELT 116 (T)
- Dsm Anti-Infectives India Ltd. V/s CCE 2014 (300) ELT 460
- Jindal Vijayanagar Steel Ltd. Vs. CCE-2006 (201) ELT 18 (T)
- CCE V/S Welspun Terri Towels -2002 (149) ELT 593

3. Shri R.R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order

4. We have carefully considered the submission made by both sides and perused the records. The basic issue to decide in the entire matter is that whether the appellant is eligible for the remission of excise duty on the goods destroyed in fire and whether the appellant is required to pay the Cenvat credit in respect of the inputs contained in the finished goods which were destroyed in fire. As regard the issue of remission of duty, we find that there is no dispute that the goods were destroyed in fire. The fire accident was unavoidable and on the entire fire accident the Insurance Company also processed the insurance claimed and the same has been sanctioned to the appellant. In such case the appellant is clearly

entitled for the remission of the duty in respect of the goods destroyed in fire as provided under Rule 21 of the Central Excise Rules, 2002 which reads as under:-

"RULE 21. [(1)] *Where it is shown to the satisfaction of the [Principal Commissioner or Commissioner, as the case may be] that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing."*

4.1 From the plain reading of the above rule 21, the objective of the Rule is that if the goods have been lost or destroyed by natural cause or by unavoidable accident at any time before the removal, the commissioner may remit the duty payable on such goods subject to conditions as may be imposed by him by order in writing. In the present case, there is no dispute that the goods have been destroyed in fire which is an unavoidable accident and there is no evidence of any mis-chief or malafide intention of the appellant in the fire accident. Therefore, as per the facts and circumstances on record, the appellant's case is clearly covered by Rule 21 of the Central Excise Act, 2002. Therefore, the appellant is legally entitled for the remission of duty in respect of the goods destroyed in fire. We further find that even insurance claim also has been sanctioned by the Insurance Company which reinforces the fact that the fire accident was unavoidable. Accordingly, we hold that the appellant is eligible for the remission of duty. Consequently, the duty demand on the finished goods destroyed in fire is not sustainable. Hence, the same is set aside.

4.3 As regard the reversal of Cenvat credit on input as such destroyed in the fire, the appellant is not contesting as the same as has been reversed by the appellant. Accordingly, the said reversal is maintained.

4.4 As regard the remaining amount of Rs. 46,46,503/- (Rs. 45,71,069 +75,434), the same is contained in the finished goods destroyed in fire. During the relevant period there was no provision for the reversal of Cenvat credit for the inputs contained in the finished goods, in order to allow the remission of duty for goods destroyed in fire. There is no dispute that the inputs have been used in the manufacture of finished product. In terms of Rule 3 of Cenvat Credit Rules, 2004, the Cenvat credit is allowed when the following ingredients are satisfied.

- (i) The inputs must be used in or in relation to the manufacturing process of the final product.
- (ii) The inputs should have been received under duty paying documents.
- (iii) The Central Excise duty must have been paid on the inputs, by the supplier.
- (iv) Receipt and utilization/consumption of inputs, in or in relation to manufacture, should not be in a dispute.

4.4 In the facts of this case there is no dispute that the aforesaid conditions have been fulfilled therefore, there is no need of reversal of credit in respect of inputs contained in the finished goods which have been destroyed in unavoidable accident of fire.

4.5 The issue that whether the Cenvat credit on inputs contained in the finished goods destroyed is required to be reversed or otherwise has been decided in various following judgments:-

a) In the case of Grasim Industries V/S CCE-2007 (208) ELT 336 (T-LB). The Larger Bench considered the same issue and passed the following order :-

"5. *The issue is whether in cases where remission of duty was allowed in respect of goods which have been lost or destroyed by natural cause or by unavoidable accident, whether the input credit taken in respect of inputs used for such goods are to be reversed or not.*

6. *We find that the Tribunal in the case of Inalsa Ltd. v. CCE, New Delhi (supra) held that the final product has not suffered duty only as a result of remission of duty given on fulfilling the conditions, therefore, under Rule 49, it is not to be equated to a general exemption from duty or goods being charged to nil rate of duty. Therefore, the credit in respect of inputs used in the manufacture of such goods need not be reversed. In the case of Mafatlal Industries (supra), the Tribunal agreed with the earlier view in the case of Inalsa Ltd. (supra) that remission of duty on finished goods cannot be equated with exemption to goods. However, it is further held that in case remissions granted to finished goods destroyed in fire, a manufacturer is not entitled for credit of duty in respect of inputs used in the manufacture of such goods. We find that the Tribunal in the case of CCE v. Indchem Electronics reported in [2003 \(151\) E.L.T. 393](#) has taken the view that inputs which were to be used in the manufacture of final product and the final product was destroyed due to fire and remission of duty was granted, the credit in respect of inputs used on such inputs is not desirable. The Revenue filed appeal against this order and the same was dismissed by Supreme Court reported in CCE v. Indchem Electronics reported in [2003 \(157\) E.L.T. A206](#).*

7. *We find that reading of Rule 49 of Central Excise Rules, 1944 and Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in respect of goods lost or destroyed by natural cause or by unavoidable accidents or in case goods become unfit for consumption or for marketing at any time before removal does not provide reversal of credit in respect of inputs used in the manufacture of such goods. The Modvat rules prohibits the credit of duty paid in respect of the inputs which are used in the manufacture of exempted goods or which are chargeable to nil rate of duty. The Tribunal in both the cases, that is Mafatlal Industries (supra) and in the case of Inalsa Ltd. (supra) held that in case the goods were destroyed due to natural cause or by unavoidable accident during handling or storage, cannot be equated with exemption to goods and the inputs can be considered to have been put to intended use for manufacture of the final product. Reading of rules under which remission is granted in respect of goods which were lost or destroyed by natural cause or by natural accident, does not provide any condition regarding reversal of credit taken in respect of inputs used on such goods, hence we are unable to support the view taken in the case of Mafatlal Industries (supra) whereby it has been held that assessee has to reverse the credit taken of inputs used in such goods on which remission is granted. Therefore, we approve the view of the*

Tribunal taken in the case of Inalsa Ltd. (supra) in this regard. The issue to the Larger Bench is answered in the above terms and the matter be placed before the Regular Bench."

b) Similar view was taken by the Hon'ble Gujarat High Court in the case of CCE V/S Intas Pharmaceuticals Limited - 2013 (289) ELT 256 (Guj.) wherein the Hon'ble High Court passed the following order:-

"14. After hearing the learned counsel for the parties and after going through the provisions contained in Central Excise Act as well as the concerned Rules, we find that Cenvat is a scheme under which a manufacturer is allowed to utilize the duty paid on inputs by taking the same from the duty payable on the final product, subject to certain procedures prescribed under the Rules. It is only a benefit available to the manufacturer to utilize the duty paid on the inputs for payment of duty on the final product subject to the procedure laid down in the Rules. It does not directly affect or reduce the assessable value automatically. It, however, will result in reduction in the cost of final product to the extent of the credit but will not automatically reduce the assessable value which is to be determined in accordance with the provisions of the Act. It, therefore, cannot have any effect on the assessable value, which is to be determined in accordance with the provisions of the Act. Further, the assessable value is to be determined in accordance with the provisions of the Act and the credit as provided by Rules cannot have any overriding effect on the provisions of the Act.

15. We find substance in the contention of Mr. Dave that in a taxing statute one has to look at what is exactly or clearly stated and there is no room for ascertaining any intendment of the legislature. It is well known that there is no equity about a tax and there is also no presumption as to tax. Over and above, nothing can be read in and nothing can be implied from a taxing statute. One must look fairly at the language used [Baidyanath Ayurved Bhawan (P) Ltd. v. Excise Commissioner, U.P. reported in AIR 1971 SC 378 = [1999 \(110\) E.L.T. 363](#) (S.C.)].

16. If we go through the provisions of the Rules relating to Cenvat, we find that prior to introduction of sub-rule (5C), there was no provision, which provided for reversal of the credit by the excise authorities where it has been lawfully taken by a manufacturer. Therefore, the credit accrued at the moment the raw material or the input was used in manufacturing of a final product which was neither exempt from duty nor carried nil rate of duty. Such being the provision, as it stood in the Cenvat Credit Rules prior to September 7, 2007, there is no scope of application of equitable doctrine against the assessee and in favour of the Revenue on the ground that it will amount to conferring of double benefit. The moment sub-rule (5C) was introduced, the Legislature made its intention clear that from the date of coming into force of the said amended rule, in case of future remission on the ground mentioned in the said sub-rule, there will be reversal of the credit.

17. In this connection, we may profitably refer to the following observation of the Supreme Court in the case of Delta Engineers v. State of Goa reported in (2009) 12 SCC 110 laying down the principles to be

followed in determining whether a statutory amendment is retrospective or clarificatory in nature :

"We may next consider whether the 1992 and 1994 Amendments to the Rules were retrospective in operation. In Zile Singh v. State of Haryana this Court held: (SCC p. 8, para 13)

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only...."

(emphasis supplied)

The Amendment Rules do not provide that they are retrospective in operation. Nor do the circumstances warrant such an inference. In fact, the contention of the respondents is not that power to levy fees/charges for use of riverine land was created/vested in the Port Authorities, by virtue of the Amendment Rules and that such power was given to levy fees/charges retrospectively. The contention has been that the power to levy fees/charges existed ever since the Rules came into force on 5-4-1984 and that position was merely clarified by the Amendment Rules in 1992 and 1994.

35. We have already held that the Amendment Rules of 1992 and 1994 are not clarificatory, but are provisions investing the Port Authorities with the power to levy and collect charges for occupation of government riverine land. Therefore, the demand for charges for use of government riverine land is valid only from 3-3-1994. Therefore the Port Authorities could not demand or recover any amount for the period prior to 3-3-1994. The Port Authorities are therefore liable to refund any amount recovered within three years prior to the date of the writ petition. Obviously, any amount paid during a period beyond three years from the date of the writ petition, is not recoverable as barred by delay and laches."

(Emphasis supplied by us).

18. *In the cases before us, we have already pointed out that the amendment has been effected from a particular date and at the same time, prior to such amendment, there was no provision of reversal as introduced in the Rules by way of amendment under the circumstances stated therein. Thus, it is creation of a new right in favour of the Revenue and in such circumstances, in the absence of any contrary intention reflected from any of the provisions of the Statute, the amendment must be held to be prospective.*

19. *We are consequently unable to accept the contention of Mr. Parikh and Mr. Ravani, the learned counsel appearing on behalf of the Revenue, that the said amended rule is clarificatory in nature. It is apparent from the notification that the same was given effect to from a specified date, i.e., September 7, 2007.*

20. *Such being the position, we hold that sub-rule (5C) of the Rules is effective from September 7, 2007 and for input credited earlier, there is no scope of reversal of the credit if the finished product becomes unfit for human consumption unless any condition has been imposed for remission of*

duty in terms of Rule 21 of the Central Excise Rules, 2002 making it clear that the credit already taken is to be reversed.

21. *We, accordingly, answer the Reference in the above way. The Reference is thus disposed of. Let the matters be placed before the appropriate Bench as per the roster."*

c) Addressing the same issue in another case of CCE V/S Biopac India Corporation Ltd. 2010 (258) ELT 56 (Guj.), the Hon'ble High Court of Gujarat passed the following order :-

"6. *From the facts noted hereinabove, it is apparent that the capital goods which came to be destroyed during the fire had been actually put to use by the respondent assessee for a period of 4 to 7 years. Thus, it is not as if the said capital goods had not been used in the manufacture of the finished goods. Hence, the respondent was entitled to avail of the cenvat credit in respect of the same. Having used the capital goods over a period of time, when the same came to be destroyed in the fire, it cannot be stated that the said goods had not been used in the manufacture of final products so as to call for reversal of the cenvat credit availed in respect of the same. In the circumstances, no infirmity can be found in the approach of the Tribunal in holding that there was no justification for reversal of modvat credit in respect of the capital goods which had been fully destroyed in the fire.*

7. *Insofar as the demand in respect of the duty involved on finished goods and semi-finished goods destroyed in the fire, the Tribunal has found as a matter of fact that the adjudicating authority had not disputed the fact that the finished goods as well as semi-finished goods were fully destroyed in the fire inspite of the respondent having taken all precautions. The Tribunal placed reliance upon the decision of the Larger Bench of the Tribunal in the case of Grasim Industries v. C.C.E., Indore, [2007 \(208\) E.L.T. 336](#) (Tri. - L.B.), wherein it had been held that the credit availed on inputs destroyed in fire was not required to be reversed and accordingly, set aside the demand on that count.*

8. *Thus, the Tribunal has merely followed an earlier decision of the Larger Bench of the Tribunal and based its conclusions upon findings of fact recorded by it upon appreciation of the evidence on record. On behalf of the revenue, nothing has been pointed out to show that the Tribunal has taken into consideration any irrelevant material or that any relevant material has been ignored. In the circumstances, it cannot be stated that the Tribunal has committed any legal error so as to call for intervention.*

9. *In matters involving similar controversy this Court has already held in cases of Commissioner of Central Excise & Customs v. GDN Garments (Tax Appeal No. 1144 of 2009) decided on 7-7-2010 and Commissioner of Central Excise Customs & Service Tax v. Pololight Industries Limited (Tax Appeal No. 1363 of 2009) decided on 7-7-2010, that no substantial question of law arises.*

10. *For the foregoing reasons, it cannot be stated that the impugned order of the Tribunal suffers from any legal infirmity so as to warrant interference. No question of law, much less any substantial question of law, can be stated*

to arise out of the impugned order of the Tribunal. The Appeal is, accordingly, dismissed."

d) The same issue was also considered by the Hon'ble Bombay High Court in the case of CCE V/S Hindalco Industries Ltd. 2011 (272) ELT 161 (Bom.) wherein it was held that prior to insertion of Sub Rule 5 (D) (C) in Rule 3 of Cenvat Credit Rules, there was no provision for reversal of the Cenvat credit on inputs contained in the finished goods which were destroyed in fire. The relevant portion of the order is reproduced below:-

"5. *The period involved in the present Appeal is prior to the insertion of sub-rules (5B) and (5C) in Rule 3.*

6. *In Commissioner of Central Excise v. Indian Petrochemicals Corporation Limited, [2008 \(226\) E.L.T. 339](#) a Division Bench of this Court had noted that the Tribunal in a long line of judgments had taken the view that where the goods have been shown as written off goods, the benefit is available. In the present case, as already noted earlier, the period to which the dispute relates is prior to the insertion of sub-rules (5B) and (5C) in Rule 3. The Tribunal held that the case of the assessee was covered by several of its judgments which have been adverted to in para 11 of the judgment. Counsel appearing on behalf of the Revenue has not submitted before the Court that any of those judgments have been overruled by any decision of this Court or of the Supreme Court. This case relates to a period prior to the amendment of Rule 3 by the insertion of sub-rules (5B) and (5C). In that view of the matter and for the reasons already noted, the Appeal would not raise any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs."*

4.6 In the present case also the period involved is January-2006 during which there is no specific provision for reversal of credit which was brought by Rule 5 (D) (C) of Rule 3 of Cenvat Credit Rules, 2004 vide Notification No 33/2007 – CE (NT) dated 07.09.2007. Therefore, prior to September, 2007 there was no requirement of reversal of Cenvat Credit as held in the above judgments. Therefore, we hold that the appellant is not required to reverse the Cenvat credit in respect of inputs contained in the finished goods which were destroyed .

5. As per our above discussion and finding, the impugned order stands modified to the above extent. Appeal is allowed in the above terms.

(Pronounced in the open court on 29.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha