# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

**EXCISE Appeal No. 13606 of 2013-DB**

[Arising out of Order-in-Appeal No CCEA-SRT-I-SSP-297-2013-14-U-S-35A-3- dated 20.08.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax-SURAT-I]

**Pankil Textiles** **.... Appellant**
Plot No. 49-a, Outside Kamela Darwaza,
Umarwada, SURAT, GUJARAT

*VERSUS*

**Commissioner of Central Excise & ST,Surat-1** **.... Respondent**
NEW BUILDING, OPP. GANDHI BAUG,
CHOWK BAZAR, SURAT, GUJARAT -395001

**APPEARANCE :**

Shri Hasit Dave, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR), for the Respondent

**CORAM:**

**HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)**
**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)**

DATE OF HEARING: 04.09.2025
DATE OF DECISION: 22.12.2025

**FINAL ORDER NO. 11439/2025**

**MR. SATENDRA VIKRAM SINGH:**

M/s. Pankil Textiles, Surat (Appellant) have filed this appeal against impugned Order dated 20.08.2013 passed by the Commissioner (Appeals), upholding the decision of the Adjudicating Authority passed vide order dated 28.02.2011 and rejected appeal filed by the appellant.

2. The facts of the case are that M/s. Pimtex Texturising Private Limited (PTPL) had two units one at Kim and the other at Surat. During 1995-96, their aggregate turn-over had crossed over 300Lakh and so PTPL were not entitled to the SSI benefit during 1996-97 and were required to pay full duty from the first clearance. As per records, M/s. PTPL availed concessional rate

of duty in respect of clearance of final goods during the month of April 1996 and May 1996 and thereafter, paid full duty from the month of June 1996. M/s. PTPL surrendered their registration on 28.10.1996 and thereafter, the present appellant M/s. Pankil Textiles obtained registration on 15.11.1996.

2.1 The appellant claims that they are entitled to concessional rate of duty on first clearance as prescribed under SSI Notification whereas, as per department since earlier owner (M/s. PTPL) had crossed turnover of Rs. 300Lakhs in 1995-96, hence as per provisions of Notification No. 1/93-CE dated 28.02.1993, the new owner shall not be entitled to duty free clearances during 1996-97. The department issued Show Cause Notice bearing No. R/VI/Pankil/97 dated 30.05.1997 and R/IV/Pankil/97 dated 12.08.1997 demanding Central Excise duty of Rs. 4,52,485/- for the period from November 1996 to February 1997 and for duty of Rs. 2,46,369/- for the month of March 1997 respectively, under Rule 9(2) of the erstwhile Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944 alongwith penalty under Rule 173Q and Rule 209A respectively. The said matters were initially adjudicated by the Assistant Commissioner vide order dated 24.11.1997 wherein he disallowed benefit of Notification No. 1/93-CE dated 28.02.1993 to the appellant and confirmed the demand of entire Central Excise duty besides imposing penalty of Rs. 6,00,000/- on the appellant under Rule 173Q of the Central Excise Rules, 1944.

3. Aggrieved by this order, the appellant filed appeal before the Commissioner (Appeals), who vide order dated 25.02.1999 set-aside the order of the Adjudicating Authority and allowed their appeal. Against this order, the department filed appeal before the CESTAT which vide order No. A/630/WZB/04/C-III dated 17.06.2004 remanded the matter to the

appellate authority with directions to rehear both the sides and thereafter re-determine the issues as per the case laws relied upon by the department on denial of benefit of Notification No. 1/93-CE and the Larger Bench decision that what should be considered as first clearance in the case of SSI exemption. In para (2) of the order, CESTAT observed as under:-

> **"2.** The reliance of the ld. D.R. on the cases of 1990 (50) ELT 250 Indica Laboratories Pvt. Limited V. Union of India (Para 30) and Dukes Pharma vs. Govt of India 199 (60) ELT 433 (Mad) and Gaurav Equipments (Pvt) Limited vs. CCE 1993 (66) ELT 438 (Tri.) is well founded and induces us to set aside the impugned order of the Commissioner (Appeals)."

3.1 In compliance to this order, the Commissioner (Appeals)vide order dated 31.08.2005 held that- "I find that the earlier manufacturer M/s. PTPL had not discharged the duty in full rate and therefore, the appellant is not entitled for concessional rate of duty". He accordingly, upheld the order of the lower authority regarding confirmation of demand, interest and penalty. Aggrieved with this order, the appellant filed appeal before this Tribunal which vide order dated 12.11.2009 remanded the matter to the Original Adjudicating Authority. The relevant Para 2 of the order is as under:-

> "Both sides agree that the matter is required to go back to the original adjudicating authority for verification as to whether the amount paid by the appellant on behalf of the earlier owner satisfies the requirement of full payment of duty or not. If the correct rate is 40%, the appellants would be entitled to refund of deposit made in respect of liability of the previous owner. In any case, even if the rate applicable is 50% now the full amount has been deposited. Since both sides agree that the matter has to go back to the original adjudicating authority to verify this aspect, we remand the matter to the original adjudicating authority to decide whether applicable rate is 40% or 50% and settle the issue accordingly."

3.2 In compliance of this order, the jurisdictional Deputy Commissioner verified the fact and held that the applicable rate of basic excise duty during the period April and May 1996 was 50% and the earlier owner M/s. PTPL were required to pay duty @ 50%. Since the appellant has not paid

differential duty on behalf of the earlier owner, they are not entitled to benefit of SSI exemption for clearances made by them during November 1996 onwards. He accordingly, confirmed the differential duty of Rs. 6,98,854/- (Rs. 4,52,485/- + 2,46,369/-) on them alongwith interest and penalty of Rs. 6Lakh.

3.3 Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeals) who vide impugned order dated 20.08.2013, rejected the appeal and upheld the order of the lower authority. Hence, the present appeal.

4 The appellant has taken the following grounds:-

(a) The impugned order passed by Commissioner (Appeals) is erroneous in law as well as on facts and is liable to be set-aside.

(b) The findings is wrong as admittedly the earlier owner never availed any SSI benefit and paid normal rate of duty.

(c) The impugned Show Cause Notices were issued by the Superintendent which should not have been issued from the year 1992 and such powers are only with the Assistant Commissioner/ Deputy Commissioner or the Commissioner of Central Excise.

(d) The findings of the Deputy Commissioner that earlier owner by mistake paid concessional rate of duty during April and May 1996 and then corrected the same even prior to the issue of said Show Cause Notices. This being is a mistake, does not mean that SSI benefit was availed by the earlier owner.

(e) In the earlier Order-in-Appeal, the Commissioner (Appeals) has recorded that the earlier owner had paid duty at full rate from June 1996 onwards and had corrected the mistake for two previous months. The authorities have travelled beyond the scope of Show Cause Notices and beyond the remand order.

(f) Penalty under Rule 173Q has been imposed which is without jurisdiction as this Rule was not attracted. There is no guilty intention or *mens rea* and only the bonafide error has happened. Therefore, such penalty under Rule 173Q will not attract.

(g) Once element of duty does not remain and in the absence of element of suppression, *mens rea* or any fault on their part, question of imposing penalty does not arise.

(h) They request not to remand this matter further as it has already been remanded twice and pray to set-aside the demand alongwith penalty and interest.

4.1 During hearing, learned Advocate pleaded that the differential duty for the month of April and May 1996 arose because the earlier owner had by mistake paid duty at the rate 40% instead of duty payable at the rate of 50% but from June onwards, they had paid full duty. The earlier owner had later on paid the differential duty amount through TR-6 challans and by debit to RG23A Part-II which shows non availment of SSI benefit by earlier owner and therefore, being new owner of the factory with effect from 24.11.1996, they become entitled to the benefit of SSI exemption. He also cited certain case laws in his defence.

4.2 As stated by learned Advocate on 04.09.2025, he, vide letter dated 20.11.2025 submitted copies of RT-12 returns of M/s. PTPL from March 1996 to October 1996 and also duty payment details to show that the earlier owner had paid duty at the full rate and thus, did not avail any SSI benefit. A perusal of said RT-12 return reveal that M/s. PTPL had availed concessional rate of duty (paid @ 40% instead of 50%) on clearances effected during April 1996 and May 1996 but later on paid the differential duty as given below:-

M/s. PTPL -**Surat Unit**

| Sr. No. | Duty paid (in Rupees) | | Payment details |
|---|---|---|---|
| | BED | AED (T&TA) | |
| 1. | 1,03,063/- | 15,459/- | Part II entry No. 53 dated 27.05.1996 |
| 2. | 72,308/- | 10,847/- | TR 6 dated 22.01.2007 |
| **Total** | **1,75,371/-** | **26,306** | |

M/s. PTPL -**Kim Unit**

| Sr. No. | Duty paid (in Rupees) | | Payment details |
|---|---|---|---|
| | BED | AED (T&TA) | |
| 1. | 1,00,003/- | 15,000/- | TR 6 dated 09.08.1996 Pt II entry No. 168 dt. 31.08.1996 |
| 2. | 1,00,003/- | 15,000/- | Part II entry No. 168 dt. 31.08.1996 |
| 3. | 50,000/- | 7,500/- | Part II entry No. 174 dt. 04.09.1996 |
| 4. | 90,000/- | 13,500/- | Part II entry No. 180 dt. 09.09.1996 |
| 5. | 56,839/- | 8,524/- | Pt II entry No. 182 dated 10.09.1996 |
| 6. | 2,28,191/- | 34,223/- | TR 6 dated 22.01.2007 |
| **Total** | **6,25,030/-** | **93,747** | |

5. Learned AR for the Revenue reiterated the findings of the lower authorities and stated that the department has complied with the remand orders of the Tribunal to ascertain whether the previous owner had paid duty at full rate or availed benefit of concessional rate of duty? On the basis of records, the Adjudicating Authority as well as the appellate authority have confirmed that the differential duty paid by the previous owner was short of the amount which was required to be paid for the month of April and May 1996. Accordingly, it has been held that since the previous owner has availed the benefit of SSI exemption, the new owner is not entitled to duty free clearances as per Notification No. 1/93-CE dated 28.02.1993, as amended. He also relied upon the following decisions:-

(a) Dukes Pharma Vs. Govt. of India- 1994 (69) ELT 433 (Mad.)

(b) Gaurav Equipments (Pvt.) Limited Vs. Collector of Central Excise - 1993 (66) ELT 438 (Tribunal)

(c) Shree Bherav Diamond Tools Pvt. Limited Vs. Commissioner of CE & ST, Udaipur - 2019 (367) ELT 305 (S.C.)

(d) Apollo Threads Vs. Commissioner of C.Ex., Coimbatore - 2011 (267) ELT 371 (Tri.Chennai)

6. We have heard the rival submissions. We find that Commissioner (Appeals) in para 11 of his order dated 31.08.2005 has clearly observed that for Surat unit, M/s. PTPL were required to pay differential duty of Rs. 1,75,371/- (BED) and Rs. 26,306/- (AED) against which they had paid duty of Rs. 1,03,063/- (BED) and Rs. 15,459/- (AED) vide RG23A Part II, entry No.53 dated 27.05.1996. Likewise, for Kim unit, he has determined short payment of Central Excise duty of Rs. 6,25,030/- (BED) and Rs. 93,747/- (AED). We find that the differential duty stands paid in respect of both the units, as per at para 4.2 above. Thus, there is no dispute regarding duty payment during the period from April 1996 to October 1996 at the full rate by earlier owner M/s. PTPL (Surat as well as Kim Unit)

6.1 Notification No. 1/93-CE dated 28.02.1993, is reproduced as under:-

> Exemption to first clearances of specified goods upto the value of Rs. 30 lakhs and concessional duty thereafter in case of S.S.I. units having clearances not exceeding Rs. two crores in preceding year
>
> In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the said Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), (hereinafter referred to as the "specified goods"), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from, -
>
> (1) a factory, which is an undertaking registered with the Director of Industries in any State or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulation) Act, 1951 (65 of 1951),-
>
> (2)
>
> (a) in the case of first clearances of the specified goods upto an aggregate value not exceeding rupees thirty lakhs -
>
> (i) in a case where a manufacturer avails of the credit of the duty paid on inputs used in the manufacture of the specified goods cleared for home consumption under rule 57A of the Central Excise Rules, 1944 (hereinafter referred to as the said Rules), from so much of the duty of excise leviable thereon which is specified in the said Schedule [read with any relevant notification issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of section 5A of the said Act, and in force for the time being] as is equivalent to an amount calculated at the rate of 10 per cent *ad valorem*;
>
> (ii) in any other case from the whole of the duty of excise leviable thereon.
>
> (b) in the case of clearances, being the clearances of the specified goods of an aggregate value not exceeding rupees twenty lakhs, immediately following

the said clearances of the value specified in sub-clause (a) under this clause, from so much of the duty of excise leviable thereon which is specified in the said Schedule [read with any relevant notification issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of section 5A of the said Act, and in force for the time being], as is equivalent to an amount calculated at the rate of 10 per cent, *ad valorem*, and

(c) in the case of clearances, being the clearances of the specified goods of an aggregate value not exceeding rupees twenty five lakhs, immediately following the said clearances of the value specified in sub-clause (b) under this clause, from so much of the duty of excise leviable thereon which is specified in the said Schedule [read with any relevant notification issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of section 5A of the said Act, and in force for the time being], as is equivalent to an amount calculated at the rate of 5 per cent *ad valorem* :

Provided that the amount of duty of excise payable on the specified goods under item (i) of sub-clause (a), or sub-clause (b), or sub-clause (c), shall not be less than an amount calculated at the rate of 5 per cent *ad valorem* :

Provided further that the aggregate value of clearances of the specified goods in terms of sub-clauses (a), (b) and (c) taken together, shall not exceed rupees seventy five lakhs.

(2) a factory, other than a factory, -

(a) which is specified in clause (1) of this paragraph, or

(b) which is registered with Directorate General of Technical Development under the provisions of the Industries (Development and Regulation) Act, 1951 (65 of 1951), -

in the case of first clearances of the specified goods upto an aggregate value not exceeding rupees ten lakhs from whole of the duty of excise leviable thereon.

2. The aggregate value of clearances of the specified goods for home consumption in a financial year –

(a) by a manufacturer from one or more factories; or

(b) from a factory by one or more manufacturers, -

(i) under sub-clause (a) of clause (1) and clause (2) of paragraph 1 taken together shall not exceed rupees thirty lakhs;

(ii) under sub-clauses (b) and (c) of clause (1) shall not exceed rupees twenty lakhs and twenty-five lakhs respectively; and

(iii) under clause (2), shall not exceed rupees ten lakhs.

**3. Nothing contained in this notification shall apply if the aggregate value of clearances of all excisable goods for home consumption, -**

**(a) by a manufacturer, from one or more factories, or**

**(b) from any factory, by one or more manufacturers,**

**had exceeded rupees two hundred lakhs in the preceding financial year.**

4 & 5 ……. …… ……

6.2 From para 3 above, it is clear that concessional rate of duty as per this notification shall only be available if the aggregate value of clearance of all

excisable goods for home consumption by a manufacturer, from one or more factories or from any factory, by one or more manufacturers, does not exceed Rs. 200Lakh in the preceding Financial Year. There is no dispute in the present case that aggregate value of clearance by both the units during 1995-96 had exceeded the limit prescribed under this notification and therefore, as per Sr. No. 3 above, clearances of excisable goods by these factories even if by a different manufacturer, during 1996-97, will not be eligible to concessional rate of duty. M/s. Pankil Textiles who obtained registration with effect from 24.11.1996 (after surrender by the erstwhile owner) will therefore not be entitled to the concessional rate of duty under this notification and their clearance will have to suffer excise duty at normal rate. We rely on the decision of CESTAT New Delhi in the case of Karan Engineers (P) Limited Vs. Collector of Central Excise, New Delhi – 1998 (100) ELT 552 (Tribunal), which while dealing with same issue, in para 10, held as under. This decision was also affirmed by Hon'ble Apex Court as reported at 1998 (104) ELT A192 (SC):-

> **"10.** Having regard to the facts brought out above and the case law cited and brought to our notice, we find that the unit taken on lease was not entitled to the benefit of exemption under Notification No. 175/86 as the unit during the relevant period was not entitled to SSI exemption. The Collector (Appeals) had allowed the benefit of exemption under Notification 175/86 and revenue had come up in appeal in this case. We find that in this judgment and in the case decided by the judgment, the aggregate value of clearances was less than Rs. 1.5 crore. Thus, the case is clearly distinguishable inasmuch as the aggregate value of clearances in the case before us during the preceding financial year was more than Rs. 1.5 crore. We therefore, uphold the impugned order and reject the appeal."

6.3 Similar finding was given by the Tribunal in the case of Bhavna Apparells Vs. CCE – 1989 (43) ELT 642 wherein the Tribunal while examining the applicability of Notification No. 150/71 dated 26.07.1971, on similar issue held as:-

> "Taking into consideration the fact that till M/s. Bhavana Apparells commenced manufacture, the factory was one and even after the lease the alteration of the licensed premises was not approved and the further fact that the same machinery had been used by both, we are satisfied that the factory was one throughout the year, though the

manufacturing activity may have been carried on by the two appellants during separate periods (as had been accepted by the lower authorities also)".

While arriving at this decision, the Tribunal also referred the judgment of Hon'ble Gujarat High Court in the case of Indica Laboratories Pvt. Limited Vs. UOI – 1990 (50) ELT 210 (Guj.).

6.4 In view of above, we hold that the present appellant (M/s. Pankil Textiles) will not be entitled to SSI benefit for their clearances with effect from 24.11.1996 under Notification No. 1/93-CE dated 28.02.1993, as amended.

6.5 As regards appellant's contention that both the Show Cause Notices have been issued by the jurisdictional Range Superintendent who was not entitled to issue Show Cause Notice. We find that, at the relevant time, Superintendent was the proper officer to issue Show Cause Notice for demand of duty within a period of six months from the relevant date. We find that CBEC vide Circular No. 249/83/96-CX dated 11.10.1996 at para 5 has clarified this issue. The said clarification is reproduced below:-

**"5. Preparation and issue of Demand-Cum-Show-Cause Notices**

If during the scrutiny of the RT 12 return or the audit or inspection, it is noticed that duty of excise leviable on any goods has escaped self-assessment and been not paid/short paid or has not been correctly or properly self-assessed and been paid by the assessee on that basis, necessary action shall be taken by the Proper Officer for preparation and issue of demand-cum-show-cause notices in accordance with Section 11A of the Act. Show Cause Notice for less than 6 months not involving fraud etc. answerable to Assistant Commissioner would be issued by the Superintendent as at present and others by the Concerned Commissioner of Central Excise as at present."

We do not find substance in contention of the Appellant and hence, the same is dismissed.

6.6 As regards contention of the appellant regarding imposition of penalty under Rule 173Q, it has been pleaded by the appellant that Show Cause Notices have invoked Rule 209A of the Central Excise Rules, 1944 for imposition of penalty whereas the penalty has been imposed upon them under different Rule i.e. 173Q. We find that Show Cause Notice dated 30.05.1997 invokes Rule 209A of Central Excise Rules, 1944 for imposition of penalty, which is reproduced below:-

> **RULE 209A.** Penalty for certain offences. Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.

The Show Cause Notice dated 12.08.1997 invoked Rule 173Q of the said Rules for imposition of penalty, as per which if any manufacturer, producer, registered person of a warehouse or a registered dealer-

(a) Removes any excisable goods in contravention of any of the provisions of these rules; or

(b) ……. ……..

(bb) ……. ……..

(bbb) ……. ……..

(c) ……. ……..

(d) Contravenes any of the provisions of these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the [manufacturer, producer, registered person of a warehouse or a registered dealer), as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (bb) or clause (bbb)] or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is greater.

Under both the rules, penalty upto a maximum not exceeding three times the value of excisable goods can be imposed. We also find that wrong mention of the Rule does not vitiate imposition of penalty by the Adjudicating Authority as held by Delhi bench of Tribunal in the case of Asian Alloys Limited vs. CCE, Delhi-III reported at 2006 (203) ELT 252 (Tri. Del.). The relevant para 15 is reproduced below:-

> **15.** The contention raised on behalf of the appellant that no confiscation could have been done and penalty imposed under the provision of Section 173Q of the erstwhile Rules, because Chapter VIIA of the Rules which contained Rule 173Q, did not apply to the matters covered by Chapter VA overlooks the aspect that mere non-mention of the correct provision will not vitiate the proceedings. There is no dispute about the fact that the ingredients of Rule 173Q(1)(a) and Rule 209(1)(a) are similar and that the provision regarding confiscation and penalty for the breaches dealt with in these two rules are almost identical. Rule 209(1), *inter alia*, provides that notwithstanding anything contained in any other provision of these rules save and except Rule 173Q, if any manufacturer, producer, registered person of a warehouse or a registered dealer, removes any excisable goods in contravention of any of the provisions of these rules, then all such goods shall be liable to confiscation, and the manufacturer, producer, registered person of the warehouse or a registered dealer as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (bb) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever was greater. Even in Rule 173Q(1)(a), it was provided, in the same vein, that subject to the provisions contained in Section 11AC of the Act and sub-rule (4) of Rule 57-I and sub-rule (5) of Rule 57U, if any manufacturer, producer, registered person of a warehouse or a registered dealer removes any excisable goods shall be liable to confiscation and the manufacturer, producer, registered person of a warehouse or a registered dealer as the case may be, shall be liable to a penalty not exceeding three times of the value of the excisable goods, in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (bb) or clause (bbb) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever was greater. It is obvious to us on reading the reply to the show cause notice as well as the impugned order that, the ingredients attracting confiscation and penalty were specifically alleged and clearly understood by the noticee and appropriately dealt with by the Commissioner. In this background mere wrong mention of the provision, namely, Rule

173Q instead of Rule 209 was of no consequence, since no prejudice whatsoever has been caused to the noticee by reference to Rule 173Q instead of Rule 209. It is the substance which is important and not the form; and when substance is examined it becomes obvious that there has been no prejudice whatsoever to the noticee by a mere erroneous reference to Rule 173Q in place of Rule 209. Reference to rule 173Q was an obvious mistake because of the provisions of rule 173A(2) stating that nothing in this chapter shall apply to a manufacturer or producer who has been allowed to discharge his duty liability in accordance with the provisions contained in Section C-I, E-III, E-VI, or E-IX of Chapter VI, *or to whom the provisions of Chapter VA apply*. This provision, however, did not exclude the applicability of Rule 209 which obviously applied in cases of breach of rules contained in Chapter V-A. In this view of the matter, the contention that confiscation and penalty should be set aside merely on the ground of the wrong mention of Rule 173Q instead of Rule 209, is misconceived and cannot be accepted. The decision on which reliance was sought to be placed cannot, therefore, assist the appellant case. The applicability of Rule 209 was neither argued nor considered in those cases. We, therefore, do not find any justification for interfering with the impugned order in respect of confiscation and penalty. We are in full agreement with the reasoning adopted by the learned Commissioner for confiscating the goods and imposing the penalties on the appellants under the impugned order.

The said decision has also been upheld by Hon'ble Supreme Court as reported vide 2012 (278) ELT A143 (SC).

Similar findings was given by Hon'ble Bombay High Court in the case of Commissioner of Central Excise & Cus. Aurangabad vs. Indian Containers Limited reported at 2017 (355) ELT 326 (Bom.). Para 24 of the said decision is reproduced below:-

**"24.** Thus, mention of wrong Rule in the demand notice would not be an impediment in the way of the petitioner in inflicting penalty under the correct Rule though the said Rule was not quoted in the demand/show cause notice. From the contents of the show cause notice, it is clear that Respondent No. 1 was made aware that it would be liable to pay penalty for obtaining MODVAT credit wrongly. Respondent No. 1 has put forth its defence against the demand for penalty and has got an opportunity to contest that claim. As such, no prejudice can be said to have been caused to Respondent No. 1 because of wrong mention of Rule in the show cause notice under which, penalty was sought to be imposed on Respondent No. 1"

Therefore, we do not find any infirmity with the above impugned order. However, considering the quantum of duty involved in this case, we are inclined to reduce penalty on the appellant from Rs. 6,00,000/- as imposed by the lower authority, to Rs. 4,00,000/- (Rupees four lakhs only). With the above modifications, we uphold the impugned order and dispose off the appeal filed by the party.

7. The appeal is disposed of in above terms.

*(Pronounced in the open court on* 22.12.2025*)*

**(Dr. Ajay Krishna Vishvesha)**
**Member (Judicial)**

**(Satendra Vikram Singh)**
**Member (Technical)**

**KL**