

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

**Excise Restoration of Appeal Application No.70077 of
2025**

(On behalf of the Appellant)

**In
Excise Appeal No.70611 of 2021**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APPL-1037-19-20, dated -
18/10/2019 passed by Commissioner (Appeals) CGST & Central Excise,
Noida)

M/s Simbhaoli Sugar Ltd.
(Simbhaoli, Hapur, U.P. 245207)

.....Appellant

VERSUS

Commissioner, Central Excise, Noida
(Noida)

....Respondent

APPEARANCE:

Shri S.C. Kamra, Advocate for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO.70103/2025

FINAL ORDER NO.-70253/2025

DATE OF HEARING : 28.03.2025
DATE OF DECISION : 05.05.2025

SANJIV SRIVASTAVA:

Appellant has filed an Application for Restoration of Appeal. Considering the submissions made by the learned counsel for the Appellant, the application for Restoration of Appeal is allowed. With the consent of both the sides matter itself is taken up for consideration.

2. This appeal is directed against Order-In-Appeal No NOI-EXCUS-001-APP-1037-19-20 dated 18.10.2019 of the

Commissioner, Central Goods and Service Tax (Appeals) Noida.
By the impugned order following has been held:

"6. In view of the facts and circumstances, the appeal bearing No 289/CE/Noida/APPLI NOI/2018-19 dated 18.05.2018 filed by M/s Simbhaoli Sugar Ltd., Simbhaoli , Distt-Ghaziabad against the Order-in-Original No: 04/ADC/Noida/2017-18 dated 15.03.2018 is rejected."

2.2 Order-In-Original dated 15.03.2018 held as follows:

"ORDER

- (i) I disallow and confirm the demand of CENVAT Credit of Rs.18,36,911/- (CENVAT Rs.18,00,911/- & Ed. Cess Rs. 36,000/-) (Rs. Eighteen Lakhs Thirty Six Thousand Nine Hundred Eleven Only) against the party under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944.*
- (ii) I also confirm demand of Interest at appropriate rate on the aforesaid inadmissible amount of CENVAT Credit against the party under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11-AB of the Central Excise Act, 1944.*
- (iii) I also impose a penalty of Rs. 18,36,911/- (Rs. Eighteen Lakhs Thirty Si. Thousand Nine Hundred Eleven Only) upon the party under Rule 15 (1) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 for contravention of the Rules 2 & 3 ibid.*

The adjudged dues shall be paid forthwith"

3.1. Appellant having Central Excise Registration No. AABCS9972PXM001, is engaged in the manufacture of V.P. Sugar and Molasses falling under Central Excise Tariff Sub-heading No. 17011190 & 17031000 respectively of the First Schedule to the Central Excise Tariff Act, 1985. They also availed the facility of Cenvat Credit on capital goods and inputs in terms of provisions of CENVAT Credit Rules 2004.

3.2 A show cause notice dated 17.08.2007 was issued to them for disallowing & recovery of the CENVAT Credit amounting Rs.18,36,011/- (Rs. 18,00,911/- as BED and Rs. 36,000/- as Ed. Cess) availed by them on the article of Iron & Steel such as plates/ coils / Shape & Section / MS Angle / MS Round & Flat / MS Channel, falling under Chapter 72/73 of the Schedule to the Central Excise Tariff Act, 1985 alongwith interest & penalty on the ground that-the article of Iron & Steel, on which CENVAT Credit had been taken by the party, were used by the unit in the construction of civil structure and hence are not covered within the definition of "input" as defined under Rule 2 (k) of CENVAT Credit Rules, 2004

3.3. The show cause not adjudicated vide Order-in-Original No. 12/Joint Commissioner/M-I1/2008 dated 21.04.2008 confirming the demand of CENVAT credit and ordered the same to be recovered from the party alongwith interest & penalty.

3.4 Being aggrieved Appellant filed an appeal before the Commissioner (Appeals), who vide his Order-in-Appeal dated 28.08.2004 rejected the appeal on the ground that no specific item of capital goods or parts & accessories appeared to be manufactured within the factory for use and accordingly, it apparently appears that the items in questions have been used in construction of go-downs. Sheds and for maintenance & repair of the plant.

3.5 Being aggrieved, the Appellant preferred an appeal before CESTAT. The Tribunal vide its final order No. A/70997/2016-SM [BR] dated 26.09.2016 allowed the appeal of the Appellant by way of remand with the direction to the adjudicating authority contained in the para-7, which is being reproduced as below:-

"7. Having considered the rival contentions, I hold that the Appellant is entitled to Cenvat credit on the items of Iron & Steel in question if the same have been used for fabrication of capital goods, for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc as no excisable products can be

manufactured without the same. Further the amended definition of inputs under the Cenvat Credit Rules provides for availability of Cenvat credit to a manufacturer on all items utilized by the manufacturer in the factory of production. Accordingly, I allow this appeal by way of remand with the direction to the Adjudicating Authority to verify the claim of the Appellant in the light of the directions & findings recorded hereinabove after verification of the utilization of the items of Iron & Steel. Thus this appeal is allowed by way of remand.”

3.6 For complying with the above directions of the CESTAT, Jurisdictional Range Superintendent visited the factory of the Appellant on 22.02.2018. The Assistant Commissioner, Division Hapur vide his letter C.No. V (30) Adj/ Misc. Corr /HPR/01/2016/296 dated 28.02.2018 informed that during the course of verification the Range Superintendent observed that it was not possible to ascertain physically whether the inputs in question were used for the purpose of fabrication of capital goods for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc. He further informed that no such documentary evidence (capitalization account, invoice etc) has been provided by the party, by which it could be ascertained that the subject inputs had been used for the said purpose.

3.7 After considering the verification report matter was again adjudicated as per the order in original referred in para 1.2 above.

3.8 Being aggrieved, the Appellant filed an appeal before the Commissioner (Appeal), which has been dismissed as per the impugned order referred in para 1 above.

3.9 Aggrieved Appellant has filed this appeal.

4.1 I have heard Shri S C Kamra, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

4.2 Arguing for the Appellant learned counsel submits that:

- the investigation stage, Mr. Y.P. Singh working as Sr. Manager (Taxation) with the Appellant was summoned by the Range Supdt. who gave his statement u/s 14 of CEA, 1944 (see page 46). Mr. Y.P. Singh has categorically affirmed on oath that the iron and steel items were used
 - in the manufacture of capital goods and their components, spare and accessories as defined in rule 2(a) of CCR, 2004;
 - in the fabrication of staging structures to support capital goods / machinery items installed in the factory;
 - in the construction of godowns, shed and yard inside the factory premises
- The show cause notice issued by the Department has relied upon the statement of Shri Y.P. Singh to describe the end-use of iron and steel items used in the Appellant's factory. The end-use so explained by the authorized representative of the Appellant is neither denied by the Appellant nor by the Revenue at any stage.
- the period in dispute is August, 2006 to December, 2006 during which period the Appellant availed CENVAT Credit on articles of iron and steel. The CESTAT after 10 years passed order on 26.09.2016 for verification of utilization of iron and steel items. In compliance to directions of the Tribunal, the Range Supdt. visited the Appellant's factory on 28.02.2018 and gave his report to the effect that it was not possible to ascertain physically whether inputs were used for fabrication of capital goods / staging structures etc. It is understood that the verification took place after 12 years from the date CENVAT Credit was availed by the Appellant in August - December, 2006. After 12 years it is naturally impossible to identify physically the plates, angles, channels, sheets etc. used / fitted in the plant and machinery or in the staging

structures or used for repairs and maintenance of plant and machinery.

- due to lapse of more than 10 years, it is difficult to lay hands on the records such as requisition slips/ indents from the concerned Department, issue slips prepared by stores at the time of issue of material (iron and steel items) to the indenting Department etc. The documentary evidences with regard to actual utilization of iron and steel items could not be placed by the Appellant before the adjudicating authority in remand proceedings. Under these circumstances, the end-use explained by the Appellant's representative in his statement dated 25.07.2007 could have been relied upon by the lower authorities particularly when the end-use so explained by the Appellant's representative was neither retracted by the Appellant nor by the Department.
- During the relevant period (August, 2006 to December, 2006) the expression "input" was defined in rule 2(k) of CCR, 2004 as all goods, except light diesel oil, high speed diesel oil and motor spirit (petrol) used in or in relation to manufacture of final products. The Explanation 2 provided as under:-

"Explanation 2 : Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer"

- From the above explanation it is clear that the definition of inputs was wide enough to cover goods used in the manufacture of capital goods, which were captively used within the factory of the manufacturer.
- The Explanation 2 was subsequently amended vide Notification No. 16/2009- CE(NT) dated 07.07.2009. As per the amendment, steel items used in the construction of factory shed, building for laying of foundation or for making structures for support of capital goods were disqualified from the ambit of Explanation 2 as input. The

Explanation 2 as amended from 07.07.2009 is reproduced below:-

"Explanation 2 : Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods."

- That the Larger Bench of the CESTAT, Pr. Bench, New Delhi in the case of Vandana Global Ltd. vs. CCE Raipur - 2010 (253) ELT 440 (Tri.-LB) held that the above amendment to the Explanation 2 was a clarificatory amendment and it was applicable retrospectively. However in appeal, the Chhattisgarh High Court in the case of Vandana Global Ltd. vs. CCE Raipur reported in 2018 (16) GSTL 462 (CG) took a different view and held that the amendment to Explanation 2 of rule 2(k) was not clarificatory but only prospective in operation. The High Court further held that steel items like angles, joists, beams, bars, plates which go into the fabrication of structures embedded to earth were to be treated as input used in relation to final products as input. Similar view has been expressed in the following decisions:
 - Mundra Ports & Special Economic Zone Ltd. [2015 (39) STR 726 (Guj.)]
 - India Cements Ltd. [2015 (321) ELT 209 (Mad.)]
 - DSCL Sugar -2019 (367) ELT 836 (ALL).
- Appellant availed CENVAT Credit on steel items in 2006 and the amendment came only from July, 2009 and being of prospective nature, the amended version of Explanation 2 was not applicable in the facts and circumstances of the case.

- in their own case the Division Bench of CESTAT, Allahabad has examined the admissibility of CENVAT Credit on iron and steel items used in the fabrication of staging structures to facilitate operation of machinery items and steel items used in the construction of godowns, sheds and yard of the sugar plant. The period of dispute in this case was June, 2006 to March, 2007, which is comparable period to the Appellant's present appeal. After examining the definition of input, Explanation 2 undergoing changes in 2009 and the case law holding the amendment of Explanation 2 as prospective, the Hon'ble Tribunal held that the Appellant were entitled to CENVAT Credit on iron and steel items used as input in the fabrication of staging and supporting structures and also in the construction of godowns, sheds and yards inside the factory. The Final Order No. 71979-71981/2017 dated 30.08.2017 passed by the CESTAT, Allahabad is placed at page 55 of the Appeal paper book.
- in view of the precedent order passed by the CESTAT Allahabad in the Appellant's own case for the comparable period and end-use of steel items as explained by the Appellant's authorized representative Mr. Y.P. Singh in his statement dated 25.07.2007 during the investigation stage, the entire CENVAT Credit availed by the Appellant on iron and steel items is allowable and the impugned order dated 18.10.2019 passed by the Commissioner (Appeals) is liable to be set aside with consequential relief in favour of the Appellant.

4.3 Authorized representative reiterated the findings recorded in the impugned order.

5.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

5.2 Impugned order records the findings as follows:

"5. I have carefully gone through the facts and records of the case and submissions made by the Appellant in the

grounds of appeal and written submissions made during the personal hearing. The issue to be decided before me is whether the Cenvat Credit availed on the articles of Iron & Steel such as plates/coils/Shape Section/MS Angle/MS Round & Flat/MS Channel, falling under Chapter 72/73 of the Schedule to the Central Excise Tariff Act, 1985 as inputs, claimed to have been used in fabrication/maintenance and repair of capital goods, fabrication of staging structures/supporting structures etc., is admissible to the applicant or not. I find that the impugned order arose in the light of CESTAT's Final Order No. A/70997/2016-SM [BR] dated 26.09.2016, wherein the CESTAT had directed the adjudicating authority to verify the claim and held that Cenvat credit on the items of Iron & Steel will be allowable to them if the inputs have been used by the Appellant for fabrication of capital goods, for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc. In this regard, I observe that the adjudicating authority has held that

"the necessary verification, as per directions of the Hon'ble Tribunal has been carried out through the jurisdictional Assistant Commissioner, who deputed the jurisdictional Range Superintendent for the purpose. The report dated 28.02.2018 submitted by him in the matter categorically states that:

"it was not possible to ascertain physically whether the inputs in question were used for the purpose of repair and maintenance of capital goods or for fabrication of capital goods and for fabrication of staging structures and supporting structures etc. Further on being asked no such documentary evidence (Capitalization account, invoice etc.) has been provided by the party, by which it could be ascertained that the subject inputs had been used for the said purpose."

Further, the party, itself, during the course of personal hearing held on 12.02.2018, submitted that at this stage i.e. after lapse of more than 10 years, it is not possible to verify the impugned capital goods.

5.1 I find that the Appellant could neither provide the documentary evidence nor could explain to the visiting officer on 28.02.2018 that as to where/ which site such items of Iron & Steel, on which they claimed the Input Credit, 'were used for fabrication of capital goods/for repair and maintenance of capital goods/for fabrication of staging structures and supporting structures in the unit. Even at the time of personal hearing on 12.02.2018, the Appellant itself submitted that at this stage i.e. after lapse of more than 10 years, it is not possible to verify the impugned capital goods.

5.2 I further observe that in para 3 and para 7 of the Grounds of appeal the Appellant itself has admitted that they are not having any specific document and they could not adduce specific record for use of each and every item. However, they have pleaded that in reply to the notice they had categorically given use of all such items, which should have been considered as documentary evidence. I find that the CESTAT has categorically stated in its order that "the Appellant is entitled to Cenvat credit on the items of Iron & Steel in question if the same have been used for fabrication of capital goods, for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc".

5.3 In my view, for the compliance of the above direction of the CESTAT, the burden of proof for utilization of Input/ such items of Iron & steel comes on the shoulder of the Appellant. The Appellant should have justified their claim by way of documentary evidence as well as physical verification of use of such items in the unit. I find that despite the directions of Hon'ble CESTAT the Appellant

failed to provide the documentary evidence/specific records for utilization of such items of Iron & Steel in support of their case, therefore in absence of any supporting evidence that such items were utilized for fabrication of capital goods, for repair and maintenance of capital goods, for fabrication of staging structures and supporting structures etc., the claim of the Appellant for Input Credit is not sustainable.

5.4 Therefore, I don't find any force in the argument of the Appellant. I also find that the Appellant has not presented any credible defense for allowing Cenvat credit in the light of direction passed by the Hon'ble CESTAT, Allahabad and hold that the Appellant has failed to demonstrate any infirmity in the impugned order to justify any interference. The charge of interest is a normal consequence once the amount is held as non admissible as CENVAT Credit, also the penal provisions are correctly imposed by the adjudicating authority."

5.3 All the arguments with regard to the admissibility of CENVAT Credit on these items were considered by the tribunal in its order while remanding the matter back to original authority for verification of the these goods for manufacture of the capital goods. Tribunal has in Final Order No A/70997/2016-SM[BR] dated 01.11.2016, while remanding the matter to original authority for verification of use of the items iron and steel in fabrication of capital goods or for repair and maintenance of capital goods, for fabrication staging and structures, have in para 5 observed as follows:

"5. The learned counsel for the Appellant urges that the issue is no longer res-integra. The Hon`ble Madras High Court in the case of India Cements Ltd. have held that an assessee is entitled to Cenvat credit on inputs being items of iron and steel utilised in fabrication of capital goods and repair thereof as well as in fabrication of support and staging structures without which no manufacture of excisable

products can take place. The learned counsel have also relied on the orders decided in their favour by a coordinate bench of this Tribunal in final order No. A/51216/2015-SM dated 15/04/2015 wherein similar question of Cenvat credit on items of iron and steel used for repair and maintenance of capital goods in sugar factory was involved. This Tribunal allowing the appeal by way of remand held that if these items were used for the repair and maintenance of capital goods or in fabrication of the capital goods then the assessee is entitled to take Cenvat credit. But such fact is to be ascertained by the Adjudicating Authority on the basis of documents to be produced, and accordingly remanded the matter to the authority for allowing the same subject to verification."

After observing as above the matter was remanded back to the original authority as per para 7 of the order, reproduced earlier in para 2.5.

5.4 As directed by the above order of CESTAT, revenue authority asked for the verification of the use of the goods for the production of capital goods. The factory premise of the Appellant was also visited. However, Appellant failed to produce any document on any physical evidence in respect of the use of these goods for production/ manufacture of capital goods. This admitted this fact that they were not in position to produce any evidence of any type to establish that these goods against which they had taken the CENVAT Credit were used for production of capital goods or for repair and maintenance of the same, during the personal hearing held before the adjudicating authority. In absence of any evidence establishing the use of these goods, in the manner prescribed, as per the CESTAT Order, remanding the matter to original authority the has been denied by the original authority as per the order in original passed de novo. Commissioner (Appeal) has also taken note of above while upholding the order of adjudicating authority.

5.5 The show cause notice dated 17.08.2007 issued to the Appellant relied upon the statement dated 25.07.2007 Shri Y P Singh Senior Manager (Taxation). In his statement Shri Y P Singh had stated as follows:

"As desired vide summon the requisite information is submitted vide letter of even date with information in annexure A and B.

I have seen the information compiled by the range officer from the purchase invoices "Inadmissible Credit of Iron & Steel availed by M/s Simbhoali Sugars Ltd., during 2006-07 (August 2006 to December 2006). I certify the information to correct except the title which says "inadmissible credit". In fact credit is admissible and has been rightly taken. To the extent of this objection the statement is signed.

Regarding your query that the items namely plates coils, ... section, H R Coil, M S Angle, M S Channel, M S Round and flats are not covered in the definition of the Capital Goods provided in CENVAT Credit Rules, 2004, I have to submit that the said goods are covered under the definition of inputs read with explanation 2 thereto. All these goods are used in the manufacture of such capital goods which are further used in the factory of manufacture and are covered by the definition of 'capital goods' as covered in sub clause (i), (ii) and (iii) of clause A of definition under Rule 2 of CENVAT Credit Rules, 2004. We do not differentiate on the use of these goods in factory of manufacture. However the information in Annexure A and Annexure B being the steel used in structure and in shades respectively is submitted on your specific requirement of summons dt 20.07.2007. It is also clarified that the one to one co-relation of steel purchased as per statement containing details of credit taken during August 2006 to Dec 2006 (referred above and signed) and annexures now filed (A & B) is not possible.

5.6 From the above statement of Shri Y P Singh referred in the show cause notice, it is evident that the even at the time of

recording the statement on 25.07.2007, it was not possible for him to co-relate these goods with their use in manufacture/ repair and maintenance of the capital goods. As per his statement these goods were used elsewhere also in construction of structure and shed. When such a correlation was not possible in 2007 and Appellant was not able provide any evidence with regards to usage of these goods in remand proceedings, at the time of visit to their factory premise or at the time of personal hearing before the adjudicating authority on 12.02.2018, I do not find any merits in the submission made by the Appellant to allow one more chance of verification in 2025. Adjudicating authority has categorically observed, *"However due to change in Adjudicating Authority, the personal hearing was again granted to the party on 12.02.2018, which was attended by Shri Anil Sethi, Manager (Commercial). During the course of personal hearing, Shri Sethi reiterated the submission made during the earlier personal hearing held on 06.10.2017 before the previous Adjudicating Authority and submitted that **as this stage i.e. after lapse of more than 10 years, it is not possible to verify the impugned capital goods...**"*

5.7 The plea taken by the counsel before me during the hearing of appeal, which goes contrary to the above submissions made by the Appellant before the adjudicating authority is clearly barred as per the principle of estoppel. Hon'ble Supreme Court has in case of B.L. Sreedhar vs. K.M. Munireddy [2003 (2) SCC 355] observed as follows:

"Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

[See *Sunderabai and Anr. v. Devaji Shankara Deshpande* (AIR 1954 SC 82)].

"Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth" Co.Litt., 352(a), cited in Ashpital v. Byron, 3B and S. 474(489); Simon v. Anglo American Telegraph Co., (1879) 5 Q.B.D. 188 C.A., per Bramwell L.J. at p. 202; Halsbury, Vol. 13, Para 488. So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. Halsbury, Vol. 13, para. 448. The rule on the subject is thus laid down by Lord Denman, in Pickard v. Sears, 6 Ad. & E. 469 at p. 474: "But the rule is clear, that, where one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act to that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time." "The whole doctrine of estoppel of this kind, which is fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of estoppel - estoppel by representation- which is founded upon reason and it is founded upon decision also." Per Jessel, M.R. in General Finance & Co. v. Liberator, L.R. 10 Ch.D.15(20). See also in Simon v. Anglo-American Telegraph Co., L.R. 5 Q.B.D.202 Bramwell, L.J. said" An estoppel is did to exist where a person is compelled to admit that to be true which is not true and to act upon a theory which is contrary to the truth."

On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a particular state of facts. Estoppel is based on the maxim, allegans contrarium non est audiendus (a party is not to be heard to allege the contrary) and is that species of presumption juries et de jure- (absolute or conclusive or irrebutable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done; it is in truth a kind of argumentum ad hominem.

"In our old law books," said Mr. Smith in his notes to the Duchess of Kingston's case, "truth appears to have been frequently shut out by the intervention of an estoppel, where reason and good policy required that it should be admitted.... However, it is in no wise unjust or unreasonable, but, on the contrary, in the highest degree reasonable and just, that some solemn mode of declaration should be provided by law, for the purpose of enabling men to bind themselves to the good faith and truth of representations on which other persons are to act."

"An estoppel is not a cause of action- it is a rule of evidence which precludes a person from denying the truth of some statement previously made by himself." Per Lindley L.J. in Low v. Bouveria, (1831) 3 Ch. 82 at p.101. In the same case, at p.105. Bowen L.J. added: "Estoppel is only a rule of evidence; you cannot found an action upon estoppel."

Estoppel though a branch of the law of evidence is also capable of being viewed a substantive rule of law in so far as it helps to create or defeat rights, which would not exist or be taken away but for that doctrine.

Estoppel is a complex legal notion, involving a combination of several essential elements statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law... Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppel fails if the statement is not sufficiently clear and unqualified"

(per Lord Wright in Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd. (1946) 3 W.W.R. 759 at p. 764).

"The essential factors giving rise to an estoppel are, I think-

"(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made. "(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, Greenwood v. Martins Bank (1933) A.C.51.) See also Thompson v. Palmer, 49 C.L.R. 547; Grundt v. Great Boulder, 59 C.I.R.675; Central Newbury Car Auctions v. Unity

Finance (1957)1 Q.B.371SD.MN "Estoppe,' commeth of a French word "estoupe", from whence the English word stopped, and it is called an estoppel, or conclusion, because a man's owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth; and Littleton's case proveth this description" (Co.Litt.352 a, where it is said estoppel is of three kinds, i.e., matter (1) of record, (2) in writing, i.e, semble, by deed, (3) in Pais). To the same effect is the definition in Termes de la Ley. (See Stroud's Judicial Dictionary, Fourth Edition, Page 943).

"An estoppel," says Lord Coke, "is where a man is concluded by his own act or acceptance to say the truth." Mr. Smith, in his note to the Duchess of Kingston's case, characterizes this definition as a little startling but it nevertheless gives a good idea of what it is, by no means easy to include within the limits of a definition. (1 Smith L.C. 760) Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority.

Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of Depuru

Veeraraghava Reddi v. Depuru Kamalamma, (AIR 1951 Madras 403) where Vishwanatha Sastri, J., observed:

"An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."

Of course, an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such is not the case a right may be claimed as having come into existence on the basis of estoppel and it is capable of being enforced or defended as against the person precluded from denying it.

In his illustrious book "Law of Estoppel" 6th Edition, Bigelow has noted as follows:

"Situations may arise, indeed, in which a contract should be held an estoppel, as in certain cases where only an inadequate right of action would, if the estoppel were not allowed, exist in favour of the injured party. In such a case the estoppel may sometimes be available to prevent fraud and circuity of action."

In another illustrious book "Estoppels and the Substantive Law" by Arthur Caspersz under title 'Conduct of Indifference or Acquiescence' it has been noted as follows:

"40. It is, however, with reference to the third class of cases that the greatest difficulty has arisen, especially where statements have been made, expressly or by implication, which cannot properly be characterized as representations at all. It must now be regarded as settled that an estoppel may arise as against persons who have not willfully made any misrepresentation, and whose conduct is free from fraud or negligence, but as against whom inferences may reasonably have been drawn upon which others may have been induced to act.

The doctrine of Acquiescence may be stated thus:

"If a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act." (Duke of Leeds v. Earl of Amherst 2 Ph. 117 (123) (1846). This is the proper sense of the term acquiescence, "and in that sense may be defined as acquiescence, under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct." (De Bussche v. Alt. L.R. 8 Ch.D. 286 (314). Acquiescence is not a question of fact but of legal inference from facts found. (Lata Beni Ram v. Kundan Lall, L.R. 261 I.A. 58 (1899).

The common case of acquiescence is where a man, who has a charge or incumbrance upon certain property, stands by and allows another to advance money on it or to expend money upon it. Equity considers it to be the duty of such a person to be active and to state his adverse title, and that it would be dishonest in him to remain willfully passive in order to profit by the mistake which he might have prevented. (Ramsden v. Dyson L.R. 1 E & I, Ap. 129(140)(1865).

x x x x x x

42. In such cases the conduct must be such that assent may reasonably be inferred from it. The doctrine of acquiescence has, however, been stated to be founded upon conduct with a knowledge of legal rights, and as stated in some cases appears to imply the existence of fraud on the part of the person whose conduct raises an estoppel. The remarks of the Judicial Committee, however, in Sarat Chunder Dey v. Gopal Chunder Laha,

(L.R. 19 I.A. 203) clearly extend the doctrine of estoppel by conduct of acquiescence or indifference to cases where no fraud whatever can be imputed to the person estopped, and where that person may have acted bona fide without being fully aware, either of his legal rights, or of the probable consequences of his conduct. In every case, as already pointed out, the determining element is not the motive or the state of knowledge of the party estopped, but the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

Lapse of time and delay are most material when the plaintiff, by his conduct may be regarded as waiving his rights, or where his conduct, though not amounting to a waiver, has placed the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards asserted. When, however, an argument against a relief, otherwise just, is founded upon mere delay not amounting to bar by limitation, the validity of that defence must be tried by principles substantially equitable."

In Snell's Principles of Equity, 27th Edition, Chapter 3, 12 Maxims of Equity have been indicated. Of these maxims principles 5, 6 and 7 are relevant for the purpose of the case in hand. They are as follows:

"x x x x

5. He who seeks equity must do equity.

6. He who comes into equity must come with clean hands.

7. Delay defeats equities, or, equity aids the vigilant and not the indolo Vigilantibus, non dormientibus, jura subveniunt."

x x x x x

The following passage from the "Law relating to Estoppel by Representation" by Geroge Spencer, Second Edition as indicated in Article 3 is as follows:-

"It will be convenient to begin with a satisfactory definition of estoppel by representation. From a careful scrutiny and collation of the various judicial pronouncements on the subject, of which no single one is, or was perhaps intended to be, quite adequate, and many are incorrect, redundant, or slipshod in expression; the following general statement of the doctrine of estoppel by representation emerges; where one person ("the representor") had made a representation to another person ("the representee") in words or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the represent in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the represent at the proper time, and in the proper manner, objects thereto."

In Article 1175 at page 637 of Halsbury's Laws of England, 3rd Edition, Volume 14, it is stated as follows:

"Waiver is the abandonment of a right, and is express or implied from conduct. A person who is entitled to the benefit of a stipulation in a contract or of a statutory provision may waive it....."

"The essence of waiver is "estoppel" and where there is no "estoppel" there can be no "waiver", the connection between "estoppel" and "waiver" being very close. But, in spite of that, there is an essential difference between

the time and that is whereas estoppel is a rule of evidence waiver is a rule of conduct. Waiver has reference to man's conduct, while estoppel refers to the consequences of that conduct."

A few decisions of this Court which have illuminatingly dealt with the concept of estoppel may be noted.

In S. Shanmugam Pillai v. K. Shanmugam Pillai (AIR 1972 SC 2069) it was observed that there are three classes of estoppels that may arise for consideration in dealing with reversioner's challenge to a widow's alienation. They are (1) that which is embodied in S.115 of the Evidence Act, (2) election in the strict sense of the term whereby the person electing takes a benefit under the transaction, and (3) ratification i.e. agreeing to abide by the transaction. A presumptive reversioner coming under any one of the aforesaid categories is precluded from questioning the transaction, when succession opens and when he becomes the actual reversioner. But if the presumptive reversioner is a minor at the time he has taken a benefit under the transaction, the principle of estoppel will be controlled by another rule governing the law of minors. If after attaining majority he ratifies the transaction and accepts the benefit thereunder, there cannot be any difference in the application of the principle of election. The effect would be the same. It may be that on attaining majority he has the option to disown the transaction and disgorge the benefit or to accept it and adopt it as his own. Whether after attaining majority the quondam minor accepted the benefit or disowned it, is a question to be decided on the facts of each case.

In Provash Chandra Dalui v. Biswanath Banerjee (AIR 1989 SC 1834), it was observed as follows:

"21. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of

the relinquishment of such right. It means the forsaking the assertion of a right at the proper opportunity. The first respondent filed suit at the proper opportunity after the land was transferred to him, and no covenant to treat the Appellants as Thika tenants could be shown to have run with the land. Waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial. The necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. Thus voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question. Nothing of the kind could be proved in this case to estop the first respondent."

In Indira Bai v. Nand Kishore (1990 (4) SCC 668), it was observed as follows:

"Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated. Present case is a glaring example of it. True no notice was given by the seller but the trial court and the appellate court concurred that the pre-emptor not only came to know of the sale immediately but he assisted the purchaser-Appellant in raising construction which went on for five months. Having thus persuaded, rather mislead, the purchaser by his own conduct that he acquiesced in his ownership he somersaulted to grab the property with constructions by staking his own claim and attempting to

unsettle the legal effect of his own conduct by taking recourse to law. To curb and control such unwarranted conduct the courts have extended the broad and paramount considerations of equity, to transactions and assurances, express or implied to avoid injustice."

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

It cannot be doubted that there may be cases in which there is deception by omission, silence may be treated as deception only where there is a duty to speak; in other words as Biglow points out in his book "Biglow on Fraud" (Volume 1 at page 597), ground of liability arises wherever and only where silence can be considered as having an active properly that of misleading.

In view of the factual conclusions arrived at by the High Court, which are perfectly in order, the appeals are bound to fail."

5.8 Thus in view of the above, I am of the considered opinion that Appellant is now barred from taking any stand contrary to what has been taken by him during the personal hearing held before the adjudicating authority on 12.02.2018 to the effect that "after lapse of more than 10 years, it is not possible to verify the impugned capital goods." Thus in absence of the verification of the capital goods, the impugned orders of the lower authorities cannot be faulted with.

5.9 Appellant has relied upon certain decisions rendered in their own case where by the Cenvat Credit on the same items of iron and steel have been allowed in their favour. I do not find

any merits in the said submissions, as none of the case has been rendered where similar facts were under examination and it was noted that the Appellant could not get the capital goods verified as per the order of the Higher Appellate authority (CESTAT). The Final Order No A/70997/2016-SM[BR] dated 26.09.2016 which has not been challenged by the Appellant before higher appellate authority cannot be challenged by referring to other judgments of the same authority (CESTAT). Such a challenge goes contrary to the principal "**Res-judicata pro veritate accipitur.**" I also observe that these decisions have been rendered without taking note of the Hon'ble Supreme Court decision in case of Saraswati Sugar Ltd. [2011 (270) E.L.T. 465 (S.C.)] observing as follows:

19. It appears to us, in the light of the meaning of the expression 'component parts' that the iron and steel structures are not essential requirements in the sugar manufacturing unit. Anything required to make the goods a finished item can be described as component parts. Iron and Steel structures would not go into the composition of vacuum pans, crystallizers etc. If an article is an element in the composition of another article made out of it. such an article may be described as a component of another article. Thus, structures in question do not satisfy description of components'. Therefore, in our opinion, the Tribunal was right in the view it took.

20. Sri V. Lakshmi Kumaran, learned senior counsel, submits that the Iron and Steel structures are fabricated at the site of the work for use in the construction of the various machineries and, therefore, can be classified under sub-heading 7308.50 under Chapter 73 of the Schedule to the Act, which attracts nil rate of duty. Therefore, it is contended that even if his other contention is not accepted, the assessee should not be fastened with any duty liable under the Act. This issue was neither raised nor canvassed by the assessee before the Tribunal. Therefore, we cannot permit the learned counsel to argue this issue before us for

the first time. Therefore, this contention of the learned counsel is rejected.

21. Now coming to the last contention canvassed by the learned counsel that the Tribunal is not correct in holding that the assessee failed to establish that the steel structures are components of the capital goods as specified in the Table below Rule 57Q of the Rules and, therefore, are not eligible for exemption under the notification. This issue requires to be answered with reference to Circular No. 276/110/96-TRU, dated 2-12-1996 issued by the C.B.E.C. The relevant portion of the Circular is as under :-

"3. The matter has been examined. With effect from 23-7-1996, capital goods eligible for credit under Rule 57Q have been specified either by their classification or by their description. Clauses (a) to (c) of Explanation (1) of the said rule cover capital goods by their classification whereas clause (d) covers goods by their description viz, components, spares and accessories of the said capital goods. It may be noted that there is a separate entry for components, spares and accessories and no reference has been made about their classification. As such, scope of this entry is not restricted only to the components, spares and accessories falling under Chapters 82, 84, 85 or 90 but covers all components, spares and accessories of the specified goods irrespective of their classification. The same was the position prior to amendment in Rule 57Q (i.e. prior to 23-7-1996) when credit was available on components, spares and accessories of the specified capital goods irrespective of their classification.

4. Accordingly, it is clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any chapter heading are eligible for availment of Mod vat credit."

22. The period in dispute is July 1999 to September 1999.

The Circular is dated 2-12-1996. Therefore, it was applicable to the disputed period. It is not disputed and it cannot be disputed that the Circular provides that all parts, components, accessories, which are to be used with the capital goods of Clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any Chapter heading are eligible for availing of MODVAT Credit. However, while denying exemption under the notification, the Tribunal has concluded that the goods in question, which comes under Chapter Heading 73 of the Tariff Act has not been specified in the table below Rule 57Q. We do not find fault with the reasoning of the Tribunal, since the Circular, on which reliance is now placed by the learned counsel, was not produced before the Tribunal and. therefore, going by the language employed in Rule 57Q, there is justification for the Tribunal for coming to the aforesaid conclusion. Since in view of the circular, which is now brought to our notice, the Tribunal was not correct to reject the claim of the assessee on the aforesaid ground. However, this finding of ours will not assist the assessee, since we have held that Iron and Steel structures are not the components of machineries used in the installation of Sugar Manufacturing Plant.

23. Before we conclude, we must further observe that Shri Lakshmikumaran drew our attention to the judgment of this Court in CCE v. Rajasthan Spinning and Weaving Mills Ltd. - 2010 (255) E.L.T. 481 (S.C.) where the appeal preferred by the Revenue is dismissed. The facts in the said case were that the respondent-assessee availed MODVAT credit on steel plates and M.S. channels, as capital goods in terms of Serial No. 5 of the Table given below Rule 57Q, used for erection of the chimney for the diesel generating set. The parties were ad idem that diesel generating set falls under chapter Heading 85 which is mentioned at Serial No. 3 of the Table and also the chimney is an accessory in terms of Serial No. 5 of the Table given below 57Q. The issue which was agitated before the Court was whether the Steel plates

and MS Channels used in the fabrication of chimney are capital goods in terms of Serial No. 5 of the Table below Rule 57Q. This Court, whilst applying the user test, had held that the steel plates and MS Channels used in the fabrication of chimney are capital goods as contemplated by Rule 57Q as the chimney is not only an accessory but also an integral part of the diesel generating set in the light of the Pollution Control laws mandating that all plants emitting effluents should be equipped with apparatus to reduce or get rid of effluent gases. We are afraid that this decision would assist the Appellants in support of the contention canvassed. In this instant case, the Court was considering whether steel plates and M.S. Channels used in fabrication of chimney for diesel generating sets are entitled to avail of MODVAT credit by treating them as capital goods in terms of Rule 57Q of the Central Excise Rules. This Court, applying 'user test', has arrived at a conclusion that Steel Plates and MS Channels are used in the fabrication of chimney which is an integral part of the diesel generating set. Therefore, the test applied by this Court is whether the items that were at issue were integral part of a machinery. If that test is satisfied, there will not be any difficulty to hold a particular item of the machinery is a component part and therefore, will fall within the ambit of the expression 'capital goods'.

24. In Simbhaoli Sugar Mills Ltd. v. Commissioner of Central Excise, Meerut, 2001 (135) E.L.T. 1239 (Tri.-Del.), the Appellant is a manufacturer of sugar and availed a MODVAT credit on the joints, channels, angles and MS Beams used in fabricating supporting structures for installation of equipments such as vacuum pan, crystallizers, sugar grader, elevator, etc., HR plates (black steel) are used in boiler of sugar plant to keep temperature high, MS bars, shapes and sections are used for erection of new cooling tower, chequered plates and ITR plates are used to construct the platforms, the cane carrier chain and spares are used to transfer the raw material/semi processed

material from stage to other, as the capital goods in the terms of Rule 57Q, treating these items as the parts and components of the plant. The question which arose before the Tribunal was that whether these items used for fabricating structures to support and install various machineries of the sugar plant are capital goods in terms of the Rule 57Q. The Tribunal while allowing the MODVAT credit found that these items, except MS sections and shapes, used for raising structure to support the various machines, parts of machineries of the plant would be covered by the explanation to Rule 57Q as a capital goods. The Tribunal referred to its own decision in Malvika Steel Limited's case [1998 (97) E.L.T. 530 (Tribunal)] and without semblance of any discussion, has partly allowed the assessee's appeal. In view of our findings and the conclusion in the earlier part of the judgment, we cannot agree with the reasoning of the Tribunal.

5.10 I do not find any merits in this appeal.

6.1 Appeal is dismissed.

(Pronounced in open court on 05.05.2025)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**