

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

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70160 of 2022

(Arising out of Order-in-Appeal No.381/CE/Alld/2021 dated 30/12/2021 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

M/s ACC Ltd.,
(Industrial Area, Gauriganj, Amethi-227409)
VERSUS

.....Appellant

**Commissioner of Central Excise &
CGST, Allahabad**

....Respondent

(38 M.G. Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Nishant Mishra, Advocate &
Ms Parinita Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70299/2025

DATE OF HEARING : 18 March, 2025
DATE OF Pronouncement : 20 May, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. 381/CE/Alld/2021 dated 30.12.2021 of the Commissioner (Appeal) Custom CGST and Central Excise, Allahabad. By the impugned order, Order-in-Original No. CGST (CE/21) 47 of 2020-21 dated 26.03.2021 passed by the Assistant Commissioner (Audit), CGST & Central Excise, Audit Circle Allahabad (the adjudicating authority) has been upheld.

1.2 By the order in original dated 26.03.2021 following has been held:

ORDER

- (i) I confirm the demand of inadmissible CENVAT credit amounting to Rs.1,00,556/- (Rs. One Lac Five Hundred Fifty Six only) demanded under Rule 14(1)(i) of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act,1944;
- (ii) I confirm the demand of wrongly utilized CENVAT credit of Ed Cess & SHED Cess, for payment of Central Excise duty amounting to Rs.5,10,029/- (Rs. Five Lacs Ten Thousand Twenty Nine only) under Rule 14(1)(i) of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act,1944;
- (iii) I confirm the demand of interest on above said confirmed demands of Rs.1,00,556/- and 5,10,029/-, on the party under Rule 14(1)(ii) of CENVAT Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944;
- (iv) I impose a penalty of Rs.6,10,585/- (Rs. Six lakh ten thousand five hundred eighty-five only) upon the noticee under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 in respect of above mentioned confirmed demands of Rs. 1,00,556/- and 5,10,029/- only;
- (v) I confirm the demand of CENVAT credit amounting to Rs.1,12,442/-(Rs. One Lac Twelve Thousand Four Hundred Forty Two only) under Rule 14(1)(i) of Cenvat Credit Rules, 2004 read with Section 11A(4) of Central Excise Act, 1944.
- (vi) I drop the demand of Service Tax of Rs.2,48,046/- (Rs. Two Lacs Forty-Eight Thousand Forty-Six only) (including SBC & KKC) demanded from them under proviso to Section 73(1) of the Finance Act, 1994.
- (vii) I drop the demand of Service Tax of Rs.4,91,521/- (Rs. Four Lacs Ninety-One Thousand Five Hundred Twenty-One only) (including SBC & KKC) demanded from them

under proviso to Section 73(1) of the Finance Act, 1994.

- (viii) I confirm the demand of Service Tax Rs. 4,895/- (Rs. Four Thousand Eight Hundred Ninety-Five only) including Ed Cess & SH Ed Cess, demanded from them under proviso to Section 73(1) of the Finance Act, 1994 and since the auditee has deposited the said amount, the same is appropriated.
- (ix) I confirm the demand of Service Tax amounting to Rs.1,15,269/- (Rs. One Lac Fifteen Thousand Two Hundred Sixty-Nine only) including Ed Cess, S H Ed Cess SBC & KKC, demanded from them under proviso to Section 73(1) of the Finance Act, 1994.
- (x) I confirm the demand of Interest on the aforesaid confirmed amounts of Service (X) Tax, under Section 75 of Finance Act, 1994;
- (xi) I order for appropriation of the interest amounting to Rs. 5,435/- paid on late payment of Service Tax amounting to Rs. 4,895/- under Section 75 of the Act;
- (xii) I drop the proposal for imposition of penalty upon them under section 76 of the Finance Act,1994;and
- (xiii) I impose a penalty amounting to Rs.2,32,606/- (Rs. Two lakh thirty two thousand six hundred six only) upon them under Section 78(1) of the Finance Act, 1994.

2.1 The appellant registered with the Department are engaged in the manufacture of Portland Pozzonala Cement falling under chapter heading 25132930 of Central Excise Tariff Act,1985. They were availing the CENVAT credit facility under the CENVAT Credit Rules, 2004.

2.2 During the scrutiny of the records by the departmental audit team, following discrepancies were noticed:

- On scrutiny of Cenvatable Capital Goods Invoices and related credit record i.e. RG-23 C' Pt.II , it was noticed that the appellant has taken inadmissible Cenvat Credit amounting to Rs. 1,00,556/- on the purchase of Structural

Platform, Flat rolled products of Iron/ Steel and Hot rolled Alloy Steel Plates. The above items do not qualify as Capital Goods in terms of Rule 2(a) of CENVAT Credit Rules-2004.

- they utilized balance amount of CENVAT credit of Education Cess amounting to Rs. 3,40,020/- & Higher Education Cess amounting to Rs. 1,70,009/- on Input Services, Totaling Rs. 5,10,029/- for payment of Central Excise duty during the month of March'15. As per provision of Rule 3(7)(b) of CENVAT Credit Rules, 2004, the credit of balance of Ed. Cess and SHED can only be utilized for the discharge of Ed. Cess and SHED respectively. The same cannot be utilized for discharge of Basic Excise duty on the finished goods.
- they availed services of M/s Security and Intelligence Services (India) Limited, Lucknow for security of residential colony which has no relation to the manufacture of final products and clearance of final products upto the place of removal. Thus, security services provided in the residential colony does not fall under the definition of input service in terms of Rule 2() of the CENVAT Credit Rules, 2004. Thus, CENVAT credit amounting to Rs.1,12,442/- utilized by the appellant was inadmissible.
- Non- payment of service tax amounting to Rs. 2,48,046/- on the Liquidation Damage charged due to non-fulfillment of obligation under category of declared service in terms of section 66EC of the Finance Act, 1994.
- They paid Management Fee amounting to Rs. 3276809/- to foreign company M/s LafargeHolcim, Switzerland but did not pay service tax amounting to Rs. 4,91,521/- on said payment under reverse charge mechanism.
- They received rent amounting to Rs. 39600/- during the F.Y 2014-15 respectively from M/s ICICI Bank for providing space for installation of ATM, but did not paid

service tax amounting to Rs. 4895/- (including Ed Cess & SH Ed Cess).

- They incurred legal expenses amounting to Rs. 8,56,345/- , Rs.5,86,130/- & Rs. 3,26,975/- during the financial years 2014-15, 2015-16 & 2016-17 respectively but failed to discharge correct service tax liability to the tune of Rs. 1,15,269/- on the said legal charges by suppressing gross value in the ST-3 return

2.3 A show cause notice dated 09.10.2019 was issued to the appellant asking them to show cause as to why:

- (i) *the inadmissible cenvat credit amounting to Rs.1,00,556/- (Rs. One Lac Five Hundred and Fifty Six only) should not be recovered from them under Section 11A(4) of Central Excise Act,1944 read with Rule 14 of Cenvat Credit Rules, 2004.*
- (ii) *wrong utilization of CENVAT credit of Ed Cess & SHED Cess for payment of Central Excise duty amounting to Rs. 5,10,029/- (Rs. Five Lacs Ten Thousand Twenty Nine only) should not be recovered from them under Section 11A(4) of Central Excise Act,1944 read with Rule 14 of Cenvat Credit Rules, 2004.*
- (iii) *interest should not be charged and recovered from them under Section 11AA of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004;*
- (iv) *penalty should not be imposed upon them under Section 11AC of Central Excise Act, 1944 read with Rule 15(2) of Cenvat Credit Rules, 2004;*
- (v) *input service credit amounting to Rs. 1,12,442/- (Rs. One Lac Twelve Thousand Four Hundred Forty Two only) should not be recovered from them under Section 11A(4) of Central Excise Act,1944 read with Rule 14 of Cenvat Credit Rules, 2004.*
- (vi) *Short paid service tax Rs. 2,48,046/- including SBC & KKC (Rs. Two Lacs Forty Eight Thousand Forty Six only) should not be demanded and recovered from them under proviso to Section 73 of the Finance Act, 1994*

(as amended from time to time) for the reasons detailed here-in-above

- (vii) Short paid service tax Rs. 4,91,521/- including SBC & KKC (Rs. Four Lacs Ninety One Thousand Five Hundred and Twenty One only) should not be demanded and recovered from them under proviso to Section 73 of the Finance Act'1994.*
- (viii) Short paid service tax Rs 4,895/- including Ed Cess & SHE Cess (Rs. Four Thousand Eight Hundred Ninety five only) should not be demanded and recovered from them under proviso to Section 73 of the Finance Act'1994 and since the auditee has deposited the said amount, why the same should not be appropriated.*
- (ix) Not paid Service Tax amounting to Rs.1,15,269/- including Ed Cess, S.H.Ed. Cess,SBC & KKC (Rs. One Lac Fifteen Thousand Two Hundred Sixty-Nine only) should not be demanded and recovered from them under proviso to Section 73 of the Finance Act,1994.*
- (x) Interest should not be demanded & recovered from them on the aforesaid amount of Service Tax under Section 75 of Finance Act, 1994.*
- (xi) Since the auditee has deposited the interest amounting to Rs.5,435/- on the payment of Service Tax amounting to Rs. 4,895/-, why the said interest should not be appropriated.*
- (xii) the penalty should not be imposed upon them under section 76 of the Finance Act, 1994; and*
- (xiii) the penalty should not be imposed upon them under Section 78(1) of the Finance Act, 1994.*

2.4 The show cause notice was adjudicated as per the order in original referred in para 1.2 above.

2.5 Aggrieved appellant filed the appeal before Commissioner (Appeal), which has been dismissed as per the impugned order.

2.6 Aggrieved appellant has filed this appeal

3.1 I have heard Shri Nishant Mishra Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- They are contesting the impugned order to the extent of demand made in respect of the following:
 - Denial of Cenvat credit on iron and steel items – Rs 1,00,526/-
 - Denial of Cenvat Credit of service tax paid on security services – Rs 1,12,442/-
 - Wrong utilization of CENVAT Credit of Ed Cess & SHE cess for payment of central excise duty – Rs. 5,10,029/-
- The appellant has procured Angles, Beams, Channels, Rods (collectively called as " Iron & Steel" items) for manufacture of capital goods within the factory production which are further used for manufacture of final products. These items qualify as inputs within the meaning of Rule 2 (k) of CENVAT Credit Rules, 2004 as has been held in the following cases:
 - Ambuja Cement Eastern Ltd. [2017 (357) ELT 55 (Chattisgarh)]
 - Rajasthan Spinning & Weaving Mills Ltd. [2010 (255) ELT 481 (SC)]
 - Associated Cement Company Ltd. [2011 (267) ELT 55 (Chattisgarh)]
 - Associated Cement Company Ltd. [2015 (317) ELT 44 (Chattisgarh)]
 - Associated Cement Company Ltd. [2016 (341) ELT 175 (Chattisgarh)]
 - Gujarat Ambuja Cement Ltd [2008 (230) ELT 221 (HP)]
 - Madras Aluminium Ltd. [2008 (226) ELT 342 (Mad.)]
 - Oswal Steel [2006 (193) ELT 403 (P&H)]
 - Zenith Papers [2002 (146) ELT 518 (P&H)]
 - India Glycols Ltd. [2008 (229) ELT 516 (UTT)]

- Prism Cement Ltd. [2006 (199) ELT 777 (MP)]
- Pioneer Agro Extracts [2008 (230) ELT 597 (P & H)]
- The issue in respect of the wrong utilization of the Cenvat credit of Ed Cess and SHE Cess for payment of Central Excise duty is no longer res integra and has been decided in the case of Genus Paper and Boards [2024 (14) CENTAX 208 (T-All)].
- The decision of Hon'ble Delhi High Court to the contrary in the case of Cellular Operators Association of India [2018 (14) GSTL 522 (Del)] relying on the decision of Hon'ble Supreme Court in the case of B K Industries [1993 Supp. (3) SCC 621], relied in the impugned order, may not lay down the correct law as it goes contrary to the findings recorded by the Hon'ble Supreme Court in the case of Unicorn Industries [2019 (370) ELT 3 (SC)]
- As per the inclusive definition of 'input service' under Rule 2 (I) of the Credit Rules, the security services procured by the appellant for residential colony fall under the definition of input service in terms of Rule 2(I) of the CENVAT Credit Rules, 2004. Reliance is placed on the decision in the case of ITC Limited [2013 (32) STR 288 (AP)]
- The entire demand is time barred and penalty imposed under Section 78 of the Act & Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 are not sustainable.

3.3 Authorized representative reiterates the findings recorded in the impugned order.

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

4.2 Appellant is contesting impugned order only in respect of three demands as stated in para 3.2 above. In fact they had before the First Appellate authority also contested these three demands only. Impugned order records the findings as follows:

"4.2 The appellant has contested that the disputed items viz. M.S. Angles, Channels M.S Rods etc. had been used for

manufacture of capital goods, therefore, qualify for inputs within the meaning of Rule 2(k) of the CENVAT Credit Rules, 2004. On the other hand the department's contention is that the appellant has not disclosed the name of capital goods manufactured by them out of the disputed inputs. They did not produce any accounts related to entries passed for capitalization of the said inputs/capitals goods etc to support their contentions.

4.3 At the very outset, I would like to examine the prevailing provisions for availing cenvat credit on capital goods during the material period. The definition of "capital goods" as provided under CENVAT Credit Rules, 2004 during the relevant period read as under:

(a) 'capital goods' means-

(A) The following goods, namely:-

- i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, of the first Schedule to the Excise Tariff Act;*
- ii) Pollution control equipment;*
- iii) Components, spares and accessories of the goods specified at (i) and (ii);*
- iv) Moulds and dies, jigs and fixtures;*
- v) Refractories and refractory materials;*
- vi) Tubes and pipes and fittings thereof; and*
- vii) Storage tank,*

4.4 The term "input" has also been defined under the said Credit Rules. As defined under the said Credit Rules, input means all goods, except the goods as specified therein, used in or in relation to the manufacture of the final products within the factory of production. Vide Notification No. 16/2009-C.E. (N.T.) dated 07.07.2009, an explanation has been inserted in Rule 2 of the Cenvat Credit Rules, 2004 so as to clarify that 'inputs' which are eligible for availing Cenvat credit shall not include cement, angles, channels,

CTD or TMT bar and other items used for construction of shed, building or structure for support of capital goods

4.5 Thus, from the above definitions, it is clear that the definition of capital goods primarily includes machinery items; components, spares and accessories of the same; and a few other things which have been specifically added such as pollution control equipment; moulds, dies etc.; refractories; tubes and pipes and fittings thereof; and storage tank. The moulds, dies, refractories, tubes and tank have been specifically added as they would not get classified and included as machinery items but it has been specifically and additionally included perhaps considering their functional utility to the manufacturing process. By specifically including these items, credit in respect of duty paid on such items has been-allowed which would not otherwise get coverage under the term 'capital goods'

4.6 From the facts of the instant case, it is apparent that the appellant has availed cenvat credit on various items viz. channels, rods, angles, bars etc. considering them as "capital goods" and not "input". They have availed 50% of credit on duty paid on these goods in terms of the provisions of Rule 4 (2)(a) of the CCR which read as under:

"The Cenvat credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year"

4.7 The above said provisions of Credit Rules are specifically meant for "capital goods" only and are not applicable to cenvat credit in respect of inputs. Thus, it is amply clear that the cenvat credit of duty paid on the above referred goods were taken by the appellant considering them as "capital goods" only and not "inputs"

4.8 The appellant has contested that the said "Iron & Steel" items are used for manufacture of capital goods which are further used for manufacture of dutiable final products. But the appellant has neither mentioned in their reply which capital goods were manufacture by them nor produce any documents/evidence in support of their contention. I observe that the appellant is trying to camouflage the actual purpose of procuring the items in dispute. Initially they have availed cenvat credit on the said items claiming the same as "capital goods", whereas after initiation of the proceeding against them under the present show cause notice, they have claimed that these items are inputs and were used for manufacture of capitals goods, but failed to give details of said capital goods which were manufactured by using said items. Thus, I find no force in the submission of the appellant.

4.9 I observe that in the similar case of M/s Jagdamba Power & Alloys Ltd. Versus Commission of Central Excise, Raipur, the Hon'ble CESTAT, Principal Bench, New Delhi [2012 (2) ECS (68) (Tri-Del)] in its judgment dated 16.08.2012 held as under:

"The disputed items of inputs are M.S. Flats, Plates, M.S. bar, CTD Bars, Joist, Beams, Coils, Sheets, Welding Electrodes, LPG gas Refilling, Oxygen Gas, etc. Cenvat credit in respect of these items had been used for fabrication of capital goods and their components, parts and accessories. But prima facie, such evidence in this case is lacking. Therefore, we are of the prima facie view that the items were not eligible for cenvat credit either as inputs or as capital goods." [Para 4]

4.10 The appellant has relied upon a number of case laws but they have not given any justification as to how these decisions are applicable to the facts of their case, especially when circumstances, transactions, events of each case, are required to be considered analyzed and weighed against

the circumstances et al to be the same in the referred cases. I also find that the Hon'ble Supreme Court in the case of Punjab National Bank vs. R.L. Vaid 2004 (172) E.L.T. 24 (S.C.), has held at Para 5, as under:

5. We find that the High Court has merely referred to the decision in R.K. Jain's case (supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision to the facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases.

4.10.1 Similarly, the Hon'ble Supreme Court in the case of CCE, Bangalore vs. Srikumar Agencies 2008 (232) E.L.T. 577 (S.C.), inter alia, held, as under: Precedents - Court decision not statute - Reliance thereon without discussion of facts - Decisions not to be relied upon without discussing similarity of facts - Judgments of courts not to be construed as statutes - Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases

4.11 As regards to appellant contention that demand is time barred, I observe that the appellant has not declared to the department the particulars and nature of the ineligible capital goods on which they have availed cenvat credit but, the facts came under the knowledge of Department at the time of Audit of records of the appellant. I observe that the appellant has suppressed the material facts with intent to wrongly avail Cenvat credit in contravention of the

provisions of Rules 2 read with Rule 3 of the Cenvat Credit Rules, 2004. Therefore the credit wrongly taken by them is required to be recovered from them along with interest by invoking extended period of limitation under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with the provisions of Section 11A(4) of the Central Excise Act, 1944 and the appellant has rendered themselves liable for penal action under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

5 As regards to utilization of balance amount of CENVAT credit of Education Cess amounting to Rs. 3,40,020/- & Higher Education Cess amounting to Rs. 1,70,009/- on Input Services, Totalling Rs. 5,10,029/- for payment of Central Excise duty during the

month of March'15, the appellant has contested that the CBEC vide Notification No. 12/2015-Central Excise (NT) dated 30.04.2015 amended the CENVAT Credit Rules, 2004 to allow use of Ed Cess & SH Ed Cess for payment of Central Excise Duty. I observe that vide Notification No. 12/2015-Central Excise (NT) dated 30.04.2015, the Central Government amend the CENVAT Credit Rules, 2004 as under:

"In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the second proviso, the following shall be substituted, namely:-

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act:

Provided also that the credit of balance fifty per cent, Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of

manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act;

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act."

5.1 From the above legal provisions, it can be seen that credit of Education Cess and Secondary and Higher Education Cess paid on inputs/capital goods/input services received by the manufacturer of final product on or after the 1st day of March 2015 can be utilized for payment of the duty of excise. Since in the present case credit of Ed Cess & SH Ed Cess utilized for payment of central excise duty belongs to period prior to 01.03.2015, therefore, the same cannot be utilized for discharge of Basic Excise duty on the finished goods in terms of Rule 3(7)(b) of CENVAT Credit Rules 2004. The appellant has misconstrued the provisions of Notification No. 12/2015- Central Excise (NT) dated 30.04.2015 in their favour which is not applicable in their case inasmuch as credit of Ed Cess & SH Ed Cess belongs to period prior to 01.03.2015.

5.2 The appellant has also contested that they claim a vested right to avail benefit of the unutilized amount of Ed Cess or S H Ed Cess credit, which was available and had not been set off as on 1st March, 2015 for payment of tax on excisable goods. The contention is that EC and SHE were subsumed in the Central Excise Duty, the general rate of which was increased from 12% to 12.5%. On the other hand, the department's contention is that credit of EC and SHE towards payment of excise duty is not a vested right. The effect of the legislation withdrawing EC and SHE was to abolish the cess, though while presenting the Bill, etc. and

giving reasons for increase in the excise duty, it was stated that EC and SHE would not be henceforth levied and would get subsumed in the higher rate of tax. Cross-utilization of EC and SHE credit was never permitted and allowed under the earlier provisions. The two notifications incorporating provisos (3) to (8) to Rule 3, sub-rule (7) in clause (b) have a very limited application as they apply to cases of excise duty where capital goods or inputs or input services on which EC and SHE had been paid were received by the purchaser/ manufacturer of the final product on or after 1st day of March, 2015 or were manufactured after 1st day of March, 2015. Further, credit of balance fifty percent of EC and SHE paid on capital goods received in the factory of a manufacturer of final product in the financial year 2014-15 for payment of excise duty was also provided. These, as elucidated and explained, were new benefits and concessions granted, as cross utilization was earlier not permitted and allowed. Any new concession or benefit given, would not in law on stand-alone basis, confer a legal right to claim vested right to a concession or benefit which has not been granted

5.3 The first aspect to be examined is the statutory effect of withdrawal of EC and SHE on excisable goods and taxable services with effect from 1st March, 2015, pursuant to the Finance Act, 2015. By Notification No. 14/2015-CE dated 1st March 2015, the Central Government in public interest had granted exemption to all goods falling in the First Schedule of the Central Excise Tariff Act, 1885 from whole of EC leviable thereon under Section 93 of the Finance (No.2) Act, 2004. Similarly vide Notification No. 15/2015-CE dated 1st March, 2015, the Central Government in public interest had exempted all goods falling in the First Schedule of the Central Excise Tariff Act, 1985 from whole of SHE leviable under Section 138 of the Finance Act, 2007

5.4 Omission of a provision signifies deletion of that provision and is normally not treated as different from

repeal. The repeal/ omission in the present case was not made retrospectively, but applied prospectively. Manufacturers were entitled to take benefit of EC and SHE credit on the EC and SHE payable on manufactured goods on or before the cutoff date, i.e., 1st March, 2015. They have not been allowed to take credit after the said date for the simple reason that EC and SHE ceased to be applicable and were no longer payable after the said date. The provisos added to Rule 3, sub-rule (7) in clause (b) are really in the nature of concessions confined to a limited and narrow set of cases and are not of general application. Noticeably, they expand the scope and give benefit of utilization of accumulated EC and SHE against payment of excise duty, which was not the position prior to 1st March, 2015.

5.5 It is in the aforesaid context and background that the appellant has relied upon the word 'subsumed' used in the speech of the Finance Minister while presenting the Budget Speech, as also in the explanation memorandum to the Finance Bill, 2015 and the TRU letter. It would not be correct to understand and interpret the word "subsumed" used as asserted by the appellant. A Finance Bill or a Budget has financial and tax implications. It is an economic, political and policy statement. Interplay of politics and economics gets reflected in the statement made and relied. Raising or increasing taxes often meets resistance, and on most occasions has to be justified and explained. The statements and explanations given in the present context would show that the Government had decided to increase excise duty and service tax marginally and at the same time had decided to withdraw or abolish EC and SHE. Any exercise of increasing taxes and withdrawing a cess or a tax is undertaken keeping in mind several aspects. This can include revenue collection in the form of increased taxes on one hand, and withdrawal or reduction of cess or another tax so as to curtail the adverse impact due to increase.

Pertinently, no statement or assertion was made that the benefit of unutilized EC and SHE credit would be given against excise duty. The use of the words 'subsumed with reference to the two cesses could indicate that there would not be an increased tax burden being put on the payers or the consumers, as EC and SHE were being withdrawn. Noticeably, the two cesses and the excise duty were always treated as different and separate and cross-utilization was never permitted.

*5.6 It is no doubt true that the two cesses, in the present case, were in the nature of taxes and not fee, but it would be incorrect and improper to treat the two cesses as excise duty. They were specific cesses for the objective and purpose specified. I observe that a Constitution Bench of five Judges in Hingir-Rampur Coal Company Limited and Others versus State of Orissa and Others, (1961) 2 SCR 537 had elucidated that "a cess can be in the form of a tax or a fee, though both are compulsory extraction of money. In case of a fee, there is an element of quid pro quo, while in tax this is not required, even if the tax being collected is used to constitute a specific fund, which does not become part of the Consolidated Fund, and its application can be regulated and confined to its purpose"**

5.7 More relevant and important for the present context and issue would be the judgment of the Supreme Court in B.K. Industries and Others versus Union of India and Others, 1993 Supp (3) SCC 621, wherein validity of levy of cess under Vegetable Oil Cess Act, 1983 was challenged. The cess was levied for the purpose of National Oil- seeds and Vegetable Oils Development Board Act, 1983 and was in addition to excise duty leviable under the Central Excise Act or law for the time being in force. In the Budget Speech delivered on 28th February, 1986 for the year 1986-87, it was decided to dispense with the cess on vegetable oil. It was also stated in the Budget Speech that cess collected since 1st April, 1986 would be refunded. However, the cess

was withdrawn vide repeal Act, effective from 1st April, 1987. Relying upon the aforesaid speech on the Floor of the House, the submission was that the statement made constitutes an enforceable right and vegetable oil cess paid between 1st March, 1986 and 31st March, 1987, when the repeal Act was made effective, should be refunded. Plea of enforceable right was rejected in the following words:-

"9. We find it difficult to agree. It is not brought to our notice that the budget proposals contained in the Finance Minister's speech were accepted by the Parliament. The cess having been imposed by a Parliamentary enactment could be rendered inoperative only by a Parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. Not only that. The repealing Act expressly provided in Section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. In the face of the said statutory provisions, no rights can be founded- nor can the levy of the cess be said to have been dispensed with- by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11, 1986. The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative."

5.8 I observe that Hon'ble Delhi High Court in its judgement dated 15.02.2018 in the case of M/s Cellular Operators Association of India Vs Union of India (Delhi High Court) While dismissing the Writ Petition, clearly held that "credit

of EC and SHE could be only allowed against EC and SHE and could not be cross-utilized against the excise duty or service tax".

6. Now, I come to the issue of availment of input service credit on the security services procured by the appellant for residential colony. I observe that the term input service' has been defined in Rule 2(I) of the CENVAT Credit Rules,2004 as under:

"Input service" means any service

- i. used by a provider of taxable service for providing an output service, or*
- ii. used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,*
and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relation to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

6.1 It can be seen that the definition of input service is expressed in the form of means' and includes'. Means' part of the definition contains, inter alia, service used by the manufacturer whether directly or indirectly or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition, of course, is worded to include variety of services used not

only for, but in relation to manufacture of final products and also for clearance of final products upto the place of removal. Despite such wide connotation of the term input service' as defined in rule 2(I) of the Cenvat Rules, the question is whether the present case would be covered in the said definition. Facts are short and not in dispute. The appellant, manufacturer of Cement has provided residential quarters for its workers and in such residential quarters, the appellant also provided security services. I observe that in the present case, the act of providing residential quarters by the manufacturer to its employees is not a statutory requirement rather it is voluntary act of benevolence on the part of the appellant. Further providing security service in such residential quarters is also an act voluntary in nature. Further, I do not see any connection between the security services provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. Thus, I find that such activity cannot be termed within the sweep of expression of input service' as provided in rule 2(I) of the CENVAT Credit Rules, 2004.

6.2 I observe that the Bombay High Court in the case of Commissioner Central Excise vs M/S Manikgarh Cement held as under:

"8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in rule 2() of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

9. Applying the ratio laid down by the Hon'ble Apex Court in the case of Maruti Suzuki Limited Vs. Commissioner of Central Excise, Delhi (Supra), we hold that unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable. In the present case, in our opinion, rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and therefore, the Tribunal was not justified in holding that the services such as repairs, maintenance and civil construction rendered at the residential colony constitutes input service' so as to claim credit of service tax paid on such services under Rule 2(I) of the CENVAT Credit Rules, 2004"

6.3 The Hon'ble Gujarat High Court in the similar case of Commissioner of Central Excise & Customs Vs M/s. Gujarat Heavy Chemicals Ltd in its judgment dated 11.05.2011 held as under:

"In the present case, the act of providing residential quarters by the manufacturer to its employees was voluntary. Providing further security service in such residential quarters was also an act voluntary in nature. No connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. Revenue Appeal allowed".

6.4 In view of the above facts & judicial pronouncements, I am of the considered view that the CENVAT credit amounting to Rs. 1,12,422/- utilized by the appellant on the security service provided in township area are not admissible to them, therefore, the same is recoverable

under Rule 14 of the CENVAT Credit Rules, 2004 along with interest under Section 11AA of the Central Excise Act, 1944

6.5 So far as the submission of the appellant about suppression of facts and invocation of extended period of limitation, is concerned, it is observed that under the self-assessment procedure prescribed under the statute, the appellant were required to avail & utilize the CENVAT credit correctly, whereas inadmissible CENVAT credit taken on security services could be detected only during scrutiny of their records by the departmental audit officer. Thus, I find that extended period of limitation has been rightly invoked in this case for recovery of inadmissible CENVAT credit and for imposing penalty of Rs. 1,12,422/- under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944."

4.3 From the facts as above, following issues are before me for consideration:

- i. Whether the CENVAT Credit of Rs 1,00,556/- taken by the appellant in respect of Structural platforms, flat rolled products of iron/ steel and hot rolled alloy steel plates would be admissible to them.
- ii. Whether the CENVAT Credit of Rs 1,12,442/- taken by the appellant in respect of security services provided in the residential colony would be admissible to them.
- iii. Whether appellant could have utilized the CENVAT Credit of Ed Cess and SHE Cess for payment of Central Excise duty during the month of March 2015.
- iv. Whether penalty have been rightly imposed upon the appellant?

4.4 Whether the CENVAT Credit of Rs 1,00,556/- taken by the appellant in respect of Structural platforms, flat rolled products of iron/ steel and hot rolled alloy steel plates would be admissible to them.

Appellants have claimed the CENVAT Credit in respect of Structural platforms, flat rolled products of iron/ steel and hot

rolled alloy steel plates, under the category of Capital Goods as defined by Rule 2 (a) of the CENVAT Credit Rules, 2004. However subsequently they have changed their stand and have claimed that these goods should be treated as inputs as defined by Rule 2(k) *ibid*. They have used these goods for the manufacture of the capital goods used in manufacture of the finished goods.

4.5 Hon'ble Supreme Court has in case of *Saraswati Sugar Mill* [2011 (270) ELT 465 (SC)] Hon'ble Supreme Court has category held that 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 Modvat 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."

4.6 Further I find that subsequently appellant has changed his stand and by relying on the decisions of this tribunal and various High Court, they have claimed that this credit would be admissible to them under the category of inputs, as these goods have been used by them for the manufacture of capital goods used within their factory. Appellant has made this claim only on the basis of the decisions without showing as to how these decisions would be applicable in their case. Assuming the claim made by the appellant is admissible, then also the same will have to be established by way of the documents and evidences. If the appellant has used these goods for the manufacture of capital goods, then fact of manufacture would have been reflected in their registration certificate and the monthly ER-1 return filed by them. They could have produced the ER-1 returns where by the use of these goods for the manufacture of capital goods (finished goods) would have been reflected to substantiate and cleared without payment of duty by claiming the exemption under Notification No 67/95-CE for use within the factory of production. Nothing has been placed on record to show the use of these in the manufacture of the Capital Goods. Further I find that tribunal has in case of Saraswati Sugar Mills [2004 (178) E.L.T. 804 (Tri. - Del.)] held that benefit of Notification No

67/95-CE would not be available. The appeal filed against this decision of tribunal has been dismissed by Hon'ble Supreme Court as reported at [2015 (322) ELT A326 (SC)].

4.7 Thus in view of the above I do not find much merits in this argument advanced relying upon various decision of High Court and Tribunal. I further note that the definition of inputs as per Rule 2 (k) of CENVAT Credit Rules, 2004 was amended by Notification No 16/2009-CE (NT) and it was provided that cement, angles, channels, CTD or TMT bar and other items used for construction of shed, building or structure for support of capital goods would not be covered by the definition of inputs. Hon'ble Gujarat High Court has in case of Mundra Ports & Special Economic Zone Ltd [2015 (39) S.T.R. 726 (Guj.)] category held as follows:

"8. Mr. Y.N. Ravani, learned counsel for the Revenue has placed reliance on the decision of the Larger Bench of the Tribunal in Vandana Global Limited v. Commissioner of Central Excise, Raipur, 2010 (253) E.L.T. 440. We have carefully gone through the decision of the Larger Bench of the Tribunal. We do not find that amendment made in Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification of particular thing or goods and/or input and as such, the amendment could operate only prospectively. In our opinion, the view taken by the Tribunal is based on conjectures and surmises as the Larger Bench of the Tribunal used the expression that intention behind amendment was to clarify. The coverage under the input from where this intention has been gathered by the Tribunal has not been mentioned in the judgment. There is no

material to support that there was any legislative intent to clarify any existing provision. For the same reason, as mentioned above, the decision of the Apex Court in Sangam Spinners Limited v. Union of India and Others, reported in (2011) 11 SCC 408 = 2011 (266) E.L.T. 145 (S.C.) would not be applicable to the facts of the instant case."

4.8 Relying on this decision Chhattisgarh High Court has in case of Vandana Global [2018 (16) G.S.T.L. 462 (Chhattisgarh)] held as follows:

"5. The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in Mundra Ports & Special Economic Zone Ltd. - 2015 (39) S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows :

"We do not find that amendment made in the Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification on particular thing or goods and/or input and as such, the amendment could operate only prospectively."

6. That view has been quoted with approval by the Madras High Court in M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal (CMA 3814/2014 and connections) decided on 10-7-2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. M/s. Thiruarooran Sugars also

considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech.”

4.9 In the present case the entire period is after the amendments made in the year 2009, to the definition of inputs as per Rule 2 (I) of Cenvat Credit Rules, 2004. Thus there is no merits in the claim of the appellant that these goods be treated as inputs. Further I also note that appellant has taken cenvat credit in respect of these goods fully aware that the credit would not be admissible in respect of these goods under the category of capital goods or inputs, they have contravened the provision of Rule 9 (5) of the Cenvat Credit Rules, 2004 with intent to utilize the same for payment of central Excise duty. Impugned order has in para 4.11 recorded the reasons for invoking the extended period of limitation which have not been refuted by the appellant. Thus I hold that extended period of limitation has been rightly invoked for making this demand.

4.10 Whether the CENVAT Credit of Rs 1,12,442/- taken by the appellant in respect of security services provided in the residential colony would be admissible to them.

Appellant has claimed credit of security services provided in the residential colony, under the category of input services as defined by the Rule 2 (I) of the Cenvat Credit Rules, 2004. Appellant has relied upon the decision of tribunal in the case of Ultratech Cement Ltd. [2018 (13) GSTL 160 (T-Del)] in their support. However I find that the issue is squarely covered by the decision of Hon'ble Gujarat High Court in case Gujarat Heavy Chemicals Ltd. [2011 (22) S.T.R. 610 (Guj.)] wherein following has been held:

9. Having thus heard the learned counsel for the parties, short question that confronts us is whether the security service provided by the respondent at the residential quarters maintained for the workers would be included in the term 'input service' as defined in Rule 2(I) of the Cenvat

Credit Rules. Term 'input service' has been defined in Section (sic) 2(l) as under :

l ""Input service" means any service -

- i. used by a provider of taxable service for providing an output service, or*
- ii. used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,*

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relation to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

10. Definition of input service is expressed in the form of 'means' and 'includes'. 'Means' part of the definition contains, inter alia, service used by the manufacturer whether directly or indirectly or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition, of course, is worded to include variety of services used not only for, but in relation to manufacture of final products and also for clearance of final products upto the place of removal. This Court in Tax Appeal No. 419 of 2010 and connected matters decided on 6th April 2011 held that the said definition is exhaustive in nature.

11. Despite such wide connotation of the term 'input service' as defined in Rule 2(1) of the Cenvat Rules, the

question is whether the present case would be covered in the said definition. Facts are short and not in dispute. Respondent assessee, manufacturer of soda ash, has provided residential quarters for its workers. In such residential quarters, the assessee also provided security services. Can such security services be stated to be service used by the manufacturer directly or indirectly in or in relation to the manufacture of final product? Our answer has to be in the negative. We do not see any connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. This is also the view of the Bombay High Court in the case of Manikgarh Cement (supra).

12. We may notice that the Apex Court in the case of Maruti Suzuki Ltd. (supra) was of the opinion that the electricity generated by the assessee and cleared to grid for distribution would not be part of manufacturing activity and be categorized as input used in manufacture of final product. We are conscious that the said decision of the Apex court is referred to Larger Bench. However, at this stage, the ratio laid down therein prevails."

4.11 In case of Manikgarh Cement [2010 (20) S.T.R. 456 (Bom.)], Hon'ble Bombay High Court has held as follows:

8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(I) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

9. Applying the ratio laid down by the Hon'ble Apex Court in the case of Maruti Suzuki Limited v. Commissioner of Central Excise, Delhi (supra), we hold that unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable. In the present case, in our opinion, rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and therefore, the Tribunal was not justified in holding that the services such as repairs, maintenance and civil construction rendered at the residential colony constitutes 'input service' so as to claim credit of service tax paid on such services under Rule 2(I) of the CENVAT Credit Rules, 2004."

4.12 In view of the decisions as above of Hon'ble High court of Gujarat and Bombay, I do not find any merits in the submissions made by the appellant. A single member of tribunal could not have in case of Ultratech Cement referred by the appellant, ruled against the above decisions on the point of law. He could have only distinguished on facts to hold that these decisions are not applicable. However as I find the issue to be squarely covered by the above decisions of High Court I do not find any merits in the arguments advanced. The services which have been provided for the personal consumption of the employees have been specifically excluded from the definition of input services. By notification No 3/2011-CE (NT) dated 01.03.2011, following amendment was made in the definition of the input services.

"(I) "input service" means any service, -

(i); or

(ii),

and includes services

but excludes services,-

(A)

(B)

(c) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;”;

From the perusal of the above amendment made in 2011, it is evident that service which were meant for personal consumption of the employees have been kept out of the purview of the definition of the input services. The intention of the amendment is evident from the use of phrase **‘when such services are used primarily for personal use or consumption of any employee;’**. Though security services are not specifically stated in the first part of the exclusion clause however, the above phrase make it evident that services meant for personal consumption of employees have been excluded. This view is in line with the decision of Hon’ble High Court of Gujarat and Bombay wherein even in respect of the un-amended definition they have ruled against the admissibility of the credit. The reliance placed on the decision of Hon’ble High Court of Andhra Pradesh in case of ITC Limited [2013 (32) STR 288 (AP)] taking contrary view in respect of un-amended definition do not support the case of the appellant. Thus I hold against the admissibility of CENVAT Credit in respect of these services. As the fact that appellant has availed CENVAT Credit in respect of the security services provided in the residential colony was never disclosed to the department hence extended period of limitation for making this demand has been rightly invoked for making this demand. Impugned order has in para 6.5 recorded the reasons for invoking the extended period of limitation which have not been refuted by the appellant.

4.13 Whether appellant could have utilized the CENVAT Credit of Ed Cess and SHE Cess for payment of Central Excise duty during the month of March 2015.

Impugned order relies upon the decision of the Hon'ble Delhi High Court in case of Cellular Operators Association of India [2018 (14) GSTL 522 (Del)] to hold against such utilization. Hon'ble High Court has observed as follows:

8. The respondents have contested the petition on several grounds and, inter alia, asserted that credit of EC and SHE towards payment of excise duty or Service Tax is not a vested right. The effect of the legislation withdrawing EC and SHE was to abolish the cess, though while presenting the Bill, etc. and giving reasons for increase in the excise duty and Service Tax, it was stated that EC and SHE would not be henceforth levied and would get subsumed in the higher rate of tax. Cross-utilization of EC and SHE credit was never permitted and allowed under the earlier provisions. The two notifications incorporating provisos (3) to (8) to Rule 3, sub-rule (7) in clause (b) have a very limited application as they apply to cases of excise duty where capital goods or inputs or input services on which EC and SHE had been paid were received by the purchaser/manufacturer of the final product on or after 1st day of March, 2015 or were manufactured after 1st day of March, 2015. In case of Service Tax, credit of EC and SHE was given where inputs or capital goods were received by the provider of output services on or after 1st day of June, 2015 or where credit of EC and SHE paid on input service in respect of invoice, bill, challan or Service Tax certificate or transportation of goods by levy was received by the provider of output service on or after 1st day of June, 2015. Credit of balance fifty per cent of EC and SHE paid on capital goods received in the factory of a manufacturer of final product in the financial year 2014-15 for payment of excise duty and Service Tax was also provided. These, as elucidated and explained, were new benefits and

concessions granted, as cross utilization was earlier not permitted and allowed. Any new concession or benefit given, would not in law on stand-alone basis, confer a legal right to claim vested right to a concession or benefit which has not been granted. Of course, this amended provisions can be relied as a secondary fact to support the main argument that EC and SHE were subsumed.

9. The first aspect to be examined is the statutory effect of withdrawal of EC and SHE on excisable goods and taxable services with effect from 1st March, 2015 and 1st June, 2015 respectively, pursuant to the Finance Act, 2015. By Notification No. 14/2015-CE, dated 1st March, 2015, the Central Government in public interest had granted exemption to all goods falling in the First Schedule to the Central Excise Tariff Act, 1885 from whole of EC leviable thereon under Section 93 of the Finance (No. 2) Act, 2004. Similarly, vide Notification No. 15/2015-C.E., dated 1st March, 2015, the Central Government in public interest had exempted all goods falling in the First Schedule to the Central Excise Tariff Act, 1985 from whole of SHE leviable under Section 138 of the Finance Act, 2007. In respect of taxable services, the Finance Act, 2015 had omitted Section 95 of the Finance (No. 2) Act, 2004, which imposed EC on taxable services, vide Section 153 and Section 140 of Finance Act, 2007 and SHE on taxable services vide Section 159, with effect from the date as notified by the Central Government in the Official Gazette. These exemptions and omissions were given effect from 1st March, 2015 for excisable goods and 1st June, 2015 for taxable services, as mentioned earlier.

10. Omission of a provision signifies deletion of that provision and is normally not treated as different from repeal. The repeal/omission in the present case was not made retrospectively, but applied prospectively. Manufacturers and output service providers were entitled to take benefit of EC and SHE credit on the EC and SHE

payable on manufactured goods and output services on or before the cut off date, i.e., 1st March, 2015 in case of manufactured goods and 1st June, 2015 in case of taxable services. They have not been allowed to take credit after the said two dates for the simple reason that EC and SHE ceased to be applicable and were no longer payable after the said dates. The provisos added to Rule 3, sub-rule (7) in clause (b) are really in the nature of concessions confined to a limited and narrow set of cases and are not of general application. Noticeably, they expand the scope and give benefit of utilization of accumulated EC and SHE against payment of excise duty and Service Tax, which was not the position prior to 1st March, 2015 and 1st June, 2015, respectively. It is also easily apparent as to why the said benefit or concession was granted. These cases certainly fall in a distinct and separate class. The said classification would not fall foul of vice of discrimination. Article 14 is not offended. In fact, the petitioners do not challenge and question the provisos, albeit seek additional benefit and concession beyond those granted, even though they were never available earlier.

11. It is in the aforesaid context and background that the petitioners have harped and heavily relied upon the word "subsumed" used in the speech of the Finance Minister while presenting the Budget Speech, as also in the explanation memorandum to the Finance Bill, 2015 and the TRU letter. It would not be correct to understand and interpret the word "subsumed" used as asserted by the petitioners. A Finance Bill or a Budget has financial and tax implications. It is an economic, political and policy statement. Interplay of politics and economics gets reflected in the statement made and relied. Raising or increasing taxes often meets resistance, and on most occasions has to be justified and explained. The statements and explanations given in the present context would show that the Government had decided to increase excise duty and Service Tax marginally and at the

same time had decided to withdraw or abolish EC and SHE. Any exercise of increasing taxes and withdrawing a cess or a tax is undertaken keeping in mind several aspects. This can include revenue collection in the form of increased taxes on one hand, and withdrawal or reduction of cess or another tax so as to curtail the adverse impact due to increase. Budgets do, and are, a balancing exercise. We would not read and hold that EC and SHE for excisable goods and taxable services had continued and were applicable even after 1st March, 2015 or 1st June, 2015 respectively, in the manner that they got included in, and formed a part of, the higher tax rate applicable to excise duty and Service Tax. Noticeably, the Service Tax rate had gone up by 2%, from 12% to 14%, with the intent to increase it further in view of implementation of the General Goods and Services Tax in future. In the case of excise duty, the increase was only marginal, from 12% to 12.50%. Pertinently, no statement or assertion was made that the benefit of unutilized EC and SHE credit would be given against excise duty and Service Tax. The use of the words "subsumed" with reference to the two cesses could well indicate that there would not be an increased tax burden being put on the payers or the consumers, as EC and SHE were being withdrawn. Noticeably, the two cesses and the excise duty and the Service Tax were always treated as different and separate and cross-utilization was never permitted.

*12. It is no doubt true that the two cesses, in the present case, were in the nature of taxes and not fee, but it would be incorrect and improper to treat the two cesses as excise duty or Service Tax. They were specific cesses for the objective and purpose specified. A Constitution Bench of five Judges in *Hingir-Rampur Coal Company Limited and Others v. State of Orissa and Others*, (1961) 2 SCR 537 had elucidated that a cess can be in the form of a tax or a fee, though both are compulsory extraction of money. In case of a fee, there is an element of quid pro quo, while in tax this*

is not required, even if the tax being collected is used to constitute a specific fund, which does not become part of the Consolidated Fund, and its application can be regulated and confined to its purpose.

13. More relevant and important for the present context and issue would be the judgment of the Supreme Court in B.K. Industries and Others v. Union of India and Others, 1993 Supp (3) SCC 621 = 1993 (65) E.L.T. 465 (S.C.), wherein validity of levy of cess under Vegetable Oil Cess Act, 1983 was challenged. The cess was levied for the purpose of National Oil-seeds and Vegetable Oils Development Board Act, 1983 and was in addition to excise duty leviable under the Central Excise Act or law for the time being in force. In the Budget Speech delivered on 28th February, 1986 for the year 1986-87, it was decided to dispense with the cess on vegetable oil. It was also stated in the Budget Speech that cess collected since 1st April, 1986 would be refunded. However, the cess was withdrawn vide repeal Act, effective from 1st April, 1987. Relying upon the aforesaid speech on the Floor of the House, the submission was that the statement made constitutes an enforceable right and vegetable oil cess paid between 1st March, 1986 and 31st March, 1987, when the repeal Act was made effective, should be refunded. Plea of enforceable right was rejected in the following words :-

"9. We find it difficult to agree. It is not brought to our notice that the budget proposals contained in the Finance Minister's speech were accepted by the Parliament. The cess having been imposed by a Parliamentary enactment could be rendered inoperative only by a Parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. Not only that. The repealing Act expressly provided in Section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention

of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. In the face of the said statutory provisions, no rights can be founded - nor can the levy of the cess be said to have been dispensed with - by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11, 1986. The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative."

We did not go as far in the present case for the explanation and reasons elucidated and given in paragraph 11 above. Use of the word "subsumed" in the context of the present case does not help and assist the petitioners in the manner asserted. No promise and statement that cross-utilization of EC and SHE would be permitted was made. The petitioners seek an addition and expansion to what was stated and intended.

4.14 I find that the decision of the Hon'ble Supreme Court in case of B K Industries, relied in the above decision of the Hon'ble High Court, was rendered in respect of levy of cess under Vegetable Oil Cess Act, 1983 whereas the issue in the present case is in respect of the utilization of cenvat credit available with the appellant in respect of the Education Cess and Secondary & Higher Education Cess for payment of Central Excise Duty, on sub-summation of these Cesses in the Central Excise Duty.

4.15 In case of Genus Paper & Boards Ltd. [2024 (14) CENTAX 208 (T-All)] I have taken a view in favour of such cross utilization of the credit. However this view was taken as decision of the Hon'ble Delhi High Court specifically on the subject was not brought to my notice. Thus I find that this decision rendered in ignorance of the binding decision of Hon'ble Delhi High Court is per incuriam. However the fact of cross utilization of the accumulated CENVAT Credit of education cess and higher

education cess for the purpose of payment of central excise duty during the month of March 2015, was reflected in ER-1 return of the appellant. Thus this demand made by invoking extended period of limitation by a show cause notice dated 09.10.2019 cannot be upheld. I also find that the impugned order does not record any findings on the issue of limitation. Order in original records that the appellant has never disclosed the fact of utilization of the accumulated CENVAT Credit of Edu Cess and SHE Cess during the month of March 2015 for payment of Central Excise duty, is contrary to the fact that the appellant had filed the ER-1 returns for that period, wherein the said utilization of credit would have been reflected. The demand has been made after the decision of Hon'ble High Court referred earlier. A change in opinion on the basis of subsequent decision of High Court cannot be reason for invoking the extended period of limitation.

4.16 Whether penalty have been rightly imposed upon the appellant.

In para 4.9 and 4.12 I have specifically held in favour of invocation of extended period of limitation for making demand of inadmissible CENVAT Credit availed by the appellant. As I have held in favour of invocation of extended period of limitation for these two demands, penalty imposed in respect of these demand in terms of Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 cannot be faulted with. Hon'ble Supreme Court has in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] held as follows:

"23. *The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-*

section (2) of Section 11A. That is what Dharamendra Textile decides.”

4.17 In respect of the demand upheld I also uphold the demand of interest.

4.18 Summarizing-

- CENVAT Credit of Rs.1,00,556/- taken by the appellant in respect of Structural platforms, flat rolled products of iron/ steel and hot rolled alloy steel plates would not be admissible to them. Demand Upheld. (Para 4.9)
- CENVAT Credit of Rs 1,12,442/- taken by the appellant in respect of security services provided in the residential colony would not be admissible to them. Demand upheld. (Para 4.12)
- Demand made in respect of utilization the CENVAT Credit of Ed Cess and SHE Cess for payment of Central Excise duty during the month of March 2015 is dropped as barred by limitation. (para 4.15)
- Demand of interest in respect of demand confirmed is upheld. (Para 4.17)
- Penalty in respect of demand confirmed is upheld under Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. (Para 4.16)

5.1 Appeal partly allowed as indicated in para 4.18 above.

(Order pronounced in open court on-20 May, 2025)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp