

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

REGIONAL BENCH - COURT NO.I

**Excise Appeal No.70804 of 2025**

(Arising out of Order-in-Appeal No.102/CE/APPL/ALLD/2025 dated 26.06.2025 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

**M/s Johnson Matthey**

**Chemicals India Pvt. Ltd.,**

**.....Appellant**

(earlier known as Mis Akzo Nobel India Ltd.,

Plot No.2A, Site II B,

Panki Industrial Area, Kanpur)

*VERSUS*

**Commissioner of Central Excise &**

**CGST, Kanpur**

**....Respondent**

(Kanpur)

**APPEARANCE:**

Request for Adjournment, for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

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

**FINAL ORDER NO.- 70893/2025**

DATE OF HEARING : 22.12.2025

DATE OF DECISION : 22.12.2025

This appeal is directed against Order-in-Appeal No.102/CE/APPL/ALLD/2025 dated 26.06.2025 passed Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad. By the impugned order Commissioner (Appeals) has upheld the Order-in-Original No.25/CE/Audit Circle-I/2021 dated 26.02.2021 holding as follows:-

**"ORDER**

- (i) *I confirm the demand of Cenvat credit amounting to Rs.48,02,984/- wrongly taken on capital goods under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944;*

- (ii) I confirm the demand of Cenvat credit amounting to Rs.35,741/- wrongly taken on imported goods under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944;
- (iii) I order for recovery of interest on the aforesaid outstanding amounts at point (i) & (ii) above, under Section 11AA of the Central Excise Act, 1944;
- (iv) I impose penalty upon the party total amounting to Rs.48,38,725/- under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944."

2.1 Appellant is holding Central Excise Registration No.AAACI6297AXM035 and is engaged in the manufacture of Catalysts, Zinc Waste, Nickel Waste, Catalysts (Copper scrap), Spent Nitric Acid, Burnt Lube Oil etc., falling under the tariff heading 38151100, 38151900, 38159000, 69091990, 76020010, 75030010, 74040012 and 28080010 of the First Schedule to the CETA, 1985. They are availing Cenvat credit facility in respect of inputs, capital goods and input services.

2.2 During the course of Audit of the records of the Appellant it was observed that -

- Cenvat credit of certain goods under the category of capital goods such as Sweeper Twinner 800, Teflon Hose Assembly, Plastic and Article Thereof, Mobil Nuto H46 & Mobil Nuto H68, Chart Ribbon Cassette, Spectro Genesis Ical Solution, Z Fold Chart, Polythene Bag, Metal Furniture of Steel etc. These goods do not qualify as capital goods hence credit availed in this respect these goods was not admissible.
- They have availed credit of Education Cess and Secondary and Higher Education Cess which was exempt as per Notification No.13/2012-CUS & No.14/2012-CUS both dated 17.03.2012 as consequence this credit availed by the Appellant was not admissible.

2.3 Show Cause Notice dated 14.10.2016 was issued to the Appellant asking them to show cause as to why:-

- a) *Cenvat Credit of amounting to Rs.48,02,984/- (Forty Eight Lakh Two Thousand Nine Hundred Eighty Four only) be not demanded and recovered under Rule 14 of Cenvat credit Rule, 2004 read with Section 11A(4) of the Central Excise Act, 1944;*
- b) *Cenvat credit of amounting to Rs.35,741/- (Thirty Five Thousand Seven Hundred Forty One only) be not demanded and recovered under Rule 14 of Cenvat Credit Rules, 2004 and Notification Nos.13/2012-CUS and 14/2012-CUS both dated 17.03.2012 read with Section 11A(4) of the Central Excise Act, 1944;*
- c) *Interest chargeable on the aforesaid amount at (a) & (b) above, be not demanded and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944;*
- d) *Penalty on the aforesaid amount at (a) & (b) above, be also not imposed upon them under Rule 15 read with Section 11AC of the Central Excise Act, 1944."*

2.4 Show Cause Notice has been adjudicated as per the Order-in-Original referred in para 1 above.

2.5 Aggrieved Appellant filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.6 Hence this appeal.

3.1 Matter was listed for hearing today i.e. 22.12.2025 the Appellant through E-mail dated 19.12.2025 have requested for adjournment. However, I find that the matter is a very narrow compass hence taken up for consideration on the basis of the records.

3.2 I have heard the learned Departmental Authorized Representative Shri A. K. Choudhary for the Revenue who reiterated the findings recorded in the impugned order.

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

4.2 The impugned order records findings as follows:-

*"3.0 Grounds of Appeal-*

3.1 *The Appellant being aggrieved with the impugned order filed an appeal before this office on the following grounds-*

1- *Because the Adjudicating Authority has failed to analyze and examine the nature of goods and their use while confirming the demand against the appellant. The Adjudicating Authority has merely held that the goods do not fall under the chapters mentioned in Rule 2(a) of the Cenvat Credit Rules, 2004 and thus the appellant is not entitled to take credit.*

2- *Because as regard to Edu. Cess and S & H Edu. Cess the Adjudicating Authority has failed to appreciate that despite being exempt the same was charged by the customs authority in the Bill of Entry.*

3- *Because the Adjudicating Authority has failed to give any proper justification and has failed to deal with the relevant provisions of law in proper manner.*

4- *Because the Adjudicating Authority has passed the order without considering the submissions made by the appellant. The appellant has submitted that they submitted the copy of EPCG license to prove that the main item i.e. Inconel tray purchased is a capital goods.*

5- *Because items/ goods involved in the present case qualify as capital goods as per Rule 2(a) of the Rules as even the parts that are used in the capital goods, components and accessories of capital goods also have to be treated as capital goods.*

6- *Because the components, spares and accessories of plant and machinery falling under the relevant chapters of the CETA 1985 referred in Rule 2(a) of the Rules.*

7- *Because without prejudice the item/goods in the present case qualify as 'inputs'.*



*goods viz sweeper twinner, teflonhose assembly, plastic articles, mobile nuto, metal furniture of steel, steel sheet, etc., do not constitute the capital goods in terms of Rule 2(a) of the Cenvat Credit Rules 2004 as they falls under chapter heading 96, 39, 27, 38, 48, 28, 83, 73, 32, 29, 40, 63, 32, 75, 94, 30, 72 and 34 of CETA 1985. Further the observations of the Adjudicating Authority were also based on the fact that the goods mentioned in relevant purchase invoices specify the chapters with the description thereof which appears to be proper. In contrast the appellant have contended that the classification of the excisable goods in question is required to be considered on the basis of usage thereof and Cenvat Credit can also be allowed on inputs does not appear to be tenable. As per the strict interpretation of Rule 2(a) ibid, only those excisable goods falling under chapter heading 82, 84, 85, 90, 68 and 86 (partial) are covered under the definition of capital goods. Thus from above it manifests that the appellant has availed and utilized inadmissible Cenvat credit.*

*5.4 Now coming to the point of availing and utilizing Cenvat credit on Cess on CVD which were exempted in terms of Notification No.13/2012-CUS 14/2012-CUS both dated 17.03.2012, I find that the law is very clear on the ground that the when Cess is not allowed on CVD and the department has issued notification to this effect, then the issue is largely settled that no credit of the same can be availed. Further the argument of the appellant that the same was charged by the customs in the Bill of Entries does not provide the legal cover to continue the wrong committed. The appellant should have addressed the issued at the place when the anomaly occurred. Thus I find that the argument of the appellant is baseless as it only insists on the fact that since the Cess was paid on CVD hence the same could be availed. The law has provided separate mechanism for separate issues. The appellant cannot be allowed to avail the Cess if the same was*

*specifically exempted from the notification ibid. Thus I find that the appellant has failed to establish their point on this aspect."*

4.3 I observe that the Appellant has specifically made two submissions vide Sr. No.5,6,7 in respect of admissibility of Cenvat credit on various goods taken by them either in the category of capital goods or in the category of inputs. Impugned order while discusses that credit would not be admissible in the category of capital goods is totally silent as to whether the credit will be admissible in the category of inputs.

4.4 I further observe that Rule 2(a) of Cenvat Credit Rules defines capital goods as follows:-

*"2(a) capital goods means,-*

*(A) The following goods, namely:-*

*(i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692] of the First Schedule to the Excise Tariff Act;*

*(ii) Xxxxx*

***(iii) Components, spares and accessories of the goods specified at (i) and (ii);***

*(iv) XXXXXXXXX*

*(v) XXXXXXXXXX*

*(vi) XXXXXXXXXXXXX*

*(vii) XXXXXXXXXXXXXXX*

*(viii) XXXXXXXXXXXXXXXXX"*

4.5 I also observe that Rule 2(k) defines input-

*"2(k) "input" means-*

*(i) All goods used in the factory by the manufacturer of the final product; or*

*(ii) XXXXXXXXX*

*(iii) XXXXXXXXXX*

*(iv) XXXXXXXXXXXXXXX*

(v) XXXXXXXXXXXXXXXXXXXXXXXX"

4.6 While considering the issue of admissibility of Cenvat credit in respect of these capitals goods impugned order solely relied upon the (i) of the definition of the capital goods as per Rule 2 (a) of the CENVAT Credit Rules, 2004. It does not consider the (iii) of the definition. The claim of the Appellant before for lower authorities was not under sub-clause (i) but was under sub-clause (iii) as it was their submissions that impugned goods are the parts, components, spares & accessories of capital goods which used by them. I find merits in the said submissions as it is evident from the above definition that the issue of the classification under the Chapters specified is provided only in respect of (i) and not (iii) if this in case of part, components, spares and accessories etc., not necessary that the goods should have been classified under any of these Chapters specified in (i). Further, I also observe that undisputedly these goods have been used within the factory of the Appellant. If in any case credit was not to be allowed under the category of capitals goods the same would be admissible as inputs. In case of Bharti Airtel [2025 (391) E.L.T. 3 (S.C.)] Hon'ble Supreme Court has observed as follows:

*"11.10 We now proceed to the next stage of consideration. Even if it is held that the mobile towers and PFBs are movable properties and "goods", the question which still requires to be answered is whether these are "capital goods" within the meaning of Rule 2(a)(A) of the CENVAT Rules. As discussed above, every "good" is not "capital good" within the scope of the CENVAT Rules, but only such goods which come within meaning of sub-Clause (i) of Rule 2(a)(A) i.e. goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 Heading no. 68.2 and the sub-Heading no. 6801, 6801.1 and 6801.10 of the First Schedule to the Central Excise Tariff Act, which are used for providing output service will be considered as "capital goods" and eligible for CENVAT credit. Sub-clause (ii) of*

*Rule 2(a)(A) provides that pollution control equipment used for providing output service can also be capital goods with which we are not concerned.*

*11.10.1 However, it may be noted that neither tower nor prefabricated shelter/building (PFB) finds mention under any of the Chapters/Heading specified under sub-clause (i), nor these are pollution control equipment to fall within sub-clause (ii). Hence, these items on their own cannot be said to be "capital goods" within the meaning of sub-clause (i) and (ii) of Rule 2(a)(A).*

*11.11 However, it is to be noted that it has been provided under subclause (iii) that components, spares and accessories of goods specified in sub-clause (i) and sub-clause (ii) will also be treated as "capital goods" if used for providing output service within the meaning of CENVAT Rules. Therefore, we have to examine whether towers and PFBs which on their own are not "capital goods" within the scope of either of the sub-clauses (i) and (ii) can be considered to be "capital goods" under sub-clause (iii) by virtue of being accessories of any of the "capital goods" mentioned under sub-clauses (i) and (ii) of Rule 2(a)(A).*

*11.11.1 It is also not the case of the Assessee before us that mobile towers and PFBs are goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, Heading No. 68.02 and sub-Heading No. 6801.10 of the First Schedule to the Central Excise Tariff Act so as to be deemed as capital goods. It is the case of the Assessee that the mobile tower is an accessory of "antenna" which is part of "BTS" and since antenna and BTS fall under Chapter 85 which are "capital goods", mobile tower being accessory of antenna and BTS is to be treated as "capital good" by virtue of sub-clause (iii) of Rule 2(a)(A). Similar is the case with PFBs.*

*11.11.2 .....*

*11.11.3 .....*

11.11.4 *What is an accessory has been defined in Black's Law Dictionary, (Fifth Edition) as,*

*"anything which is joined to another thing as an ornament or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment. A thing to subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate."*

*Similarly, Oxford Dictionary defines "accessory" as:*

*"an extra piece of equipment that is useful but not essential or that can be added to something else as a decoration."*

11.11.5 *What comes out from the above dictionary meaning of "accessory" is that any such item which adds to the beauty, convenience or effectiveness of some other items can be said to be accessory of that other thing and it may or may not be essential for functioning of main machinery. Seen from the above perspective what is evident is that the tower is a structure fixed to the earth or building on which microwave antenna is fastened to provide the necessary height and stability to the antenna by making it steady and wobble free. The function of antenna as part of the BTS is to receive and transmit radio signal and is used for providing mobile telecom service to the subscribers. The tower itself is not an electrical component of microwave antenna per-se, yet it is necessary and helps in keeping the antenna at proper height and in a stable position so that the antenna can transmit signals for ensuring uninterrupted and seamless services to the subscribers. It is with the aid of the tower that the potential of the antenna is fully realised, making it function optimally. Without tower, antenna cannot effectively function for the purpose it is used. Hence, there*

*can be no doubt that tower is to be considered as an accessory of antenna.*

*11.11.6 Similarly, the PFB houses other BTS equipment and alternative electricity source in the form of diesel generators and other equipment to provide alternative and uninterrupted power supply to the antenna so that in the event of failure of main power supply, the generator can instantly provide backup electricity supply to the antenna and BTS. The PFBs house electric cables, other equipment related to antenna, BTS and generator. Thus, PFBs enhance the efficacy and functioning of mobile antenna as well as BTS and accordingly, PFBs can also be considered as accessories to the antenna and BTS which are "capital goods" falling under Chapter 85 of the Schedule to the Central Excise Tariff.*

*11.11.7 That tower is to be treated as an accessory of antenna or BTS and their relationship has been highlighted by this Court in Tata Teleservices Ltd. v. Bharat Sanchar Nigam Ltd. (2008) 10 SCC 556 wherein the principles of cellular networks have been discussed showing the inter dependency of tower and antenna in the following words, "....."*

*11.11.8 In this regard, we may also note the finding given by the CESTAT which has not been disturbed by the Bombay High Court regarding the contention of the Assessee that towers are essential parts of the antennas and as such without tower, the antennas cannot be placed at appropriate and requisite height to receive and send signals and since towers are essential for the functioning of antennas, towers should be treated as accessories of antennas. The CESTAT did not find the said contention of Assessee acceptable on the ground that tower cannot be considered to be a part of antenna, since a component or part of any goods means something which is required to make such goods a finished item. The CESTAT held that only those articles which would go into the composition of*

*another article can be considered to be component or part of the latter and that tower does not enter into the composition of the antenna and hence it is not a component/part of the antenna, relying on the decision of this Court in Saraswati Sugar Mills (supra). In the aforesaid case of Saraswati Sugar Mills (supra) it was held by this Court that anything required to make the goods a finished item can be described as component or part of the finished item. It was held that 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 in the said case did not satisfy the description of 'component'.*

*11.11.9 While there can be no dispute about the aforesaid proposition, we are of the view that it cannot be the only criterion to determine what amounts to component of another article. In order for any article to be considered a component of another article, it does not necessarily mean that it has to be consumed or used up for producing the said another article as in the case of a manufacturing process. In our considered opinion, a component of any good would also mean to include those which make the good fully functional and make such a good more effective as observed in M/s. Annapurna Carbon Industries Co. (supra), wherein this Court held that an accessory would mean an object or a device that is not essential in itself but that adds to the beauty or convenience or effectiveness of something else or is supplementary or secondary to something of greater or primary importance, which assists in operating or controlling the said good, and thus serves as its accessory.*

*It was thus held in Annapurna Carbon Industries Co. (supra) that,*

*"10. We find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word accessory is used is given in Webster's Third New International Dictionary as follows:*

*"An object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else."*

*Other meanings given there are: "supplementary or secondary to something of greater or primary importance", "additional", "any of several mechanical devices that assist in operating or controlling the tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."*

*11.11.10 Thus, in our opinion, the restricted meaning of accessory given by the CESTAT and not differed from by the Bombay High Court is not wholly correct in as much as the meaning of accessory can have different ascribed meanings as observed in the aforesaid decision.*

*11.11.11 There is no dispute to the fact that BTS is a composite system consisting of the transmitter, receiver, antenna and other equipment, and antenna can be said to be an integral part of BTS. As discussed above, and not disputed by the Revenue, tower is needed to keep the antenna at an appropriate height and keep it stable. Without the tower, it is not possible to hoist the antenna at the requisite height and without it being securely fastened to the tower, antenna cannot be kept firm and steady for proper receipt and transmission of radio signals. Thus, there cannot be any doubt that a mobile tower can be treated to be an accessory of antenna and BTS. Accordingly, since in terms of subclause (iii) of Rule 2(a)(A), all components, spares and accessories of such*

*capital goods falling under sub-clause (i) would also be treated as capital goods, a mobile tower can also be treated as "capital good".*

*11.11.12 We, therefore, agree with the conclusion arrived at by the Delhi High Court that towers and shelters (PFBs) support the BTS/antenna for effective transmission of mobile signals and thus enhance their efficiency and since these articles are components/accessories of BTS/antenna which are admittedly "capital goods" falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of CENVAT Rules, these items consequently are covered by the definition of "capital goods" within the meaning of sub-clause (iii) read with sub-clause (i) of Rule 2(a)(A) of CENVAT Rules. Further, since these are used for providing output service, i.e., mobile telecommunication service, and since these are "capital goods" received in the premises of the provider of output service as contemplated under Rule 3(1)(i), the Assessee would be entitled to CENVAT credit on the excise duties paid on these goods.*

*11.12 The alternative plea taken by the Assessee is that these items, viz., mobile tower and the prefabricated buildings (PFBs) are "inputs" used for providing output service of telecommunication and hence, being "inputs" under Rule 2(k) which are used for providing output service i.e., mobile service, CENVAT credit will be available in terms of Rule 3(1) which provides that a provider of a taxable service shall be allowed to take credit on duties paid on any input received in the premises of that provider of output service on or after 10th September, 2004 and this may be utilised for payment of service tax on any output service under Rule 3(1) read with Rule 3(4) of the CENVAT Rules.*

*11.12.1 "Input" has been defined under Rule 2(k) to mean all goods used for providing any output service. We have already held that tower and the prefabricated buildings (PFBs) are not immovable property but are "goods"/*

*"capital goods" within the meaning of Rule 2(a)(A)(iii) and since these are used for providing output service, i.e. mobile service, these can be considered to be "inputs" within the meaning of Rule 2(k) and CENVAT credit can be availed in respect of these goods for payment of service tax.*

*The aforesaid definition clause under Rule 2(k) neither puts any condition on it nor any qualifying words have been added to the word "input", except to mean goods used for providing any output service. Hence, it would mean any "good" which is used as "input" for providing taxable output service. Thus, any item so long it qualifies as a "good" and is "used" for providing output service, would come within the purview of "input" under Rule 2(k) and excise duty paid on such items can be claimed as CENVAT credit which may in turn be used for payment of service tax for the output service provided by the MSPs.*

*11.12.2 It may be also noted that there must be "use" of such goods to qualify as "inputs". Without stretching too much the meaning of the words "use" and "input", it can be said, without any doubt, that tower and PFBs are used for providing output service by way of inputs. The use of tower and PFB cannot be said to be so remotely connected with the output of service that these goods will go beyond the ordinary meaning of "use". Their usage in providing the output service is not remote but proximate. In fact, without the use of tower and PFB, it is inconceivable that the service provider can provide mobile services effectively. Rather, towers and PFBs are indispensable being accessories of antenna for providing mobile services. In this regard one may refer to the decision in Phelps & Co. (P) Ltd., (supra) wherein it was held that,*

*"6. We have now to find out what exactly is the meaning of the expression "for use by him in the manufacture of goods for sale". Identical words are used in Section 8(b) of the Central Sales Tax Act 1956. This court was called upon*

*to find out the scope of that expression in M/s. J.K. Cotton Spinning & Weaving Mills Co Ltd. v. Sales Tax Officer, Kanpur and Anr. (AIR 1965 SC 1310 ). Dealing with that expression this Court observed:*

*The expression "in the manufacture of goods" would normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression "in the manufacture of goods.*

*In the present case the assessee company has sold the goods in question to certain manufactures who were manufacturing iron steel materials. It is also clear from question no. (i) that those gloves were to be used by workmen who were engaged in hot jobs or in handling corrosive substances in the course of manufacture. That being so it cannot be denied that those gloves had to be used in the course of manufacture."*

*11.12.3 It may be noted that in the definition of "input" under Rule 2(k) when it relates to providing output service it has been simply defined as all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and the motor vehicles used for providing any output service. However, when the word "input" is defined relating to manufacture of product, it has been defined in a broad and expensive manner to mean all goods except light diesel oil, high speed diesel oil and motor vehicle spirit commonly as petrol,*

- (i) used in or in relation to the manufacture of final products,*
- (ii) whether directly or indirectly,*
- (iii) whether contained in the final product or not,*

- (iv) and includes lubricating oils, greases, cutting oils, coolants, accessories of the final product cleared along with the final products,*
- (v) goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam, used in or in relation to manufacture of final products,*
- (vi) or for any other purpose, within the factory of production.*

*Thus, "input" in relation to manufacturing of final product would mean not only those which are directly used but also indirectly used not only for manufacture of final product whether contained in the final product or not but also used in relation to manufacture of final product or for any of other purpose.*

*However, as mentioned above when "input" has been defined with reference to providing output service, the definition clauses does not explain it so elaborately but merely uses the simple expression i.e. "used for providing any output service".*

*In our view, even if the definition of "input" with reference to output service may not have been explained in an expansive manner as in the case of manufacture of final product under Rule 2(k)(i), the definition of "input" with reference to providing output service under Rule 2(k)(ii) need not be given a restrictive meaning as sought to be done by the CESTAT by holding that tower is not used directly for transmission of signal. In our view since the subject matter is same, i.e., what amounts to "input" though the end use is for two different products, one tangible, in the form of final manufactured product, and one intangible i.e., output service, applying similar tests to determine what amounts to "input" would not be impermissible."*

I do not find any merits in the findings in this regard recorded in the impugned order.

4.7 In respect of Cenvat credit taken against Education Cess and Secondary & Higher Education Cess I observe that undisputedly Appellant had paid this amount as a cess and bill entry during the relevant period as they have paid the amount there was no bar in availing the Cenvat credit. It is not for the Authorities at this end to decide upon the admissibility of any exemption Notification or not while allowing the Cenvat credit. The only test to check them for required to undertake in respect of actual payment of these cesses as the Appellant has paid these amounts. In the case of Kris Flexipacks Pvt. Ltd. [Final Order dated 21.07.2023 in Excise Appeal No.13692 & 13907 of 2014 – DB] Ahmedabad Bench has observed as follows:

*"4. We have carefully considered the submission made by both the sides and perused the records. We find that the case can be decided on the first issue assuming the Capital Goods received by the appellant is exempted at the suppliers and we find there is no dispute on the fact that the supplier are registered with Central Excise, they have duly discharged the payment of Excise duty, they have issued invoices and filed their returns to their Jurisdiction Central Excise Officer. The Jurisdictional Central Excise officer of supplier has not whisper a word about alleged wrong assessment of duty. The department had jolly well accepted the Act of the supplier that is payment of Excise Duty. The self-assessment of payment of excise duty has attained finality as no objection was raised by the department against the supplier. Therefore, rightly or wrongly, if the assessment at the supplier's end has been accepted and no objection was raised, the same cannot be disputed at the recipient of goods for availment of Cenvat credit by the recipient. Since, the payment of duty has been assessed and the same was not challenged the duty was paid by the supplier is in terms of Section 3 of Central Excise Act, 1944 and this duty is clearly, legally available as Cenvat credit to the recipient.*

In the case of MDS Switchgears Ltd. [2008 (229) E.L.T. 485 (S.C.)] Hon'ble Supreme Court observed as follows:

**"4.** *The Revenue issued a show cause notice dated 4-11-1999 to the assessee being of the opinion that they have deliberately entered into practice of raising value of semi-finished goods by adding Modvat element and rounding off the value to higher figure so as to pass on the excess Modvat credit. The said notice was, thus, issued to show cause as to why Modvat credit amounting to Rs. 13,08,701/- should not be disallowed under Rule 57-I of the Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944 and to show cause as to why interest and penalty should not be levied and as to why plant, machinery, building etc. should not be confiscated.*

**5.** *By the order-in-original dated 30th October 2000, the Commissioner of Central Excise & Customs, Aurangabad confirmed the demand of Rs. 13,08,701/- under Section 11A of the Act and imposed a penalty equivalent to the amount of duty under Section 11AC of the Act and also a penalty of Rs. 1,00,000/- under Rule 173Q of the Rules. Recovery of interest under Section 11AB of the Act was also ordered.*

**6.** *Aggrieved by the above order-in-original, the assessee preferred an appeal before the Tribunal which has been accepted by the impugned order. Revenue, being aggrieved, has filed the present appeal.*

**7.** *The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons :*

*"Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the loading of the assessable value by the Modvat credit on the earlier inputs. That exercise has nowhere been done. If the*

*department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by the department and the payment of duty was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into 'deposit of duty'. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit [2000 (38) RLT 179]."*

**8.** *Counsel appearing for the Revenue could not assail any of the findings recorded by the Tribunal.*

**9.** *That being the position, we agree with the view taken by the Tribunal and find no merit in these appeals which are dismissed leaving the parties to bear their own costs."*

Chennai Bench has in the case of E-Mox Device Company [(2024) 18 Centax 159 (Tri.-Mad)] observed as follows:

*10. The High Court of Madras, in the case of Commissioner of Central Excise, Chennai - 2005 (1) TMI 125 High Court of Judicature at Madras, had occasion to analyse a similar situation wherein, the supplier of goods was unaware of an exemption notification and paid the duty on the final product which was passed on to the assessee. The department was of the view that as the supplier is eligible for exemption, the assessee is not eligible for credit. The High Court of Madras held that if the duty has been paid on the inputs, Cenvat credit cannot be denied. The relevant para reads as under:-*

"4. A perusal of Section 57A(1) shows that the terminology used therein is 'paid' and not 'payable'. This distinction, in our opinion, is important because it indicates that we have to take into account the factual state of affairs. In other words, we have to consider whether the duty has actually been paid on the raw material and not whether duty was payable or not. In the present case, it is not in dispute that the assessee supplier in fact that paid the duty on the raw materials supplied to the assessee and the department accepted this excise duty. The concept of Modvat is that if the raw material suffered duty then relief should be given so far as the excise duty on the final product is concerned. For instance, if a manufacturer of coat purchases cloth on which the manufacturer of cloth has paid excise duty say Rs. 20/-, then if the excise duty on the coat is say Rs. 100/-, the sum of Rs. 20/- has to be deducted from it and only Rs. 80/- is payable by the coat manufacturer. This is no doubt a rough and ready example but it illustrates the concept of Modvat. Since the very concept of Modvat is to mitigate double taxation, if the raw material has suffered excise duty then relief should be granted in respect of duty payable on the final product."

11. In the case of *Balakrishna Industries Ltd. v. Commissioner of Central Excise., Jaipur-I - 2014 (309) E.L.T. 354 (Tri.-Delhi)*, the issue under consideration was whether the goods supplied to the appellant without availing the benefit of Notification No. 44/2001-CE (NT)/26-6-2001 and consequent credit passed on to assessee was eligible or not. The Tribunal followed the decision in the case of *Commissioner of Central Excise v. MDS Switchgear Ltd. 2008 (229) E.L.T. 485 (S.C.) = 2008 taxmann.com 1022* to hold that credit is eligible.

Thus I find that impugned order lacks merits in this regard also.

4.8 I also observe that the Appellant have specifically raised the ground of limitation before the Original Authority as well as before the first Appellate Authority. Order of first Appellate Authority is totally silent as to why extended period of limitation could have been invoked for making this demand. The Original Authority have not recorded any reasons to arrive at a finding as to why extended period is invoked. After reproducing the provisions of Section 11A(4) he has concluded that the Appellant have taken this credit fraudulently by suppression etc. Such finding cannot be a finding of the fact in law. It is settled law that for invocation of extended period specific evidence needs to be recorded as to existence of various ingredients leading to the invocation of extended period. Thus I find that the demand is also hit by limitation as extended period could not have been invoked.

4.9 As I do not find any merits in the demand made the penalties imposed upon the appellant are also set aside.

4.10 In view of the above discussion, I do not find any merits in the impugned order and set aside the same

5.1 Appeal allowed.

(Dictated and pronounced in open court)

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

LKS