CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Excise Appeal Nos. 40560 to 40562 of 2017

(Arising out of Order-in-Original No. LTUC/705 to 707 / 2016-C dated 30.11.2016 passed by Commissioner of Central Excise, LTU Chennai)

M/s. Saint Gobain India Private Limited **...Appellant**
Gut No. 348,361, 371, 300, 312 and 379
Village, Nare, Vadavali, Near Kudus,
Wada, Dist. - Thane

Versus

The Commissioner of CGST & Central Excise **...Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40137-40139/2025

DATE OF HEARING: 10.12.2024
DATE OF DECISION:31.01.2025

Per AJAYAN T.V.

The above appeals assail common impugned orders in original (OIOs in short) and were heard together and are disposed of by this common order. The adjudicating authority, upon adjudicating three show cause notices dated 08.10.2014, 08.09.2015 and 26.11.2015, spanning the period from September 2009 to September 2015, inter-alia, confirms a demand of duty of Rs.2,51,85,773/- recovered from the appellant's customers on the sale of 'jointing compound', under

Section 11D/Section 11D (1A) of the Central Excise Act, 1944 (Act in short), demands Rs.1,22,46,467/- payable under Rule 6(3)(i) of Cenvat Credit Rules, 2004 (CCR in short), demands Rs.49,28,260/- as cenvat credit wrongly availed on ineligible capital goods, demands interest on the aforementioned amounts at the appropriate rates as per the provisions more specifically detailed in the OIOs, imposes penalties amounting to Rs.75,20,256/- under provisions of Rule 15 of CCR read with provisions of Section 11AC of the Act, and further appropriates the amounts paid towards demand of ineligible capital goods credit, interest paid and penalty paid, as more specifically detailed in the OIOs.

2. Facts, to the extent they are relevant for determining the disputes herein are that, the appellant M/s. Saint Gobain India Private Limited (formerly Saint Gobain Gyproc India Ltd and earlier to that known as M/s. India Gypsum Ltd.) are engaged in the manufacture of "Gypsum plaster", "Gypsum Plaster Board" and "Jointing Compound which they have classified under sub heading No 38249090, No.6809 11 00 and No.6809 90 00, respectively, of Central Excise Tariff Act, 1985 (CETA in short) and under sub heading 38249090 of CETA from October 2014. The genesis of the present dispute is in an audit conducted on the records of the appellant during October 2011 covering the period January 2010 to June 2011, which culminated in Audit report dated 23.01.2012, which in turn relied on a show cause notice (SCN for short) dated 21.02.2011. In the said SCN dated 21.02.2011 issued to the appellant on the basis of investigation, the Department alleged that the appellant had wrongly availed and utilised cenvat credit of duty paid on capital goods for manufacturing finished

goods, i.e., Gypsum Plaster Board and Jointing Compound which were exempted from payment of central excise duty at the time of receipt of such capital goods. It was also alleged that the appellant availed cenvat credit of service tax paid on input services received and utilised for erection and installation of the capital goods plant which in turn was used to manufacture their finished goods which were exempted at the relevant time of availment of such services. It was further alleged that the appellant had resorted to wilful misstatement of fact by purposefully misclassifying their product jointing compound under chapter heading 68099000 instead of chapter heading No.25202010 chargeable to nil rate of duty. The SCN dated 21.02.2011 alleged contravention of Rule 6(1), 6 (4) and 3 (4) of CCR and invoked extended period of limitation to demand inter-alia, the cenvat credit wrongly availed on capital goods and input services that were used exclusively in the manufacture of exempted products. The allegations raised in the SCN dated 21.02.2011 were confirmed in the OIO dated 10.10.2011.

3. Of the three SCNs issued and impugned in the present dispute, SCN dated 08.10.2014 and 08.09.2015 were premised on the aforementioned audit report dated 23.01.2012. SCN dated 08.10.2014, among other things, stated that the Department had in SCN dated 21.02.2011 proposed to reclassify jointing compound under chapter sub heading No.25202010 instead of chapter subheading No.68099000 of CETA 1985 and that once it is so classified, it becomes totally exempted, i.e. the tariff rate itself is Nil. The SCN stated that the duty recovered by the appellant on the sale of 'jointing compound'

from their customers becomes recoverable under Section 11D of the CEA and proposed recovery of such amount for the period from September 2009 to F.Y 2013-14. The SCN dated 08.10.2014 also demanded sought payment of the amount recoverable at the rate specified under Rule 6(3)(i) of the CCR for availing cenvat credit on the common input/input services used for manufacture of both dutiable goods (i.e, gypsum plaster board) and exempted goods (i.e. jointing compound) without maintaining separate accounts as contemplated under Rule 6 (2) of CCR. The SCN dated 08.09.2015 for the period from April 2014 to Nov 2014 (upto 14.11.2014) and SCN dated 26.11.2015 for the period from Nov 14 (from 15.11.2014) to September 2015, both did not have any demand of inadmissible cenvat credit availed on capital goods and apart from the demand of duty on sale of jointing compound under section 11D(1A), only sought payment of the amount recoverable at the rate specified under Rule 6(3)(i) of the CCR for availing cenvat credit on the common input/input services used for manufacture of both dutiable and exempted goods without maintaining separate accounts as contemplated under Rule 6 (2) of CCR. The third SCN dated 26.11.2015, while noticing that the appellant appeared to be paying duty on jointing compound classifying the same under tariff item 38249090 proposed to classify it under tariff sub heading 2520, and while demanding Rs.65,88,076/- amount recovered from customers under the provisions of Section 11D(1A) also stated that the amount of Rs.65,88,076/- already paid by them requires to be appropriated against the demand. The appellant filed its reply to the aforementioned SCNs pursuant to which a personal hearing was granted and thereafter the adjudicating authority, in the OIOs impugned herein, confirmed the demands to the extent aforementioned. Aggrieved by the impugned OIOs, the appellant has preferred the instant appeals and are before this Tribunal.

4. Ld. Counsel Shri. Raghavan Ramabadran appeared and argued for the appellant. Shri. Raghavan Ramabadran would take us to para 34 of the impugned OIO to the finding of the adjudicating authority that though the notice brought out a detailed argument about the classification of 'jointing compound' that there is no proposal about the classification in the demand portion of the SCN. The learned counsel draws attention to the finding of the adjudicating authority that the issue of classification of jointing compound is already decided by the Commissioner of C.Ex, Thane I vide Order in Original No.61/BR-61/Th-I/2011 dated 10.10.2011 and that in the said order the Commissioner has classified that Jointing Compound is falling under chapter 2520 of the CET 1985. The learned counsel also points out the further observation of the adjudicating authority that the appeal preferred by the appellant before CESTAT is pending and that therefore the adjudicating authority found that the paragraphs relating to classification of 'jointing compound' in the subject SCNs is only for reference purpose. Shri. Raghavan Ramabadran would then submit that the Tribunal, Mumbai Bench has already decided the appeal preferred against the aforementioned OIO dated 10.10.2011 and as also stated in the synopsis filed, the OIO dated 10.10.2011 was set aside by the Hon'ble Tribunal Mumbai vide Final Order No. A/85421/2022 dated 17.03.2022 in Appeal No. E/79/2012 and a perusal of the decision of the Honble CESTAT will reveal that the

question of classification of jointing compound was never an issue. It is the submission of the learned counsel that the inference of the adjudicating authority in para 34 that the issue of classification of jointing compound is already decided by the commissioner of C.Ex, Thane vide the OIO dated 10.10.2011 is incorrect, and it was not the issue at all as the issue in the said order in original was eligibility to avail credit on capital goods which were put to use at the time when the final products were exempt and had subsequently become dutiable. It was submitted that therefore, as the CESTAT order would reveal, the question of classification of jointing compound was never an issue. It is the submission of the learned counsel that proposal to reclassify being absent in the SCN the proposal to invoke section 11D and discussions thereto are irrelevant. He would submit that legally, admittedly and factually no proposal for classification of jointing compound being present, the Section 11D demand and consequential Rule 6 (3)(i) demand are non-est.

5. The counsel submits that, in the alternate, the demand under Section 11D is not legal as the appellant has collected and paid the duty on jointing compound and much more in cash and thus there cannot be one more recovery of the amount collected and paid. The learned counsel draws attention to the table at page 90 of the Appeal paperbook indicating that the excise duty paid in CENVAT by the appellant was Rs.43,90,42,716-, the excise duty paid in PLA was Rs.46,05,23,337/- and thus the total excise duty paid was Rs.89,95,66,054/- and even though PLA and Cenvat Credit pool are common in so far as payment of duty on final products are concerned,

the very fact that Rs.46 crore is paid in cash as evidenced from PLA would suffice to indicate that the revenue demand of Rs.2.1 crore towards duty of jointing compound recovered from customers as well as the amount indicated payable under Rule 6 (3)(i) of CCR stands more than adequately discharged. It is the learned counsel's submission that as per the decision of the Tribunal in Unison metals Ltd v CCE once the amount of duty collected from the customer has already been paid to the revenue at the time of removal, entire credit is licit. Shri. Raghavan Ramabadran would submit that therefore there does not arise any requirement to pay the amount as demanded under Rule 6 (3)(i). As regards the issue of cenvat credit taken on capital goods, the learned counsel placed reliance on ground D of the synopsis filed wherein a brief note of the eligibility of the goods specifying the tariff entry, description of goods and submissions in respect of the usage of the goods alongwith precedents were provided. The learned counsel submits that the goods with respect to which cenvat credit is denied are covered under the chapter headings as provided in Rule 2(a)(i) of CCR and the credit was rightly availed. The learned counsel submits that the items are components, spares and accessories of capital goods which are falling under chapter heading 84 and are directly covered under Rule 2(a)(A)(iii) of the CCR. It is further submitted that components, spares and accessories falling under different chapter heading of the tariff act would qualify as capital goods under Rule 2(a)(A)(iii) of credit rules as long as they pertain to capital goods falling under Rule 2(a)(A)(i). That even otherwise they are alternatively available as inputs under Rule 2(k).

6. The learned counsel further submits that the demands are also barred by limitation as the first SCN for Sept 2009 to March 2014 is dated 08.10.2014 invoking extended period of limitation on the grounds that facts came to the knowledge of Revenue during audit. However, the Audit Report is based entirely on the SCN dated 21.02.2011 issued to the Thane Unit. Even so, Audit concluded in 2012. There is a delay of 2 years in issuing SCN dated 08.10.2014 and this delay is sought to be justified by alleging suppression, which is untenable. Further it is submitted that extended period of limitation cannot be invoked for second show cause notice is issued for the same issue of classification of jointing compound. The Department was in knowledge of the entire factual gamut when they issued the show cause notice No. 15- 60/2011 dated 21.02.2011 for the previous period (April 2005 to December 2007) to the Appellant herein. In this regard, reliance is placed paragraph 9 of Nizam Sugar Factory v. CCE [2006 (197) E.L.T. 465 (S.C.). It is submitted that the entire demand has been proposed and confirmed by relying upon the documents submitted by the Appellant and hence the allegation of non-disclosure of material facts is baseless and hence extended period has been wrongly invoked. Reliance is placed on Anand Nishikawa Co Ltd vs Commissioner of Central Excise, Meerut 2005 (188) E.L.T. 149 (S.C.). Reliance is also placed on paragraph 3(l) of Zee Telefilms Ltd vs Commissioner of C.Ex. (Appeals), Mumbai-IV 2006 (4) S.T.R. 349 (Tri. - Mumbai) wherein the Hon'ble Tribunal held extended period cannot be invoked when the credit availed by the assessee is clearly disclosed in the ER-1 returns. It is submitted that the Appellant was also subjected to regular audits by the Department and all the facts have

been put forth by the Appellant to the Department during the conduct of audit. Reliance is placed on Raj Kumar Forge Ltd vs Union of India 2010 (262) ELT 155 (Bom) wherein the Hon'ble High Court held that demand is barred by limitation, and it cannot be said that the assessee has mis-stated the facts when audit has been conducted by the Department. Further it is submitted that no evidence has been produced by the department to establish that there was willful misdeclaration of facts on the part of the Appellant with intention to evade payment of duty. That in any event the issue in dispute in the present case involves interpretation of provisions of law. When the issue involves interpretation of law / provisions no penalty is imposable. Reliance is placed on paragraph 8 of Collector of Central Excise vs Chemphar Drugs & Liniments 1989 (40) E.L.T. 276 (S.C.).

7. Learned Authorised Representative (A.R. in short), Shri. M. Selvakumar appears on behalf of the Respondent. The learned A.R. would take us through the impugned OIO and particularly para 35.3, 35.4 and 36.3(v). Shri. M. Selvakumar submits that when the jointing compound manufactured and cleared by the appellant is exempted, the appellant ought not to have availed cenvat credit on inputs and inputs services used and hence availment of cenvat on the exempted product is in contravention of Rule 6(1) of CCR. The learned A.R. further submits that when the availment of credit itself is not in order the utilisation of the said irregular credit is also not valid and as such there is no payment of duty amount to the Government exchequer on the jointing compound cleared and since the appellant has not produced any evidence to prove that jointing compound was cleared

on duty by challan/PLA only and not by cenvat credit, the amount demanded under Section 11D is in order and the demand needs to be sustained. It is further submitted that since the appellant has not disputed the contention about non-opting of Rule 6(3A) of CCR for payment of amount as required under the said rule, the appellant is required to pay the amount demanded under Rule 6(3)(i) of CCR rules equal to 5% to 6% of the value of the exempted goods and the demand made in the SCN are in order. The learned A.R. also submitted that as the appellant had not produced any evidence as to how the goods are capital goods/components spares and accessories of capital goods available at their factor and falling under capital goods covered under Rule 2(a)(i) of CCR, the denial of cenvat credit on capital goods is also in order. As regards limitation and penalties imposed, the learned A.R. reiterates the findings in the impugned order in original.

8. Heard both sides, perused the appeal records, written submissions/synopsis and compilation of statutes and case laws submitted as relied upon.

9. At the outset, we deal with the submission of Shri. Raghavan Ramabdaran that the finding of the Adjudicating Authority that the issue of classification of jointing compound is already decided by the commissioner of C.Ex, Thane vide the OIO dated 10.10.2011 is incorrect and it was not the issue at all and Shri. Raghavan Ramabdran’s further submission that the OIO dated 10.10.2011 was set aside by the Hon’ble Tribunal Mumbai vide Final Order No. A/85421/2022 dated 17.03.2022 in Appeal No. E/79/2012 and a

perusal of the decision of the Honble CESTAT will reveal that the question of classification of jointing compound was never an issue.

10. We have perused the OIO dated 10.10.2011 wherein in paragraph 63, among other things, the adjudicating authority has after stating that the notice has disputed (sic) that, though not being manufactured by the assessee (appellant) at that time and later on when its regular manufacture started, the product jointing compound was misclassified by the assessee under chapter 68 and the correct classification of the same is under chapter 25; has thereafter, in paragraph 67,68 and 69 discussed the classification of jointing compound to arrive at the conclusion that it is not classifiable under S.H. No.68099000. The adjudicating authority has further in paragraphs 70 and 71 discussed the alternate classification under chapter 38 which was proposed then by the assessee and comes to the conclusion that the classification now being claimed by the assessee is incorrect as against the correct classification as proposed in the notice. Thereafter, in para 72 the adjudicating authority upon finding that all the three products as discussed at length in the foregoing paragraphs of the OIO were not dutiable being exempt/chargeable to nil rate of duty, concludes that the assesee has therefore contravened the provisions as alleged in the SCN and have availed/utilised wrongly credit and it is recoverable from them. Again in paragraph 73, while discussing the contest of the demand on limitation as made by the assessee, the adjudicating authority finds that the assessee has purposefully misclassified the product “jointing compound” under

S.H.No.68099000 as " other articles of plaster or of composition based on plaster", with a malafide intent to demonstrate that the said product is duitable and to avail the cenvat credit of duty paid on the capital goods which are used in the manufacture of "plasterboard" and partly for " jointing compound" as claimed by them.

11. On a perusal of the said Final Order No. A/85421/2022 dated 17.03.2022 in Appeal No. E/79/2012, we notice that in para 4.2, the Tribunal has extracted, among other things, para 47 of the order of the Commissioner impugned therein as under:

> "*4.2 Commissioner has in the impugned order for disallowing the CENVAT credit taken in respect of the Capital Goods and input services observed as follows:*
>
> *"(47) Findings: I have carefully gone through the entire records of the case, written submissions made by the noticees, oral submissions made by them during the hearing, and the relevant provisions of law on the subject matter. There are mainly two issues involved that is, to be decided in the present case, first, whether the Cenvat credit availed by the assessee on the capital goods which were used by them for manufacture of a product which was exempt at the time of taking such credit is correct and* ***second, whether another product manufactured by them and classified under a particular heading with applicable rate of duty has been misclassified, and upon proposed revised classification will be exempt from duty****."* ***(emphasis supplied)***

12. Thereafter, the Tribunal in para 4.9 and 4.10 has held as under:

> *"4.9 Thus it is quite evident that even if at the time of the receipt of the capital goods, the finished goods manufactured and cleared by the*

appellant were exempt from payment of duty or attracted duty at "nil" rate, but subsequently the capital goods were utilized for manufacture and clearance of the goods on payment of duty, then the CENVAT credit in respect of such capital goods could not be denied subject to the restrictions as per the Notification No.13/2016-CE (NT) dated 1.3.2016. In the terms of amendment made the capital goods should have been utilized for manufacture and clearance of goods on payment of duty within two years of the commercial operation of the capital goods. The facts as have been recorded by the Commissioner, admit that indeed these capital goods were utilized within the period of two years from the start of their commercial operations for manufacture and clearance of the finished goods on payment of duty. It is not even the case of revenue that throughout these capital goods were exclusively used for manufacture and clearance of finished goods exempt from payment of duty.

4.10 As there is no denial of the fact that appellants have utilized theses capital goods for manufacture and clearance of the finished goods on payment of duty, in the manner as prescribed by the amended rule 6(4) the CENVAT Credit could not have been denied. ***In view of this we do not intend to dwell on the issue of classification/misclassification of the finished goods, which have been raised by the impugned order****."* ***(emphasis supplied)***

13. Thus, contrary to the submissions of Shri. Raghavan Ramabadran that classification of jointing compound was not an issue at all in the OIO dated 10.10.2011, and Shri. Raghavan Ramabadran's further submission that a perusal of the decision of the Honble CESTAT setting aside the said OIO will reveal that the question of classification of jointing compound was never an issue; what is borne out from the records is that the commissioner of C.Ex, Thane vide the OIO dated

10.10.2011 examined the contesting claims of the department and the appellant as to the classification of jointing compound, found that the appellant has misclassified the jointing compound and arrived at a conclusion that it is classifiable under chapter 25. However, in the said OIO as well as in the SCN which it had adjudicated, the endeavour of determining the classification of jointing compound was undertaken by the Department only to discredit the appellant's contention that the jointing compound and other products were dutiable, and to show that the goods were exempted and thereby as a consequence, deny the cenvat credit taken on receipt of capital goods into the factory. The Tribunal, Mumbai Bench upon finding that even if at the time of the receipt of the capital goods, the finished goods manufactured and cleared by the appellant were exempt from payment of duty or attracted duty at 'nil' rate, but subsequently since the capital goods were utilized for manufacture and clearance of the goods on payment of duty, then cenvat credit in respect of such capital goods could not be denied in terms of the amendment to rule 6(4), therefore, consciously chose not to dwell on the issue of classification/misclassification of the finished goods, which was indeed raised by the impugned order.

14. The aforesaid narrative is to put things in perspective, namely that the verbal and written submissions as aforementioned on the above aspects, were at variance with the appeal records and documents produced before us. This, to our mind, is disconcerting, to say the least. We would expect every advocate being an officer of the court, though appearing for a client, to assist us fairly in carrying out

our functions, which would entail stating facts without economising on truth.

15. Be that as it may, the fact remains that the aforementioned OIO dated 10.10.2011 wherein the adjudicating authority has recorded his finding on the classification of jointing compound stands set aside and has merged with the Final Order of the Hon'ble Tribunal. Neither the Respondent nor the Appellant has pleaded or shown to us that the aforesaid Final Order of the Hon'ble Tribunal setting aside the OIO dated 10.10.2011 has not attained finality. Thus, the Department whose finding on the classification of jointing compound on merits was not disturbed while the demand of cenvat credit of capital goods made consequent to such determination was set aside, seemingly has not been aggrieved that the demand was set aside, so as to prefer an appeal against the said Final order of the Tribunal. Equally, the appellant, seemed content that the Demand was set aside, though the Department's finding on classification of its jointing compound was contrary to its contentions, since the appellant too didn't prefer any appeal against the Tribunal decision not to dwell on the aspect of alleged misclassification of the product by the appellant. With such order attaining finality, it effectively foreclosed the right of both parties to agitate the issues determined in that lis for the same period again. However, given that the Tribunal in its aforementioned final order has refrained from deciding the merits of the classification, res judicata does not apply and the said decision of the tribunal setting aside the OIO dated 10.10.2011 does not operate as a bar for the Revenue to take up the issue of classification of jointing compound again for a

subsequent period, and in such an event, for the appellant to contest the same.

16. In the above background, we now proceed to decide the issue whether the demand invoking Section 11D/Section 11D(1A) of the Act and the amounts demanded under Rule 6(3)(i) of the CCR, by the Respondent in the impugned OIOs while disputing the classification adopted by the appellant, is tenable.

17. It is seen that in the OIOs impugned in the present appeals, the adjudicating authority finds that the SCNs do not contain a proposal about the classification in the demand portion of the SCN. However, noticing that the Commissioner of C.Ex, Thane I in the order in original dated 10.10.2011 has classified the jointing compound as falling under chapter 2520 of the CET 1985, and while observing that the appeal against the said order in original is pending before CESTAT, the adjudicating authority proceeds on the premise that the said finding holds good. This would be so, since on that date, the OIO dated 10.10.2011, continued to prevail as it was set aside only by the Final Order No. A/85421/2022 dated 17.03.2022 of the Tribunal. It is also pertinent that while the appellant had obtained a waiver of pre-deposit dues and a stay of recovery of the same when the appeal was pending before CESTAT, vide Order No.S/1288/12/EB/C-II dated 29.05.2012, which, from the records, is seen to be filed along with the appellant's correspondence dated 10-01-2014 with the jurisdictional range superintendent; nevertheless neither in their reply nor in the present proceedings before the adjudicating authority, this was stated. The

appellant presumably has not brought the existence of the stay to the fore, since the stay was prima facie on considering the aspect of time bar and not on a prima facie appreciation of merits. In any event, the stay order was merely a postponement of their determined liabilities to prevent the recovery of demanded dues and which operated at the risk of the appellant, pending the hearing of the Tribunal. Such stay does not per-se quash or obliterate the findings in the OIO, though as a consequence of the appeal pending, such findings were in jeopardy. Further, it is evident that the appellant has also understood the SCN as proposing the classification of the jointing compound manufactured by the appellant under tariff item 25202010, since in its reply dated 29.09.2015 to the SCN dated 08.10.2014, in para B1 the appellant has stated "*It is submitted that the jointing compound manufactured by the noticees is not classifiable under Tariff item 25202010 of the First Schedule to the Central Excise Tariff Act, 1985, as proposed in the present show cause notice*." The aforesaid sentence, reflecting the understanding of the appellant, has been repeated in the replies to the subsequent notices. In the written submissions dated 24.10.2016 also, which was submitted to the adjudicating authority post the personal hearing, the appellant in the tabulation presenting the issues involved in the SCN, has indicated classification of jointing compound as one such issue, with the corresponding allegation indicated as its liability to be classified under CETH 2520 attracting NIL rate of duty. Thus, in our view the contention that the SCN does not propose the intended classification or put the appellant to notice of the intended classification, is incorrect, given the fact that the appellant itself has understood the SCN to have raised the issue of classification of jointing compound under CETH 2520. Therefore, the reliance placed on the decisions in *Commissioner of Customs Mumbai v Toyo Engineering India Ltd, (2006) 7 SCC 592* and *CCE v M/s. Champadany Industries Ltd, 2009 (9) SCC 466* in this regard, is misplaced. In fact, the decision in Toyo Engineering rather goes against the appellant since it also indicates that the Hon'ble Supreme Court agreed with the Tribunal that submissions cannot be made for the first time before the Tribunal when even in the grounds of appeal these points have not been taken. In the appellant's case, the grounds of appeal do not contain a plea that the SCN did not contain a proposal to reclassify the product nor was such a plea taken before the adjudicating authority. On the contrary, the replies to SCN and the submissions to the adjudicating authority reflect the appellant's understanding that the Department has proposed to classify the jointing compound under CETH 2520 and their contentions as to why such classification is untenable as against their prevailing classification. So the preliminary submissions as to the tenability of SCN, absent a proposal to reclassify the jointing compound under CETH 2520 is devoid of substance.

18. Be that as it may, de hors the dispute on classification as nothing much turns on it for the reasons further elucidated infra, the pertinent question that needs to be answered is whether the demands under Section 11D and under Rule 6(3)(i) of the CCR, made on the Appellant can sustain in the facts and circumstances of the Appellant's case.

19. Shri. Raghavan Ramabadran had submitted in the alternate, that the demand under Section 11D is not legal as the appellant has collected and paid the duty on jointing compound and much more in cash and thus there cannot be one more recovery of the amount collected and paid.

20. The provisions of Section 11D, relevant for consideration of the matter, is reproduced as below:

> **Duties of excise collected from the buyer to be deposited with the Central Government.**
>
> 11D (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.
>
> (1A) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

21. While it is seen that Section 11D envisages two situations under sub section (1) and sub-section (1A), the SCN dated 08.10.2014 does not specify the specific sub-section under which the demand is proposed and so also the impugned OIO fails to state the specific sub-section under which the demand is confirmed with respect to the said SCN. Surprisingly, the appellant too has not stated any quarrel with the absence of indication of the specific sub-section of Section 11D that the Department has chosen to invoke in the SCN dated 08.110.2014 or in the demand confirmed in the OIO. On a plain reading, given the allegation that the jointing compound manufactured and cleared by the appellant is chargeable to nil rate of duty, the relevant sub-section would be sub-section (1A) of Section 11D. In order to attract Section 11D (1A), the Department ought to have proved that the amount collected by the appellant from the customer representing the same as excise duty on the jointing compound, was being retained with the appellant and it has not been deposited by the appellant with the Government Exchequer. This is an essential prerequisite for the Department to thereafter issue a notice under Section 11D (2).

22. We notice that the Adjudicating Authority has in para 32 of the impugned OIO tabulated the details furnished by the appellant which indicates that the excise duty paid in CENVAT by the appellant was Rs.43,90,42,716/-, the excise duty paid in PLA was Rs.46,05,23,337/- and thus the total excise duty paid was Rs.89,95,66,054/-. The feeble reason provided by the Adjudicating Authority to sustain the demand under Section 11D is that the appellant has not produced any evidence to prove that jointing compound was cleared on duty by challan/PLA only. We are unable to concur with such a specious finding of the Adjudicating Authority which ignores the fact that payment of duty can be made, either through PLA or utilising Cenvat Credit Account, and are licit payments of duty and it is the sum of duties paid through PLA and that paid utilizing the Cenvat Credit pool, which is taken as the total payment of duty on the final products manufactured and cleared. When the said table reflects that Rs.46 crore is paid from PLA it is ample indication that the revenue demand of Rs.2.1 crore towards duty of jointing compound recovered from customers stands more than adequately discharged. Even otherwise, we observe that neither the SCN has raised any allegation nor has the OIO recorded any finding that the amount collected by the appellant from the customer representing the same as excise duty on the jointing compound, was being retained with the appellant and it has not been deposited by the appellant with the Government Exchequer, which as observed supra, is an essential prerequisite to sustain the demand made under Section 11D. On the contrary, the consistent averment of the appellant throughout the proceedings has been that the entire amount of excise

duty charged and collected by the appellant while treating jointing compound as dutiable throughout the relevant period has already been paid to the Revenue every month and duly indicated in the returns filed. These averments have not been controverted by the Revenue. In fact, it is seen that in the SCN dated 26.11.2015, the appellant was asked why the amount of Rs.65,88,076/- already paid by the appellant on the jointing compound cleared under sub-heading 38249090 should not be appropriated against the demand of the same amount made in the show cause notice under Section 11D(1)(A) which validates the appellant's contention that such duties collected already stands paid by the appellant. When taxes are paid by the assessee, they are being credited into the consolidated fund of India and do not require a further appropriation, which tantamount to an exercise in superfluity.

23. Our aforesaid findings are also bolstered by the decision of the Tribunal Larger Bench in ***Unison Metals Ltd v CCE, Ahmedabad-I, reported in 2006 (204) ELT 323 (Tri-LB)***, the relevant portions of which are reproduced as below:

> *"8. In the present case, it is not in dispute that the assessees had paid 8% of the value of the goods in terms of Rule 57CC at the time of removal of the goods from the factory. The amounts so paid are the amounts recovered by them from their buyers. Thus, in the present cases, no amounts collected from the buyers remain unpaid to the revenue, irrespective of whether those amounts were represented in the sales documents as duty or not. In fact, the invoices referred to the payment in different terms such as "8% reversal of assessable value", "8% value", "8% duty etc." As the amounts recovered from the buyers are not retained by the assessees, the question of deposit cannot arise, whether under*

Section 11D or any other provision. A reading of Section 11D makes it clear that what is required is that amounts collected as duty should not be retained by the manufacturers and should be deposited with the revenue. This was the view that Division Bench took in the case of Nu-Wave shoes. We may read the relevant part of that order:

"Admittedly, Rule 57CC(1) is applicable in the present case. It is not the case of the Department that the assessees have been charging an amount over and above 8 of the price of the exempted variety of footwear from their customers and in fact, the show cause notice proceeds on the basis that only the amount reversed by debit in the credit account from 1-9-1996 to April, 1997 has been charged from the customers. For the period 23-7-1996 to 31-8-1996, the show cause notice itself recognises that the assessees have been reversing Modvat credit proportionately on a prorata basis on inputs used in the manufacture of exempted variety of footwear and that the amount so reversed has been charged from the customers. A perusal of the invoices placed on record clearly shows that they have debited their RG 23A account while paying 8% under Rule 57CC and some invoices show debit entry in their PLA. This makes it clear that the appellants have not retained the amount collected from the customers and that they have passed on the amount to the Government as provided under Section 11D of the Central Excise Act. Hence the charge of contravention of the provisions of Section 11D is not sustainable. Accordingly, we set aside the impugned order and allow the appeal."

We find that the above view taken by the Tribunal is in conformity with the judgment of the apex Court in the case of Mafatlal Industries, that repeat payment of excise duty is not contemplated. We read para 97 of that judgment [Mafatlal Industries Ltd. - 1997 (89) E.L.T. 247 (S.C.)]:

"Meaning and Purport of Section 11D

97. It was contended by the learned counsel for the appellants-petitioners that Section 11D provides for double taxation. It was contended that sub-section (1) of Section 11D makes the manufacture liable to pay duty which he collects from the buyer as part of the price of goods even where the manufacturer has already paid the duty at the time of removal. We do not think that there is any foundation for the said understanding or apprehension. There are no words in the section which provide for payment of duty twice over. All that the section says is this: the amount collected by a person/manufacturer from the buyer of goods as representing duty of excise shall be paid over to the State; even if the tax collected by the manufacturer from his purchaser is more than the duty due according to law, the whole amount collected as duty has to be paid over to the State; if on the assessment being made it is found that the duty collected and paid over by the manufacturer is more than the duty due according to law, such surplus amount shall either be credited to the Fund or be paid over to the person who has borne the incidence of such amount in accordance with the provisions of Section 11B. It is obvious that if in a given case, the manufacturer has collected less amount as representing the duty of excise than what is due according to law, he is not relieved of the obligation to pay the full duty according to law. This is the general purport and meaning of Section 11D. These may be case where goods are removed/cleared without effecting their sale. In such a case Section 11D is not attracted. It is attracted only when goods are sold. The purport of this section is in accord with Section 11B and cannot be faulted."

9. The scheme of Central Excise duty payment is that a manufacturer removed goods from the factory of production after payment of duty.

While selling the goods, the manufacturer recovered the duty so paid. In doing so, an assessee is recouping the tax already paid. The arrangement is not that the assessee first collected the tax from the buyer of the goods and then remits the amount to the government. Section 11D has to be read keeping this scheme in view. Therefore, the provisions for "every person who is liable to pay duty........ and has collected any amount from the buyer of any goods in any manner representing as duty of excise, shall forthwith pay the amount so collected to the credit to the Central Government" has application only when equivalent duty had not been deposited at the time of removal of the goods. The scheme of the law is that manufacturers shall not collect amounts falsely representing them as central excise duty and retain them, thus, unjustly, benefiting themselves. In the present cases, (irrespective of whether the 8% payments were duty or not) since the 8% amount remain already paid to the revenue, and no amount is retained by the assessee, Section 11D has no application.

10. The real identity of the amount 'collected' (whether excise duty payable or not) is of no relevance for Section 11D. What is relevant is only whether the collection was 'represented' as duty of excise. The representation may as well be entirely false. The qualifying of the representation through the words 'in any manner' makes this clear. Therefore, the contentions of both sides on the question, as to whether deposits under Rule 57CC are excise duty or not, are beside the point"

24. As observed supra, it is the consistent submission of the appellant that the amounts collected by them as duty on the jointing compound already stands paid to the Department and is reflected in their returns. The said averments have not been controverted by the Respondent. Also, there is no allegation in the SCN, or a finding

recorded in the OIOs, that the amount collected by the appellant from the customer representing the same as excise duty on the jointing compound, was retained with the appellant and has not been deposited by the appellant with the Government Exchequer. Absent any evidence being let in that the amount collected by the appellant from the customer representing the same as excise duty on jointing compound was being retained by the appellant and has not been deposited by the appellant with the Government Exchequer, and that the appellant has thus unjustly enriched itself, there cannot be a valid proposal of demand of duty invoking Section 11D/ Section 11D(1)(A). Law does not recognize taxation by inferences, surmises or implication. We therefore hold that the demands made in the SCNs under Section 11D/Section 11D(1)(A) are illegal.

25. We also find that the demands under Rule 6(3)(i) in the SCNs are premised on the finding that jointing compound attracts Nil rate of duty and therefore since the appellant is manufacturing dutiable and exempted goods and have not maintained separate accounts for inputs and input services, and further has not exercised the option that is required to be made under Rule 6(3A), the appellant is required to pay the amount determined under Rule 6(3)(i). When it is an admitted fact that the appellant has not considered the jointing compound as exempt or attracting NIL rate of duty and instead was clearing the said jointing compound on payment of duty and when the submission of the appellant that such payment of duty on jointing compound stands declared in its returns filed with the Department, which averment has not been controverted, the demands made under Rule 6(3)(i) cannot

be considered in isolation and in exclusion to the payment of duty on jointing compound which the appellant has already made treating it as a duty payable product and the effect of such payment.

26. The OIOs record the duty that the appellant has collected from the customers on jointing compound and which has been demanded under Section 11D/Section 11D (1A). The appellant's contention that the said duty has already been paid into the Government coffers and has also been reflected in their returns remains uncontroverted. It is seen that the amount under Rule 6 (3)(i) that the appellant is called upon to pay for not maintaining separate account for the inputs and input services used in the manufacture of the said jointing compound, if it were to be exempted, is clearly lesser than the aforementioned duty which is demanded under Section 11D and which the appellant contends is already paid. If the goods were exempted and the appellant need not have paid the aforementioned duty, that does not obliterate the fact that such payment has indeed been made to the Revenue, which in that event could be considered as reversal of the alleged ineligible amount of cenvat credit taken on input and input services in terms of Rule 6(3)(i) of CCR and is even otherwise much more than the amount presently sought to be demanded from the appellant.

27. In this context, it is appropriate to note the findings of this Tribunal in the decision in ***Ajinkya Enterprises v CCE, Pune, 2013 (288) ELT 247 (Tri-Mumbai)***, wherein it has been held as under:

> "*11. The learned Advocate also relied on several case laws, wherein it was held that when duty paid at the time of clearance equal to or higher*

than the credit availed, the same is to be treated as reversal of credit. Therefore, no further reversal of credit is required as held by this Tribunal in the case of Repro India Ltd. (supra), Punjab Stainless Steel Industries (supra), Drish Shoes Ltd. (supra), SAIL (supra). In this case, it is admitted fact that the department has accepted duty paid by the appellants on their clearances and as per judicial pronouncement in the case of Ashok Enterprises (supra), Super Forgings (supra), SAIL (supra), M.P. Telelinks Ltd. (supra), Creative Enterprises (supra) which was upheld by the Hon'ble Apex Court that once duty on final products has been accepted by the department in the case, CENVAT credit cannot be denied even if the activity does not amount to manufacture.

12. Therefore in view of the above discussion, we find that the duty paid by the appellants has been accepted by the department which is admittedly more than the CENVAT credit availed by the appellants. Therefore, following the various judicial pronouncements as discussed herein above, we hold that the appellants are not required to reverse the credit. Accordingly, the appeals are allowed with consequential relief."

28. The said decision is seen affirmed by the Bombay High Court in ***CCE- Pune III v Ajinkya Enterprises***, as reported in ***2013 (294) ELT 203 (Bom)*** wherein it has been held as under:

"*10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15)*

S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.

11. *Therefore, in the facts of the present case, in our opinion, no fault can be found with the decision of the CESTAT in passing the impugned order*".

29. Again, in ***CCE, Bangalore V vs Vishal Precision Steel Tubes & Strips Pvt Ltd, 2017 (349) ELT 686 (Kar),*** the Honourable High Court of Karnataka has held as under:

"*7. It is an undisputed position that the final product is treated as dutiable and duty is paid by the assessee. When once duty is paid by the assessee treating the activity as manufacturing activity by the Department, Cenvat credit is available and there is no question of reversion of Cenvat credit. As such, in view of the aforesaid two decisions of the High Court namely, Bombay High Court and Gujarat High Court, we do not find any question of law would arise for consideration as sought to be canvassed*."

30. Similar view is also seen taken in ***Colour Roof (India) Ltd. Vs. Commissioner of Central Excise, Raigad [2014-TIOL-628-CESTAT-MUM]***. In our view, on parity of ratiocination, if the appellant has paid duty on the final product which are treated by the Department

as exempt and the Department has already accepted payment of such duty without demur, then credit availed on inputs and input services utilized in the manufacture of such products on which duty has been so paid, need not be reversed.

31. It is also seen that Rule 6(3)(i) of the CCR stands substituted vide notification 13/2016-C.E.(N.T.) dated 01-03-2016 read with notification 23/2016-C.E.(N.T.) dated 01-04-2016, and the substituted Rule 6(3)(i) including its first proviso, as relevant for consideration in this matter, reads as under:

(i) Pay an amount equal to six per cent, of value of the exempted goods and seven percent of value of the exempted services subject to a maximum of the sum total of opening balance of credit of input and input services available at the beginning of the period for which the payment relates and the credit of inputs and input services taken during that period; or;

(ii) Pay an amount as determined under sub-rule (3A)

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) (emphasis supplied)

32. The effect of substitution of a provision has been stated in Chandra Sekhar Jha v Union of India, 2022 (380) ELT 130 (SC), as

"*Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision [See in this regard, a discussion in Justice G.P. Singh, Principles on Statutory Interpretation (12th Edition) page No. 676.]*."

33. The principles of law with regard to the interpretations of the word "substitute" has already been settled in matter of ***Zile Singh v. State of Haryana & Ors. reported in (2004) 8 SCC 1*** and the relevant portions of the above decision are quoted below :

> *"23. The text of Section 2 of the Second Amendment Act provides for the word "up to" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"?*
>
> *24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.*
>
> *25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamth v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chttiar v. S. Michael. In West U.P. Sugar Mills Assn. case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in*

> *force. In Koteswar case a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place*."

34. The aforenoted substitution reveals the intent of the legislature to extent a benefit that the determination of any amount payable under Rule 6(3)(i) ought to take into account the duty if any paid on the exempted goods.

35. Thus, when the effect of substitution of a provision is that it is as if the old provision ceases to exist and the new provision has been brought into existence in its place, evidently the stipulation in the first proviso to Rule 6 (3) would govern the appellant's situation and the duty that the appellant has already paid has to be deducted from the amount demanded under Rule 6 (3)(i). Since the duty paid by the appellant on the jointing compound is more than the amount demanded under Rule 6 (3)(i) by the impugned OIOs, the question of any payment under Rule 6 (3)(i) as confirmed in the impugned OIOs would therefore not arise and the demands would not sustain.

36. Thus, the present Section 11D demand as well as the Rule 6 (3)(i) demand as made in the impugned OIOs, premised on the conclusion that the jointing compound manufactured by the appellant is classifiable under chapter 25 attracting nil rate of duty, completely ignoring the quantum of duty already paid by the appellant treating

the said products as dutiable, are even otherwise, for the reasons elucidated supra, non-est in law.

37. We are therefore refraining from deciding on the classification of jointing compound in the present matter for more reasons than one. Firstly, as per our findings above, the dispute of classification for the relevant period are rendered inconsequential as the demands are even otherwise unsustainable. Secondly, the classification for the period of dispute in the present matter becomes a purely academic exercise, since it is the categorical averment of the appellant that after the period of present dispute till September 2015, on and from October 2015, the classification of jointing compound under chapter heading 3824 which the appellant has claimed for the disputed period in the present matter, is the classification the appellant has continued to adopt till date, which therefore is nearly a decade, and there has been no dispute raised by the Revenue thereafter on the classification of jointing compound as being made by the appellant. Lastly, if a lis can be conclusively decided on narrow points that arise in a particular proceeding, it is the discretion of this Tribunal to decide the matter only on such points, without dealing with all other arguments that are raised in the alternate.

38. The next issue that arises for consideration is denial of cenvat credit on capital goods which has been denied by the adjudicating authority holding that the appellant has not produced proof as to how the goods are capital goods/components, spares and accessories of capital goods satisfy the definition of capital goods under CCR 2004.

We notice that the impugned OIO at para 37.5 records the table showing the chapter headings and the amount of credit taken on goods which the appellants have classified as capital goods. Credit of Rs.40,92,588/- has been shown as credit taken in respect of disputed goods that fall under chapter 82,84,85 & 90 and credit of Rs.8,52,260/- in respect of goods that the appellant claims are spares, parts and components of eligible capital goods. The OIO also records the manner in which such spares, parts and components are used in para 37.6. The appellant also took an alternate plea that the disputed spares, parts and components would alternatively satisfy the definition of 'inputs' in terms of Rule 2(k) as they are used in or in relation to manufacture of finished goods. The Adjudicating authority without controverting the veracity of the contents of the table and the usage stated by the appellants, merely on the fact that the appellant has taken an alternate plea that such goods otherwise satisfy the requirements of inputs under Rule 2(k), has held that the appellant has taken a different stand and has not produced proof or evidence that the capital goods satisfy the definition provided in CCR 2004. We find such denial of cenvat credit on the disputed goods on superficial justifications, clearly untenable. When the appellant has evidently furnished details of the chapter headings under which the disputed goods are covered along with the amount of credit taken and the manner in which the other disputed goods are used as spares, parts and components of the eligible capital goods in their reply, it was incumbent upon the Adjudicating Authority to have them verified as it is not a matter of dispute that the capital goods and the spares, parts and components thereto are available at the factory. Instead of having them verified and controverting the aforesaid submissions of the appellant, a summary dismissal of the appellant's contentions stating that the appellant has not produced evidence cannot be countenanced. In fact, if that be the case, it was for the adjudicating authority to have spelt out what exactly is the proof that the adjudicating authority was expecting the appellant to adduce. The appellant have also provided in para D of their written submissions/synopsis, a note of the use of the disputed items as spares, parts and components of the eligible capital goods, duly supported by the case laws being relied on to substantiate their contentions. We have perused the same and are satisfied that given the manner in which they are stated to be put to use in the capital goods available at the appellant's factory premises, they would qualify as components, spares and accessories of the capital goods as contended by the appellants. We also find that it is settled law that the scope of entry "components, spares and accessories" in the definition of capital goods is not restricted to the components, spares and accessories falling under Chapter 82, 84, 85 or 90 of CETA, 1985 alone but covers all spares, components and accessories of specified goods irrespective of their classification under any chapter and is thus not chapter specific. The reliance placed by the Appellant on the decision in ***M/s. Nissan Motor India Pvt Ltd vs Commissioner of CGST & Central Excise, Chennai Outer Commissionerate, Chennai 2024 (4) TMI 626- CESTAT CHENNAI 32*** is appropriate. Therefore, the demand of wrongly availed Cenvat Credit on ineligible capital goods as made in the impugned order-in-original, cannot sustain and is therefore set aside.

39. The Appellants have also taken the plea of limitation. Admittedly the genesis of the first SCN is in an audit report dated 23.01.2012 which in turn relies on the earlier SCN dated 21.0.2011 to substantiate the allegation regarding misclassification of jointing compound by the appellant. Further, it is not disputed that the Appellant are regularly filing their monthly returns along with cenvat credit details with the departmental authorities. Under the said circumstances it is difficult to uphold the finding that the appellants have committed fraud or willfully suppressed facts with intent to avail inadmissible cenvat credit as there is no evidence let in of any positive action by the appellant that bears out the existence of the ingredients of the proviso to Section 11A(1) which are necessary to invoke the larger period of limitation. This Tribunal has vide its Final Order 41524/2024 dated 28.11.2024 in the case of Xomax Sanmar Limited, Unit II v. Commissioner of CGST and Central Excise, Trichy, has among other things, held that it is the responsibility of the jurisdictional central excise officers to scrutinize the returns filed reflecting the information of cenvat credit taken, and the failure to take up the information for scrutiny is not to be held to the detriment of the appellant by invoking the extended period of limitation. Thus, in any event, the demands made in the SCNs dated 08.10.2014 and 08.09.2015, beyond the normal period from the relevant date with respect to the respective SCNs, are barred by limitation. We are also of the view that the appellant had acted on their bonafide belief as regards the classification of jointing compound and availment of cenvat credit on capital goods and since the disputes regarding classification are interpretational issues where two views are possible and considering the fact that the demands confirmed in the

impugned Orders in original itself, are unsustainable, we are of the view that imposition of penalties are uncalled for.

40. In the light of our discussions and findings stated above, the demands of duty under Section 11D and Section 11D (1A), demands of amounts payable under Rule 6(3)(i) of CCR as well as the consequential interest on the aforesaid demands of duty, demand of wrongly availed Cenvat credit on ineligible capital goods and amounts payable and all the penalties imposed in the impugned Orders in Original with respect to the three SCNs adjudicated, save to the extent of cenvat credit allowed and appropriation of capital goods credit reversed, interest and penalty paid thereon made with respect to the SCN dated 08.10.2014, are held to be unsustainable and thus set aside. The impugned Orders in Original stand modified to the extent stated above. The Appeals are allowed with consequential relief in law, if any.

(Order pronounced in the open court on 31.01.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

psd