

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4704 OF 2007

**THE KISAN COOPERATIVE
SUGAR FACTORY LTD.**

APPELLANT(S)

VERSUS

**COMMISSIONER, CENTRAL EXCISE,
MEERUT-1**

RESPONDENT(S)

WITH

CIVIL APPEAL NO.2445 OF 2007

CIVIL APPEAL NO.3976 OF 2007

CIVIL APPEAL NOS.6126-6129 OF 2012

CIVIL APPEAL NOS.6130-6132 OF 2012

CIVIL APPEAL NO.6133 OF 2012

CIVIL APPEAL NO.6135 OF 2012

CIVIL APPEAL NO.6125 OF 2012

CIVIL APPEAL NO.6134 OF 2012

CIVIL APPEAL NO.3520 OF 2008

CIVIL APPEAL NO.6411 OF 2008

CIVIL APPEAL NO.2800 OF 2009

CIVIL APPEAL NO.6136 OF 2012

CIVIL APPEAL NO.1877 OF 2010

CIVIL APPEAL NO.6142 OF 2010

CIVIL APPEAL NO.10824 OF 2010

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.25833 OF 2015)

CIVIL APPEAL NOS.202-204 OF 2016

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.549 OF 2016)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.547 OF 2016)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.551 OF 2016)

CIVIL APPEAL NOS. _____ OF 2023
(Arising out of SLP(C) NOS.4144-4146 OF 2016)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.37978 OF 2016)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.2358 OF 2017)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO. _____ OF 2023
Arising out of C.C. NO.1960 OF 2017)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.27610 OF 2017)

CIVIL APPEAL NO.18006 OF 2017

CIVIL APPEAL NO.18008 OF 2017

CIVIL APPEAL NO.18005 OF 2017

CIVIL APPEAL NO.18007 OF 2017

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9053 OF 2020)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9062 OF 2020)

CIVIL APPEAL NO. _____ OF 2023

(Arising out of SLP(C) NO.8918 OF 2020)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9077 OF 2020)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9040 OF 2020)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9001 OF 2020)

CIVIL APPEAL NO. _____ OF 2023
(Arising out of SLP(C) NO.9000 OF 2020)

J U D G M E N T

Delay condoned.

Leave granted in Special Leave Petitions.

2. The question arising in this batch of civil appeals is identical i.e., whether products viz. welding electrodes, paint, varnish, MS plates, jointing sheets etc. used within the factory of the assessees for repair, maintenance, fabrication and upkeep of capital goods, are “eligible inputs” for availing credit under the relevant Modified Valued Added Tax (for short, “Modvat”) and Central Value Added Tax (for short, “Cenvat”) Credit Rules, as amended from time to time. It is in this background that all these appeals were tagged together and have been heard collectively.

3. The relevant facts as culled out from these matters are summarized in the following tabulation:

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|--|---|
| 01 | C.A. No.4704 of 2007 The Kisan Cooperative Sugar Factory Ltd. Vs. Commissioner Central Excise | Welding electrode, plain plates, HR Sheets, Channels, angles and synthetic Enamel (Paints). | For repairing and maintenance of the plant and machinery, as capital goods. | April 2003 to December 2003 Central Excise Rules, 1944 |
| 02 | C.A. No. 2445 of 2007 M/s Steel Authority of India Vs. Commissioner of Customs and Central Excise | Welding flux, powder, chromium paste | Used in welding of heavy metal items, such as cracks in the high-pressure boiler in power plant. | December 2000 to May 2002 Central Excise Rules, 1944 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|---------|--|---------------------------------|---|---|
| | | Welding electrodes, wires, etc. | <p>Used in various workshops located inside the factory of production; as well as in blast furnace, Steel melting shop, Coke oven, and in the various rolling mills. Also used for welding, soldering and blazing on various capital goods.</p> <p>The goods used in the various workshops, mainly, foundry shop, forge shop, machine shop, steel structural shop, and auxiliary shop in the manufacture of various capital goods which are used in the manufacture of final products. In the process of soldering, welding, blazing of different items the electrodes become the part of the goods itself.</p> <p>(Additional documents - Reply to show cause notice</p> | |
| 03 | C.A. No.3976 of 2007 Ramala Sahkari Chini Mills Ltd Vs. Commissioner Central Excise | Welding electrodes | Used for repair and maintenance of machines | March, 2002 to April, 2003 Cenvat Credit Rules, 2002 |
| 04 | C.A. No. 6126-6129 of | Welding electrodes, | Used in the manufacture of | May 1998 to October |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|--|--|
| | 2012 M/s Steel Authority of India Vs. Commissioner of Central Excise, Jharkhand | welding wires, welding flux | fabricated structures. | 1998 Central Excise Rules, 1944 |
| 05 | C.A. No. 6130-6132 of 2012 M/s Steel Authority of India Ltd. Vs. Commissioner of Central Excise, Jharkhand | Welding electrodes, Formatic Flux/Welding Alloys, Welding Wires, Welding Flux, etc. | Used for joining pipes and also for fabrication of structures. | November 1996 to January 1997 Central Excise Rules, 1944 |
| 06 | C.A. No. 6133 of 2012 M/s Steel Authority of India Vs. Commissioner of Central Excise, Jharkhand | Paints and varnishes | Used for protective painting of structures. Used in cold rolling mill/hot roll coil finishing mill. | May 1996 Central Excise Rules, 1944 |
| | | Welding electrodes | Used for welding purposes to manufacture various parts & components which were captively used for repair and maintenance of machineries. | |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|---|---|---|---|
| | | Posithermo, thermocouple | Credit denied for the reason of improper/duplicate documents for taking credit. | |
| 07 | C.A. No. 6135 of 2012 M/s Steel Authority of India Vs. Commissioner of Central Excise, Jharkhand | Lubricating oil | Used to lubricate the mill equipment installed in the factory. | June 1996 Central Excise Rules, 1944 |
| | | Welding electrodes | Used for welding purpose to manufacture various parts & components which were captively used for repair and maintenance of machineries. | |
| 08 | C.A. No. 6125 of 2012 M/s Hindustan Zinc Ltd. Vs. Commissioner of Central Excise | Welding electrodes | Welding electrodes are used for repair and maintenance of capital goods. | November 2002 to July 2003 Cenvat Credit Rules, 2002 |
| 09 | C.A No.6134 of 2012 M/s Maihar Cement Unit No-2 | Welding electrodes, DA Gases, Flux Corud wire, etc. | Used for repair and maintenance of plant and machineries in the manufacture of cement. | January 2003 to August 2003 And September 2003 to |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|---|---|--|--|
| | Vs. Commissioner of Central Excise | | | March 2004 Cenvat Credit Rules 2002/200 4 |
| 10 | C.A. No. 3520 of 2008 M/s Grasim Cement Vs. Commissioner of Central Excise, Raipur | Welding electrodes | Welding electrodes are used for repair and maintenance of plant and machinery. Welding electrodes has been used for maintenance of different plant and machineries lime clinker, hammer crusher, separator of raw mill, cement mill etc and also used for making partes in workshop. | April 2001 to February 2002 Central Excise Rules, 2001 |
| 11 | C.A. No. 6411 of 2008 M/s Aditya Cement Ltd. Vs. Commissioner of Central Excise Jaipur- II and Anr. | Welding electrodes and Jointing Sheets | Welding electrodes and joint sheets are used for maintenance and repair of capital goods. | December 2002 to October 2003 Cenvat Credit Rules, 2002 |
| 12 | C.A. No. 2800 of 2009 M/s Century Cement Vs. The | Welding electrodes, | Used for repair and maintenance of plant and machineries in the manufacture of cement. | November, 2003 to March, 2004 Cenvat |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|---|--|--|--|
| | Commissioner of Central Excise | | | Credit Rules, 2002 And Central Excise Rules, 2001 |
| 13 | C.A. No. 6136 of 2012 M/s Aditya Cement Ltd. Vs. Commissioner of Central Excise Jaipur II and Anr. | Welding electrodes, Welding cable, paste for hard facing work and jointing sheets. | Welding electrodes used for maintenance and repair of capital goods. Jointing sheets are used for providing packing of various joints. Paste for hard facing work is used along with welding electrodes during the welding process carried out for the repairs of capital goods. | November 2003 to March 2004 Cenvat Credit Rules, 2002 |
| 14 | C.A. No. 1877 of 2010 M/s Vikram Cement Vs. Commissioner of Central Excise Indore | Welding electrodes | Welding electrodes used for repairing and maintenance of machines. | 2003 to December 2007 Cenvat Credit Rules, 2002 |
| 15 | C.A. No. 6142 of 2010 M/s Lloyds Metals and Engineering Ltd. Vs. | Welding electrodes, | Used for repair and maintenance of machineries. | April, 2006 to October 2006, November, 2006 to March, 2007 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|--|--|
| | Union of India and Ors. | | | Cenvat Credit Rules, 2004 read with the Central Excise Act, 1944. |
| 16 | C.A. No. 10824 of 2010 M/s Madras Cements Ltd. Vs. Commissioner of Central Excise Madurai | Welding electrodes, | Used for manufacture of final products, as inputs and capital goods. | April, 2005 to April, 2006 Cenvat Credit Rules, 2004 |
| 17 | SLP (C) No.25833 of 2015 M/s Dhampur Sugar Mills Ltd Vs. Commissioner of Central Excise, Meerut | Welding electrodes | Used for maintenance and repair of the machineries, as capital goods and inputs. | May, 2001 to June, 2001. Cenvat Credit Rules, 2001; Central Excise Act and Rules, 1944 |
| 18 | C.A. Nos. 202-204 of 2016 M/s Monnet Sugar Ltd. Vs. | Welding electrodes, Drimax, Magna Flock, Ranocide, DP/LDP | Used for maintenance and repair of the machinery. | July, 2004 to December, 2004; January, 2005 to |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|--|--|---|
| | Commissioner, Customs and Central Excise, Meerut - I | Liner, etc. | | March, 2006; April, 2006 to November, 2006, Cenvat Credit Rules, 2004; |
| 19 | SLP(C) No. 549 of 2016 M/s Kesar Enterprises Ltd. Vs. Commissioner, Customs and Central Excise, Meerut | Asbestos, joining sheets, welding electrodes, plates, mills plates, S.S. plates, shape and section, H.R. coils | Used for repair and maintenance of the plant and machinery. | May to December 2004 Cenvat Credit Rules, 2002 |
| 20 | SLP(C) No. 547 of 2016 M/s L.H. Sugar Factories Ltd. Vs. Commissioner Of Central Excise, Meerut | Welding electrodes | Used in repairs and maintenance of plant and machinery, tubes, pipes etc. | April 2003 to May 2004 Cenvat Credit Rules, 2002 |
| 21 | SLP(C) No. 551 of 2016 M/s L.H. Sugar Factories Ltd. Vs. Commissioner of Central Excise, Meerut - II | Welding electrodes, asbestos jointing sheets, steel plates, shapes and sections, channel, HR coil | Welding electrodes used for welding / repair of pipelines, equipment. Packing and jointing used to seal leakage in tubes and pipes installed inside the factory | September 2003 to March 2004 Cenvat Credit Rules, 2002 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|---|---|--|---|
| | | | Asbestos gland packing, stem jointing, jointing sheets and packing are used for packing of pipe line etc to prevent leakage. | |
| 22 | SLP (C) Nos.4144-4146 of 2016 M/s. D S M Sugar Asmoli Vs. Commissioner of Central Excise, Meerut-II | Welding electrodes, Packing sheets (Jointing Sheets) | Used for maintenance and repair of the machinery. | October, 1999 to March, 2000. Central Excise Act and Rules, 1944 |
| 23 | SLP (C) No.37978 of 2016 M/S D S M Sugar Asmoli Vs. Commissioner of Central Excise, Meerut-II | Welding electrodes, AMPs, Angle, HR Coils, MS Plate, shape and section of Iron and spare parts of chain | Used in the fabrication, repair and maintenance work within the factory. | July, 1998 to September , 1998 Central Excise Rules, 1944 |
| 24 | SLP(C) No. 2358 of 2017 Kesar Enterprises Limited Vs. Commissioner Customs and Central Excise and Service Tax, Meerut-II | Welding electrodes | Welding electrodes are used for repair of plant and equipment apparatus. | February to March 2005 Cenvat Credit Rules, 2004 |
| 25 | SLP .. CC No.1960 of 2017 | Welding electrodes, Chrome Crap, | Used in the repair and maintenance of plant and machinery | July, 2006 to February, |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|--|--|
| | M/s D.S.M. Sugar Mansurpur Vs. Commissioner of Central Excise, Meerut - I | SS Alloy Steel, Chain, etc. | within the factory, as inputs. | 2007. Cenvat Credit Rules, 2004 |
| 26 | SLP (C) No.27610 of 2017 Avadh Sugar and Energy Ltd Vs. Commissioner of Central Excise, Lucknow | Welding electrodes, | Used as capital goods as well as inputs as essential components of the machinery used in the manufacturing of sugar. | February, 2000 to March, 2000; and March, 2007 to September, 2007 Cenvat Credit Rules, 2004 |
| 27 | C.A. No.18006 of 2017 M/s Manikgarh Cement Vs. The Commissioner of Customs and Central Excise | Welding electrodes, welding wire and sweet on paste | Used for the repair and maintenance of capital goods. | July, 2001 to December, 2001. Cenvat Credit Rules, 2001 |
| 28 | C.A. No.18008 of 2017 M/s Manikgarh Cement Vs. Commissioner of Central Excise | Welding electrodes, welding wire and sweet on paste | Used for repairing and maintenance of capital goods (for rebuilding, refurbishing at the table liners/tyres, rollers, etc. of the raw mill, coal mill, cement mills and kiln in its cement plant). | September and October, 2005 Cenvat Credit Rules, 2001/2004 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|--|--|--|
| 29 | C.A. No.18005 of 2017 M/s Manikgarh Cement Vs. The Commissioner of Customs and Central Excise | Welding electrodes, Welding wire and sweet on paste etc. | Used for repairs and maintenance of the plant and machinery, as capital goods. | July, 2004 to September , 2004. Cenvat Credit Rules, 2002/2004. |
| 30 | C.A. No. 18007 of 2017 M/s Manikgarh Cement Vs. Commissioner of Customs and Central Excise | Welding electrodes, Welding wire and sweet on paste etc. | Used for repairs and maintenance of capital goods used within the factory. | Nov. 1997 to Feb. 1998; March, 1998 to July, 1998 and August, 1998 to October, 1998 Central Excise Rules, 1944. |
| 31 | SLP(C) No. 9053 of 2020 Kesar Enterprises Vs. Commissioner Central Excise Noida | Steel material, tubes and pipes and welding electrodes. | Repair and maintenance of capital goods. | December 2014 to September 2015 Cenvat Credit Rules, 2004 |
| 32 | SLP(C) No. 9062 of 2020 Kesar | MS flat bar, MS plates. | Used in repair and maintenance of plant and machinery. | May to July 2006 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|---|--|
| | Enterprises Limited Vs. Commissioner Central Excise Noida | | | Cenvat Credit Rules, 2004 |
| 33 | SLP(C) No. 8918 of 2020 Kesar Enterprises Limited Vs. Commissioner Central Excise Noida | MS plates, sections, jointing sheets, MS flat bars, MS plates, etc. | Used in repair and fabrication of used as spare part and accessories of the machines and equipment used within the factory premises.) | November 2005 to March 2006 Cenvat Credit Rules, 2004 |
| 34 | SLP(C) No. 9077 of 2020 Kesar Enterprises Limited Vs. Commissioner Central Excise Noida | Steel materials, tubes and pipes, welding electrodes | Used for repair and maintenance of plant, machinery, building, platform and structure. | October 2007 to August 2016 Cenvat Credit Rules, 2004 |
| 35 | SLP(C) No. 9040 of 2020 Kesar Enterprises Vs. Commissioner Central Excise Noida | MS Angles, plates, shape and section, HR Coil, MS Bars, floor grill, welding electrodes | Used for repair and maintenance of plants and machinery. | April 2006 to November 2014 Cenvat Credit Rules, 2004 |

| Sr. No. | Case No. | Items in Dispute | Use of Items | Period and Relevant Rules |
|----------------|--|---|--|--|
| 36 | SLP(C) No. 9001 of 2020 Kesar Enterprises Limited Vs. Commissioner Central Excise Noida | Steel material, tubes, pipes and welding electrodes | Used in repair and maintenance of plant and machinery. | October 2007 to August 2016 Cenvat Credit Rules, 2004 |
| 37 | SLP(C) No. 9000 of 2020 Kesar Enterprises Ltd. Vs. Commissioner Central Excise Noida | Steel material, tubes, pipes and welding electrodes | Used in repair and maintenance of plant and machinery. | October 2007 to August 2016 Cenvat Credit Rules, 2004 |

4. We have heard learned counsel on behalf of the appellants/assesseees and learned Additional Solicitor General Mr. N. Venkataraman and learned counsel on behalf of the revenue.

5. Since the question arising in this batch of Civil Appeals are common, we shall deal with Civil Appeal No.2445 of 2007 as a representative case.

Submissions on behalf of the Assessee

6. Ms. Charanya Lakshmikumaran, learned advocate appearing for the assessee - SAIL leading the arguments on behalf of the appellants

submitted that Modvat Credit Scheme was introduced in the month of March 1986 with a clear intention to avoid cascading effect of taxation. It allowed credit on items used in or in relation to the manufacture of finished goods in the factory. The Scheme also incorporated provisions relating to reversal of credit on such items which are used in the manufacture of exempted finished goods.

7. Ms. Lakshmikumaran has bestowed our attention to the history of certain provisions of the Central Excise Rules, 1944 granting credit on inputs which we advert to.

a) Prior to 01.03.1995, Rule 57A of Central Excise Rules, 1944 was the relevant provision which reads as follows:

“Rule 57A. Applicability- (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the ‘final products’), as the Central Government may, by notification in Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975, as may be specified in the said notification (hereinafter referred to as the ‘specified duty’) paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the ‘inputs’) and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and conditions and restrictions that may be specified in the notification;

.....

Explanation – For the purposes of this rule, “inputs” includes –

(a) Inputs which are manufactured and used within the factory of production, in or in relation to, the manufacture of final products; and

(b) Paints and packaging materials,

but does not include....”

- b) That in the year 1992, Rekhi Committee was constituted to submit recommendations pertaining to indirect tax reforms, under the Chairmanship of Mr. K.L. Rekhi. On the issue of Modvat, the Committee recommended as follows:

“13.1 After valuation, perhaps the second factor accounting for the large number of disputes between the Department and the assessee is Modvat. Controversies commonly arise on the point whether a certain material or part is an ‘input’ eligible for Modvat Credit or not. The Apex Court decided the question four years ago holding that the expression “used in manufacture of” had a wide scope and covered articles used both directly as well as indirectly. But disputes still abound, may be due to ignorance of the case law or may be because of overzealousness of junior officers to augment revenue. The Committee feel that it would help put a stop to these futile disputes if in the light of the law as laid down by the Supreme Court, the words “Whether directly or indirectly and whether contained physically in the final product or not” are added after the existing words ‘used in or in relation to the manufacture of the said final products’ in Rule 57A.”

- c) The Rekhi Committee proposed that in order to end unnecessary controversies, the rule itself should clearly say that no one-to-one co-relation would be required to be established between inputs and outputs. Consequently, vide Central Excise (Ninth

Amendment) Rules 1995, Rule 57A of Central Excise Rules 1944

was further amended as under:

“2. In the Central Excise Rules, 1944 (hereinafter referred to as the said rules), in rule 57A, -

(i) in sub-rule (1), after the words “goods used in or in relation to the manufacture of the said final products”, the following shall be inserted, namely :-

“whether directly or indirectly and whether contained in the final product or not”;

(ii) in the explanation to sub-rule (1), after clause (d) and before the portion “but does not include —” the following shall be inserted, namely :-

“(e) accessories of the final product cleared alongwith such final product, the value of which is included in the assessable value of the final product,”.

d) The Rules pertaining to credit of duty paid on excisable goods used as inputs were recast by M.F. (D.R.) Notification No. 6/97-C.E.(N.T.), dated 01.03.1997 which reads as under:

“RULE 57A. Applicability.-(1) The provisions of this section shall apply' to such finished excisable goods (hereafter, in this section, referred to as the final products) as the Central Government may, by notification in the Official Gazette, specify in this behalf for the purpose of allowing credit of any duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereafter, in this section, referred to as the specified duty) paid on the goods used in the manufacture of the said final products (hereafter, in this section, referred to as the inputs).

(2) The credit of specified duty allowed under sub-rule (1) shall be utilised towards payment of duty of excise leviable

on the final products, whether under the Act or under any other Act, as may be specified in the notification issued under sub-rule (1) and subject to the provisions of this section and the conditions and restrictions, if any, specified in the said notification.

(3) The Central Government may also specify in the said notification the goods or classes of goods in respect of which the credit of specified duty may be restricted.

(4) The credit of specified duty under this section shall be allowed on inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not.

(5) Notwithstanding anything contained in sub-rule (1), the Central Government may, by notification in the Official Gazette declare the inputs on which declared duties of excise or additional duty (hereinafter referred to as declared duty) paid shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow the credit of such declared duty deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

Explanation.-For the purposes of the sub-rule, it is clarified that even if the declared inputs are used directly by a manufacturer of final products, the credit of the declared duty shall, notwithstanding the actual amount of duty paid on such declared inputs, be deemed to be equivalent to the amount specified in the said notification and the credit of the declared duty shall be allowed to such manufacturer.”

(emphasis supplied)

- e) That post 01.03.1997, the substituted Rule 57B of the Central Excise Rules, 1944 that pertained to eligibility of credit provided

as under:

*“57B. Eligibility of Credit of duty on certain goods. (1) Notwithstanding anything contained in rule 57A, the manufacturer of final products shall be allowed to take credit of the specified duty paid on the following (inputs), **used in or in relation to the manufacture of final products, whether directly or indirectly and whether contained in the final products or not**, namely:-*

(i) inputs which are manufactured and used within the factory of production;

(ii) paints;

(iii) inputs used as fuel;

(iv) inputs used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production

(v) packing materials and materials from which such packing materials are made provided the cost of such packing materials is included in the value of the final product;

(vi) accessories of the final products cleared along with the final product, the value of which is included in the assessable value of the final product.

Explanation – For the purposes of this sub rule, it is hereby clarified that the term inputs refers to such inputs as may be specified in a notification issued under rule 57A.”

(emphasis supplied)

- f) That with effect from 01.04.2000, the Modvat scheme was replaced by Cenvat Scheme, which was provided in the newly inserted Rules 57AA to 57AK. Cenvat Scheme, in essence, is the

same as Modvat Scheme except that it is simpler in that, the previously separate schemes for inputs and capital goods were merged into one under Cenvat Scheme, thereby allowing cross utilization of Credit.

- g) The definition of input under Rule 57A(d) of Central Excise Rules, 1994 w.e.f. 01.04.2000, reads as follows-

“(d) “input” means all goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and whether used as packing material, or as fuel, or for generation of electricity or steam, except high-speed diesel oil and motor spirit, commonly known as petrol.

Explanation: - The High-Speed Diesel Oil or motor spirit commonly known as petrol will not be deemed to be input for any purpose whatsoever.”

(emphasis supplied)

- h) Further, with effect from 01.07.2001, Central Excise Rules, 2001 were notified which defined ‘inputs’ under Rule 2(f) and Explanation 2 to Rule 2 of Central Excise Rules was inserted. We note for the first time, the expression ‘includes’ being introduced in the definition which has expanded the same. The

*“Rule 2(f) - “inputs” means all goods, except high speed diesel and motor spirit, commonly known as petrol, **used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes** lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as*

paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1.- The High Speed Diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacture;”

(emphasis supplied)

- i) Further on 01.03.2002, the Cenvat Credit Rules, 2002 were introduced under which the definition of input under Rule 2(g) reads as follows:

*“Rule 2(g) -“inputs” means all goods, except light diesel oil, high speed diesel and motor spirit, commonly known as petrol, **used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes** lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.*

Explanation 1.- The Light Diesel Oil, High Speed Diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacture;”

(emphasis supplied)

- j) The Cenvat Credit Rules, 2002 were superseded by the Cenvat

Credit Rules, 2004 w.e.f. 10.09.2004, which remained in vogue till the GST regime. The 2004 rules define input under Rule 2(k) as follows:

“(k) input means-

- (i) *all goods, except light diesel oil, high speed diesel and motor spirit, commonly known as petrol, **used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes** lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.*
- (ii) *All goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;*

Explanation 1.- The Light Diesel Oil, High Speed Diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2:- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacture;”

(emphasis supplied)

- k) That for the first time, in 2009, Explanation 2 to the definition of Inputs was amended to exclude certain goods which were used in construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

After this amendment, Explanation 2 to the definition of Input

read as under:

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

(emphasis supplied)

- 1) Further, the definition of input, i.e. Rule 2(k) of Cenvat Credit Rules, 2004 was recast in 2011 in the following manner w.e.f. 01.04.2011:

“(k) “input” means -

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

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

*(iv) all goods used for providing any output service; but **excludes-***

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction of a building or a civil structure of a part thereof; or

(b) Laying of foundation or making of structures for

support of capital goods;

except for the provision of any taxable service specified in sub-clauses (zn), (ztl), (ztl), (ztl), (ztl) and (ztl) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods such as food items, goods, used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.”

(emphasis supplied)

8. It was submitted that in the instant matter the items in dispute were used either for repair or maintenance of the plant and machinery or for painting the final products or for manufacture of plants and machinery. That this Court in a series of cases has interpreted the expression “used in or in relation to manufacture” and held that this expression has wide scope and covers all the items which are used in the process of manufacture but does not form part of the finished goods. However, the Revenue continues to argue that items used indirectly in the process of manufacture cannot be item used in relation to the manufacture of finished goods.

Learned counsel for the appellants relied upon several judgments

of this Court to contend that the expression “used in or in relation to manufacture” must be given a wide interpretation which we shall advert to later.

9. Learned counsel next submitted that the items used for maintenance and also post manufacturing activities are used in or in relation to the manufacture of finished goods. She submitted that in the case of ***Indian Farmers Fertilizer Co-operative Ltd. vs. CCE, 1991 (51) ELT 527 (Tri.-Delhi)***, the assessee was engaged in the manufacture of urea. It obtained raw naphtha without payment of duty for manufacture of ammonia which in turn was further used for manufacture of fertilizer. While the ammonia was directly used for manufacture of fertilizers, some quantity of the ammonia produced from raw naphtha was used by the assessee for water treatment, effluent treatment and maintenance of pipelines. Exemption under Notification 187/61 was sought to be denied for the latter quantity, on the footing that it is for maintenance of plant and not used in the manufacture of fertilizer.

10. This Court vide judgment in ***Indian Farmers Fertilizer Cooperative Limited vs. Collector of Central Excise, Ahmedabad, (1996) 5 SCC 488***, overruled the aforesaid order of Tribunal. This Court further held that Ammonia used in the effluent treatment plant

being essential and integral part of manufacturing is covered under condition of “used elsewhere in the manufacture of fertilizer” to allow exemption.

11. In view of the above, this Court reversed the order of the Tribunal that ammonia used for maintenance of water treatment plant is also used in relation to manufacture of finished goods. Therefore, the items used for maintenance are also items used in the manufacture of finished goods.

12. Learned counsel further relied upon pertinent decisions relating to the issue of eligibility of credit on welding electrode used for maintenance of capital goods/machinery in the factory as under:

a) In ***Ramala Sahkari Chini Mills Ltd. vs. Commissioner, Central Excise, Meerut-I, (2010) 14 SCC 744***, the question of law which arose was whether welding electrode used in the maintenance of machines is eligible for credit as ‘inputs’ under the Cenvat Credit Rules, 2002. This Court referred the matter to a larger bench on the question as to whether the inclusive portion of the definition of the term ‘input’ in Rule 2(g) of the Credit Rules, 2002 is to be given a restricted meaning to cover only the six enumerated items, or is to be understood to include items beyond the six items mentioned specifically in Rule 2(g). A three-Judge

Bench of this Court in ***Ramala Sahkari Chini Mills Limited vs. Commissioner, Central Excise, Meerut-I, (2016) 7 SCC 585***

held that the definition of the term 'input' in Rule 2(g) of the Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g) and the word 'includes' in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension and not by way of restriction.

- b) Similarly, in ***CCE Raipur vs. Birla Jute and Industries Limited, 2001 (135) E.L.T. 280 (Tri.-Delhi)***, the Tribunal held that Modvat Credit is eligible for electrodes and welding equipment. The said decision was upheld by this Court in **[2002 \(139\) E.L.T. A93 \(S.C.\)](#)**.
- c) The Larger Bench of the Tribunal in the ***Jawahar Mills Limited vs. Commissioner of Central Excise, 1999 (108) E.L.T. 47 (Tri.-Delhi)*** considered the definition of capital goods under Rule 57Q. The Bench while interpreting the definition of capital goods held that items used indirectly for production of goods is also covered by the definition of capital goods. The Bench specifically allowed credit on welding electrode.

The aforesaid judgment has been upheld by this Court in ***Commissioner of Central Excise Coimbatore vs. Jawahar***

Mills Limited, 2001 (132) ELT 3 (SC).

- d) The decision of the Larger Bench of the Tribunal in the case of ***Jaypee Rewa Plant vs. CCE, 2003 (159) ELT 553 (Tri.-Delhi)*** (“***Jaypee Rewa Plant***”) disallowing credit on welding electrodes on the ground that goods used for repair and maintenance of machinery cannot be considered as inputs, was impliedly overruled by the Rajasthan High Court in the case of ***Hindustan Zinc Ltd. vs. Union of India, 2008 (228) ELT 517***. The SLP filed against the said judgment of the High Court was dismissed on low tax effect.
- e) The Rajasthan High Court in the case of ***Union of India vs. Hindustan Zinc Ltd., 2007 (214) ELT 510 (Raj.)***, following the principles laid down in its own judgment in ***Union of India vs. Aditya Cement (D.B. Civil Central Excise Appeal No. 5 of 2005, decided on 8.11.2005)*** allowed credit on various goods such as MS/SS plates used for repair and maintenance of machinery. It clearly held that without proper up-keep and maintenance, the principal plant and machinery cannot function properly.

The SLP filed by the Union of India against this judgment was dismissed by this Court on 06.11.2006 in SLP (Civil)

13. It was submitted that the aforesaid expression “inputs used in or in relation to the manufacture of final products, whether directly or indirectly and whether contained in the final products or not” continued to exist in the definition of inputs throughout the Modvat and Cenvat Schemes under the Cenvat Credit Rules of 2001, 2002 and 2004. The disputed products on which credit has been denied in the present batch of matters are ‘used in or in relation to’ the manufacture of the final product and therefore covered under the definition of inputs. These inputs on which credit has been denied are also undisputedly used within the factory of production. It is pertinent to note that without proper maintenance of various capital goods for which disputed products are essential, the final product cannot be manufactured. Hence, disputed products used for maintenance of capital goods / machinery is indirectly used in relation to the manufacture of finished goods.

It was contended that denial of credit on the disputed products by the Revenue without taking into consideration the legal position is erroneous and not in consonance with the wide definition of inputs.

Submissions on behalf of the Revenue

14. It is submitted by learned ASG that in order for the party to be

eligible to take Cenvat Credit of the goods, it is essential that it should be used in relation to the manufacture of the final products whether directly or indirectly. Considering the nature/application of welding electrodes, tubes, pipes, steel plates etc. and the manufacturing process of the final products, it has been rightly held in the impugned orders that they have no role in or in relation to the manufacture of the final products. Even the assessee has claimed that it was used in the maintenance of plant and machinery. The case law relied on by the assessee are different from the present matters, hence the said case law are not applicable to the present matters. The Cenvat credit has rightly been denied as the items in issue are neither input nor capital goods for the assessee, hence cannot be termed as used in or in relation to the manufacture of the final products whether directly or indirectly.

15. We have recorded the submissions of the learned counsel for the appellant and learned ASG with regard to the aforesaid Civil Appeals, the details of which are mentioned in Tabular Form.

16. The controversy with regard to the products in question are similar to all the cases. The availment of the credit under the relevant Modvat/Cenvat Credit Rules in the context of eligible inputs as defined from time to time have been delineated under the respective

rules starting from the period prior to 01.03.1995 and thereafter at subsequent periods when the rules have been amended or substituted by fresh rules. The bone of contention in these cases revolves around the definition of inputs. It is not in dispute that the said definition is an exhaustive.

17. The only question is whether the products in question are eligible inputs for availing the credit under the Modvat/Cenvat Rules. Having regard to the definition of inputs as adumbrated above from time to time under the relevant rules, we find that the expression “used in or in relation to manufacture” must be given an expansive interpretation and not a narrow or myopic one.

18. Learned counsel referred to a series of decisions of this Court as under to buttress her submission that the expression “used in or in relation to manufacture” is of a very wide ambit and has to be interpreted in a broad manner.

a) In ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. Sales Tax Officer, Kanpur, (1965) 1 SCR 900***, a three judge Bench of this Court held that drawings, photographic materials and electricals are used in the manufacture of goods. The expression “in the manufacture of goods” should normally encompass the entire process carried on by the dealer of converting raw materials

into finished goods. It was also held that where any particular process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the said process or activity would, fall within the expression “in the manufacture of goods”. They need not be ingredients or commodities used in the processes, nor must they be directly and actually needed for “turning out or the creation of goods”.

- b) This Court held that cane baskets, material handling equipment, which are used to carry copper concentrate are used in the manufacture of final product *vide Indian Copper Corporation Limited vs. Commissioner of Commercial Taxes, Bihar, AIR 1965 SC 891*.
- c) In *Member, Board of Revenue, West Bengal vs. Phelps & Co. (P) Ltd., (1972) 4 SCC 121*, it was held that gloves used by workman in the factory are used in the manufacture of goods for sale.
- d) It was held by this Court that goods used as spare parts, tools, lubricants etc. are also used for ‘manufacturing or processing’ in *Chowgule & Co. Pvt. Ltd. vs. Union of India, (1981) 1 SCC*

653.

- e) This Court held that ammonia used in the treatment of effluents from the urea plant is used in the manufacture of urea in **Indian Farmers Fertiliser Cooperative Limited vs. Collector of Central Excise, Ahmedabad, (1996) 5 SCC 488.**
- f) In **M/s Doypack Systems Pvt. Ltd. vs. Union of India, (1988) 2 SCC 299**, this Court has held that the expression 'in relation to' is a very broad expression, which pre-supposes any subject-matter and these imply a comprehensive meaning.
- g) The words 'in relation to' have been interpreted by this Court in the case of **CCE vs. Rajasthan State Chemical Works, (1991) 4 SCC 473** and **Union of India vs. Ahmedabad Electricity Co. Ltd., (2003) 11 SCC 129** wherein it has been held that such words widen and expand the scope, meaning and content of expressions. Hence, all goods which are integrally connected with the process of manufacture without which such manufacture would be impossible or commercially inexpedient shall qualify as inputs. Therefore, credit is admissible on the products used in the repair and maintenance of capital goods because same is essential for the working and are integrally connected with the manufacturing activity of the assesseees.

- h) In ***Jaypee Rewa Cement vs. Commissioner of Central Excise, MP, (2001) 8 SCC 586*** and ***Vikram Cement vs. Commissioner of Central Excise, Indore, 2006 (194) E.L.T. 3 (S.C.)*** held that Explosives used in captive mines to procure limestone to manufacture cement in the factory, is used in or in relation to manufacture of finished goods and credit on such explosives is available. It was held that indirect use of inputs towards the manufacture of final products cannot be a ground to deny of credit on inputs.:
- i) This Court held that plaster of paris used in the manufacture of moulds which are in turn used in the manufacture of sanitaryware is used in or relation to manufacture of sanitaryware in ***Collector of Central Excise, New Delhi vs. Hindustan Sanitaryware & Industries, 2002 (145) ELT 3 (SC)***.
- j) In ***Collector of Central Excise, Bangalore vs. Escorts Mahle Ltd., 2003 (154) ELT 321 (SC)***, this Court held that ramming mass, fibre glass and filter mesh used to line the furnaces to neutralise the effect of acidic vapours produced during the course of melting steel is used in or in relation to manufacture of steel.
- k) In ***Jayaswal Neco Ltd. vs. Commissioner of Central Excise, 2015 (319) ELT 247 (SC)***, this Court held that credit on railway

track material used for handling the material within the factory is available as the same is essential for the manufacture of finished goods. Hence, credit on railway track material is available.

In view of the aforesaid settled legal position, the interpretation of the expression “used in or in relation to manufacture” must be very wide and cover all items used in the process of manufacture whether directly or indirectly and whether contained in the final product or not.

19. Learned counsel for the appellant in Civil Appeal No.6133 of 2012 submitted that she will not press Cenvat credit claim in the Posithermo-Couple and therefore, the appeal is not pressed insofar as that claim is concerned. Her submission is placed on the record.

Learned counsel for the appellants in Civil Appeal Nos.6411 of 2008 and 6136 of 2012 submitted that insofar as joint sheets are concerned, the order of the Commissioner (Appeals) is in favour of the appellant/assessee and the respondent has not assailed the said finding. Therefore, there is no controversy as such with regard to that item in these appeals.

In Civil Appeal arising out of SLP (C) No.549 of 2016, the learned counsel for the appellant submitted that the appellant is aggrieved by the order of the High Court reversing the findings given by the

Tribunal in favour of the assessee, insofar as jointing sheets, welding electrodes, melting plates shapes, HR coils are concerned. He drew our attention to the fact that in C.A. No.6411/2008 and CA No.6136/2012, insofar as jointing sheets are concerned, the Tribunal has held in favour of the assessee and has granted the benefit of Cenvat Credit Rules in respect of that item also. There was no challenge to the same by the Revenue.

In the circumstances, learned counsel submitted that the finding given against the assessee insofar as jointing sheets are concerned may be reversed in the appeal, bearing in mind the aforesaid facts.

Findings:

20. In view of the settled legal position, the interpretation of the expression “used in or in relation to manufacture” is of a very wide import and takes within its scope and ambit all items used in the process of manufacture whether directly or indirectly and whether contained in the final product or not. The items used for maintenance of plant and machinery are also items used in the manufacture of finished goods. Hence, credit on the items used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assesseees.

Thus, in view of the above judgments, credit on welding

electrodes and other items such as jointing sheets, SS plates etc. used for maintenance, repair, up-keep or fabrication of plant and machinery are admissible to the assesseees.

Conclusion:

21. In terms of the above findings, these appeals are allowed. No costs.

.....**J.**
(B.V. NAGARATHNA)

.....**J.**
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 07, 2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4560/2018

THE PRINCIPAL COMMISSIONER,
CCE RAIPUR

APPELLANT(S)

VERSUS

MSP STEEL & POWER LIMITED

RESPONDENT(S)

O R D E R

Learned counsel for the respondent pointed out that the Customs, Excise And Service Tax Appellate Tribunal (herein after referred to as 'CESTAT'), by its order dated 31.01.2017, had categorically considered the period prior to 07.07.2009 and the period thereafter, as Explanation to Rule 2k which defines 'input', was added from the aforesaid date of Cenvat Credit Rules, 2004. Therefore, relief was granted up till the period of 07.07.2009 and for the period thereafter bearing in mind the Explanation-2, the matter was remanded to the adjudicating authority. The said order of the tribunal has been affirmed by the High Court by impugned order dated 13.11.2017. Therefore, in view of the remand pursuant to the insertion of Explanation-2, the appeal would not survive for consideration as such.

In response to this submission, learned counsel for the appellant submitted that appropriate orders may be made in the appeal. For sake of immediate reference, paragraph 4 of the order dated 31.01.2017 is extracted as under:

"4. After hearing both the sides, it appears that till the period of 7.7.2009, when the amendment came in Rule 2(k) of Cenvat Credit Rules, 2004 the claim is allowable as per ratio laid down in the case of Lafarge India Pvt. Ltd. vs. CCE, Raipur-2016-TIOL-2451-CESTAT-DEK. Hence, we allow the claim for the period and upto 7.7.2009 on the steel items mentioned above. However, regarding the post-7.7.2009 period, the matter is remanded back to the adjudicating authority. The adjudicating authority shall verify whether the inputs were used towards the capital goods or not. The adjudicating authority is directed to provide reasonable opportunity and decide the issue de novo as expeditiously as possible. Necessary evidence may be admitted as per law."

Since the aforesaid order has been affirmed by the High Court, bearing in mind the insertion of Explanation-2 to Rule 2k of the Cenvat Credit Rules, 2002, we do not find the need to interfere in the matter.

It is for the parties to ascertain as to the adjudication pursuant to the remand made by the tribunal to the adjudicating authority. Since Explanation-2 was inserted w.e.f. 07.07.2009, excluding certain goods from the definition of "input goods", it would imply that till the insertion of the said Explanation, the assessee was entitled to claim Cenvat credit of those goods.

Hence, we do not find any reason to interfere in the matter.

The appeal is dismissed.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 07, 2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5746/2018

THE PRINCIPAL COMMISSIONER OF CENTRAL EXCISE,
RAIPUR

APPELLANT(S)

VERSUS

M/S GODWARI POWER AND ISPAT LTD.

RESPONDENT(S)

O R D E R

Learned senior counsel appearing for the Revenue submitted that the appeal would no longer survive in view of the Notification dated 22.08.2019 owing to low tax effect.

Hence, appropriate order(s) may be made.

His submission is placed on record.

The appeal is dismissed owing to low tax effect keeping open the substantial question of law, if any, which arises in the appeal.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 07, 2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8009/2019

COMMISSIONER OF CENTRAL EXCISE CUSTOMS AND
S.T., RAIPUR

APPELLANT(S)

VERSUS

TOPWORTH STEEL AND POWER PVT. LTD.

RESPONDENT(S)

O R D E R

Delay condoned.

Learned A.S.G. appearing for the Revenue submitted that the appeal would no longer survive in view of the Notification dated 22.08.2019 owing to low tax effect.

Hence, appropriate order(s) may be made.

His submission is placed on record.

The appeal is dismissed owing to low tax effect keeping open the substantial question of law, if any, which arises in the appeal.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 07, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.4704/2007

THE KISAN COOPERATIVE SUGAR FACTORY LTD
THROUGH GENERAL MANAGER

Appellant(s)

VERSUS

COMMISSIONER CENRAL EXCISE

Respondent (s)

WITH

C.A. No. 2445/2007 (XVII-A)
(FOR ON IA 15977/2007)

C.A. No. 3976/2007 (XVII-A)

C.A. No. 6126-6129/2012 (XVI)

C.A. No. 6130-6132/2012 (XVI)

C.A. No. 6133/2012 (XVI)

C.A. No. 6135/2012 (XVI)

C.A. No. 6125/2012 (XV)

C.A. No. 6134/2012 (XVII-A)
(FOR ON IA 9368/2009
FOR ON IA 39792/2009
IA No. 2/2009 - EARLY HEARING APPLICATION)

C.A. No. 3520/2008 (XVII-A)
(FOR ON IA 1/2008)

C.A. No. 6411/2008 (XV)

C.A. No. 2800/2009 (XVII-A)
(FOR AMENDMENT IN CAUSE TITLE ON IA 212268/2023
IA No. 212268/2023 - AMENDMENT IN CAUSE TITLE)

C.A. No. 6136/2012 (XV)

C.A. No. 1877/2010 (XVII-A)

C.A. No. 6142/2010 (IX)
(FOR ON IA 74323/2011)

C.A. No. 10824/2010 (XII)

**(FOR STAY APPLICATION ON IA 2/2010
IA No. 2/2010 - STAY APPLICATION)
C.A. No. 6116-6124/2012 (III)**

C.A. No. 8307/2023 (III-A)

SLP(C) No. 33238/2015 (III)

C.A. No. 202-204/2016 (III-A)

C.A. No. 8308/2023 (III-A)

C.A. No. 8309/2023 (III-A)

C.A. No. 8310/2023 (III-A)

C.A. No. 8311-8313/2023 (III-A)

**C.A. No. 10943-10944/2016 (III-A)
(LIST FOR MODIFICATION ON IA 84785/2019
IA No. 84785/2019 - MODIFICATION)**

C.A. No. 8314/2023 (III-A)

SLP(C) No. 621/2017 (XI)

C.A. No. 8315/2023 (III-A)

**C.A. No. 8013/2023 (III-A)
(FOR CONDONATION OF DELAY IN FILING ON IA 1/2017
IA No. 1/2017 - CONDONATION OF DELAY IN FILING)**

C.A. No. 8316/2023 (III-A)

**SLP(C) No. 26756/2017 (IV-C)
(FOR ADMISSION and I.R. and IA No.101123/2017-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT
IA No. 101123/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

C.A. No. 18006/2017 (III)

C.A. No. 18008/2017 (III)

C.A. No. 18005/2017 (III)

C.A. No. 18007/2017 (III)

C.A. No. 1465/2018 (IV-C)

**C.A. No. 3981-3982/2018 (XII)
(FOR ADMISSION and I.R. and IA No.50169/2018-CONDONATION OF DELAY
IN FILING)**

C.A. No. 4560/2018 (IV-C)

C.A. No. 5746/2018 (IV-C)

**SLP(C) No. 18266/2018 (IV-C)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
71538/2018
IA No. 71538/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 18249/2018 (IV-C)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
77557/2018
IA No. 77557/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

SLP(C) No. 22204/2018 (IV-C)

SLP(C) No. 22200/2018 (IV-C)

**SLP(C) No. 18270/2018 (IV-C)
(FOR CONDONATION OF DELAY IN FILING ON IA 86148/2018
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
86150/2018
IA No. 86150/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

C.A. No. 9694/2018 (IV-C)

**SLP(C) No. 19075/2018 (IV-C)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
99887/2018
IA No. 99887/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)**

**SLP(C) No. 22202/2018 (IV-C)
(IA No. 167157/2023 - CLARIFICATION/DIRECTION)**

SLP(C) No. 29165/2018 (IV-C)

**C.A. No. 10715/2018 (IV-C)
(IA No. 167164/2023 - AMENDMENT IN CAUSE TITLE)**

**C.A. No. 8009/2019 (IV-C)
(FOR ADMISSION and I.R. and IA No.145428/2019-CONDONATION OF DELAY
IN FILING and IA No.145430/2019-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.145429/2019-CONDONATION OF DELAY IN
REFILING)**

**SLP(C) No. 8909/2020 (XI)
(IA No. 68698/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL**

VAKALATNAMA/OTHER DOCUMENT

IA No. 3275/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 131504/2020 - STAY APPLICATION)

C.A. No. 8317/2023 (III-A)

(IA No. 70593/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131524/2020 - EXTENSION OF EX-PARTY STAY)

C.A. No. 8318/2023 (III-A)

(IA No. 70712/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131501/2020 - STAY APPLICATION)

C.A. No. 8319/2023 (III-A)

(IA No. 68893/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131507/2020 - STAY APPLICATION)

C.A. No. 8320/2023 (III-A)

(IA No. 71030/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131503/2020 - STAY APPLICATION)

C.A. No. 8321/2023 (III-A)

(IA No. 70410/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131519/2020 - STAY APPLICATION)

C.A. No. 8322/2023 (III-A)

(IA No. 69906/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131517/2020 - STAY APPLICATION)

C.A. No. 8323/2023 (III-A)

IA No. 69905/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 131508/2020 - STAY APPLICATION)

C.A. No. 1376/2022 (XII)

(FOR ADMISSION and I.R. and IA No.14931/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 12777/2022 (XI-A)

SLP(C) No. 14179/2022 (XI-A)

SLP(C) No. 9057/2023 (IV-A)

SLP(C) No. 7780/2023 (IV-A)

(IA No.63494/2023-CONDONATION OF DELAY IN FILING and IA No.63495/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 9952/2023 (IV-A)

SLP(C) No. 7669/2023 (IV-A)

(IA No.59351/2023-CONDONATION OF DELAY IN FILING and IA

No.59354/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4383/2023 (IV)

(FOR ADMISSION and I.R. and IA No.120485/2023-CONDONATION OF DELAY IN FILING and IA No.120486/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 07-12-2023 This appeals were called on for hearing today.

CORAM :

**HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN**

For Appellant(s)

**Mr. n. Venkatraman, ASG
Mr. Arijit Prasad, Sr. Adv.
Mr. Rupesh Kumar, Adv.
Mr. V.C. Bharathi, Adv.
Mr. Rohit Verma, Adv.
Mr. Kamal Kishore, Adv.
Mr. H.R. Rao, Adv.
Mrs. B. Sunita Rao, Adv.
Mrs. Nisha Bagchi, Adv.
Mr. Raghav Sharma, Adv.
Mr. Mukesh Kumar Maroria, AOR**

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Mr. Rishi Agrawala, Adv.
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Mr. Rupesh Kumar, Adv.
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Mr. Bhupesh Kumar Pathak, Adv.
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Mr. L Kartikeyan, Adv.
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Mrs. Suman Sharma, Adv.
Mr. Brahma Prakash, Adv.
Ms. Nazish Fatima, Adv.

M/S. Khaitan & Co., AOR
Mrs. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Nikitha Shenoy, Adv.

Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

C.A. No.4704/2007; C.A. No.2445/2007; C.A. No.3976/2007;
C.A. No.6126-6129/2012; C.A. No.6130-6132/2012; C.A. No.6133/2012;
C.A. No.6135/2012; C.A. No.6125/2012; C.A. No.6134/2012; C.A.
No.3520/2008; C.A. No.6411/2008; C.A. No.2800/2009; C.A.
No.6136/2012; C.A. No.1877/2010; C.A. No.6142/2010; C.A.
No.10824/2010; SLP(C) No.25833/2015); C.A. No.202-204/2016; SLP(C)
No.549/2016; SLP(C) No.547/2016); SLP(C) No.551/2016; SLP(C)
No.4144-4146/2016; SLP(C) No.37978/2016); SLP(C) No.2358/2017;
SLP(C) C.C. No.1960/2017); SLP(C) No.27610/2017); C.A.

No.18006/2017; C.A. No.18008/2017; C.A. No.18005/2017; C.A. No.18007/2017; SLP(C) No.9053/2020; SLP(C) No.9062/2020; SLP(C) No.8918/2020; SLP(C) No.9077/2020); SLP(C) No.9040/2020); SLP(C) No.9001/2020); and, SLP(C) No.9000/2020.

Delay condoned.

Leave granted.

These appeals are allowed, in terms of the Signed Non-Reportable Judgment.

Pending applications, if any, also stand disposed of.

C.A. No.6116-6124/2012

It is stated at the Bar that the learned counsel for the appellant Shri Jay Savla, has been designated as a Senior Advocate and therefore his name does not appear in the cause list. Hence, the Registry to ascertain as to whether any other counsel has filed vakalatnama for the appellant. Hence, the matter is adjourned to second week of February, 2024.

C.A. No.4560/2018; C.A. No.5746/2018; and, C.A. No.8009/2019

These appeals are dismissed, in terms of the separate Signed Orders placed on the file.

Pending applications, if any, also stand disposed of.

SLP(C) No.33238/2015; C.A. Nos.10943-10944/2016; SLP(C)

No.621/2017; SLP(C) No.26756/2017; C.A. Nos.3981-3982/2018; SLP(C) No.18266/2018; SLP(C) No.22204/2018; SLP(C) No.22200/2018; C.A. No.9694/2018; SLP(C) No.22202/2018; SLP(C) No.29165/2018; C.A. No.10715/2018; SLP(C) No.8909/2020; C.A. No.1376/2022; SLP(C) No.12777/2022; SLP(C) No.14179/2022; SLP(C) No.9057/2023; SLP(C) No.7780/2023; SLP(C) No.9952/2023; SLP(C) No.7669/2023; and, C.A. No.4383/2023

Heard.

These matters are detagged and are ordered to be listed together.

C.A. No.1465/2018

Learned counsel for the respondent assessee submitted that this appeal would not survive for further consideration having regard to low tax effect for each of the assessment year 2006-2007 to 2010-2011, in respect of which a single show cause notice has been issued. She submitted each claim for Cenvat Credit is referable to a single assessment year and in view of the low tax effect, the appeal filed by the department may be dismissed.

Learned senior counsel appearing for the respondent by saying that a single show cause notice was issued for five assessment years and the total mentioned in the show cause notice is over 2 crores and the dispute is about 2.78 crores, the appeal cannot be dismissed on the ground of low tax effect.

In order to consider this question as well as on merits, list the matter in the second week of February, 2024 along with SLP(C)No.33238/2015 and connected cases.

SLP(C) No.18249/2018; SLP(C) No.18270/2018; and, SLP(C)
No.19075/2018

Issue notice.

Tag with SLP (Civil) No.33238/2015.

(KRITIKA TIWARI)
SENIOR PERSONAL ASSISTANT

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

(Non-reportable judgment and three separate signed order are placed
on file)