CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 2817 of 2011

(Arising out of Order-in-Original No. 65/2011 ST (Commr.) dated 15.07.2011 passed by the Commissioner of Central Excise and Service Tax, Large Taxpayer Unit, Bangalore.)

IBM India Private Limited,
No. 12, Subramanya Arcade,
Bannerghatta main road,
Bangalore – 560 029.

Appellant(s)

VERSUS

Commissioner of Service Tax
Office of the Commissioner of Central
Excise and Service Tax Large Taxpayers
Unit, JSS Towers,
100 ft Ring Road, Banashankari III Stage
Bangalore – 560 085.

Respondent(s)

APPEARANCE:

Ms. Priyanka Rathi Chinmayi, Advocate for the Appellant

Mr. Rajesh Shastry, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21279/2025

DATE OF HEARING: 21.04.2025

DATE OF DECISION: 20.08.2025

PER : R. BHAGYA DEVI

This appeal is filed by M/s. IBM India Pvt. Ltd. against Order-in-Original No. 65/2011-ST (Commr.) dated 15.07.2011 passed by the Commissioner of Central Excise and Service Tax (LTU), Bangalore.

2. Brief facts of the case are that the appellant being an 100% Export Oriented Unit (EOU) was availing cenvat credit of

service tax paid on various input services used for providing both taxable as well as exempted services. As per Rule 6(3A)(c)(iii) of the Cenvat Credit Rules, 2004 the appellant was to reverse the ineligible cenvat credit as per the provisions laid down on or before 30th June of the succeeding financial year and where the amount to be reversed was short-paid, he was liable to pay interest from the due date till the date of payment. From the returns filed by the appellant, it was noticed that appellant had short reversed certain credit amounts hence, interest was demanded and the impugned order, accordingly, demanded differential amount of Rs.8,75,04,359/- and also appropriated the amount paid and demanded interest of Rs.52,93,414/- under Rule 6(3A)(e) of the Cenvat Credit Rules, 2004 and also imposed penalty of Rs.5000/- under Rule 15A of the Cenvat Credit Rules, 2004. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel on behalf of the appellant submitted that as per Rule 14 of the Cenvat Credit Rules, 2004, interest is liable to be paid on wrong availment and utilization of cenvat credit. In the present case, since the appellant had sufficient balance in his credit ledger as is held by the Commissioner at Para 18.3 of the impugned order, the question of payment of interest does not arise. Reliance is placed on the decision of the Hon'ble High Court of Karnataka in the case of **CCE & ST vs. Bill Forge Pvt. Ltd.: 2012 (26) STR 204 (Kar.)** and **CCE, Bangalore-II vs. Pearl Insulation Ltd.: 2012 (27) STR 337 (Kar.)**.

4. The learned Authorised Representative (AR) on behalf of the Revenue submitted that the appellant was in the first place not eligible to avail cenvat credit attributable to exempted goods/services, however, the provisions allowed them to avail the cenvat credit on both dutiable and exempted goods/services provided the cenvat credit availed on the exempted goods/services was reversed as per the provisions of Rule 6(3A). These Rules also provide payment of interest whenever there is

short reversal. In support, he placed reliance on the decision by the Hon'ble High Court of Bombay in the case of **Commissioner of Central Excise Thane-I Vs. Nicholas Piramal (India) Ltd., 2009 (244) ELT 321 (Bom.)** and the decision by the Hon'ble Supreme Court in the case of **Union of India & Anr. vs. Ind-Swift Laboratories Ltd. 2011 (265) ELT 3 (S.C.)**.

5. Heard both sides. The only question to be decided is whether the appellant is liable to pay interest on the short reversals of the cenvat credit availed by them on the exempted services. It is not in dispute that for the financial year 2008-09, the appellant intimated the Department that as per Rule 6(3A)(c) of the Cenvat Credit Rule, 2004, the finally determined cenvat credit attributed to exempted services was Rs.4,95,55,665/- and the same was reversed on 30.04.2009. On 02.06.2009, they revised the figure to Rs.3,39,93,788/- and accordingly availed back cenvat credit of Rs.1,55,61,877/- on 31.05.2009. Later, on 22.10.2009, it was intimated that the actual cenvat credit attributable to was Rs.12,14,98,147/- and the differential credit of Rs. 8,75,04,359/- (Rs.12,14,98,147/- minus Rs.3,39,93,788/-) which was taken in excess was reversed on **30.09.2009**.

6. The relevant provisions of Cenvat Credit Rules, 2004 are reproduced below:

> **RULE 6.** [**Obligation of a manufacturer or producer of final products and a [provider of output service**]]. — [(1) **The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :**

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

Explanation 3. - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].

Explanation 4. - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]

[(3) (a) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed;

or

(b) a provider of output service who provides two classes of services, namely :-

(i) non-exempted services;

(ii) exempted services,

shall follow any one of the following options applicable to him, namely :-

[(i) pay an amount equal to six *per cent.* of value of the exempted goods and seven *per cent.* of value

of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input 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) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven *per cent.* of the value so exempted :

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two *per cent.* of value of the exempted services.

Explanation 1. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation 2. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Explanation 3. - For the purposes of this sub-rule and sub-rule (3A),-

(a) "non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;

(b) "exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;

(c) "non-exempted services" means the output services excluding exempted services.]

[(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-

C = T - (A + B);

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

D = (E/F) x C;

where E is the sum total of –

(a) value of exempted services provided; and

(b) value of exempted goods removed, during the preceding financial year;

where F is the sum total of -

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed, during the preceding financial year :

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty *per cent.* of the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where,-

G = C - D;

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen *per cent.* per annum;

(c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely:-

(i) the CENVAT credit attributable to inputs and input

services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A(Annual);

(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);

(iii) common credit left for further attribution shall be denoted as C(Annual) and calculated as, -

C(Annual) = T(Annual) – [A(Annual) + B(Annual)];

(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, -

D(Annual) = (H/I) x C(Annual);

where H is sum total of-

(a) value of exempted services provided; and

(b) value of exempted goods removed;

during the financial year;

where I is sum total of -

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed; and

(d) value of exempted goods removed;

during the financial year;

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later;

(e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen *per cent.* per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

(f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}], where the former of the two amounts is greater than the later;

7. As seen from the above Cenvat Credit Rules, 2004, it categorically disallows cenvat credit on inputs/services used exclusively in the exempted goods/services. Thus, there is no provision to avail cenvat credit on exempted goods or services, however, when the appellant utilizes common credit for both exempted and dutiable goods/services, the Rules provide the benefit of availing credit on both provided the cenvat credit on the exempted services is reversed as per the formula laid down on or before 30th June of every financial year. In case, there is a delay in reversing the ineligible credit, the Rules also provide for payment of interest. Admittedly, in this case, as per the appellant's own calculation they were to reverse Rs.12,14,98,147/- on 30th of June 2009 but they had reversed Rs.3,39,93,788/- on 02.06.2009 and the balance ineligible credit of Rs.8,75,04,359/- was reversed only on 30.09.2009. As per Clause (d) and (e) of Rule 6(3A) of Cenvat Credit Rules, 2004 reproduced below, it is very obvious that the appellant has to discharge interest liability as and when there is a delay in reversing the ineligible credit as per the prescribed formula dealt under Rule 6(3A) of Cenvat Credit Rules, 2004.

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later;

(e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen *per cent.* per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

8. The appellant's argument on Rule 14 of the Cenvat Credit Rules, 2004 has no role to play since the interest provisions as per Rule 6(3A) are specific with regard to common credit used in dutiable and exempted goods/services. The case laws relied upon by them are also not relevant in the present set of facts. The Hon'ble High Court referring to Rule 14 of the Cenvat Credit Rules 2004, has observed that liability to pay interest does not arise when the entire credit has been reversed before being utilised. But in the instant case we are dealing with a case of ineligible credit and the Rules specifically to avail ineligible credit since segregation at the first instant is not possible and provide reversal of the ineligible credit on or before 30th of June of the succeeding financial year and interest is payable from the stipulated date till the date of reversal. These provisions are entirely different from the provisions laid down in Rule 14 of the Cenvat Credit Rules 2004. Thus, the case laws relied upon by the appellant are not relevant to the present set of facts.

9. The above views are fortified with the observations of the Hon'ble Supreme Court in the case of **UOI Vs. Ind-Swift**

Laboratories Ltd. (supra), wherein the Apex Court has observed as follows:

> **"15.** In order to appreciate the findings recorded by the High Court by way of reading down the provision of Rule 14, we deem it appropriate to extract the said Rule at this stage which is as follows :
>
> > "**Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded :-** Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Sections 11A and 11AB of the Excise Act or Sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries."
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> **16.** A bare reading of the said Rule would indicate that the manufacturer or the provider of the output service becomes liable to pay interest along with the duty where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded and that in the case of the aforesaid nature the provision of Section 11AB would apply for effecting such recovery.
>
> **17.** We have very carefully read the impugned judgment and order of the High Court. The High Court proceeded by reading it down to mean that where CENVAT credit has been taken and utilized wrongly, interest should be payable from the date the CENVAT credit has been utilized wrongly for according to the High Court interest cannot be claimed simply for the reason that the CENVAT credit has been wrongly taken as such availment by itself does not create any liability of payment of excise duty. Therefore, High Court on a conjoint reading of Section 11AB of the Act and Rules 3 & 4 of the Credit Rules proceeded to hold that interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is wrongly utilized. In our considered opinion, the High Court misread and misinterpreted the aforesaid Rule 14 and wrongly read it down without properly appreciating the scope and limitation thereof. A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest would be recovered

from the manufacturer or the provider of the output service. The issue is as to whether the aforesaid word "OR" appearing in Rule 14, twice, could be read as "AND" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions 'taken' or 'utilized wrongly' or has been erroneously refunded' as the word "AND". On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.

18. We do not feel that any other harmonious construction is required to be given to the aforesaid expression/provision which is clear and unambiguous as it exists all by itself. So far as Section 11AB is concerned, the same becomes relevant and applicable for the purpose of making recovery of the amount due and payable. Therefore, the High Court erroneously held that interest cannot be claimed from the date of wrong availment of CENVAT credit and that it should only be payable from the date when CENVAT credit is wrongly utilized. Besides, the rule of reading down is in itself a rule of harmonious construction in a different name. It is generally utilized to straighten the crudities or ironing out the creases to make a statute workable. This Court has repeatedly laid down that in the garb of reading down a provision it is not open to read words and expressions not found in the provision/statute and thus venture into a kind of judicial legislation. It is also held by this Court that the Rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. In this connection we may appropriately refer to the decision of this Court in *Calcutta Gujarati Education Society and Another* v. *Calcutta Municipal Corporation and Others* reported in (2003) 10 SCC 533 in which reference was made at Para 35 to the following observations of this Court in the case of *B.R. Enterprises* v. *State of U.P. and Others* reported in (1999) 9 SCC 700 : -

> *"81. ……. It is also well settled that first attempt should be made by the courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of*

legislation, maybe beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated…… This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power." (emphasis supplied)"

19. A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in *Commissioner of Sales Tax, U.P.* v. *Modi Sugar Mills Ltd*. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows : -

"10. ……. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it

cannot import provisions in the statutes so as to supply any assumed deficiency."

20. Therefore, the attempt of the High Court to read down the provision by way of substituting the word "OR" by an "AND" so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules".

10. The Supreme Court in the case of Union of **India Versus VKC Footsteps India Pvt. Ltd. 2021 (52) G.S.T.L. 513 (S.C.)** dated 13-9-2021 observed as follows:

"76. Parliament engrafted a provision for refund Section 54(3). In enacting such a provision, Parliament is entitled to make policy choices and adopt appropriate classifications, given the latitude which our constitutional jurisprudence allows it in matters involving tax legislation and to provide for exemptions, concessions and benefits on terms, as it considers appropriate. The consistent line of precedent of this Court emphasises certain basic precepts which govern both judicial review and judicial interpretation of tax legislation. These precepts are:

(i) Selecting the objects to be taxed, determining the quantum of tax, legislating for the conditions for the levy and the socio-economic goals which a tax must achieve are matters of legislative policy. Chief Justice M. Hidayatullah, speaking for the Constitution Bench in *Assistant Commissioner of Urban Land Tax* v. *Buckingham and Carnatic Co. Ltd.* [(1969) 2 SCC 55] held :

"10...The objects to be taxed, the quantum of tax to be levied, the conditions subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the Courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the

power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit.

(ii) The same principle has been reiterated in *Federation of Hotel & Restaurant Association of India* v. *Union of India* [(1989) 3 SCC 634], where Justice M.N. Venkatachaliah (as the Learned Chief Justice then was), speaking for the Constitution Bench held :

"46. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its governmental power, has, of necessity, to make laws operating differently in relation to different

> groups or classes of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience."

(iii) In matters of classification , involving fiscal legislation, the legislature is permitted a larger discretion so long as there is no transgression of the fundamental principle underlying the doctrine of classification. In *Hiralal Rattanlal* (supra), Justice K.S. Hegde, speaking for a four judge Bench observed:

> "20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the Legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14."

(iv) More recently in *Union of India* v. *Nitdip Textile Processors Private Limited* [(2012) 1 SCC 226 = 2011 (273) E.L.T. 321 (S.C.)], a two judge Bench observed :

> "67. It has been laid down in a large number of decisions of this Court that a taxation statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in

where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the taxpayers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assessees are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line."

11. The Supreme Court in the case of **Steel Authority of India Ltd. Versus Commissioner of C. EX., Raipur 2019 (366) E.L.T. 769 (S.C.)** dated 8-5-2019 with regard to interest liability held as follows:

"63. We are of the view that the reasoning of this Court in the order referring the cases to us (to this Bench) that for the purpose of Section 11AB, the expression "ought to have been paid" would mean the time when the price was agreed upon by the seller and the buyer does not square with our understanding of the clear words used in Section 11AB and as the rules proclaim otherwise and it provides for the duty to be paid for every removal of goods on or before the 6th day of the succeeding month. Interpreting the words in the manner contemplated by the Bench which referred the matter would result in doing violence to the provisions of the Act and the Rules which we have interpreted. We have already noted that when an assessee in similar circumstances resorts to provisional assessment upon a final determination of the value consequently, the duty and interest dates back to the month *"for which"* the duty is determined. Duty and interest is not paid with reference to the month in which final assessment is made. In fact, any other interpretation placed on Rule 8 would not only be opposed to the plain meaning of the words used but also defeat the clear object underlining the provisions. It may be true that the differential duty becomes crystallised only after the escalation is finalized under the escalation clause but it is not a case where escalation is to have only prospective operation. It is to have retrospective operation admittedly. This means the value of the goods which was only admittedly provisional at the time of clearing the goods is

finally determined and it is on the said differential value that admittedly that differential duty is paid. We would think that while the principle that the value of the goods at the time of removal is to reign supreme, in a case where the price is provisional and subject to variation and when it is varied retrospectively it will be the price even at the time of removal. The fact that it is known, later cannot detract from the fact, that the later discovered price would not be value at the time of removal. Most significantly, *Section 11A and Section 11AB as it stood at the relevant time did not provide read with the rules any other point of time when the amount of duty could be said to be payable and so equally the interest"*.

12. In view of the above, when specific provisions are provided under Rule 6(3A) of the Cenvat Credit Rules 2004 on ineligible cenvat credit availed by the appellant on exempted goods which demands reversal of credit on or before 30th June of 2009, the appellant had to reverse the same and the provisions also specifically provide for payment of interest under Rule 6(3A) in case of delay. Based on the observations of the apex court the words taken and utilised mentioned in Rule 14 cannot be read into Rule 6(3A) which is entirely for a different purpose altogether. Therefore, the appellant is liable to pay interest from the stipulated date till the reversal of credit and accordingly, the impugned order is upheld and the appeal is dismissed.

(Order pronounced in Open Court on 20.08.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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