Bombay High Court Raymond Limited vs The Commissioner, Central Excise . . .
on 5 March, 2015 Bench: S.C. Dharmadhikari CEXA.101.102.103.2014.Judgment.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 101 OF 2014
WITH
CENTRAL EXCISE APPEAL NO. 102 OF 2014

WITH
CENTRAL EXCISE APPEAL NO. 103 OF 2014

Raymond Limited }
a company registered under }
the Companies Act, 1956 and }
having its administrative office at }

Jekegram, Pokhran Road No. 1, }
Thane - 400 606 and registered
ig }
office at Plot No. 156/H No. 2, }
Village Zadgaon Ratnagiri - }
15 612, Maharashtra and one of }

its factories, inter alia, }
at Thane and Nashik, in the }
State of Maharashtra } Appellant
versus

The Commissioner, Central Excise }
and Customs, Nashik having his }

office at Kendriya Rajaswa }
Bhawan, Gadkari Chowk, }
Old Agra Road, Nashik - 400 002 } Respondent

Mr. V. Sridharan - Senior Counsel with Mr. Prakash Shah i/b. M/s. PDS Legal for the Appellant.

Mr. Pradeep S. Jetly with Mr. S. D. Bhosale for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.
Reserved on :- January 19, 2015
Pronounced on :- March 5, 2015

J.V.Salunke,PA

JUDGMENT :- (Per S.C.Dharmadhikari, J.)

These Appeals involve common questions of law and therefore they were heard together and by consent are being disposed of by this common Judgment. After

having perused the impugned order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), West Zonal Bench at Mumbai dated 2nd January, 2014, we proceed to admit these Appeals on the following substantial questions of law:- "(a) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the credit of Additional Excise Duty (Textile and Textile Articles) paid on the inputs was always allowed to be utilised for payment of Additional Duty of Excise (Textiles and Textiles Articles) and for no other purpose? (b) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that credit of AED (T&TA) paid on the inputs was allowed to be utilised only during October, 2000 to June, 2001 and not subsequent thereto? (c) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in remanding the proceedings for the recasting of the duty in cash as AED (GOSI)? (d) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in sustaining the penalty under Rule 25 of the Rules?" 2) These questions will have to be answered in the following factual background:- The Appellant manufactures final product, namely, blanket out of woollen fibres. The blankets attract only Basic Excise Duty (for short "BED") and does not attract either Additional Excise Duty (Goods of Special Importance) [for short "AED(GSI)"] or Additional Excise Duty (Textiles and Textile Articles) [for short "AED(T&TA)]. Polyester top is J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc not used in the manufacture of the blanket. Therefore, the polyester top as such is not an input for the blanket. 3) With effect from 1st April, 1994, the Appellant became entitled to avail credit of duty paid on the inputs (tops etc.) used in or in relation to the manufacture of man-made yarn. With effect from the said date, the Appellants became entitled to avail credit of duty paid on the inputs used in or in relation to the manufacture of blankets falling under Chapter 63. 4) Vide Notification No. 24/94-CE (NT) dated 20 th May, 1994 issued under Rule 57A, AED(T&TA) paid on input can be utilised for payment of AED(T&TA) on the final product. Similarly, AED(GSI) paid on the input can be utilised for payment of AED(GSI) on the final product. Similar provision contained in Notification No. 5/94(NT) dated 1st March, 1994 also issued under Rule 57A. 5) Fourth proviso was added to Rule 57F with effect from 16 th March, 1995. This provision has non-obstante clause. This proviso applied notwithstanding anything contained in Rule 57A or Notification issued thereunder. Construing this proviso in Modi Rubber vs. CCE reported in 2000 (126) ELT 1222 (T), the learned CEGAT held that AED (GSI) paid on tyre-cord fabrics can be utilised for payment of BED J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc on tube being another final product (tyre-cord fabric is used in the manufacture of tyre only). This decision in Modi Rubber has been subsequently followed in series of decision namely: (a) SRF Ltd. Versus CCE - 2000 (49) RLT 579 (b) SRF Ltd. Versus CCE - 2002 (147) ELT 851 (c) Madura Coats Versus CCE - 2001 (44) RLT 191 (T) (d) MRF Ltd. Versus CCE - 2004 (164) ELT 202 (T)

6) The fourth proviso to Rule 57F(4) of the erstwhile Central

Excise Rules 1944, as inserted by Notification No. 11/95-CE(NT) dated 16th March, 1995, reads as under:- "Provided that, notwithstanding anything contained in sub-rule (1) of Rule 57A and the Notifications issued thereunder the credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise on any other final product, whether or not such inputs have actually been used in the manufacture of such other final product, if such inputs have been received and used in the factory of production on or after the 16 th day of March, 1995." 7) When Modvat Rules were redrafted in lucid manner, similar provisions were contained in provisions to Rule 57F(12). 8) With effect from 3rd September, 1996, the Appellants became entitled to avail credit of duty paid on the inputs used in or in relation to the manufacture of fabrics falling under Chapter 55. 9) The Appellant, inter alia, took the credit of Basic Excise Duty and AED(T&TA) on one of the inputs viz. Man-made tops falling under Chapter 55 of the Tariff Act used in or in relation to the J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc manufacture of yarn from 1st March, 1994. The yarn manufactured by the Appellants was subject to BED and AED(T& TA). 10) With effect from 3rd September, 1996, the Appellants were paying BED and AED(T&TA) on the yarn contained in the grey fabric at the time of clearance thereof by reason of the fact that the grey fabric was exempt from payment of duty, both under the Central Excise Act, and the Additional Duty of Excise payable under the Additional Duties of Excise (Goods of Special Importance) Act. 11) The Appellant started manufacturing processed fabrics with effect from March, 1998. The Appellant utilised the credit of BED paid under section 3 of the Act on the tops towards the payment of BED and the additional duty of excise payable under the Additional Duties of Excise (Goods of Special Importance) Act. However, under a mistake of law, the Appellant did not utilise the credit of AED (T&TA) on the tops towards the payment of duty on any other final products viz. Fabric, Blanket, Shawls etc. 12) By a Notification No. 27/2000-C.E.(NT) dated 31 st March, 2000, the Government of India amended the Central Excise Rules, 1944 by substituting the existing Rule 57A to 57V by Rules 57AA to 57AK. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 13) Rule 57AB(1) provided for allowing and utilisation of the credit of various duties paid on the inputs specified thereunder and described as CENVAT Credit. Sub-rule (2) of Rule 57AB allowed the utilisation of the Cenvat Credit (duty paid under various Acts specified in Sub-rule (1) of 57AB) towards the payment of duty, inter alia, on any final product manufactured by a manufacturer. This also allowed utilisation of the credit of additional duty of excise paid under T&TA Act on the inputs towards payment of other specified duties on any other final products. 14) Rule 57AB(2)(b) provided that AED (T&TA) and AED (GSI) paid on input can be utilised for payment of AED (T&TA) or AED (GSI). This position contained upto 30th June, 2001. Construing this, the CEGAT in Reliance Industries Ltd. Versus CCE - 2002 (150) ELT 479 and Grasim Industries Ltd. Versus CCE - 2003 (54) RLT 288 (T) held that AED (T&TA) can be utilised for payment of AED (GSI) during this period. 15) As on 1st April, 2000, the Appellant had approximately Rs.1.7 crores as unutilised balance in AED (T&TA). Further, credit

of Rs.1.2 crores (approximately) was taken by the Appellant as AED (T&TA) on polyester tops during the period from 1st April, 2000 to 30th June, 2001. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 16) The AED (T&TA) balance was not utilised by the Appellants till January, 2003. Between January 2003 to April, 2003, the Appellants utilised this AED (T&TA) credit for payment of BED and AED (GSI) to the extent of Rs.2.9 crores. The dispute in the present appeal relates to this utilisation of AED (T&TA), which was held to be impressible by the Respondent, is sustained by the Appellate Tribunal vide the impugned order. 17) Significantly, during the period from April, 2000 to June, 2001, the Appellant has paid AED (GSI) approximately 6.48 crores in cash on man-made fabrics. The Appellants filed an affidavit dated 4 th June, 2013 of their General Manager (Indirect Taxation) before the Tribunal stating the aforesaid facts on oath and annexing to the said affidavit details of payment of various duties duly certified by the Superintendent of Central Excise. 18) By a notification No. 31/2001 dated 21st June, 2001, the Central Government promulgated the Cenvat Credit Rules, 2001 in substitution of Rule 57AA to Rule 57AV providing for Cenvat Credit on inputs. 19) While making the Cenvat Credit Rules, 2001, the Central Government, consciously provided in Rule 3(6)(b) that the credit of J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc additional duties paid under AED (T&A) Act, AED (GOSI) Act, the national Calamity Contingent Duty paid under Section 136 of the Finance Act and additional duty paid under the Customs Tariff Act, the utilisation thereof towards payment of duty on the final product under the above referred Acts respectively and cross-utilisation was not permissible. The word "respectively" was inserted in Rule 3(6)(b) for the first time effective from July 1, 2001. 20) By their letter dated February 5, 2003, the Appellants after referring to the aforesaid facts and decision of the Appellate Tribunal in the case of Modi Rubber Limited Versus Commissioner of Central Excise, Meerut reported in 2000 (126) ELT 1222, informed the Range Superintendent of Central Excise that in their view the utilisation of credit of duty paid under the T&TA Act for paying other duties was in order, and sought his guidance on the subject. 21) Since no contrary view was expressed by the office of the Range Superintendent, the Appellants utilised the credit upto 30 th June, 2001, and lying unutilised "Additional Duties of Excise (T&TA)" for payment of other specified duties viz. Basic Excise Duty and Additional Duties of Excise (Goods of Special Importance) Act, 1957 payable on the clearance effected during the period from 16 th January, 2003 to 30th April, 2003. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 22) By his letter dated 13th May, 2003, the Superintendent of Central Excise, after referring to the provisions of sub-rule 6(b) of Rule 3 of the Cenvat Credit Rules, 2002, stated that the additional duty of excise paid under the T&TA Act shall be utilised only towards the payment of duty of excise leviable under that Act and the utilisation of Cenvat Credit lying unutilised under the head additional excise duty paid under the T&TA Act is in contravention of the said sub-rule and directed the Appellants to pay the said duty amounting to Rs.2,65,76,666/- through PLA. 23) By their letter dated 16th May, 2003, the Appellants replied to the Superintendent's said letter dated 13 th May, 2003, inter alia, contending

that they are eligible to utilise the credit of duty paid under the T&TA for payment of other duties and that they were not liable to pay the amount mentioned in the said letter dated 13 th May, 2003 through the PLA. 24) Statements of Mr. R. K. Shriyan, the Deputy General Manager (Administration) of the Appellants were recorded on 16 th May, 2003 and 21st May, 2003 under section 14 of the Act, wherein he stated that the Appellants had utilised the accumulated credit of additional duty (T&TA) towards the payment of basic excise duty and additional duty (ST). J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 25) By a notice to show cause-cum-demand F. No. Prev/VII/05/Raymond/03 dated 13th August, 2003 the Assistant Commissioner of Central Excise, called upon the Appellants to show cause as to why - (a) the amount of duty of Rs.2,65,76,666/- paid through Additional Duty of Excise (T&TA) should not be disallowed and recovered from them under section 11A of the Central Excise Act, 1944; (b) the amount of duty of Rs.7,85,336/- resulted as short payment of duty on denial of specified duties through additional duty of (T&A) should not be demanded and recovered under the provisions of section 11A of the Act; (c) interest at appropriate rate should not be demanded and recovered from them on the amount of duty not paid/short paid from the due date of payment under the provisions of section 11AB of CESA, 1944; (d) Penalty should not be imposed under Rule 26 of the Central Excise Rules, 2001 26) The said Notice to show-cause-cum-demand further proposed to impose penalty on Shri. R. K. Shriyan, the Deputy General Manager (Administration) under Rule 25 of Central Excise Rules, 2001. It was inter alia alleged in the said notice to show-cause-cum-demand that the Appellant contravened the provisions of Rule 3(6)(b) read with Notification No. 24/99-CE(NT) dated 1st March, 2000, inasmuch as the Appellants had wrongly utilised Additional Duty of Excise (T&TA) for J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc the payment of Basic Excise Duty and AED (GOSI) and intentionally evaded the payment of specified duties. 27) The Appellant by its letter dated 9th December, 2003, submitted a detailed reply to the said notice to show-cause-cum- demand dated 13th August, 2003, inter alia, contending that they were entitled to utilise the accumulated credit of Additional Duty of Excise (T&TA) for payment of Basic Excise Duty and Additional Duty of Excise (GOSI). 28) After granting a personal hearing to the Appellants on 3 rd March, 2004, wherein the Appellants representative reiterated the submissions made in their reply dated 9 th December, 2003, the Respondent by his order-in-original No. 12/CEX/2004 dated 16 th April, 2004, confirmed the demand of Rs.2,65,76,666/- on the Appellant on the ground that the credit of Additional Duty of Excise (T&TA) utilised towards payment of Basic Excise Duty and Additional Duty of Excise (GOSI) was not admissible. However, the Respondent dropped the demand of Rs.7,85,336/- on the ground that the amount was already included in the demand of Rs.2,65,76,666/-. The Respondent further imposed a penalty of Rs.5,00,000/- on the Appellant under Rule 25 of the Rules. The Respondent further imposed a penalty of Rs.50,000/- on Mr. R. K. Shriyan under Rule 26 of the Rules. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 29) Being aggrieved by the said order-in-original No.12/CEX/2004 dated 16th April, 2004, passed by the Respondent,

the Appellant preferred an appeal along with application for waiver of pre- deposit and stay before the Appellant Tribunal under section 35B of the Act. 30) By its common stay order No. S/1045-1046/WZB/2004/C-I dated 2nd September, 2004, the Appellate Tribunal granted unconditional waiver of predeposit of the duty demanded and penalties imposed pursuant to order of the Respondent. 31) By its final order No. A/459/WZB/05/C-I dated 10 th May, 2005, the Appellate Tribunal set aside the demand of Additional Excise Duty of Rs.66,79,179/- holding that there is force in the Appellant's submission that the additional excise duty paid under the Additional Duties of Excise (Textile and Textile Articles) Act, is available for utilisation towards payment of additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act in the light of the Tribunal's decision in the case of Reliance Industries Ltd. Versus CCE reported in 2002 (150) ELT 479 (T) and Grasim Industries Ltd. Versus CCE reported in 2003 (54) RLT 288. However, as regards the issue regarding the Basis Excise Duty, the Appellate Tribunal held that the Respondent has not recorded his findings on one of the two J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc contentions raised by the Appellants before him and in the absence of any finding on the said two contentions as regards the demand of basic excise duty, it has no alternative but to remand the case to the Respondent and accordingly remanded the case to the Respondent for his fresh decision on the Appellant's stand that the Basic Excise Duty liability is not sustainable in view of the Appellant's submission. The Appellate Tribunal further directed the Respondent to pass fresh orders after extending the Appellants a reasonable opportunity of being heard in their defence. 32) Being aggrieved by the aforesaid order No.A/459/ WZB/05/C-I dated 10th May, 2005, the Respondent filed Central Excise Appeal No. 159 of 2007 and 222 of 2007 before this Hon'ble Court only to the extent setting aside of demand of Rs.66,79,179/- by the Appellate Tribunal. 33) By its order dated 29th March, 2012, this Court disposed of the above Central Excise Appeal and other connected appeal as under:- "1. The above appeals were admitted on 10th July, 2008. After the above matter was argued for some time, counsel for both the parties state that by consent the orders impugned in the appeals be set aside and the appeals be restored to file of CESTAT for de-novo consideration in accordance with law. Accordingly, the orders impugned in both the Appeals are set aside and the matters are restored to the file of CESTAT for de-novo consideration. 2. Both the appeals are disposed of accordingly with no order as to costs. 3. All contentions of both the parties are kept open" J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 34) Pursuant to the aforesaid order of this Court, the Appellate Tribunal heard the appeal on 5 th December, 2013. The Appellants tendered their written submissions. 35) By its order No. A/08-11/14/EB/C-II dated 2 nd January, 2014 the Appellate Tribunal, inter alia, disposed of Appeal No. E/ 1963/04-Mum filed by the Appellant holding that credit of AED (T&TA) was all along allowed to be utilised only for payment of AED (T&TA) and for no other purpose. The Appellate Tribunal further directed the Appellant to pay the credit of AED (T&TA) in cash and take the credit of the said amount and use it for the purpose allowed under the law.

The Appellate Tribunal further held that no useful purpose will be served in remanding the proceeding for re-casting the accounts as it did not uphold the utilisation of AED (T&TA) for the purpose of AED (GOSI) or BED. The Appellate Tribunal set aside penalty on Mr. R. K. Shriyan. The correctness of the above conclusion on utilisation of credit, is under challenge before us. 36) Mr. Sridharan-learned Senior Counsel appearing for the Appellant would submit that the Appellant receives polyester woolen blended fibre as input. On this input, the Appellant inter alia pays AED(T&TA) under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. The appellant has then taken credit of the said AED J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc (T&TA) paid on polyester top. From the polyester top, the Appellant manufactures polyester yarn. Polyester yarn is then consumed in the manufacture and clearance of man-made fabrics. On man-made fabrics, AED(GSI) under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 is levied. However, on man-made fabrics, no AED(T&TA) is leviable. 37) Mr. Sridharan relies upon Notification No. 21 of 1999 issued under Rule 57A of erstwhile Central Excise Rules, 1944. He submits that in terms of this Notification AED (T&TA) paid on input can be utilised for payment of AED (T&TA) on the final product. Similarly, AED(GSI) paid on input can be utilised for payment of AED(GSI) on the final product. Mr. Sridharan submits that similar provision was earlier contained in Notification No. 5 of 1994 (T&T) dated 1 st March, 1994 which is also issued under Rule 57A. Mr. Sridharan invites our attention to the Cenvat Credit Rules prevailing from 1 st April, 2000 till 30th June, 2001 (Rules 57AA to 57AI). Mr. Sridharan submits that Rule 57AB(2) provided that AED(T&TA) or AED(GSI) paid on input can be utilised for payment of said AED(T&TA) or AED(GSI) on any final products manufactured and this position continued upto 30 th June, 2001. Mr. Sridharan submits that construing these provisions, the Customs, Excise and Gold Control Appellate Tribunal (CEGAT), in the J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc case of Reliance Industries Ltd. vs. Commissioner of Central Excise reported in 2002 (150) ELT 479 and Grasim Industries Ltd. vs. Commissioner of Central Excise reported in 2003 (54) ELT 288 held that AED(T&TA) can be utilised for payment of AED(GSI) during this period. By referring to transitional provision Rule 57AG Mr. Sridharan points out that as on 1st April, 2000, the Appellant had approximately 1.7 crores as unutilised balance in AED(T&TA). Further credit of Rs.1.2 crores (approximately) was taken by the Appellant as AED (T&TA) on polyester top during the period from 1st April, 2000 to 30th June, 2001. The AED(T&TA) balance was not utilised by the Appellant till January, 2003. Between January, 2003 to April, 2003, the Appellant utilised this credit of AED(T&TA) for payment of BED and AED(GSI) to the extent of 2.9 crores. It is this utilisation which is held to be illegal. This order-in- original and the confirmation thereof is subject matter of Central Excise Appeal No. 101 of 2014. Mr. Sridharan submits that during the period April, 2000 to June, 2001, the Appellant had paid AED(GSI) in cash of approximately 6 crores on man-made fabrics. 38) Mr. Sridharan submits that the Notification dated 28 th February, 1999 restricted utilisation of credit of duty paid on inputs under

AED(T&TA) for payment of AED(T&TA) and duty paid on the inputs under AED(GSI) for payment of AED(GSI) and this is because of J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc the two paragraphs, namely, 2(a) and 2(b) of this Notification. Mr.Sridharan then invites our attention to the Notification No. 27 of 2000 modifying the earlier Notification. He submits that Rule 57AB(1) and which has described various types of duties of Excise and additional duty of Customs under section 3 of the Customs Tariff Act, 1975 allowed vide clause (b) of Sub-Rule (1) of Rule 57AB utilisation of Cenvat Credit for payment of any duty of Excise on any final products manufactured by the manufacturer. However, by Rule 57AB(2)(b), the position, according to the Revenue and the Tribunal, has undergone a change and in that regard, he has also referred to Rule 3(6)(b) of the Cenvat Credit Rules, 2001, which came into effect on 1st July, 2001. Mr.Sridharan would submit that addition of the word "respectively" in Rule 3(6)(b) of Cenvat Credit Rules, 2001 is w.e.f. 1 st March, 2001. However the prefix "said" continues to figure in the Rule. This establishes the position that prefix "said" is not synonymous with word "respectively". This argument is canvassed to fault the approach of the Tribunal in not following its earlier decisions in the impugned order and taking a contrary view. If the Tribunal wanted to differ from binding precedents, it ought to have referred the matter to the Larger Bench. In the impugned order, the Appellate Tribunal has relied upon the use of the phrase "under the said" twice in Rule 57AB(2) to hold that AED(T&TA) could not have been utilised for payment of AED(GSI) even J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc during 1st April, 2000 to 30th June, 2000. In other words, the restriction having come by the insertion of the word "respectively" after 1 st July, 2001, this view of the Tribunal cannot be sustained. 39) Mr. Sridharan has invited our attention to a Division Bench Judgment of this Court in the case of CEAT Limited vs. Union of India (Writ Petition No. 9996 of 2014), decided on 23rd December, 2014 to which, one of us, (S.C.Dharmadhikari, J.) is a party. Mr. Sridharan submits that the view taken by the Appellate Tribunal is that AED(T&TA) is levied exclusively for the purpose of Union while AED(GSI) is mainly for the purpose of State. Further erroneous view is cross utilisation of AED(T&TA) for AED(GSI) will be in conflict with the purpose of the Act. The manner of payment of duty and collecting the same are governed by provisions of the Cenvat Credit Rules read with the two Acts. In these circumstances, the reasoning of the Tribunal is ex-facie incorrect. Undisputedly, the AED(T&TA) can be paid by utilisation of BED. He relies upon CBEC Circular dated 16th April, 2003. Therefore, there is no substance in the contentions of the Revenue and which are based on an erroneous finding of the Tribunal about distortion of collection/utilisation of the duties. 40) Mr. Sridharan relies upon the settled principle that in taxing statute, there is no room for intendment. In that regard, he J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc relies upon several Judgments of the Hon'ble Supreme Court and which summarise the principles of interpretation of a taxing statute. Mr. Sridharan relies upon the transitional provisions contained in Rule 57AG(1), which provide that credit accrued on 1 st April, 2000 can be utilised in accordance with these Rules. In

the circumstances, if there is a balance credit which could be utilised in terms of these Rules, then, the reference is to the Central Excise Rules, 1944 and particularly Rules 57AA to 57AK. Mr. Sridharan submits that the balance credit lying on 1st April, 2000 in AED(T&TA) account can be utilised towards payment of AED(GSI) on final product. If the right vested in a manufacturer in the form of credit is to be utilised upon receipt of the input, then, that is a vested right. It is not a contingent/existing/future right even though credit can be utilised in future. Mr. Sridharan, therefore, submits that several Judgments of the Hon'ble Supreme Court conclude this issue. 41) Mr. Sridharan then canvases an alternate submission and which is to the effect that Rule 3(3) of the Cenvat Credit Rules, 2002 permit utilisation of Cenvat Credit specified in Rule 3(1) for payment of duty of Excise on any final product. He then invites our attention to Rule 3(6)(b) of the Cenvat Credit Rules, which restricts utilisation of credit of AED(T&TA) and AED(GSI) which is notwithstanding Rule 3(1) and Rule 3(3). Relying upon the wording of Rule 3(7) and the non- J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc obstante clause therein, Mr. Sridharan would submit that Cenvat Credit Rules, 2004 have similar Sub-Rules as the 2002 Rules and therefore, between 1st March, 2002 to 9th September, 2004, the credit of AED(T&TA) can be used for payment of any of the specified duty referred to in Sub-Rule (1) of Rule 3. 42) Mr. Sridharan submits that in any event, no provision in Additional Duties of Excise (Goods of Special Importance) Act, 1957 provides for levy of interest. The provisions in relation to interest in Central Excise Act, 1944 and Rules thereunder are not borrowed. Therefore, no interest is payable on the utilisation of credit by the Appellant. In that regard, Mr. Sridharan invites our attention to the Finance Act, 1994. Finally, it is submitted that in the absence of any such provision relating to levy of interest, the impugned order to the extent it directs payment of interest, should be quashed and set aside. 43) Mr. Sridharan has relied upon the following Judgments:- (i) Reliance Industries Ltd. vs. CCE 2002 (150) ELT 479 (T) (ii) Grasim Industries Ltd. vs. CCE 2003 (54) ELT 288 (T) (iii) Eicher Motors Ltd. vs. UOI 1999 (106) ELT 3 (SC) (iv) Aunde Faze Three Autofab Ltd. vs. CCE 2009 (6) ELT 564 (v) Innamuri Gopalan vs. State of A. P. 1962 (2) SCR 888 (vi) V.V.S. Sugars vs. Government of A.P. (1999) 4 SCC 192 J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc (vii) Hemraj Gordhandas 1978 (2) ELT (J-250) (viii) CCE vs. Dai Ichi Karkaria Ltd. 1999 (112) ELT 353 (ix) Silk Mills vs. UOI 1995 (80) ELT 507 (Del) (x) CCE vs. Orient Fabrics Pvt. Ltd. (2004) 1 SCC 597 (xi) India Carbon Ltd. vs. State of Assam (1997) 6 SCC 479 (xii) Devi Dass Gopal Krishnan Ltd. 2002 (140) ELT 56 (P&H) 44) On the other hand, Mr. Jetly appearing in each of these Appeals supports the order of the Tribunal and submits that the same records a conclusion which is imminently possible given the nature of the additional duties and their basic distinction. Secondly, the Tribunal has not proceeded by ignoring any binding decision but has given effect to the law which has been brought into effect. The Tribunal thought it fit not to send back the cases because they are fairly old. Once the legal position is clear, then, the Tribunal's order cannot be faulted. The same does not give rise to any substantial question of law. Mr. Jetly therefore

submits that the Appeals deserve to be dismissed. Mr. Jetly relies upon the Judgments which have been referred in the Tribunal's order. 45) Before proceeding further, it would be appropriate to refer to the two Acts, namely, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, which is a prior Act and the Additional Duties of Excise (Textiles and Textiles Articles) Act, 1978. The J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc Additional Duties of Excise (Goods of Special Importance) Act, 1957 reads as under:- "ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT, 1957 [ACT NO. 58 OF 1957] [24th December, 1957] An Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its Second report dated the 18th December, 1990 BE it enacted by Parliament in the Eighth Year of the Republic of India as follows: SECTION 1. Short title and extent - (1) This Act may be called the Additional Duties of Excise (Goods of Special Importance) Act, 1957. (2) It extends to the whole of India SECTION 2. Definitions. - In this Act, - (a)"additional duties" means the duties of excise levied and collected under sub-section (1) of Section 3; (b) "State" does not include a Union territory SECTION 3. Levy and collection of Additional Duties. - (1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in column (4) of the said Schedule. (2) The duties of excise referred to in sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force. (3) The provisions of the Central Excise Act, 1944, and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1). J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc SECTION 4. Distribution of additional duties among States. - SECTION 5. Expenditure to be charged on the Consolidated Fund of India - Any expenditure under the provisions of this Act shall be expenditure charged on the Consolidated Fund of India. SECTION 6. Power to make rules - (1) The Central Government may, by notification in the Official Gazette, make rules providing for the time at which and the manner in which any payments under the provisions of this Act, are to be made, for the making of adjustments between one financial year and another and for any other incidental or ancillary matters. (2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions

aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule." Similarly, the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 reads as under: "ADDITIONAL DUTIES OF EXCISE (TEXTILES AND TEXTILE ARTICLES) ACT, 1978 [ACT NO. 40 OF 1978] [6th December, 1978] An Act to provide for the levy and collection of additional duties of excise on certain textiles and textile articles. BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:- SECTION 1. Short title and commencement - (1) This Act may be called the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. (2) It shall be deemed to have come into force on the 4 day of October, 1978. th SECTION 2. [*****] SECTION 3. Levy and collection of additional duties of excise on certain textiles and textile articles. - (1) When goods of the J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc description mentioned in the Schedule chargeable with a duty of excise under the Central Excise Act, 1944 (1 of 1944), read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable (not being a notification providing for any exemption for giving credit with respect to, or reduction of duty of excise under the said Act on such goods equal to any duty of excise under the said Act, or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid on the raw material used in the production or manufacture of such goods), are assessed to duty, there shall be levied and collected a duty of excise equal to fifteen per cent of the total amount so chargeable on such goods. (2) The duties of excise referred to in sub-section (1) in respect of the goods specified in the Schedule shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force and shall be levied for the purpose of Union and the proceeds thereof shall not be distributed among the States. The provisions of the Central Excise Act, 1944 (1 of 1944), and the rules made thereunder, including those relating to refunds and exemptions from duties, shall, so far as may be, apply in relation to the levy and collection of the duties of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules. SECTION 4. Repeal and saving - (1) The Additional duties of Excise (Textiles and Textile Articles) Ordinance, 1978 (4 of 1978), is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act." 46) A bare perusal of these two Acts would make it clear that the 1957 Act is to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of the part of the net proceeds thereof among the States, in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission report. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 47) The "additional duties" are defined

in this Act under section 2(a) to mean the duties of excise levied and collected under sub- section (1) of section 3 of the 1957 Act. It has been specified by section 3(1) as to how the additional duties would be levied and by sub-section (2), it is clarified that these duties are in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 or any other law for the time being in force. By sub-section (3) of section 3, which has been substituted by section 63(a) of the Finance Act, 1994 (32 of 1994), it has been specified as to how the provisions of the Central Excise Act, 1944 and the Rules made thereunder including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1). 48) The 1978 Act is an Act to provide for a levy and collection of additional duty of excise on certain textiles and textile articles. All the submissions of Mr. Sridharan overlook the fundamental distinction between these two additional duties and which have been imposed by two different enactments on goods of special importance and textiles and textile articles. Both are additional duties and over and above those chargeable and leviable on such goods under the Central Excise J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc Act, 1944 or any other law for the time being in force. However, it has been clarified in the case of 1978 Act as to how these dues are leviable for the purpose of Union and the proceeds thereof shall not be distributed among the States. 49) Now, if one peruses the scheme of credit of duties paid on excisable goods used as inputs under the Central Excise Rules, 1944, one finds that in Rule 57A as was prevailing in 1995-96 and thereafter until the Notification was issued by the Government, the credit of these duties was not permissible. In that regard, our attention has been invited to the changes brought about by Notifications under Rule 57A of the Central Excise Rules, 1944. In this behalf, in the compilation handed over by Shri. Sridharan at page 15 is one of the Notifications, which provides for availment of input credit in relation to the duties which have been paid and from 16 th March, 1995, credit of such duties under 1957 Act was permitted to be availed of on the final products described in column 3 of the table. However, by this very Notification, it has been specified as under:- ". . . .. (2) the credit of specified duty allowed in respect of inputs shall be utilised towards payment of duty of excise leviable under the Central Excises and Salt Act, 1944 (1 of 1944), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules: Provided that the credit of specified duty in so far as it relates to the additional duty of excise specified under (ii) above or the additional duty specified under (iv)(b) above, allowed in J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc respect of inputs shall be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules: Provided further that the credit of specified duty in so far as it relates to the additional duty of excise specified under (iii) above or the additional duty specified under (iv)(c) above, allowed in

respect of inputs shall be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under rule 57F of the said Rules: ....." 50) Thus, there was no cross utilisation permissible and from the inception. In other words, the credit of specified duties allowed in respect of inputs insofar as it relates to the additional duty of excise in terms of the 1978 Act shall be utilised only towards payment of duty of excise leviable under 1978 Act on the final products or as the case may be on the inputs. Similar is the position with regard to the 1957 Act. We do not find that at any stage the manner in which the Appellants wished to avail of these credits on inputs was ever permitted. That is the position and which is prevailing for further periods and though reliance is placed on some of the Notifications all that these Notifications clarify is that even if the inputs have not been actually used in the manufacturing of such final products but if the inputs have been used and received in the factory of production on or after 1 st March, 1997, the credit can be availed. This is the position even with J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc regard to the further Notifications and which are to be found in the Central Excise Manual of 1997-98 from page 27 of the compilation. Thereafter, even the Notification dated 28th February, 1999 does not alter this position. All that the Cenvat Credit Rules or the Central Excise Rules prevalent clarify is that credit of specified duty insofar as it relates to duty paid under the 1957 and 1978 Acts can be availed of and subject to the restrictions. The position remains the same even under the Notifications subsequently issued. We do not see how this position is altered just by non-reference or even deletion of paras 2(a) and (b) of the Notification No. 21/99-CE(NT) dated 28th February, 1999. 51) Mr. Sridharan places heavy reliance on a Notification bringing about changes and bearing No. 37 of 2000 dated 3 rd May, 2000 and a corrigendum dated 13th April, 2000. Rule 57AB reads as under:- "RULE 57AB CENVAT credit - (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of, - (i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said First Schedule), leviable under the Act; (ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985, leviable under the Central Excise Act, 1944 in relation to the goods falling under sub- heading Nos. 2401.90, 2404.40, 2404.50, 2404.99, 5402.20, 5402.32, 5402.42, 5402.43, 5402.52, 5402.62, 8415.00, 8702.10, 8703.90, 8706.21 and 8706.39 of the said First Schedule; (iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); and (v) the additional duty leviable under section 3 of the Customs Tariff Act, 1975, equivalent to the duty of excise specified under clauses (i), (ii), (iii) and (iv) above, paid on any inputs or capital goods received in the factory on or after the first day of April, 2000. Explanation - For removal of doubts it is clarified

that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under Chapter heading No. 98.01 of the First Schedule to the said Customs Tariff Act. (b) The CENVAT credit may be utilised for payment of any duty of excise on any final products manufactured by the manufacturer or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such. Explanation - When inputs or capital goods are removed from the factory, the manufacturer of the final products shall pay the appropriate duty of excise leviable thereon as if such inputs or capital goods have been manufactured in the said factory, and such removal shall be made under the cover of an invoice prescribed under rule 52A. (2) Notwithstanding anything contained in sub-rule (1) - (a) credit of duty in respect of inputs or capital goods produced or manufactured - (i) in a free trade zone and used in the manufacture of the final products in any other place in India; or (ii) by a hundred per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software Technology Parks and used in the manufacture of the final products in any place in India, shall be restricted to the extent which is equal to the additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975 paid on such inputs; (b) credit in respect of - (i) the additional duty of excise under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc (ii) the additional duty of excise under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); and (iii) the additional duty under section 3 of the Customs Tariff Act, 1975, equivalent to the duty of excise specified under clauses (i) and (ii) above - shall be utilised only towards payment of duty of excise leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act or under the said Additional Duties of Excise (Goods of Special Importance) Act, on any final products manufactured by the manufacturer of for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed. (c) CENVAT credit of the duty paid on the inputs shall not be allowed in respect of texturised yarn (including draw- twisted or draw-wound yarn) of polyesters falling under heading No. 54.02 of the said First Schedule, manufactured by an independent texuriser, that is to say, a manufacturer engaged in the manufacture of texturised yarn (including draw-twisted or draw-wound yarn) of polyesters falling under heading No. 54.02, who does not have the facility in his factory (including plant and machinery) for manufacture of partially oriented yarn of polyesters falling under sub-heading No. 5402.42 of the said First Schedule. (d) credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid on marble slabs or tiles falling under sub-heading No. 1504.21 or 2504.31 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall be allowed to the extent of thirty rupees per square meter. Explanation - Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non-availability of credit of duty paid on any

input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of the rules made under this section." 52) We do not see how, upon a reading of this Rule, the situation has undergone any change from the one noted by us hereinabove. When the Cenvat Credit Rules, 2001 came into force on J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 1st July, 2001, there as well, by Rule 3, Cenvat Credit was allowed to be taken. 53) Rule 3 of these Rules enables a manufacturer or producer of final products to take credit referred to as Cenvat Credit of the duties set out in clauses (i) to (vi) of Sub-Rule (1) of Rule 3 of Cenvat Credit Rules, 2001. In these Rules, Mr. Sridharan relies upon Sub-Rule (3) of Rule 3. The entire Rule 3 reads as under:- "RULE 3. CENVAT credit. - (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of - (i) the duty of excise specified in the First Schedule to the Tariff Act leviable under the Act; (ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act; (iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); (v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and (vi) the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise specified under clauses (i), (iii), (iv) and (v) above, paid on any inputs or capital goods received in the factory on or after the first day of July, 2001, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number GSR 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of July, 2001. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc Explanation.- For the removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under heading No. 98.01 of the First Schedule to the said Customs Tariff Act. (2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable. (3) The CENVAT credit may be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such: Provided that while paying duty, the CENVAT credit shall be utilised only to the extent such credit is available on the fifteenth day of a month for payment of duty relating to the first fortnight of the month, and the last day of a month for payment of duty relating to the

second fortnight of the month or in case of a manufacturer availing exemption by notification based on value of clearances in a financial year, for payment of duty relating to the entire month. (4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under section 4 or section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in rule 7. (5) The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4). (6) Notwithstanding anything contained in sub-rule (1),- (a) CENVAT credit in respect of inputs or capital goods produced or manufactured, (i) in a free trade zone or a special economic zone and used in the manufacture of the final products in any other place in India; or (ii) by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc Technology Park and used in the manufacture of the final products in any place in India, shall be restricted to the extent which is equal to the additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975 (51 of 1975) paid on such inputs or capital goods; (b) CENVAT credit in respect of - (i) the additional duty of excise under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); (ii) the additional duty of excise under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); (iii) the National Calamity Contingent duty under section 136 of the Finance Act, 2001 (14 of 2001); and (iv) the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise specified under clauses (i) , (ii) and (iii) above, shall be utilized only towards payment of duty of excise leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, or under the said Additional Duties of Excise (Goods of Special Importance) Act, or the National Calamity Contingent duty under the said section 136 of the Finance Act, 2001(14 of 2001) respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed; (c) The CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Tariff Act shall be allowed to the extent of thirty rupees per square metre; (d) The CENVAT credit of the duty paid on the inputs shall not be allowed in respect of texturised yarn (including draw- twisted or draw-wound yarn) of polyesters falling under heading No. 54.02 of the First Schedule to the Tariff Act, manufactured by an independent texturiser, that is to say, a manufacturer engaged in the manufacture of texturised yarn (including draw-twisted or draw-wound yarn) of polyesters falling under heading No. 54.02, J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc who does not have the facility in his factory (including plant and machinery) for manufacture of par-

tially oriented yarn of polyesters falling under sub-heading No. 5402.42 of the First Schedule to the Tariff Act. Explanation.- Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non- availability of credit of duty paid on any input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of these rules." 54) A bare perusal thereof does not indicate that any cross utilisation or cross availment is permissible. Mr. Sridharan would rely upon the words "the Cenvat Credit may be utilised for payment of any duty of excise on any final products" separated by further word 'or' "for payment of duty on inputs or capital goods themselves if the further condition stipulated thereunder is satisfied". The words "any duty of excise on any final products" cannot be read in such a manner as to enable cross utilisation. This sub-rule does not support the argument of Mr. Sridharan that in payment of additional duties under the 1957 Act, the credit thereof can be obtained so as to enable payment of duty of excise specified under the 1978 Act. Mr. Sridharan's argument, as already held above, fails to take note of the fact that one is the additional duty on goods of special importance, whereas later on is only additional duty on textiles and textile articles. 55) Mr. Sridharan also relied upon Rule 3(6) to urge that the word "respectively" appeared in Rule 3(6) clause (b) in 2001 and that would not therefore affect the prior utilisation. We are unable to agree J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc with him because all throughout it has been clarified by the legislature that availment of Cenvat Credit in respect of additional duty of excise under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, Additional Duties of Excise (Goods of Special Importance) Act, 1957 shall be utilised only towards duty of excise leviable under the said Acts. That means the respective Acts. The word "respectively" only denotes the duties of excise leviable under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, Additional Duties of Excise (Goods of Special Importance) Act, 1957 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 and the additional duty under section 3 of the Customs Tariff Act, 1975. Therefore, it is not as if the word "respectively" having been inserted that the position prevailing prior to the said insertion or introduction was not the same but different and distinct. We have elaborated on this aspect in the foregoing paragraphs and by pointing out that right from inception any cross utilisation was impermissible. The word "respectively" being inserted or introduced thus does not make any difference. Mr. Sridharan then relies upon the Cenvat Credit Rules, 2002 and similar stipulation in Rule 3(3) and Rule 3(6) and the insertion of the word "respectively". However, for the reasons that we have set out above, we do not think that any benefit or advantage can be derived from the insertion or introduction of the word "respectively". J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 56) The attempt of Mr. Sridharan is then to rely upon the Cenvat Credit Rules, 2004 and to demonstrate as to how a manufacturer or producer of final products or provider of textile service is allowed to take credit (Cenvat Credit) of the several dues paid on any input or capital goods received in the manufacture of final products or premises of the provider of output service on or after 10 th September,

2004 and any input service received by manufacturer of final product or by the provider of output service on or after 10 th September, 2004. Mr.Sridharan submitted that credit of duty paid on the inputs under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 can be utilised for payment of additional duties of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 during 1st April, 2000 to 30th June, 2001. He relied upon the Notifications, but the Notification which he relies, namely, dated 28 th February, 1999 has been referred by us above with the specific paras and clauses thereof to conclude that the credit of duty paid on the inputs under AED(T&TA) cannot be utilised for payment of AED(GSI) even during the aforementioned period. We have traced the entire legislative history. Therefore, we are of the view that the Tribunal's conclusion cannot be faulted. The Tribunal unnecessarily engaged itself in the controversy and emerging allegedly from a reading of this Rule 57AB appearing prior to the insertion of the word "respectively". A J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc reading of the Rule by the Tribunal in the case of Reliance Industries Limited (supra) was contrary to its plain language. We do not see how the Appellant can derive any assistance from this order of the Tribunal. We are of the opinion that independent of this order, the Appellant has addressed us extensively on the construction/interpretation of the aforereferred Rules. Once we are not in agreement with the Appellant, then, any further reference to these Rules or decisions of the Tribunal is unnecessary. We also need not enter into the controversy as to whether the Tribunal erred in not following or applying its decision in the case of Reliance Industries Limited and Ors. while deciding the Appeals by the impugned order. Once our independent satisfaction enables us to reach the conclusion as above, then, we are not required to go into this question any further. The inputs and the final product dealt with by 1957 Act and the 1978 Act are not one and the same. This aspect is clear if note is taken of the nature of the goods specified in the Schedules to these Acts. As the title indicates one category is of goods of special importance whereas the other is textiles and textile articles. The fact that these goods are separately and distinctly classified in the Schedules to these Acts and equally in the Central Excise Tariff is enough to reject the submissions of the Appellant. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 57) We are also of the view that the Division Bench Judgment of this Court in the case of CEAT Limited (supra) cannot be of any assistance. There, the issue was of classification made by section 88 of the Finance Act, 2004 disallowing utilisation of the credit of AED(GSI) paid after 1st April, 1996 but prior to 1st April, 2000 for payment of duty under the first and second Schedule to the Central Excise Tariff Act, 1985, but at the same time allowing utilisation of credit of additional excise duty on the same goods paid on or after 1 st April, 2000. It is in dealing with such controversy and issue of classification raised by the Petitioner CEAT Limited that the observations in para 38 of this Judgment and which are relied upon by Mr. Sridharan have been made. We do not see how any assistance can be derived from these observations for the purpose of the cross availment or availment of Cenvat Credit in the manner noted by us hereinabove. 58) Then,

Mr. Sridharan's reliance on the decisions of the Hon'ble Supreme Court with regard to interpretation of taxing statutes can be of no assistance. We have gone by the plain language of the Cenvat Credit Rules. It is the plain language which enables us to conclude that the availment as sought is not permissible. We have neither made any additions nor subtractions. Therefore, the decisions relied upon by Mr.Sridharan in his written notes/submissions on this point need not be referred any further. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 59) Then, the reliance placed by Mr. Sridharan on the transitional provision and particularly Rule 57AG(1) can be of no assistance to him. Once we have said that the credit lying as on 1 st April, 2000 in AED(T&TA) account cannot be utilised towards payment of AED(GSI) on final products and which is clear from a plain reading of the Rules, then, the transitional provision cannot be read otherwise. It will have to be read in consonance with the earlier rules and so read, there is no right flowing therefrom to claim such entitlement or availment. Once this conclusion is reached, then, the Judgment of the Hon'ble Supreme Court of India in the case of Eicher Motors Ltd. vs. Union of India reported in 1999 (106) ELT 3 (SC) can be of no assistance. As has been pointed out to us that this Judgment was rendered in the case of taking of credit by the manufacturer/Assessee of duty paid inputs used in the manufacture of tractors falling under Heading No. 87.01 or motor vehicles falling under Heading No. 87.02 and 87.04 or chassis of such tractors or such motor vehicles under Heading No. 87.06. Prior to budget of 1995-96 the credit of BED was allowed to be used for payment of duty on the final products, in which the inputs were used. In 1995-96, the Modvat claim was liberalised/ simplified and condition that credit of duty paid on the inputs could have been used for discharging duty liability only in respect of above final products was removed. The credit then can be utilised for J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc payment of duty on any final product manufactured in that factory. That is how the subject Rule providing for lapsing of credit unutilised with the manufacturer of tractors was referred. The Assessee contended that this amounts to taking away a vested right acquired by the manufacturer under the existing law and taking away such right by Rule 57F(4A) is beyond powers of the Central Government. It is in that context that the Revenue's stand was negatived by the Hon'ble Supreme Court. We cannot read the observations and conclusions of the Hon'ble Supreme Court de-hors this factual position and controversy. Once we have arrived at a conclusion that there is no vested right created in the Assessee/Appellant before us, then, this Judgment and equally the Judgment in the case of Collector of Central Excise vs. Dai Ichi Karkaria Ltd. reported in 1999 (112) ELT 353 can be of no assistance. 60) In the view that we have taken, we find no substance in the alternate contention or alternative submission of Mr. Sridharan. Rule 3(3) of the Cenvat Credit Rules, 2002, according to Mr. Sridharan, permitted utilisation of Cenvat Credit for payment of any duty of excise on any final products or for payment of duty on inputs on capital goods themselves, if such inputs are removed as such or after being partially processed or such capital goods are removed as such. Mr. Sridharan submitted that Rule 3(3) was never disturbed nor diluted and the non- J.V.Salunke,PA

CEXA.101.102.103.2014.Judgment.doc obstante clause in Rule 3 (6) only rules out the applicability of Sub-Rule (1) of Rule 3 but has no effect on Rule 3(3). We are unable to agree with him because irrespective of this non-obstante clause and which is referable to Sub-Rule (1), the position with regard to availment of credit is spelt out by initial Notification No. 21 of 1999-CE (NT) dated 28th February, 1999. Once we have based our conclusions on a reading of this and further Notifications following it so also the plain language of the Rules, then, we do not see any force in this argument. We are therefore of the opinion that there is no substance in the argument that between 1st March, 2002 to 9th September, 2004 the credit of AED(T&TA) can be used for payment of any of the specified duty referred to in Sub-Rule (1) of Rule 3. Further, the non-obstante clause appearing in Rule 3(6) is so worded because the entitlement to credit is spelt out in Rule 3(1). Thereafter, Rules 3(2) and 3(3) sets out the mode and manner of availment thereof. It is clarified by Rule 3(3) that Cenvat Credit may be utilised for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods even if the inputs are removed as such or after being partially procured or such capital goods are removed in that State. Hence, Rule 3(6) contains the non-obstante clause and read as above. It does not mean recourse to Rule 3(3) is permissible for cross utilisation. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 61) The final argument on the point of interest also fails to impress us. That argument is based on section 3(3) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 and similar provision in section 3(3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957. In fact sub-section (3) of section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 was substituted by section 63(a) of the Finance Act, 1994. That clearly states that the provisions of Central Excise Act, 1944 (1 of 1944) and the Rules made thereunder including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be apply, in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1). The Judgment of the Hon'ble Supreme Court, which Mr. Sridharan relies upon, is not, on his own showing, dealing with the provision of interest. The decision in the case of Commissioner of Central Excise vs. Orient Fabrics Private Limited reported in (2004) 1 SCC 597 deals with a case of imposition of penalty or confiscation of goods for non payment of AED(GSI). Recourse to these powers was taken on the basis that provisions of Central Excise Act, 1944 and the Rules made thereunder apply to the levy and collection of AED (GSI). Such is not the case before us. Merely because the language of sub-section (3) of section 3 of both Acts J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc has undergone some change does not mean that interest is not leviable and recoverable. In fact, the provisions of Central Excise Act, 1944 and the Rules made thereunder including those relating to refunds, exemption from duty, offences and penalties, shall, so far as may be, apply in relation to levy and collection of the additional duties of excise on the goods specified in section 3(1). Such broad and wide stipulation would definitely include interest. We do not see how any assistance

can be derived from the Judgment of the Hon'ble Supreme Court, which holds that in the absence of any substantive provision, interest cannot be levied and charged on delayed payment of tax. We are of the view that the language of section 9A of the Customs Tariff Act and particularly section 9A(8) and section 9(7A) of the said Act cannot be of any assistance. The word "interest" specifically having not been included, the argument is that no interest was payable by the Appellant on AED(GSI) paid by the Appellants by utilisation of credit of AED(T&TA). Once the controversy has been understood in proper perspective and of lack of any provision in the statute enabling availing of such credit between January, 2002 to April, 2003 and this utilisation by the Appellant was held to be illegal by concurrent orders, then, interest was leviable. We have found that no such plea was raised before the Tribunal. Apart from the fact that it was not so raised, phraseology of section 3(3) of both Acts enables us to conclude that J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc there is nothing erroneous in directing payment of interest. In this regard, the legal position as emerging from the following observations of the Hon'ble Supreme Court in the case of South Eastern Coalfields Ltd. vs. State of M. P. and Ors. Reported in AIR 2003 SC 4482 is eloquent enough. The Hon'ble Supreme Court held as under:- ". . . . . 19. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see Chitty on Contracts, Addition 1999, Vol. II, Part 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many. 20. We may refer to the decision of this Court in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa & Ors. v. Lrs & Ors. (2001)2 SCC 721, wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest of pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J. has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, viz., interest compensation or damages and this proposition is umistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract and in the absence of any other prohibition, the arbitrator can award interest. 21. Under the English Law, generally speaking, a seller cannot recover interest when the buyer is in default of paying the price, nor can the buyer recover it when claiming a refund of the purchase price. Yet special damages have been held permissible to be awarded in respect of interest paid by the plaintiff as due to the defendant's breach subject to the rule of remoteness. The J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc english Law caused considerable debate

in India as well, but the matter was set at rest by the enactment of S. 61 of the Sale of Goods Act, 1930. Recovery of interest by way of damages is permissible under sub-sec. (2) of S. 61 (see Mulla on Sale of Goods Act, Sixth Edition, PP. 61-62). Power to award interest by way of damages at a reasonable rate if there be no contract rate specified, or at the contract rate as specified, flows from S. 61 of the Act." Also in this case, there was an unconditional interim order. There was prolonged litigation. The Revenue was deprived of its legitimate and legal dues by continued litigation. Hence, following principles would also govern the grant of interest. In the same Judgment, the Hon'le Supreme Court held as under:- "24. ..... Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. ..... 26. That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the act of the court embraces within its sweep all such acts as to which the court may from an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc only what the party excluded would have made but also what the party under obligation has or might reasonable have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be resorted to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation." Thus the view of the Tribunal, in accord with the language of the section, cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. 62) As a result of the above discussion, each of these Appeals

fail. They are dismissed, but without any order as to costs. The questions of law are answered in favour of the Revenue and against the Assessee. 63) At this Stage Mr. Shah appearing for the Appellant in each of these Appeals submits that though this Court has negatived the legal challenge, but it should take a sympathetic view and delete the penalties which have been imposed on the Appellant. J.V.Salunke,PA CEXA.101.102.103.2014.Judgment.doc 64) Mr. Jetly appearing for the Revenue opposes this request on the ground that this is nothing but engaging the Revenue in prolonged legal battle. Therefore, when the position in law is clear, the Appellant should have not avoided its liability. 65) Having noted the rival contentions, we find that there is no justification for imposition of the penalties. Merely because the orders have been challenged and right up to this Court does not mean penalties were imposable. The Penalties on the Appellant in each of these Appeals are therefore set aside. In the light of this the question of law (d) is answered in favour of the Assessee and against the Revenue. 66) We have only deleted the penalties as we find that the Tribunal in its final order in Appeal No. E/3003/04-MUM was pleased to set aside the penalty imposed on Shri. R. K. Shriyan. If that was the position and finding that no intentional or deliberate act is attributed either to the Company or any of its officers that we delete the direction in the Tribunal's order in the Appeals of the Company to pay penalty. Save and except this modification, we maintain the order of the Tribunal. (SUNIL P. DESHMUKH, J.) (S.C.DHARMADHIKARI, J.) J.V.Salunke,PA