

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT No. I

**Excise Appeal No. 41125 of 2018**

(Arising out of Order-in-Original No. 33/COMMR/CE/2017 dated 14.12.2017 passed by Commissioner of GST and Central Excise, No. 1, Williams Road, Cantonment, Tiruchirappalli - 620 001)

**The India Cements Ltd.**

Dalavoi Works,  
Ariyalur – 621 730.

**...Appellant**

***Versus***

**Commissioner of GST and Central Excise**

Trichy Commissionerate,  
No. 1, Williams Road,  
Cantonment,  
Tiruchirappalli – 620 001.

**...Respondent**

**APPEARANCE:**

For the Appellant : Mr. Raghav Rajeev, Advocate  
For the Respondent : Ms. O.M. Reena, Authorised Representative

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

**FINAL ORDER No. 40499 / 2026**

DATE OF HEARING : 19.03.2026

DATE OF DECISION : 17.04.2026

**Per Mr. VASA SESHAGIRI RAO**

The present appeal arises out of Order-in-Original No. 33/COMMR/CE/2017 dated 14.12.2017 passed by the Commissioner of Central Excise & Service Tax, Trichy, whereby CENVAT credit amounting to Rs.3,63,85,392/- along

with interest and penalty of Rs.2,42,57,680/- was confirmed against the appellant.

1.2 Facts briefly stated are that M/s India Cements (hereinafter referred to as "the Appellant") is engaged in the manufacture of clinker and cement and is availing CENVAT credit under the provisions of the CENVAT Credit Rules, 2004. The dispute in the present case relates to availment of CENVAT credit on Countervailing Duty (CVD) paid on imported steam coal under Notification No. 12/2012-Cus dated 17.03.2012, as amended by Notification No. 12/2013-Cus dated 01.03.2013. The Department's case is that the CVD paid at concessional rates of 1% / 2% under the said notification is not "equivalent to duty of excise" and, therefore, not eligible for credit under Rule 3(1)(vii) of the CENVAT Credit Rules, 2004.

1.3 Based on the above, proceedings were initiated for the period from September 2012 to June 2017, which culminated in confirmation of demand, interest and penalty as mentioned in Para 1, leading to the present appeal.

2. The Ld. Advocate Shri Raghav Rajeev appeared on behalf of the Appellant. The Ld. Authorized Representative Ms. O.M. Reena, appeared for the Revenue.

3. The Ld. Counsel for the Appellant submitted that: -

- i. the issue is no longer res integra and stands settled in favour of the assessee by several Tribunal decisions.
- ii. CVD is levied under Section 3(1) of the Customs Tariff Act and is in the nature of customs duty, though measured with reference to excise duty. Therefore, credit eligibility depends on the nature of levy, not the rate or quantum.
- iii. Rule 3(1)(vii) of CCR permits credit of "additional duty leviable under Section 3 of the Customs Tariff Act" without any qualification that it must be at tariff rate.
- iv. Reliance is placed on the following decisions: -
  - a. *Seshasayee Paper and Boards Ltd. vs Commissioner of GST & CE, Salem, 2026 (1) TMI 508 – CESTAT Chennai*
  - b. *Shyam Steel Industries Ltd. vs Commissioner of CGST, 2022 (382) E.L.T. 366 (Tri.-Kolkata), affirmed in 2022 (382) E.L.T. 329 (Cal.)*
  - c. *Tamil Nadu Newsprint & Papers Ltd., 2021 (10) TMI 13 – CESTAT Chennai*
  - d. *Chettinad Cement Corporation Pvt. Ltd., 2023 (11) TMI 57 – CESTAT Chennai*
  - e. *Rungta Mines Ltd., 2025 (10) TMI 1035 – CESTAT Kolkata*
  - f. *Hindalco Industries Ltd., 2018 (363) E.L.T. 1085*
- v. It was also argued that TRU Circular and CBEC Circular relied upon by the Department cannot override statutory provisions.
- vi. On limitation, it is contended that the issue is interpretational and all facts were disclosed in returns;

hence extended period is not invokable. Reliance is placed on *Pushpam Pharmaceuticals Co. vs CCE, 1995 (78) E.L.T. 401 (S.C.)*.

4. The Ld. Authorized Representative reiterated findings of the impugned order and it was further submitted that concessional CVD is not equivalent to excise duty and hence credit is not admissible. It is further argued that the appellant availed CENVAT credit wrongly and hence demand along with penalty is justified.

5. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions and the case laws cited.

6. Upon consideration the following questions arise.

- i. Whether CENVAT credit is admissible on CVD paid at concessional rate under Notification No. 12/2012-Cus. and,
- ii. Whether the demand is sustainable on merits and limitation.

7. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

**ISSUE (i): Admissibility of CENVAT Credit on CVD**

8.1 The principal issue that arises for consideration in the present appeal is whether the appellant is entitled to avail CENVAT credit of Countervailing Duty (CVD) paid on imported steam coal at concessional rates of 1% / 2% under Notification No. 12/2012-Cus dated 17.03.2012, as amended by Notification No. 12/2013-Cus dated 01.03.2013, and whether such CVD can be regarded as "additional duty of customs equivalent to duty of excise" within the meaning of Rule 3(1)(vii) of the CENVAT Credit Rules, 2004. The Department has denied the credit on the ground that the concessional rate of CVD is not "equivalent to duty of excise", whereas the appellant contends that eligibility to credit is dependent on the nature of duty and not the rate at which such duty is paid.

8.2 At the outset, it is necessary to examine the statutory framework. Section 3(1) of the Customs Tariff Act, 1975 provides for levy of additional duty of customs equivalent to the excise duty leviable on like goods manufactured in India. It is, however, well settled that the

said duty, though measured with reference to excise duty, retains its character as a duty of customs. The expression "equivalent to duty of excise" has been judicially interpreted to refer to the measure or yardstick of levy and not to its intrinsic nature. Thus, the levy under Section 3 remains a customs duty, albeit quantified with reference to excise duty.

8.3 It is also relevant to clarify that the Countervailing Duty (CVD) paid on imported steam coal is nothing but the "additional duty of customs" leviable under Section 3(1) of the Customs Tariff Act, 1975. The terms "CVD" and "additional duty" are used interchangeably in practice to denote the same levy. For the purpose of availment of CENVAT credit under Rule 3(1)(vii) of the Cenvat Credit Rules, 2004, what is relevant is the nature of the levy under Section 3(1) and not its nomenclature or the rate at which such duty is paid. Therefore, the duty paid on imported steam coal under the said provision remains eligible for credit irrespective of its nomenclature or the rate at which such duty is paid.

8.4 Rule 3(1)(vii) of the CENVAT Credit Rules, 2004 permits availment of credit of "the additional duty leviable under Section 3 of the Customs Tariff Act". The Rule does not impose any condition that such duty must be paid at the

tariff rate or that it must strictly correspond to the rate of excise duty. The absence of such qualification is significant. To read into the Rule a condition that credit would be admissible only when CVD is paid at tariff rate would amount to importing words into the statute, which is impermissible in law.

8.5 We also find that the issue is no longer res integra and stands covered by a catena of decisions relied upon by the appellant. In *Seshasayee Paper and Boards Ltd. vs Commissioner of GST & Central Excise, Salem, 2026 (1) TMI 508 (CESTAT Chennai)*, the Tribunal, while dealing with an identical issue, held in Para 11 and 12 as follows: -

*"11. In view of the foregoing discussions and findings and respectfully following the binding judicial precedents as discussed hereinabove, we hold that the Appellant is entitled to avail CENVAT credit of 1% / 2% Additional Duty of Customs (CVD) paid on imported coal under Notification No. 12/2012-Cus dated 17.03.2012 and Notification No. 12/2013-Cus dated 01.03.2013.*

*12. As the core issue has been decided on merits in favour of the Appellant, we are of the considered view that there is no necessity to examine the remaining questions framed by us, namely, Issue Nos. 3 and 4, relating to the sustainability of the demand, interest and imposition of penalties. Consequently, the impugned Orders-in-Original, confirming the demand of CENVAT credit along with interest and imposing penalties, are set aside in toto."*

We find that the ratio decidendi of the above decision is that the expression "equivalent to duty of excise" refers to the nature of the levy and not to the quantum of duty, and that

credit cannot be denied merely on account of concessional rate.

8.6 Similarly, in *Shyam Steel Industries Ltd. vs Commissioner of CGST & Central Excise, Bolpur, 2022 (382) E.L.T. 366 (Tri.-Kolkata)*, which was affirmed by the Hon'ble Calcutta High Court in *2022 (382) E.L.T. 329 (Cal.)*, it was held in Para 5 & 6 of the Tribunal Order that:

*"5. We find that the crux of the issue before us relates to admissibility of Cenvat credit of CVD on imported coal cleared at the rate of 1%/2% under Sl. No. 123 of the Customs Notification No. 12/2012-Cus dated 17 March 2012 as amended by Customs Notification No. 12/2013-Cus dated 1 March 2013. There is no restriction in these notifications unlike Sl. No. 67 of Central Excise Notification No. 12/2012 dated 17 March 2012 in so far as the availment of Cenvat credit on coal is concerned. The credit of CVD is available under Rule 3(1)(vii) of the CCR and the proviso to Rule 3(1)(i) restricting credit in case of coal cleared under Excise Notification No. 12/2012 dated 17 March 2012 cannot impliedly be read into when the rate of CVD has not been borrowed from the excise notification but has a generally applied rate on its own. There is considerable merit in the contention of the Appellant that there is no room for any intendment in taxing statutes which deserves a strict interpretation. Even otherwise generally applied rate of CVD (1% upto 28 February 2013 and 2% thereafter under the Customs notification) and the concessional excise duty rate on domestically manufactured goods (1% all throughout without Cenvat under the excise notification) were not uniform and in any event, the expression "equivalent" appearing in Rule 3(1)(vii) of the CCR for quantification of CVD could not be restricted ignoring the tariff rate of excise duty of 6% on domestically manufactured coal. We also find that the said issue is squarely covered by the decision of the Tribunal in the case of M/s. Jaypee Sidhi Cement Plant (supra) wherein the following order was passed:."*

*The Hon'ble High Court, while affirming the Tribunal's view, upheld the principle that eligibility to credit is governed by statutory provisions and not by the rate at which duty is paid. The ratio emerging from the said judgment is that concessional rate of duty does not alter the character of the levy for the purpose of CENVAT credit.....*

6. *The said view has been consistently followed by different Benches of this Tribunal. Since the legal issue involved in the present case is identical, we are inclined to follow these decisions referred supra and accordingly set aside the Order-in-Appeal."*

8.7 Further, in *Chettinad Cement Corporation Pvt. Ltd. Vs. Commissioner of GST & Central Excise, 2023 (11) TMI 57 (CESTAT Chennai): -*

*"The Tribunal held that the embargo in Rule 3 of the Cenvat Credit Rules, 2004 operates only with reference to the Excise Notification and its specified serial entries and does not extend to restrictions contained in the Customs Notification granting concessional CVD on imported coal. The decision reasons that Excise Notification No.12/2012 applies to domestically manufactured coal and the condition denying CENVAT in that notification is therefore inapplicable to imports. Relying on earlier decisions (including SRF Ltd. and the Tribunal's decision in TNPL), the Tribunal concluded that denial of credit by invoking the Excise notification against a Customs notification was legally unsustainable and that the appellant was entitled to retain the CENVAT credit of CVD paid on the imported steam coal. [Paras 9, 11].*

8.8 In *Hindalco Industries Ltd. Vs. Commissioner of GST, Bhopal, 2018 (363) E.L.T. 1085 (Tri.-Del.)*, in Para 5 it was held: -

*"I find that the sole reason to deny Cenvat credit to the appellant is that the authorities below has taken into consideration Notification No. 12/2012-CE dated 17.3.2012. The authorities below have not considering the Notification No. 12/2012-Cus. dated 17.3.2012. If same is taken into consideration and duty paid under the said notification, there is no bar for availment of Cenvat credit in terms of Rule 3(7) of Cenvat Credit Rules, 2004. Therefore, I hold that authorities below has applied wrong provision to deny Cenvat credit to the appellant. Therefore, Cenvat credit cannot be denied to the appellant. In that circumstances, I hold that the appellant has correctly availed the Cenvat credit of CVD paid on imported coal in terms of Rule 3 (7) of Cenvat Credit Rules, 2004. Further, I find that the show cause notice has been issued by invoking extended period of limitation. As the Revenue*

*itself has applied wrong provisions of law, therefore, the extended period of limitation is not invocable. In that circumstances, the impugned order is set aside."*

This decision succinctly captures the core principle governing the issue.

8.9 Likewise, in *Rungta Mines Ltd. vs Commissioner of CGST & Central Excise, 2025 (10) TMI 1035 (CESTAT Kolkata)* in Paras 8,9 & 10 of the Order held that,

*"8. Thus, by following the ratio of the decisions cited supra, we hold that the appellant is eligible to avail the CENVAT Credit of the CVD paid by them on imported coal. Accordingly, we hold that the disallowance of CENVAT Credit to the appellant under section 14 of the CENVAT Credit Rules, 2004, along with the demand of interest, in the impugned order is not sustainable and hence we set aside the same. As there is no irregularity in availing the credit, we are of the opinion that no penalty is imposable on the appellant; hence we also set aside the penalty, equal to the amount of credit disallowed, as imposed on the appellant under Rule 15(2) of the said Rules, read with Section 11AC of the Central excise Act, 1944.*

*9. Regarding invocation of extended period of limitation, we find that the dispute in the instant case relates to pure interpretation of statute and the appellant has claimed CVD under the bona fide belief that they are entitled to avail the credit of CVD paid on the imported coal. Thus, it is evident that there was no intention to avail irregular credit on the part of the appellant. Therefore, we also hold that the extended period cannot be invoked in this case to disallow the credit.*

*10. In view of the above discussions, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law."*

8.10 The consistent thread running through all the above decisions relied upon by the appellant is that CVD remains a duty under Section 3 of the Customs Tariff Act

irrespective of the rate at which it is paid, and that eligibility to CENVAT credit depends on the nature of duty and actual duty amount paid. These decisions have also consistently held that notifications prescribing concessional rates do not curtail the statutory right to credit.

8.11 The Department, on the other hand, has relied upon TRU Letter dated 25.03.2011 and CBEC Circular No. 41/2013-Cus to contend that concessional CVD is not eligible for credit. However, it is well settled that circulars and administrative instructions cannot override statutory provisions. Where the statute and rules clearly permit availment of credit, such benefit cannot be denied by relying on executive instructions. The circulars relied upon by the Department do not expressly prohibit availment of credit and, in any event, cannot be interpreted in a manner contrary to the statutory scheme.

8.12 The interpretation sought to be placed by the Department on the expression "equivalent to duty of excise" as meaning equality in rate is not supported either by the statutory text or by judicial precedent. The word "equivalent" has to be understood in the context of measure of levy and not in the sense of exact numerical parity. Accepting the Department's interpretation would lead to anomalous results,

whereby credit would be denied even when duty is paid under valid statutory provisions merely because the rate differs from the tariff rate.

8.13 The CENVAT scheme is designed to avoid cascading of taxes and to ensure seamless flow of credit. Denial of credit on the basis of concessional rate of duty would defeat the very purpose of the scheme and lead to unintended consequences. Such an interpretation cannot be accepted.

8.14 In view of the above discussion, and respectfully following the binding judicial precedents cited supra, we hold that the denial of CENVAT credit on the ground that CVD was paid at concessional rate is not sustainable in law. The issue stands conclusively settled in favour of the appellant.

**ISSUE (ii): Whether the demand is sustainable on merits and limitation**

9.1 Having held that the appellant is entitled to avail CENVAT credit on the CVD paid under Notification No. 12/2012-Cus, the very foundation of the demand does not survive. However, since the impugned order has also invoked the extended period of limitation and imposed penalty, it is necessary to independently examine the sustainability of the

demand on the ground of limitation and the applicability of penal provisions.

9.2 The demand in the present case has been raised by invoking the extended period under Section 11A of the Central Excise Act, 1944 on the allegation that the appellant had wrongly availed CENVAT credit. The justification for invoking the extended period must necessarily be founded on suppression of facts, wilful misstatement, fraud or collusion with intent to evade payment of duty. It is well settled that mere wrong availment of credit, or difference in interpretation of law, does not ipso facto attract the extended period.

9.3 The appellant has contended that all relevant particulars relating to availment of credit were duly reflected in statutory records and returns filed before the Department and that there was complete transparency in their transactions. There is no allegation that the appellant had suppressed any material fact or had failed to disclose relevant information. The issue involved pertains to interpretation of provisions of Rule 3 of the CENVAT Credit Rules, 2004 and the effect of exemption notifications, which is purely a legal issue.

9.4 The appellant has placed reliance on the judgment of the Hon'ble Supreme Court in *Pushpam Pharmaceuticals Company vs Collector of Central Excise, 1995 (78) E.L.T. 401 (S.C.)*, wherein the law on the scope of "suppression of facts" in the context of extended period has been authoritatively laid down. The Hon'ble Court observed that suppression of facts must be wilful and with an intent to evade duty. Mere omission to disclose correct information is not suppression unless it is deliberate.

The ratio of the said judgment, as rightly relied upon by the appellant, is that suppression must be deliberate and accompanied by intent to evade duty, and cannot be inferred merely from an erroneous claim or a differing interpretation of law. Applying the above principle to the facts of the present case, where the issue pertains to interpretation of eligibility of CENVAT credit and all relevant particulars were disclosed in statutory records, the essential ingredient of wilful suppression with intent to evade duty is clearly absent.

9.5 In the present case, the issue relates to eligibility of credit on CVD paid at concessional rate under an exemption notification. The fact that multiple Tribunal decisions have been rendered on this very issue, as discussed in detail under Issue (i), clearly establishes that the matter is interpretational and debatable. When an issue

is subject to differing interpretations and judicial scrutiny, it cannot be said that the assessee has suppressed facts or acted with intent to evade duty.

9.6 The Department has not brought on record any material to establish that the appellant had deliberately suppressed facts or misrepresented the nature of transactions. The availment of credit was reflected in statutory returns and was within the knowledge of the Department. Therefore, the essential ingredients required for invoking extended period are conspicuously absent.

9.7 Further, it is also well settled by the Hon'ble Supreme Court in *CCE vs Rajasthan Spinning & Weaving Mills, 2009 (238) E.L.T. 3 (S.C.)*, wherein the Apex Court held that penalty under Section 11AC is attracted only when the conditions of fraud, suppression or wilful misstatement are satisfied. In the absence of such conditions, penalty cannot be sustained.

9.8 In the present case, as discussed *supra*, the Department has failed to establish any element of suppression or intent to evade duty. The appellant has acted on a bona fide interpretation of law and has disclosed all relevant facts. Therefore, penalty is not imposable.

9.9 Even otherwise, once the demand itself is held to be unsustainable on merits, the consequential liabilities of interest and penalty cannot survive. It is well settled that interest and penalty are consequential and cannot survive independently of the principal demand.

9.10 In view of the foregoing discussion, we hold that the invocation of extended period of limitation is not sustainable in law. Consequently, the demand is liable to be set aside both on merits and on limitation.

10.1 In view of the foregoing discussion and findings recorded hereinabove, we hold that the appellant is entitled to avail CENVAT credit of Countervailing Duty (CVD) paid under Notification No. 12/2012-Cus, as amended, and that denial of such credit on the ground that the duty was paid at concessional rate is not sustainable in law.

10.2 We further hold that the demand confirmed in the impugned order is not sustainable on merits and that the invocation of extended period of limitation under Section 11A of the Central Excise Act, 1944 is also not justified in the facts and circumstances of the case.

11. Consequently, the impugned Order-in-Original No. 33/COMMR/CE/2017 dated 14.12.2017 is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 17.04.2026)

Sd/-  
**(AJAYAN T.V.)**  
MEMBER (JUDICIAL)

MK

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)