

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

REGIONAL BENCH - COURT NO. - I

Excise Appeal No. 30049 of 2019

(Arising out of **Order-in-Appeal** No.TTD-EXCUS-000-APP-015-18-19 dated 31.05.2018
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

India Cements Ltd.,
Yerraguntla,
Kadapa,
Andhra Pradesh - 516 309.

..

APPELLANT

VERSUS

**Pr. Commissioner of Central Tax
Tirupati - GST**

..

RESPONDENT

No. 9/86,
West Church Complex,
Amaravathi Nagar,
MR Palli Road,
Tirupati, Chittoor,
Andhra Pradesh - 517 502.

APPEARANCE:

Shri Narendra Dave, Advocate for the Appellant.

Shri Dr. T.V. Rajesh, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30356/2026

Date of Hearing: 08.07.2026

Date of Decision: 10.07.2026

[ORDER PER: P. ANJANI KUMAR]

M/s India Cements Ltd., contested the impugned order dated 31.05.2018 passed by Commissioner of Central Tax & Customs (Appeals) culminating the proceedings initiated vide Show Cause Notices dated 18.04.2016 and 05.05.2017.

2. The brief issue involved in the case is whether the appellants are eligible to avail Cenvat Credit on the Counter Veiling Duty (CVD) paid on the import of Steam Coal at a concessional rate of duty of 1% /2% in terms of Notification No. 12/2012 dated 17.03.2012.

3. Revenue entertains an opinion that there is a Central Excise Notification No. 1/2011 which exempts the central excise duty on the Steam Coal imported by the appellants and therefore the appellants are not eligible for the Cenvat Credit of CVD paid as per Customs Notification.

4. Learned Counsel for the appellants submits that when one or more notifications are available for the appellants, the appellants are free to choose any of the notification which is beneficial to them. He also submits that there is no bar in the Cenvat Credit Rules, 2004 (CCR) to avail Cenvat Credit on the CVD paid by them on the import of Steam Coal and there is no restriction in the CCR making them dis-entitled to Cenvat Credit. He further submits that there are two other small issues involved in the case, wherein, penalty has been imposed on them even though they have paid duty/the Cenvat Credit availed along with interest before issuance of Show Cause Notice.

5. He also submits that as the ingredients for invocation of extended period are not specified and therefore, extended period cannot be invoked and consequently imposition of penalty is not justified. In respect of his submissions, he relies on the following cases:

a. India Cements Vs Commr GST & CE [2026 (4) TMI 1227 (Tri-Chen)]

b. Shyam Steel Vs CCGST & CX [2021 (12) TMI 956 (Tri-Kolkata)]
affirmed by the Calcutta High Court in [2022 (9) TMI 230]

c. Tamil Nadu Vs Commr GST & CE [2021 (10) TMI 13 (Tri-Chennai)]
affirmed by the Madras High Court in [2026 (4) TMI 1075]

d. Seshasayee Paper Vs Commr GST & CE [2026 (1) TMI 508 (Tri-Chennai)]

e. Sree Rengaraj Vs Commr GST& CE [2026 (4) TMI 1738 (Tri-Chennai)]

- f. Chettinad Cement Vs Commr GST & CE [2023 (11) TMI 57 (Tri-Chennai)]
- g. Rungta Mines Vs Commr GST& CE [2025 (10) TMI 1035 (Tri-Kolkata)]
- h. Jaypee Sidhi Vs CCGST, Cus & CEx [2019 (7) TMI 250 (Tri-Delhi)]
- i. Hindalco Industries Ltd., Vs GST [2018 (3) TMI 1124 (Tri-Delhi)]
- j. CCE-I Vs Gaurav Mercantiles Ltd., [2005 (190) ELT 11 (Bom HC)]
- k. Rashtriya Ispat Nigam Ltd., Vs CCE [2003 (161) ELT 285 (Tri-Bang)]
maintained by the Supreme Court in [2004 (163) ELT A53 (SC)]
- l. IDMC Ltd., Vs CCE [2014 (302) ELT 420 (Tri-Ahmd)]
- m. CCE Vs Sunrise Zinck Ltd., [2015 (322) ELT 198 (Bom HC)]

6. Learned AR reiterates the findings of the impugned order and submits that availment of Cenvat Credit on an item which is not liable to pay any central excise duty in terms of Notification No. 1/2011 is against the spirit of the Cenvat Credit Scheme under Central Excise.

7. Heard both the sides and perused the records of the case.

8. We find that there are two notifications which are available to the appellants Notification No. 12/2012-Cus dated 17.03.2012 as amended by 12/2013 dated 01.03.2013 exempts the additional duty leviable under subsection 1 of Section 3 of the Customs Tariff Act 1975 as in excess of the additional duty rate specified in the corresponding entry in Column 5 of the table appended to the notification. We find that at entry no. 123 Steam Coal falling under CTI 2711 9700 is chargeable to 1% additional Customs duty, which popularly referred to as CVD. The appellants have availed this notification. Revenue is of the opinion that as the central excise duty itself is exempted by Notification No. 01/2011 entry no. 28, the appellants are not eligible to Cenvat Credit. We find that when more than one notification is

available, the appellant importer is free to choose any notification and no particular notification can be pressed upon the appellant. Moreover, we find that in the scheme of Cenvat Credit, credit is available in terms of Rule 3 of CCR. Rule 3 describes that Cenvat Credit of rational duty leviable under Section 3 of Customs Tariff Act. Moreover, Cenvat Credit is admissible to the goods which are duty paid, which are brought into the factory of production which are used in the manufacture of excisable goods cleared on payment of duty and when the inputs are received in the factory under the cover of a document prescribed under Rule 9 of CCR. It is not the case of the Department that any of the conditions for availing Cenvat Credit are violated by the appellants. Therefore, we find that credit cannot be denied. We further find that similar issue has come before the Chennai Bench of the Tribunal for consideration in the case of the appellant themselves. CESTAT, Chennai Bench vide Final Order No. 40499/2026 dated 17.04.2026 held as follows:

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.

9. Coming to the other issue, it is not disputed that the appellants have paid back the Cenvat Credit availed on the inputs used by them for civil construction. Learned Counsel for the appellants submits that in the absence of reasons to invoke extended period 100% penalty cannot be imposed. We find that in the facts and circumstances of the case, no case has been made to invoke the extended period. Therefore, penalty under Section 11AC cannot be imposed. However, looking into the fact that the appellants are an established corporate being well aware with the provisions of central excise total immunity from payment of penalty cannot be extended. Therefore, imposition of a penalty of about 10% of the Credit availed would meet the interest of justice.

10. In view of the above, the appeal is partly allowed as follows:

(i) Demand of Rs. 23,98,944/- + Rs. 33,03,297/- on the alleged irregularly availed Cenvat Credit of additional duty of Customs (CVD) is set aside.

(ii) Penalty of Rs. 23,98,944/- + Rs 33,03,297/- imposed on (i) above is also set aside.

(iii) Penalty of Rs. 5,000/- imposed under Rule 27 for (i) as above is set aside.

(iv) Rest of the penalty imposed i.e. Rs. 5,11,726 + Rs. 11,11,774 + Rs. 7083 is limited to Rs. 1,50,000/-.

(v) All other credits confirmed are not disturbed.

(Pronounced in the open court on 10.07.2026)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)