CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 843 of 2009

[Arising out of Order-in-Original No. 03/MS-03/Th-I/2009 dated 31.03.2009 passed by the Commissioner of Central Excise, Thane-I.]

Prakash Jokhani **.... Appellant**
Partner of M/s Venus International
D-1, 2, 3, Sainath Industrial Complex
Mithpada, Khoni Village, Bhiwandi
District Thane, Maharashtra–421 302.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Earlier Thane - I Central Excise Commissionerate
Thane – 411 001.

WITH

EXCISE APPEAL No. 844 of 2009

[Arising out of Order-in-Original No. 03/MS-03/Th-I/2009 dated 31.03.2009 passed by the Commissioner of Central Excise, Thane-I.]

Venus International **.... Appellant**
D-1, 2, 3, Sainath Industrial Complex
Mithpada, Khoni Village, Bhiwandi
District Thane, Maharashtra–421 302.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Earlier Thane - I Central Excise Commissionerate
Thane – 411 001.

WITH

EXCISE APPEAL No. 852 of 2009

[Arising out of Order-in-Original No. 03/MS-03/Th-I/2009 dated 31.03.2009 passed by the Commissioner of Central Excise, Thane-I.]

Shree Nathji Textiles **.... Appellant**
N.H-2,3, Prince Industrial Estate
Behind Keshav Nagar, Bhestan,
Surat - 413 305.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Earlier Thane - I Central Excise Commissionerate
Thane – 411 001.

APPEARANCE:

Shri Darius B. Shroff, Senior Advocate for the Appellants

Shri P.K. Acharya, Authorized Representative for the Respondent

AND

EXCISE APPEAL No. 911 of 2009

[Arising out of Order-in-Original No. 03/MS-03/Th-I/2009 dated 31.03.2009 passed by the Commissioner of Central Excise, Thane-I.]

Commissioner of CGST & Central Excise .... Appellant
Earlier Thane - I Central Excise Commissionerate
Thane – 411 001.

VERSUS

Venus International .... Respondent
D-1, 2, 3, Sainath Industrial Complex
Mithpada, Khoni Village, Bhiwandi
District Thane, Maharashtra–421 302.

APPEARANCE:

Shri P.K. Acharya, Authorized Representative for the Appellant

Shri Darius B. Shroff, Senior Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85016-85019/2026

Date of Hearing: 06.11.2025
Date of Decision: 08.01.2026

PER: M.M. PARTHIBAN

Pursuant to the remand directions contained in the Orders dated 11.07.2024, 18.02.2025 and 08.07.2025 passed by the Hon'ble High Court of Bombay in Central Excise Appeal No.35 of 2022, this appeal is being taken up for hearing.

2.1 Briefly stated, the facts of the case are that the Order-in-Original No. 03/MS-03/Th-I/2009 dated 31.03.2009 (for short, referred to, as 'the impugned order'), passed by the Commissioner of Central Excise, Thane-I, both the assessee-appellant as well as the Revenue had filed appeals before

the Tribunal, which were disposed of vide common Final Order No. A/85237-85240/2022 dated 28.03.2022, in the following manner:

(i) Appeal No. E/843/2009 was partly allowed by reducing the penalty imposed on Shri Prakash Jokhani from Rs.20,00,000/- to Rs.5,00,000/-;

(ii) Appeal No. E/844/2009 were also partly allowed by holding that the CENVAT credit availed after revocation of Rule 12B with effect from 9.7.2004 is in order and upheld part of the duty demand to the extent of Rs.1,21,61,218/- being fraudulently availed CENVAT credit along with interest under Section 11AB of Central Excise Act, 1944 and penalty under Rule 13 of CENVAT Credit Rules read with Section 11AC of Central Excise Act, 1944.

(iii) Appeal No. E/852/2009 filed by Shree Nathji Textiles was allowed; and

(iv) Appeal No. E/911/2009 filed by the Revenue was dismissed as infructuous.

2.2 The said order dated 28.03.2022 of the Tribunal, disposing the Excise Appeal No. 844 of 2009 was assailed against by the appellant M/s Venus International, by way of filing the appeal before the Hon'ble High Court of Bombay, which was listed as Central Excise Appeal No.35 of 2022. The said appeal filed before the Hon'ble High Court was disposed of by quashing/ setting aside the order dated 28.03.2022 of the Tribunal by way of remand for *de novo* consideration. However, with regard to the other appeals being numbers E/843/2009, E/852/2009 and E/911/2009, we find that against the Final Order dated 28.03.2022 of the Tribunal, no further appeals were preferred by the appellants/Revenue before the higher appellate forum(s). Thus, with regard to those appeals, the order dated 28.03.2022 passed by the Tribunal has attained finality and cannot be further agitated. Since, the Registry, due to inadvertence, had listed those disposed of appeals along with the Appeal No. E/844/2009, the said decided appeals, in our considered view, cannot be taken up for hearing, since infructuous. Therefore, considering those appeals as infructuous, we are only taking up the appeal No. E/844 of 2009 for hearing and disposal.

3.1 The appellant M/s Venus International, having its factory located at Bhiwandi, is engaged *inter alia*, in the manufacture of cut and packed processed fabrics, for the purpose of export. During the disputed period, the appellant had only installed a wrapping machine at its factory premises. Since, it had not installed any other machines for converting the yarn into grey fabrics or to process further grey fabrics into dyed and printed fabrics, it had sent the duty paid yarn to various job workers for manufacture of the dyed and printed fabrics. Upon receipt of such fabrics from the job workers, the appellant had carried out further activities of cutting and packing of such fabrics in its factory, for effecting supplies to the overseas entities. The appellant had availed CENVAT credit of Central Excise duty paid on inputs, including yarn and fabrics before sending the same to job worker by following the procedures prescribed in Rule 4(5)(a) of CENVAT Credit Rules, 2004. Since the ultimate final products were meant for export, the appellant had paid central excise duty on removal of the said goods from the factory and subsequently claimed the benefit of rebate under Rule 18 of the Central Excise Rules, 2002. While discharging the central excise duty payable on exportation of the final products, the appellant had utilised the CENVAT credit taken by it in terms of CENVAT Credit Rules, 2004.

3.2 The Government had introduced a new Rule 12B in the Central Excise Rules, 2002 vide Notification No. 24/2003-C.E. (N.T.) dated 25.03.2003. The said notification had allowed payment of duty by the person, who gets yarns or fabrics, readymade garments produced on his account, on job work basis. It was also provided in the statute that the said person is required to comply with all the prescribed procedures, considering itself as a Central Excise assessee. However, the said Rule 12B was omitted in the amending notification No.11/2004-C.E. (N.T.) dated 09.07.2004. As a result of such omission, the principal manufacturer was not permitted to avail the CENVAT credit on the inputs. However, in this case, the appellant continued to avail CENVAT credit on inputs during the period from 09.07.2004 to 30.06.2005.

3.3 During the course of scrutiny of records by the jurisdictional Central Excise officers, it was observed that the CENVAT Credit availed by the appellant during the period 09.07.2004 to 30.06.2005 is irregular inasmuch as it had no facility to manufacture the dyed and printed fabrics and hence, it cannot be termed as a manufacturer of excisable goods in terms of Rule

9 ibid and therefore, the CENVAT availed by it is not permissible under the law. On the basis of such observation, the department had issued the Show Cause Notice (SCN) dated 09.08.2005, alleging denial of wrongly availed CENVAT credit and payment of interest. Besides, it was also proposed for imposition of penalty on the appellant and the other persons.

3.4 Subsequent to the issuance of Show Cause Notice (SCN) dated 09.08.2005, further investigation was conducted by the department and the premises of appellant located at Saki Naka, Mumbai and at Bhiwandi were searched on 12.08.2005 and 14.08.2005. Further, the department had also conducted inquiries at various other places along with the job workers premises. Upon investigation, the department had contended that an amount of Rs.1,21,61,218/- availed as CENVAT credit, out of the total amount of CENVAT Credit of Rs.2,88,89,873/- availed by the appellant, was fraudulent inasmuch as availment of such benefit was on the basis of fake/bogus duty paying documents/ invoices. With the said observations, an addendum dated 17.09.2007 to the original SCN dated 09.08.2005, was issued, seeking for confirmation of the CENVAT duty demand of Rs.1,21,61,218/- under Rule 12/14 of the CENVAT Credit Rules, 2002/2004 and imposition of penalty under Section 11AC of the Central Excise Act, 1944. Both the SCN dated 09.08.2005 along with its addendum dated 17.09.2007, was adjudicated by the learned Commissioner of Central Excise vide the impugned order dated 31.03.2009, in confirming the adjudged demands on the appellant as well as others.

5. The issues relevant for consideration before the Tribunal, are as follows:

(i) Whether the appellant is eligible to avail CENVAT Credit during the disputed period from 09.07.2024 to 30.06.2005, when Rule 12B Rules of 2002 was omitted from the statute book by notification No.11/2004-C.E. (N.T.) dated 09.07.2004? ;

(ii) Does the addendum issued to SCN dated 09.08.2005 is sustainable?

(iii) If the answer to question No. (i) is in affirmative, whether the appellant is exposed to the penal consequence or otherwise?

6. In order to appreciate the issues under dispute, we would like to refer to the provisions of Rule 12B of the Rules of 2002, which provided the procedures to be adopted by the manufacturer and subsequent omission of the said Rule from the statute book. The relevant rule, existed at the material time is extracted herein below:

> *"[1]**Rule 12B. Job work in textiles and textile articles**.—(1) Notwithstanding anything contained in these rules, every person (not being an export-oriented unit or a unit located in special economic zone) who gets yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act, **produced or manufactured on his account, on job work** (hereinafter referred to as "the said person") shall obtain registration, maintain accounts, **pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee:***
>
> ***Provided** that the job worker may, at his option, agree to obtain registration, maintain accounts, pay the duty leviable on such goods, prepare the invoice and comply with the other provisions of these rules. In such a case the provisions of these rules shall not apply to the said person. The job worker, may, at his option, authorize the said person to, on his behalf as his agent, maintain accounts, pay duty, prepare invoice and comply with any of the provisions of these rules except that of rule 9 :*
>
> ***Provided further** that the job worker may make **an option to undertake the activities mentioned in this sub-rule as an agent or person authorized** by the said person and in such a case, the **said job worker shall be deemed to be the said person**.*
>
> *(2) If the **said person desires clearance of excisable goods for home consumption or for exports from the premises of the job worker, he shall pay duty on such excisable goods and prepare an invoice**, in the manner referred to in rules 8 and 11 respectively except for mentioning the date and time of removal of goods on such invoice. The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after completion of job work are intended to be cleared, before the goods are cleared from the premises of the job worker. The job worker shall fill up the particulars of date and time of removal of goods before the clearance of goods. After such clearanc[2]e the job worker shall intimate to the said person, the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.*
>
> *(3) The said person may supply or cause to supply to a job worker, the following goods, namely,—*
>
> > *(a) inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2002, without reversal of the credit thereon; or*

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[1] *Rule 12B was inserted by Notification No. 24/2003-C.E. (N.T.), dated 25.03.2003, and amended by Notification No. 27/2003-C.E. (N.T.), dated 01.04.2003 and lastly Rule 12B was Omitted by Notification No. 11/2004-C.E. (N.T.), dated 9-7-2004.*

(b) goods manufactured in the factory of the said person without payment of duty;

under a challan, consignment note or any other document (hereinafter referred to as "document") as described in sub-rule (4), duly signed by him or his authorized agent.

(4)
(a) The document shall be in duplicate, in printed (including computer printed) format, having printed running serial numbers on a financial year basis. The document, before it is issued shall be signed by the sender, of the goods referred to in sub-rule (3) or his authorized representative, as the case may be.

(b) The document for the movement of goods from the said person to the job worker shall contain the following information,—
(i) the name, address and registration number of the said person;

(ii) the Range, Division and the Commissionerate with whom the said person is registered;
(iii) the description, quantity (in terms of kg./m/sq. m) and the value of the goods being sent for the job work;

(iv) the date of dispatch of such goods; and

(v) the name and address of the job worker.

(c) The document pertaining to movement of goods from a job worker to another job worker or from a job worker to the said person shall contain,—

(i) the name and address of the job worker (the sender);

(ii) the description and quantity (in terms of kg./m/sq. m) of the goods being sent;

(iii) the date of dispatch of such goods;

(iv) the name and address of the job worker/the said person to whom the goods are being sent (the receiver).

(d) The responsibility in respect of accountability of the goods, referred to in sub-rule (3) shall lie on the said person.

(5) The job worker, on receipt of the goods mentioned in sub-rule (3) or, as the case may be, from another job worker sent by him in terms of clause (ii) to sub-rule (7), shall duly acknowledge the receipt of the goods on the said document.

(6) Notwithstanding anything contained in these rules, the job worker shall not be required to get himself registered or shall not be required to maintain any record evidencing the processes undertaken for the sole purposes of undertaking job work under these rules unless he has exercised his option in terms of the first or the second proviso to sub-rule (1).

(7) The job worker, with or without completing the job work, may,—

(i) return the goods without payment of duty to the said person; or

(ii) send the goods without payment of duty to another job worker; or

(iii) clear the goods for home consumption or for exports,

subject to receipt of an invoice from the said person, as mentioned in sub-rule (2). The job worker shall clear the goods after filling in the time and date of removal and authenticating such details. The rate of duty on such goods shall be rate in force on date of removal of such goods from the premises of the job worker. No excisable goods shall be removed except under an invoice :

Provided *that the goods may be sent under a proforma invoice in terms of proviso to sub-rule (1) of rule 11.*

(8) The provisions of this rule, mutatis mutandis, be applicable to the goods in the nature of the waste, by-products or like goods arising during the course of manufacture of the goods mentioned in sub-rule (1).

(9) Nothing contained in these rules shall apply to the goods sent from or to an export oriented unit or a unit located in a special economic zone.

Explanation 1.—For the purposes of this rule, "job worker" means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said person or by another job worker or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act and the term "job work" shall be construed accordingly.

Explanation 2.—For the removal of doubt, it is clarified that if any goods or part thereof is lost, destroyed, found short at any time before the clearance of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act or waste, by-products or like goods arising during the course of manufacture of such goods, the said person shall be liable to pay duty thereon as if such goods were cleared for home consumption."

7. On plain reading of the above procedure prescribed under Rule 12B *ibid*, it transpires that the government had prescribed a detailed procedure for enabling the textile processors who had to depend upon job workers for undertaking various activities before the final products are manufactured by them, which could be cleared for home consumption on payment of duty or exported under claim for rebate. It also provided for availing CENVAT credit facility by complying with various requirements of law such as, issuance of invoice, documentation of movement of goods, maintenance and accounting of goods including generation of waste/scrap, accountability of the entire process of sending goods for job work and their return to the factory, furnishing of information to the jurisdictional Central

Excise authorities etc., The said facility was withdrawn by issue of Notification No.11/2004-C.E. (N.T.) dated 09.07.2004, which came into effect immediately on the date of its issue i.e., on 09.07.2004. Due to such sudden withdrawal of ongoing manufacturing facilities, a number of problems faced by the persons availing the facility of Rule 12B ibid was represented to the government and the Tax Research Unit of the Ministry of Finance vide Central Board of Excise & Customs (CBEC) Circular No. 795/28/2004-CX dated 28-07.2004 had allowed the persons operating under Rule 12B ibid to continue to allow them to make payment of duty, whereupon the goods can be cleared from their registered premises, or from the premises of the job worker, whether for domestic clearance or for export (under ARE-1 procedure) as a transitional measure. The relevant extract of the said circular is given below:

"Circular No.795/28/2004-CX
28th July, 2004

F.No.345/2/2004-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
***

Subject: Issues relating to changes in the excise duty structure on textiles and textile articles, as pointed out by the trade and the field formations-reg.

The undersigned is directed to state that subsequent to Budget 2004 announcements, a number of representations/references have been received from the trade as well as from the field formations pertaining to the changes made in the excise duty structure on Textiles and Textile Articles. The point raised and the clarifications thereon are as follows.

xxx xxx xxx xxx

Issue No. (2) : *A manufacturer had stock of inputs as on 08.07.2004 (or stock of finished goods which contained inputs) on which he had availed credit. Can he avail full exemption under notification no. 30/2004-CE on finished goods which was in stock or are manufactured subsequently from such inputs?*

Clarification : *If the manufacturer had not taken any credit on his pre-budget stock of inputs, he can clear the finished products without payment of duty under notification no. 30/2004-CE dated 09.07.2004. However, for manufacturers who had pre-budget stock of inputs (or stock of semi-finished or finished goods which contained inputs) on which credit had already been availed, there are two options. He can continue to pay duty on the finished goods made therefrom, at post budget rates i.e. 4% for cotton and 8% for others. Alternatively, he can reverse the credit amount and avail of full exemption on the finished goods.*

Issue No. 3: *Rule 12 B of the Central Excise Rules 2002 (which prescribed special job work procedure for textile traders getting their goods manufactured on job work basis) was omitted vide Notification No. 11/2004-C.E. (N.T.) dated 9 th July, 2004. A number of units which were either not undertaking any activity/ processes or were undertaking processes such as cutting and packing (which does not amount to manufacture) had taken registration as 'said person' under the said Rule 12B. Such persons can not be considered 'manufacturers' and their registered premises can not be considered as 'factory'. Some of such persons have credit balance in their account, have inputs on which such credit is taken, and have stock of finished goods received from job workers. Some of the inputs are with their job workers. What would be modalities of clearing such goods and utilizing such credit? Whether such 'said persons' be allowed to issue Cenvatable invoices or ARE-1 for exports?*

Clarification : *The issue is essentially transitional one and arises only in respect of inputs received on or before 08.07.2004. The person registered under erstwhile Rule 12B, even though not undertaking any manufacturing activity on his own and not having a factory, should be treated as a manufacturer for all practical purposes. If such person reverses the credit on the prebudget stock of inputs (as mentioned in point no. (2) above), the finished goods would become eligible for duty free clearance by anybody clearing them, be it the registered person or his job workers. However, in case the trader does not desire to reverse the credit on the pre-budget stock of inputs, he may be allowed to make payment of duty, whereupon the goods can be cleared from his registered premises, or from the premises of the job worker, whether for domestic clearance or for export (under ARE-1 procedure). In either case, no duty is to be paid by the job worker and duty liability, if any, would be on the trader (i.e. the registered person). In case of polyester filament yarn also, which now attracts mandatory duty, the pre-budget stock can be cleared in this manner, by allowing the trader to pay duty. This procedure would not, however, apply in case of inputs received on or after 9th July, 2004."*

8.1 Further, we also find that the Tribunal in the case of *Maharashtra Dyeing & Printing Works Vs. Commissioner of Central Excise, Mumbai* - 2011 (271) E.L.T. 558 (Tri. - Mumbai) have held that the facility for payment of Central Excise duty including CENVAT credit facility should be available for the assessee beyond 09.07.2004 in respect of goods lying with them. The relevant paragraphs of the said order is quoted below:

"*4. The issue involved in this case is regarding the wrong availment of Cenvat Credit by the appellant on invoice issued by the Shree Laxmi Textiles, S.P. Cotton Mills and M/s. Hindustan Cotton Mills. The appellants herein availed Cenvat Credit of duty paid as indicated on the invoice by these three firms, the invoices were dated 11-8-2004, 12-8-2004, 18-8-2004. The case of the Revenue is that the traders who had issued invoices have lost their status as manufacturer, subsequent to the deletion of Rule 12B of Central Excise Rules, 2002, with effect from 9-7-2004, as person, who can issue the invoice and discharge duty liability.*

4. We find that the CBE &C Circular No. 345/2/2004-TRU dated 28-7-2004 have categorically clarified as under :-
"……..Hence, from the above it is clear that even after the omission of Rule 12B of Central Excise Rules, 2002, the firm can clear goods lying with them under an invoice after paying Central Excise Duty as per law".

5. It can be seen from the above reproduced portion of the Board Circular that the trader can discharge the duty liability on the goods, which were received by him prior to 9-7-2004…."

8.2 We further find that the Hon'ble High Court of Gujarat in the case of *Omkar Textile Mills Private Limited Vs. Commissioner of Central Excise, Ahmedabad-II* - 2010 (262) E.L.T. 115 (Guj.) have also held that certain facility was made available as per existing rules, the same cannot be changed to the disadvantage of denial of such benefit, before the credit facility was availed of. The relevant paragraphs of the said judgement is given below:

"8. Having heard Mr. Ravani, learned Standing Counsel appearing for the Revenue and having perused the order of the authorities below including the order passed by the Tribunal in the case of S.V. Business Pvt. Ltd. (supra) and judgment of this Court as well as Hon'ble Supreme Court we are of the view that the issue is squarely covered by the earlier decision. This Court in the case of Dipak Vegetable Oil Industries Ltd. v. Union of India (supra) had clearly held that a right, which is acquired as a result of a statutory provision cannot be taken away retrospectively unless the statutory provision so provides or by necessary implication it has the same effect. Even with regard to the proviso to Rule 3 support can be derived from the observations made by the Hon'ble Supreme Court in the case of Eicher Motors Ltd. v. Union of India, 1999 (106) E.L.T. 3 (S.C.), the scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. Any manner or mode of application of the said rule would result in affecting the rights of the assessees. The Hon'ble Supreme Court further observed that Section 37 of the Act does not enable the authorities concerned to make a rule which cannot be said to be applied to the goods manufactured prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods. The Court further observed that when on the strength of the rules available certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufacture products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of a scheme, is affected and, in particular it loses sight of the fact that the provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned.

> *9. Considering above legal position, we are of the view that the assessee's case is squarely covered by the decision of the Hon'ble Supreme Court and hence no substantial question of law arises out of the order of the Tribunal. Both these appeals are accordingly dismissed."*

Being dissatisfied with the above judgement, though the department had filed the Special Leave to Appeal (Civil) CC No. 8124 of 2009, but the same was dismissed by the Hon'ble Supreme Court, reported in 2016 (332) E.L.T. A84 (S.C.), in upholding the order of the Hon'ble High Court.

8.3 In view of the above discussion and analysis of the legal position as well as the clarification issued by the CBEC (supra), and on the basis of the above decisions of the Tribunal, Hon'ble High Court, Hon'ble Supreme Court, we are of the considered view that the appellants are eligible to CENVAT Credit during the disputed period from 09.07.2024 to 30.06.2005.

9. It is not in dispute that the SCN for recovery of CENVAT credit was issued on 09.08.2005. Further, the addendum was issued after a lapse of more than two years i.e., on 17.09.2007. The basis of such issue of addendum also includes the subsequent investigation, involving search operations conducted on 12.08.2005 and 14.08.2005. Even though it is contended by the department that CENVAT Credit of Rs.1,21,61,218/- is a part of the total amount of CENVAT Credit of Rs.2,88,89,873/- availed by the appellant, but to the extent the addendum was issued, allegations were levelled that such credit facility have been fraudulently availed on the basis of fake/bogus duty paying documents/invoices. Since, the addendum had considered entirely a new ground, which was not canvassed in the original SCN dated 09.08.2005, such fresh grounds urged cannot be addressed to by the judicial forum inasmuch as the said addendum is not in continuance with the original SCN containing the same allegations. Therefore, we are of the considered view that the grounds under addendum dated 17.09.2007 is required to be issued separately under the legal provisions of Section 11A of the Central Excise Act, 1994. Thus, the demand of CENVAT Credit on account of additional ground, even though such amount is already covered under the SCN issued earlier, is required to be issued separately within the normal time limit provided under Section 11A ibid. Since, the original SCN dated 09.08.2005 was issued by invoking the extended period of limitation, the addendum thereto cannot be further issued beyond the period of two

years thereto. Therefore, both on account of limitation of time as well as on merits, the addendum issued on 17.09.2007 is not legally sustainable.

10. On the basis of the above decisions and analysis, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellant M/s Venus International. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant. As discussed in the preceding paragraph 2.2 above, since the other appeals as per the preamble have already been disposed of, the same become infructuous.

(Order pronounced in the open Court on 08.01.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM