Reserved On : 10/07/2026
Pronounced On : 17/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.9248 of 2026

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No

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MESSRS VIBRANT PRODUCTS & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2
MS NIDHI VYAS, (1523) for the Respondent(s) No. 1 to 3

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The petitioners, in the present writ petition, have prayed for a direction declaring Rule 12(4) of the Health Security Se National Security Cess Rules, 2026 (for short "the Rules") as *ultra vires* of Sections 4, 5, 35 and Schedule-II of the Health Security Se National Security Cess Act, 2025 (for short "the Cess Act") and also Articles 14 and 19(1)(g) of the Constitution of India. The petitioners have further prayed for quashing and setting aside order dated 22.04.2026 by which their application seeking abatement of cess has been rejected.

BRIEF FACTS

2. The petitioners are engaged in the business of producing and supplying *pan masala* (not containing tobacco), which is classified under Tariff Item No.21069020. These goods attract the levy of cess under the Cess Act as well as Goods and Services Tax (for short, 'the GST Act') under the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act'). *Pan masala* is a product sold and supplied in pouch packing, and such pouches are produced on packing machines like Form Fill and Seal (for short, 'the FFS') machines, i.e. Form, Fill and Seal machines, and Profile Pouch Making Machines.

2.1 In the month of March 2026, the petitioners proposed to install 02 more machines, and therefore an intimation was submitted by the petitioners on 12.03.2026 requesting approval of the declaration and permission for the installation of 02 new machines in the factory premises.

2.2 One more machine was also proposed to be installed by the petitioners, and therefore an intimation regarding such machine was also furnished by the petitioners.

2.3 The jurisdictional Assistant Commissioner informed the petitioners by letter dated 17.03.2026 that the verification report of the Quality Council of India had been received regarding the technical verification of the said 02 machines, and that the petitioners would be eligible to submit a declaration for installation of new/additional machines upon issuance of the order determining the amount of cess payable under the Cess Act.

2.4 All the 03 new machines were allowed to be installed in the petitioners' factory between 18.03.2026 and 20.03.2026, and all the 03 new machines were verified as fully installed and operational from 20.03.2026.

2.5 The petitioners, at their factory premises, installed 03 packing machines and made them operational on 20.03.2026.

2.6 It is the case of the petitioners that though these machines did not exist in the petitioners' factory till 19.03.2026, as they were not "*machines installed for the manufacture or production of the specified goods*" as contemplated under the charging Section 4 of the Cess Act, yet cess for the first 19 days of March 2026 has been levied and collected by the Assistant Commissioner in view of the provision of sub-rule (4) of Rule 12 of the Rules. Hence, the said Rule is required to be struck down.

2.7 It is the petitioners' case that as against a total sum of Rs.7,68,00,000/- deposited by the petitioners as cess for the 03 new machines in question for the entire month of March 2026, the amount of cess payable on a proportionate basis for the period from 20.03.2026 to 31.03.2026 was Rs.2,97,29,033/-; and therefore an abatement of the excess amount of Rs.4,70,70,967/- was required to be allowed and the excess amount had to be returned to the petitioners. For claiming back the excess amount so deposited towards the cess liability in respect of the 03 new machines for the period from 01.03.2026 to 19.03.2026, the petitioners submitted a formal application for abatement on 10.04.2026.

2.8 This application was filed in view of Section 5(7) of the Cess Act read with Rule 15(2) of the Rules, which provides that where any machine remained inoperative for a continuous period of fifteen days or more, the cess computed under that section shall be abated proportionately for the period of such non-operation, subject to such conditions as may be prescribed. Since the three new machines remained non-operational till 19.03.2026 because these 03 machines were admittedly installed and rendered functional on 20.03.2026, these 03 machines were actually in operation only from 20.03.2026, and hence the amount of cess for these machines for the first 19 days of March 2026 was required to be abated under the scheme of Section 4 read with Section 5(7) of the Cess Act.

2.9 The Assistant Commissioner passed an adjudication order on 22.04.2026 and rejected the petitioners' abatement application by holding that abatement was permissible under Rule 15 of the Rules only when the packing machines were installed and subsequently sealed and rendered non-operational, but the petitioners' case related to the installation of new machines during the month, and not to the temporary non-operation of already installed machines. The Assistant Commissioner referred to sub-rule (4) of Rule 12 of the Rules and held that the provision provides for taking the maximum number of machines installed on any day during the month for the purpose of calculating cess in case of the addition, installation, removal, or uninstallation of a machine in the factory during the month, and accordingly the 03 machines in question installed in the factory on 20.03.2026 were also to be taken into consideration for computing and collecting cess for all the machines installed and operated during the month. The Assistant Commissioner also referred to the answer to Question No.12 of the FAQs published by the Central Board of Indirect Taxes and Customs (for short "CBIC") and held that the provisions relating to abatement under Section 5(7) of the Cess Act read with Rule 15 of the Rules were applicable to cases where an already installed and operational machine was temporarily shut down and sealed for a continuous period of not less than 15 days; and that the provisions of abatement were not applicable in the present case, where the machines were newly installed during the month and were not subjected to sealing or closure after being put into operation.

SUBMISSIONS ON BEHALF OF PETITIONERS :

3. Learned advocate Mr.Paresh M. Dave has submitted that the levy of cess under Section 4 of the Cess Act is on the "machines installed" for the manufacture or production of the specified goods. Thus, cess, which is a tax on the manufacture or production of specified goods like *pan masala*, is a levy imposed on the machines actually installed in the factory of the taxable person, which were operated for the manufacture of the goods. If machines were not installed and were therefore not used for the manufacture of the specified goods, then no cess could be levied and collected on such machines for the period for which they were not installed at all, and were consequently non-existent machines. But Rule 12(4) of the Rules results in a situation where cess is levied and collected on machines which were not installed in the factory, and therefore this Rule is *ultra vires* the charging provision of Section 4(1) of the Cess Act.

3.1 It is submitted that Section 5 of the Cess Act is the machinery provision, which provides for computing cess based on various factors like (i) the speed of the machines, (ii) the weight of the specified goods packed in a pouch, etc., as declared by the taxable person; and thus the computation of cess is on an existing/installed machine and the weight of the goods packed in a pouch by using such installed machine. Section 5(1) of the Cess Act makes it clear that the computation of cess is based on a machine installed and in operation, and not on non-existent machines. But Rule 12(4) of the Rules results in a situation where cess is levied and collected on machines which were not installed in the factory, and therefore this Rule is *ultra vires* the machinery provision of Section 5 of the Cess Act.

3.2 It is submitted that sub-section (2) of Section 5 of the Cess Act refers to a situation where specified goods were manufactured wholly or partly with the aid of a machine, and this provision lays down the method of computing cess in such a situation. This part of the machinery provision shows that the levy was on specified goods "manufactured or produced" with the aid of the machine, and accordingly the existence of an operational machine in the factory of the taxable person is a pre-condition for computing cess under the Cess Act.

3.3 It is submitted that sub-section (3) of Section 5 of the Cess Act provides for collecting cess as the aggregate of the amount calculated "for each of the machines installed in a factory of the taxable person", and thus this part of the machinery section also shows that cess is computed for machines installed in a factory, and not for non-existent machines which are not installed in the factory. But Rule 12(4) of the Rules results in a situation where cess is levied and collected on machines which were not installed in the factory, and therefore this Rule is *ultra vires* the machinery provision of Section 5(3) read with Section 5(2) of the Cess Act.

3.4 It is contended that sub-section (7) of Section 5 of the Cess Act provides for abatement of cess where any machine remained "inoperative". Section 5(7) of the Cess Act mandatorily provides for not computing (and hence not collecting) any amount of cess in the case of an "inoperative" machine where the machine remained "inoperative" for a continuous period of 15 days or more. But Rule 12(4) of the Rules results in a situation where cess is payable even for those days of a month when the machine remained "inoperative" because the machine was not installed in the factory of the taxable person. The impugned Rule cannot result in a levy while laying down the procedure for payment of cess; and therefore the provision of Rule 12(4) of the Rules is *ultra vires* Section 5(7) of the Cess Act.

3.5 It is submitted that the machinery provision of Section 5(1) of the Cess Act provides for computation of cess in accordance with the amount specified in Schedule-II of the cess Act, which is applicable to wholly or partly "machine-based" processes. The existence of a machine for a machine-based process is thus a mandatory condition for the applicability of the amount/rate of cess under Table-I of Schedule-II of the cess Act. The amount of cess under this Schedule for a machine-based process is to be computed on the basis of the maximum rated speed of the "machine"; and thus a machine must exist (i.e. be installed) in a factory for computing cess under Section 5(1) of the Cess Act. The amount of cess on a monthly per-machine basis is specified under Column 4 of Table-I of Schedule-II of the cess Act, and it is clear therefrom that cess is to be computed on a per-machine basis, signifying that the existence and installation of a machine is a pre-condition for computing cess chargeable from the taxable person. But Rule 12(4) of the Rules creates a situation where cess payable is calculated even for a machine which was not installed in the factory, because the Rule provides for charging cess even for such period when the machine was non-existent, if the machine came to be installed on any day during the month. Thus, Rule 12(4) of the Rules is *ultra vires* Schedule II of the Cess Act also.

3.6 It is submitted that the levy of any tax cannot be imposed by way of a Rule, because a Rule or a Regulation is framed by the Executive in exercise of powers meant for delegated legislation. Any tax can be levied and imposed only by an Act of Parliament or the State Assembly, whereas only the procedure for collection and recovery of a tax validly imposed by Parliament or the State Assembly, as the case may be, could be provided under Rules framed by the Government. But in the present case, the levy of cess is created by virtue of Rule 12(4) of the Rules even for machines which were not installed in the factory of a taxable person. Sub-rule (4) of Rule 12 is *ultra vires* Article 14 of the Constitution of India, because this provision has no nexus with the objective sought to be achieved by the charging and machinery provisions of the Cess Act.

3.7 It is submitted that a newly registered person, that is, a manufacturer installing new machines and commencing the manufacture of specified goods on such machines for the first time, is required to pay cess on the machines from the commencement of installation, and not for the prior period. If the petitioners had been newly registered persons, then the petitioners would not have been required to pay cess on the three machines in question till 20.03.2026 because the installation of the machines was permitted by the jurisdictional Revenue Officer at that time and consequently the petitioners installed such machines by 20.03.2026.

The provision of sub-rule (1) of Rule 12 of the Rules is also an indicator that the levy of cess is only on machines installed, and not on machines which were not installed, i.e. not for the period when the machines were not installed. But the case of an existing registered person who installs new machines is covered under sub-rule (4) of Rule 12 of the Rules; and for such a person like the petitioners, this Rule provides for taking the maximum number of machines installed on any day during the month for computing the monthly cess liability. The petitioners were registered persons who commenced paying cess from 01.02.2026, and therefore the Assistant Commissioner has relied on sub-rule (4) of Rule 12 of the Rules and upheld the collection of cess for the three new machines for the entire month of March 2026, even though the installation of these machines commenced and was completed only on 20.03.2026. This action and order of the Assistant Commissioner are based on Rule 12(4) of the Rules, and this provision treats a manufacturer like the petitioners, who installs new machines in the middle of a month, in a different and discriminatory manner compared to a newly registered person, because a newly registered person is not required to pay cess on the machines until the installation of the machines commences in the factory. The impugned provision is therefore *ultra vires* Article 14 of the Constitution of India.

3.8 It is submitted that the conditions for abatement are accordingly laid down by virtue of Rule 15 of the Rules. Sub-rule (1) of Rule 15 of the Rules makes it clear that the conditions are (i) intimating the proper officer in advance before the non-operation of an installed machine, (ii) actually not operating the packing machine, and (iii) not manufacturing specified goods on the machine. All these conditions show that abatement from cess otherwise payable is allowed when the machine was not operated. Rule 15 of the Rules nowhere provides that abatement from the liability to pay cess on a monthly basis would not be allowed if the machine was not operated because the machine was not installed at all for a period of 15 or more continuous days.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

4. Opposing the present petition, learned Senior Standing Counsel Ms.Nidhi Vyas, appearing for the respondent authorities, has submitted that the petitioners are misreading the scheme of the Act as well as the Rules. She has submitted that Rule 12(4) of the Rules, which the petitioners are seeking to have declared as *ultra vires*, has been framed keeping in mind the intention of the Act to levy the cess on the production of the goods as per the capacity of the machines and not as per the number of machines installed by the tax-payer/producer of the goods.

4.1 It is submitted that the petitioners filed an application for grant of abatement under Rule 15 of the Rules in terms of Section 5(7) of the Cess Act, which has been rejected by the competent authority. She has submitted that the Explanation to Rule 15 of the Rules refers to the installed machines, which are operational machines that have, in turn, become non-operative during the period of abatement. It is submitted that, in the instant case, none of the machines of the petitioners has become non-operative. It is submitted that the provisions of Rule 15 of the Rules have to be read in conjunction with the provisions of sub-section (7) of Section 5 of the Cess Act, which stipulate that the machine must remain inoperative for a continuous period of 15 days.

4.2 It is submitted that, in the present case, the petitioners had installed new machines during the month in which the production was undertaken along with other machines, and hence, in such circumstances, the provision of Rule 12(4) of the Rules, read with Rule 15 of the Rules, cannot be struck down or declared *ultra vires*.

ANALYSIS OF STATUTORY SCHEME OF COMPUTATION OF CESS.

5. We may first deal with the computation of cess under the statutory scheme. The petitioners are seeking a declaration that Rule 12(4) of the Rules is *ultra vires* the provisions of Sections 4, 5 and 35 and Schedule-II of the Cess Act and also Articles 14 and 19(1)(g) of the Constitution of India.

6. The challenge to the constitutional validity of the provision stems from of the installation of new machines by the petitioners on 20.03.2026. Subsequent thereto, the petitioners were made liable to pay the cess for the entire month of March, 2026 as per the provisions of Rule 12(4) of the Rules.

7. In order to ascertain the true purport of Rule 12(4) of the Rules, it is necessary to examine the scheme of the provisions of Sections 4 and 5 of the Cess Act. The same reads as under:

"CHAPTER III

"Section 4 : Levy and Collection of Cess

(1) There shall be levied and collected a cess, to be called Health Security se National Security Cess, from every taxable person, on the machines installed or other processes undertaken by him for the manufacture or production of the specified goods referred to in Schedule I, at the amount specified in Schedule II and computed in the manner provided in section 5.

(2) The cess leviable under sub-section (1) shall be in addition to any other duties or taxes chargeable on the specified goods under any law for the time being in force.

(3) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt any taxable person or a class of taxable persons, unconditionally or subject to such conditions, from the whole or any part of the cess leviable under this section for such period as may be specified in the said notification.

5. Manner of Computation of Cess

(1) The cess referred to in section 4 shall be computed in accordance with the provisions of this section based on the relevant process, speed of the machine or capacity of other processes and the weight of the specified goods packed in pouch, tin or other container, as the case may be, as declared by the taxable person and, where applicable, as verified or calibrated by the proper officer under section 9, and on the amount specified in Schedule II for such combination of process, speed or capacity and weight.

(2) Where the specified goods are manufactured or produced wholly or partly with the aid of a machine, the cess shall be levied and collected from the taxable person —

> *(a) with reference to the maximum rated speed of the machine measured in number of pouches, tins or containers per minute;*
>
> *(b) for the corresponding weight of the specified goods packed in a pouch, tin or container;*
>
> *(c) at the monthly amount of cess specified in column (4) in Table 1 of Schedule II against such rated speed and weight provided therein.*

(3) The cess payable under section 4 shall be the aggregate of cess calculated under sub-section (2) for each of the machines installed in a factory of the taxable person and where such taxable person owns, possesses, leases or otherwise controls machines installed in more than one factory, the cess shall be computed separately for each such factory.

(4) Where the specified goods are manufactured or produced by a taxable person wholly by manual process without the aid of a machine, the cess shall be levied and collected from the taxable person for each factory at the monthly amount specified in column (4) in Table 2 of Schedule II, irrespective of the capacity of such manual process or the weight of the specified goods packed in a pouch, tin or container.

(5) For the purposes of sub-section (4), a taxable person shall be deemed to be engaged in the manufacture or production of the specified goods wholly by manual process without the aid of a machine only where no machine capable of performing, assisting, or completing any part of the process of manufacture or production of the specified goods is installed in the factory of the taxable person.

(6) The cess determined under sub-section (2) or sub-section (4) shall be payable for each month or part thereof and shall be subject to such abatement or other conditions, as may be prescribed.

(7) Where any machine or manual process unit remains inoperative for a continuous period of fifteen days or more, the cess computed under this section shall, subject to such conditions, as may be prescribed, be abated proportionately for the period of such non-operation."

8. Chapter-III of the Cess Act deals with the levy and collection of cess. Section 4 of the Cess Act provides for the levy and collection of cess from every taxable person on the "machines installed or other process undertaken" by him for the manufacture or production of the specified goods referred to in Schedule-I of the Cess Act at the amount specified in Schedule-II of the Cess Act and computed in the manner provided in Section 5 of the Cess Act. Section 5 of the Cess Act refers to the computation of cess on the relevant process, speed of the machine or capacity of other processes and the weight of the specified goods packed in a pouch, tin or other container as declared by the taxable person and verified or calibrated by the proper officers under Section 9 of the Cess Act and the amount specified in Schedule-II of the Cess Act for such combination of process, speed or capacity and weight. Thus, the manner of computation of cess is premised on three parameters i.e. *"1) combination of process, 2) speed or capacity and 3) weight of the specified goods which are processed and produced in the machines which are installed by the taxable payer."*

9. The three clauses under sub-section (2) of Section 5 of the Cess Act provides for levy of cess to be collected from the taxable person on specified goods manufactured with reference to (a) the "maximum rated speed of the machine measured in the number of pouches, tins or containers per minute clause, (b) the corresponding weight of the specified goods packed in a pouch tin or container, and (c) the monthly amount of cess specified in Column-4 of Table-1 of Schedule-II of the Cess Act against such rated speed and weight provided therein.

10. Sub-section (3) of Section 5 of the Cess Act stipulates that the cess payable under Section 4 of the Cess Act shall be the aggregate of the cess calculated under sub-section (2) of Section 5 of the Cess Act for each of the machines installed in a factory of the taxable person. Sub-section (6) of the Cess Act provides that the cess determined under sub-section (2) or sub-section (4) of Section 5 of the Cess Act shall be payable for each month or part thereof and shall be subject to such abatement or other conditions as may be prescribed. Finally, sub-section (7) of Section 5 of the Cess Act deals with those machines which remain inoperative for a continuous period of 15 days or more, and the calculation of cess is to be made proportionately for the period of such non-operation.

11. At this stage, the provisions of Rule 12 of the Rules need to be incorporated. The same read thus:

> *"12. Cess payable to be calculated. –*
>
> *(1) The cess payable for a particular month shall be calculated as per the amount of cess per machine or manual process unit specified in Schedule II of the Act: Provided that in the case of a newly registered person, the cess payable for the first month shall be calculated on a pro-rata basis, having regard to the total number of days in that month and the number of days commencing from the date of installation of the machine or the start of the*

manual process unit, as the case may be, and such cess shall be paid within five days of such installation or start.

(2) For the purpose of calculating the cess under sub-rule (1), the maximum rated speed of a machine shall be taken as the maximum speed achievable by the machine, as declared in FORM HSNS DEC-01 and as confirmed by the proper officer, irrespective of the actual operating speed at which that machine is used to manufacture or produce the specified goods of any weight.

(3) Where a machine is used to manufacture or produce specified goods of different weights during a month, the cess payable for that machine for that month shall be calculated with reference to the maximum weight of pouch or tin or container manufactured or produced as specified in Schedule II of the Act.

(4) In case of addition or installation or removal or uninstallation of a machine in the factory during the month, for the purpose of calculating cess under sub-rule (1), the number of machines installed for the month shall be taken as the maximum number of machines installed on any day during the month."

12. The petitioners are aggrieved by the provisions of sub-rule (4) of Rule 12 of the Rules. A close reading of sub-rule (4) of Rule 12 of the Rules manifests that in the case of the "*addition or installation or uninstallation of machine*" in the factory during the month for the calculation of cess under sub-rule (1) of Rule 12 of the Rules, the number of machines installed for the month is required to be taken as the maximum number of machines installed on any day during the month. Thus, sub-rule (4) of Rule 12 of the Rules has to be read in conjunction with the provisions of sub-rule (1) to Rule 12 of the Rules, and cannot be read independently. Rule 12 (1) of the Rules refers to the cess payable for a particular month which shall be calculated as per the amount of Cess per machine or manual process unit specified in Schedule-II of the Act. The proviso to sub-rule (1) to Rule 12 of the Rules refers to the cases of a newly registered persons, and the cess payable for the first month by such persons is to be calculated on a *pro-rata* basis having regard to the total

number of days in that month and the number of days commencing from the date of installation of the machine. Thus, the quintessential feature of Rule 12 of the Rules is the calculation of the Cess for a particular month as per the amount of cess per machine or manual process unit specified in Schedule-II of the Cess Act. The relevant part of Schedule-II of the Cess Act is extracted as under:

"SCHEDULE II
[See sections 2(o), 4(1), 5 and 6] TABLE 1
Applicable to wholly or partly machine-based process

Sr. No.	Number of pouches or tins or containers per minute (Maximum rated speed of machine)	Weight of the specified goods per pouch or tin or container	Amount of cess per month per machine (rupees in lakhs)
1	2	3	4
1	Up to 500	Up to 2.5 grams	101.00
		Above 2.5 grams but below 10 grams	364.00
		Above 10 grams	849.00
2	501 to 1000	Up to 2.5 grams Above 2.5 grams but below 10 grams	202.00 728.00
X	X	X	X

Schedule-II of the Cess Act is articulated in the context of Sections 2(o), 4(1), 5 and 6 of the Cess Act, and is the connecting link with Rule 12 of the Rules. Column-2 refers to the number of pouches or tins or containers per minute into (maximum rated speed of the machine). Column-3 refers to the weight of the specified goods per pouch or tin or container and Column-4 prescribes the amount of cess per month per machine (Rupees in lakhs). Thus, the amount of cess per month per machine is calculated on the basis of two components in Columns 2 and 3 which are the number of pouches or tins or containers produced by a machine along with the weight of the specified goods per pouch or tin or container. This applies to the newly registered tax payer and also to those who subsequently installed operational machines. The petitioners want to declare the provisions of sub-rule (4) of Rule 12 of the Rules as *ultra vires* by misreading the same. The petitioners are aggrieved by the calculation of the machines, which are to be calculated as the maximum number machines installed during the month, even though such machines may be installed at the end of the month.

OPINION AND CONCLUSION :

13. In the present case, the installation of three machines took place on 20.03.2026. The petitioners are reading the provisions of sub-rule (4) of Rule 12 of the Rules with a jaundiced eye by ignoring the provisions of sub-rule (1) of Rule 12 of the Rules read with the Schedule-II of the Cess Act which finds place in Section 5 of the Cess Act and sub-rule (1) of Rule 12 of the Rules. The computation of cess is exclusively premised on the production from the machines installed by the tax-payer for the production of goods. Schedule-II, which is the connecting link between the provisions of Section 5 of the Cess Act and Rule 12 of the Rules, mentions the amount of cess to be computed on the basis of the production in terms of the number of pouches, tins or containers at the maximum rated speed of the machines along with the weight of the specified goods per pouch, tin or container. Such calculation of the amount of Cess is not exclusively premised on the number of machines as canvassed by the petitioners, but on the production of actual goods in

pouches, containers or tins through operational machines.

14. A holistic reading of Section 5 of the Cess Act, paired with Rule 12 of the Rules and Schedule-II of the Cess Act, confirms that the computation of cess is not based on the specific date or time of machine installation. Instead, it is computed on the total production capacity of all machines installed during a month that are capable of producing goods in pouches, containers, or tins at their maximum rated speed. Consequently, Rule 12(4) of the Rules cannot be read in isolation or restricted solely to the act of installation of machines, as the petitioners suggests. The phrasing of Rule 12(4) of the Rules, specifically, the expression *"for the purpose of calculation of cess under sub-rule (1)"* is intrinsically linked to the production of goods by installed and operational machines, regardless of their specific installation date within that month. The cess is then calculated according to the factors specified in Schedule-II of the Cess Act. Under Rule 12(4) of the Rules, the total number of operational machines used for manufacturing the goods listed in Schedule-II of the Cess Act must be treated as the maximum number of installed machines. If the petitioners' argument is accepted, the machines installed towards the end of the month (which, in the petitioners' case, were installed after 20.03.2026) would be excluded from the cess calculation, despite being actively used to produce or package *pan masala* in pouches, tins, or containers. The sole exception to this cess liability is found in Section 5(7) of the Cess Act, which provides for a proportionate abatement of cess only if a machine remains inoperative for a continuous period of 15 days or more. The petitioners do not claim that the machines installed after 20.03.2026 were inoperative; on the contrary, the petitioners assert

that they were fully operational after that date. Therefore, even if machines are installed at the end of the month, they must be included in the cess computation if they are used in the manufacturing of goods as per Rule 12(4) of the Rules. The meaning of the word "inoperative" as used in Section 5(7) of the Cess Act cannot be extended to operational machines installed at the end of the month, neither it can be extended to the newly registered tax payer who installs the machines at any time durig the month. Furthermore, it cannot be argued through a deeming fiction that because these machines were installed later in the month, they can be said to be "inoperative", for the initial period, and hence, they should be excluded from the ambit of Rule 12(4) of the Rules, and the goods produced from them should therefore be excluded from the cess. The word “inoperative” applies to only those machines that have remained in such status for a period of 15 days or more after their installation before becoming operational, and not to those machines that are installed later in the month, and are made operational. The petitioners want to read into the statute something which the legislature has not intended. There is a clear demarcation in the Rules regarding the calculation of cess from the goods produced by installed operational machines and those which remain inoperative after installation.

15. In the decision in the case of <u>State of Tamil Nadu and Anr. vs. P. Krishnamurthy and Ors</u>. (2006) 4 S.C.C. 517, the Supreme Court has enunciated the following principles while adjudging the validity of subordinate legislation, including regulations. The same read as under:

> *“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be*

challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)

16 The court considering the validity of a sub-ordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity."

16. The questioning of the validity of Rule 12(4) of the Rules, as per the say of the petitioners, at its best, will fall under principle (d) and (e). However, we do not find that the Rule 12(4) of the Rules is in violation of the enabling provisions of the Act, nor does the Rule convey manifest arbitrariness or unreasonableness. The object of the scheme of the statutory provisions is to charge cess on the production of goods on the basis of installed and operational machines in a given month. The petitioners have misread and misinterpreted the provisions of the Act and the Rules.

17. Thus, on an overall analysis of the statutory scheme, we do not find that the Rule 12(4) of the Rules is *ultra vires* either Sections 4, 5 or 35 of the Cess Act and Schedule-II thereto or Articles 14 and 19(1)(g) of the Constitution of India. As far as the challenge to the impugned order dated 22.04.2026 is concerned, the petitioners have an equally efficacious remedy of filing an appeal before the appellate authority under the provisions of Rule 29 of the Rules.

18. In light of the foregoing analysis and observations, the writ petition stands ***dismissed***.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED/1/