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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 28-07-2026

DELIVERED ON: 28-09-2026

CORAM

THE HON'BLE DR JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MRS.JUSTICE N. MALA

CMA No. 2451 of 2004
AND
CMA NO. 2470 OF 2004,CMP NO. 14466 OF 2004,CMP NO. 14549 OF 2004,WP NO. 23840 OF 2004

Commissioner Of Central Excise
Chennai-1 121,Uthamar Gandhi Road,
Nungambakkam, Chennai-34 ..Appellant(s)

Vs

1.M/s.Mrf Ltd.,
P.B.No.5285,Thiruvottiyur Chennai-19
2.Customs, Excise And Service
Tax Appellate Tribunal, Chennai South Zonal
Bench, Chennai-6

..Respondent(s)

CMA No. 2470 of 2004

Commissioner Of Central Excise
Chennai-i 121,Uthamar Gandhi Road,
Nungambakkam, Chennai-34

..Petitioner(s)

Vs

1.M/s.Mrf Ltd.,
P.B.No.5285, Thiruvottiyur, Chennai-19
2.Customs, Excise And Service
Tax Appellate Tribunal, Chennai South Zonal
Bench, Chennai-6 ..Respondent(s)

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WP No. 23840 of 2004

M/s.Mrf Ltd.,
124, Greams Road, Chennai - 600 006, Rep. By
Itsv.Deivasigamani,Csorporate Man

..Petitioner(s)

Vs

1.Union Of India, Rep. By: The
Deputy Commissioner Of Centralexcise, `c` Division,
Chennai I Commissionerate, Chennai-101.
2.The Commissioner Of Central
Excise, Chennai I Commissione-rate, 26/1(old
No.121)mahatma Gandhi Road, Chennai - 34.
3.Customs, Excise And Service Ta
X Appellate Tribunal(cestat) South Zonal Bench,
Shastri Bhavan Annexe, Chennai - 6.

..Respondent(s)

Civil Miscellaneous Appeals filed under Section 35G of the Central Excise Act, 1944, against the Final Order Nos.1003 and 1004/2003 dated 25.11.2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relaing to the issuance of the order bearing Nos.1003 & 1004/2000 dated 25.11.2003 and direct the 1st respondent to implement the said order without any further enquiry.

CMA Nos. 2451 and 2470 of 2004

For Appellant(s): Mr.M.Santhanaraman (sr. Standing Counsel For Customs & Gst)
For Respondent(s): Mr.Karthik Sundaram for
Mr.Pavan Kumar Gandhi
R2 - Tribunal

WP.No.23840 OF 2004

For Petitioner : Mr.Karthik Sundaram for
Pavan Kumar Gandhi
For Respondent ; Mr.M.Santhanaraman (sr. Standing Counsel For Customs & Gst)

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COMMON JUDGMENT

N.Mala J.

(1)The Civil Miscellaneous Appeals are filed by the Revenue against the Final Orders Nos.1003 and 1004 of 2008 of the Tribunal dated 25.11.2003. The writ petition in WP.No.23840/2004, is filed by the respondent, for a mandamus directing the Revenue, the Commissioner of Central Excise, to implement the aforesaid Final Orders dated 25.11.2003.

(2)Since the issue involved in both the Civil Miscellaneous Appeals are one and the same and the writ petition is filed only to implement the orders impugned in the Civil Miscellaneous Appeals, all the three cases are taken up together for hearing and are disposed of by this common judgment.

(3)For the sake of convenience, the parties will be referred to as per their array in the Civil Miscellaneous Appeals.

(4)**The brief facts of the case**:- The respondent / MRF Limited is a manufacturer of tyres, tubes and flaps falling under Chapter 40 of the Schedule to the Central Excise Tarrif Act, 1985. The respondent uses

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unprocessed nylon Tyre Cord fabrics to manufacture processed / dipped rubberized Tyre Cord wrap Sheets [hereinafter referred to as "TCWS"] which are used in the manufacture of tyres. The tyre manufactured by the respondent attracted Basic Excise Duty [BED] under the Central Excise Act, 1994, and the intermediary products namely the unprocessed grey nylon tyre cord fabric, attracted the Additional Excise Duty for goods of Special Importance [hereinafter referred to as "AED [GSI]"] under the Additional Excise Duty [Goods of Special Importance] Act, 1957 [hereinafter referred to as "AED [GSI] Act".]. Notification No.11/1998 [CE] dated 02.06.1998 exempted processed TCWS from AED[GSI] subject to the conditions stated therein. For the period June 1998 to October 1998, the respondent availed AED[GSI] credit of Rs.1,02,38,707/- on unprocessed nylon grey tyre cord fabrics invoking Rule 57A [2] and Notification No.5/94-CE[NT].

(5)The respondent further availed AED[GSI] credit of Rs.1,07,62,274/- for similar input received during 01.11.1998 to 31.03.1999 and filed 5 refund claims totalling Rs.1,03,44,539/- relating to AED[GSI] paid on inputs used in manufacture of tyres, which were ultimately exported.

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While so, a Show Cause Notice dated 02.12.1998 was issued in C.No.V/40/15/55/98-Adj, by the Assistant Commissioner, Central Excise, to the respondent, seeking explanation, as to why *[1]the credit of Rs.1,02,38,707/- [One Crore Two Lakhs Thirty Eight Thousand Seven Hundred and Seven] as aforesaid should not be disallowed under Rule 57[I] of the Central Excise Rules, 1944 and [2]a penalty should not be imposed on them under Rule 173Qbb of the said CER, 44 inasmuch as they have taken credit of duty wrongly in contravention of the said Rule 57C.*

(6)The respondent filed a reply to the Show Cause Notice, contending, *inter alia* that under Notification No.5/94, dated 01.03.1994, AED [GSI] was eligible item of duty for availing MODVAT credit, that exemption under AED [GSI] Act, applied only to TCWS [processed Tyre Cord Wrap Sheet] and not to unprocessed grey tyre cord fabrics and that it was entitled for refund of AED [GSI] proportionate to tyre cord wrap sheet used by it in the manufacture of tyres exported by it.

(7)The Assistant Commissioner, Central Excise, by an order dated 08.02.1999, Order-in-Original No.1/99, ordered the respondent not to take credit of duty on AED [GSI] paid on unprocessed fabrics. The

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Assistant Commissioner further directed the respondent to remit a sum of Rs.1,02,38,707/-, taken credit by it in RG 23 Part II or to pay the sum in cash, if utilised. Thereafter, on 03.05.1999, the Assistant Commissioner, Central Excise, issued another Show Cause Notice to the respondent for the period from 01.11.1998 to 31.03.1999, for the credit availed by them, totalling a sum of Rs.1,07,62,274/- towards duty on excise levied under AED [GSI] Act, and the duty levied under the Customs Tariff Act, in lieu of the duty under the AED [GSI] Act and to show cause as to why *[1]the credit of Rs.1,07,62,274/- [One Crore Seven Lakhs Sixty Two Thousand Two Hundred and Seventy Four] as aforesaid should not be disallowed under Rule 57I of the Central Excise Rules, 1944 and [2]a penalty should not be imposed on them under Rule* 173Qbb *of the said CER, 44 inasmuch as they have taken credit of duty wrongly in contravention of the said Rule 57C.*

(8)The respondent submitted similar reply to the Show Cause Notice and also, by the letter dated 20.10.1999, requested that the Show Cause Notice may be considered along with their claim for refund.

(9)The Assistant Commissioner of Central Excise, by an order dated 21.10.1999, in Order-in-Original No.49/1999, ordered that the

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respondent was not eligible for credit of AED paid on the grey Tyre Cord wrap fabric and adjust the amount of Rs.1,07,62,274/- reversed by the respondent, vide RG 23 A Part II Entries No.1441, 1442, 1443 and 1444 dated 28.06.1999 against the amount sought to be disallowed in the Show Cause Notice dated 03.05.1999. The Assistant Commissioner further rejected 5 refund claims of the respondent and further directed the respondent to furnish details for the period April and May 1998. Aggrieved by the order passed in Order-in-Original No.1/1999, the respondent preferred an Appeal in Appeal No.89/1999 and against the order passed in Order-in-Original No.49/1999, the respondent preferred an Appeal in Appeal No.79/2000.

(10)By an order dated 16.08.1999, the Commissioner of Customs and Central Excise [Appeals], rejected the Appeal preferred by the respondent, confirming the order of the Assistant Commissioner, Central Excise, dated 08.02.1999. Similarly, the Commissioner of Customs and Central Excise [Appeals], rejected the Appeal preferred by the respondent in Appeal No.79/2000, vide order dated 31.07.2000, and confirmed the order of the Assistant Commissioner, Central Excise, dated 21.10.1999.

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(11)Aggrieved by the rejection of the aforesaid appeals by the Commissioner of Customs and Central Excise, the respondent preferred two appeals in E/1722/99 and E/1243/2000/M4 and by a common final order dated 25.11.2003, in Final Order Nos.1003 and 1004/2000, the Customs, Excise and Service Tax Appellate Tribunal [CESTAT], South Zonal Bench, at Chennai, allowed the Appeals.

(12)Aggrieved by the common Final Order of the CESTAT, dated 25.11.2003, in the aforesaid appeals, the Revenue filed the above Civil Miscellaneous Appeals.

(13)At the time of admission of the Appeals, the following substantial questions of law were framed in both the appeals:-

> *''[1]Whether the 1st respondent is eligible to take credit of AED [GSI] paid on inputs when the final product is exempt from AED [GSI] as opposed to the provisions of Rule 57C of the Central Excise Rules, 1944?*
>
> *[2]Whether the Tribunal has erred in ordering the Department to grant refund of the credit of AED [GSI] amounting to Rs.1,03,44,539/- under Rule 57F[13] of the Central Excise Rules, 1944,*

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particularly, when the 1st respondent was not eligible for such credit in view of the provisions of Rule 57C of the Central Excise Rules?''

(14)The learned counsel for the Revenue submitted that the Tribunal failed to examine the applicability of provisions of Rule 57C to the facts of the case and erroneously concluded that the credit on AED [GSI] could be utilised towards the liability of BED for the relevant period which is contrary to the provisions of Rule 57C of the Central Excise Rules, 1944 and the Notification No.5/94-CE[NT] dated 01.03.1994. The learned counsel further submitted that the Tribunal erred in relying on the Board Circular No.751/67/2003-CD dated 30.09.2003, by misconstruing the Circular as having retrospective operation. The learned counsel further submitted that the Tribunal erred in concluding that Notification No.13/2003 CE[NT] dated 01.03.2003 and the aforesaid Board Circular conferred a fresh right on the respondent overlooking that, the aforesaid Notification had only prospective effect and was not applicable to past cases. The learned counsel further submitted that the Tribunal erred in thinking that the aforesaid Circular enabled the respondent to claim credit of duty on

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AED [GSI] accrued prior to 01.03.2003, for utilisation towards payment of BED in view of the issuance of the aforesaid Notification. The learned counsel submitted that the Circular did not intend to grant or determine the eligibility of credit on AED [GSI] to the respondent and such determination of credit ought to be made strictly in terms of the law provided under Rule 57C of the Central Excise Rules read with Notification No.5/94 CE[NT] dated 01.03.1994. The learned counsel therefore submitted that the conclusion of the Tribunal that, in view of the Board's Circular, the respondent became eligible for credit, is totally erroneous, illegal and invalid. The learned counsel further submitted that the Tribunal failed to note that the provisions of Rule 57F[13], were totally inapplicable to the case on hand and therefore, the extension of benefit of refund, on the basis of inapplicable provision to the respondent, is wholly unsustainable. The learned counsel therefore submitted that the impugned orders deserved to be set aside.

(15)The respondent filed a detailed written submissions. The respondent, in the written submissions, referred to the various litigations pending before this Court. In the written arguments, the respondent also

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referred to WP.Nos.37380 and 34072/2003, which cases in fact, stand de-tagged by the Court order dated 28.07.2026. Therefore, the written submissions insofar as it relates to the issues in the aforesaid two Civil Miscellaneous Appeals and WP.No.23840/2004 alone are considered.

(16)The first submission of the respondent is that pursuant to the Final Order dated 25.11.2003 of the CESTAT, the respondent had only taken recredit of a sum of Rs.1,06,56,442/- which was paid by the respondent to the Department, consequent to the retrospective amendment of Section 88 of the FinanceAct, 2004 and the Notice dated 14.06.2005 along with the Corrigendum dated 05.07.2005, of the Deputy Commissioner of Central Excise, 'C' Division, Chennai. The learned counsel for the respondent submitted that the issue before this Court relates to grant of refund of AED[GSI] used as inputs for manufacture of final products which final products were exported. The learned counsel submitted that the contention of the appellant that by virtue of Rule 57C, the respondent was not entitled to credit of duty, was rightly rejected by the Tribunal since it found that the claim of the respondent of AED [GSI] amounting to Rs.1,03,44,539/- related to final product of tyres and not TCWS. The learned counsel further submitted that the

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Tribunal had rightly found that Rule 57[C] envisaged that the credit of duty was ineligible only in cases where final product was exempted from duty, since it was not the Revenue's case that the final product, namely, tyre, is exempted from duty. The learned counsel, in other words, submitted that as the final product of the respondent is tyres, which attracts BED under Section 3 of the Central Excise Act, 1944, the bar under Rule 57C for availment of credit of AED [GSI] paid on inputs will not arise. The learned counsel submitted that since the respondent satisfied all the conditions of Rule 57F[13] of the CER, 1944, read with Notification 85/87-CE dated 01.03.1987 as amended, the respondent is entitled to refund of AED [GSI] paid on inputs which were used for manufacture of tyres [final products] which were exported.

(17)The learned counsel for the respondent further submitted that the respondent was entitled to re-credit and refund in terms of Section 142 [6][a] of the CGST Act, of the amount of AED [GSI] paid in cash subsequent to the amendment vide Section 88 of the Finance Act, 2004, and recovery under Section 124 of the Finance Act, 2005. The learned counsel further submitted that the respondent is fully entitled to

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re-credit of AED [GSI] so paid since GST has been introduced with effect from 01.07.2017 and the respondent will no longer be in a position to utilize even CENVAT, MODVAT credit. Hence, the AED [GSI] which is available as a re-credit, should be refunded to the respondent in terms of the transitional provision of Section 140[1] of the CGST Act. The learned counsel, relying on the retrospective amendment of Rule 3[6][b] of CENVAT Credit Rules, vide Section 88 of the Finance Act, 2004, submitted that AED [GSI] credit can be utilised for discharging the BED liability on or after 01.04.2000. For the aforesaid reasons, the learned counsel prayed for dismissal of the Civil Miscellaneous Appeals and for allowing of the writ petition filed by the respondent for implementation of the orders impugned in the Appeals.

(18)We have heard the learned counsels on both sides and perused the materials placed on record.

(19)The respondent is a Tyre manufacturing Company and it uses unprocessed nylon tyre cord fabrics to process them to manufacture 'dipped tyre cord wrap sheet' and 'rubberized tyre cord wrap sheet [TCWS]', which are used in the manufacture of tyres. The respondent

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exports the tyres to other countries. It is the admitted case of the respondent that it is liable to pay the Basic Excise Duty [BED] under the Central Excise Act, 1944, and the Additional Excise Duty [Goods of Special Importance] Act, 1957. The respondent availed MODVAT credit under Rule 57A of the Central Excise Act, for AED [GSI] paid on unprocessed nylon tyre cord fabrics used in the manufacture of processed Tyre Cord Wrap Sheet [TCWS]. The respondent, for the period June 1998 to October 1998, availed the AED [GSI] credit of Rs.1,02,38,707/- on unprocessed nylon tyre cord fabrics and availed AED [GSI] of Rs.1,07,62,274/- for the period from 01.11.1998 to 31.03.1999. The respondent also filed five refund claims totalling to Rs.1,03,44,539/- relating to AED [GSI] paid on inputs used in the manufacture of processed tyre cord wrap sheets and tyres, which were ultimately exported.

(20)The Assistant Commissioner, was of the view that the respondent was not eligible for credit, under Rule 57C for inputs used in manufacturing final products which were wholly exempted from excise duty or chargeable to NIL duty and that the Notification No.5/94-CE[NT] dated 01.03.1994 restricted utilisation of AED [GSI] credit to

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payment of AED [GSI] on final product. He therefore, issued two Show Cause Notices, one dated 02.12.1998 for the period from June 1998 to October 1998 and the other dated 03.05.1999, for the period from November 1998 to March 1999, calling upon the respondent to show cause as to why the credit availed by it, should not be disallowed.

(21)The respondent submitted its reply and thereafter, by orders dated 08.02.1999 in Order-in-Original No.1/99 and 21.10.1999 in Order-in-Original No.49/99, the Assistant Commissioner [Central Excise], disallowed both credit and refund claims. Aggrieved by the rejection of the credit and refund claims, the respondent preferred two appeals in Order-in-Appeal Nos.89/99 and 78/2000. Both the appeals were dismissed by the Commissioner]Appeals], vide orders dated 16.08.1999 and 31.07.2000 respectively. The respondent challenged the appellate orders before the CESTAT, Chennai, and the CESTAT, Chennai, by final orders dated 25.11.2003, in Final Orders No.1003 and 1004/2003, relying on the judgment in ***Coats Viyella India Limited Vs. CCE, Madurai*** reported in ***1999 [111] ELT 90,*** held that AED [GSI] credit could be utilised towards the Basic Excise Duty where the final product was chargeable to BED, but not AED [GSI].

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The Tribunal held that the respondent was entitled to refund of Rs.1,03,44,539/- under Rule 57F[13]. The Revenue, aggrieved by the aforesaid orders of the CESTAT, has filed the above Civil Miscellaneous Appeals.

(22)The basic issue to be addressed by us in these appeals is whether the respondent is eligible to take credit of AED [GSI] paid on input when the final product is exempt from AED [GSI]. If the respondent is found eligible for credit, then the respondent would be entitled to refund of credit of AED [GSI] paid by it on grey nylon tyre cord fabric [unprocessed fabric].

(23)Admittedly, the unprocessed grey nylon tyre cord fabrics are used in the manufacture of dipped TCWS and rubberized TCWS which are used in the manufacture of tyres. It is also admitted that the respondent exports the tyres manufactured by it. The respondent has paid AED [GSI] on unprocessed nylon tyre cord fabrics and claimed credit for it while discharging its MODVAT liability. According to the appellant, under Rule 57C, credit of AED [GSI] is allowable only in case the final product is not exempted from duty. There is a dispute between the parties as to what is the final product. While the Revenue claims that

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the final product is TCWS, the respondent claims that it is tyres. The Tribunal found that TCWS was used for captive consumption and in the manufacture of tyres and therefore, the final product of the respondent is only tyres and not TCWS. The Tribunal further found that under Rule 57C, credit of duty is not allowable in case the final product was exempt from duty. Since the Tribunal found that the final product was only tyres and the appellant has not disputed that the tyres were not exempt from payment of basic excise duty, it found that the respondent was eligible for adjustment of AED [GSI] paid by it towards liability against the basic duty of excise on the tyres.

(24)Before examining the substantial questions of law, we consider it necessary to first refer to the provisions of Rule 57C and Notification No.5/94 dated 01.03.1994.

(25)Rule 57C reads as follows:-

> *"**RULE 57C:-**Credit of any duty not to be allowed if final products are exempt. No credit of the specified duty shall be allowed on such quantity of inputs used which is used in the manufacture of final products [which are exempt from whole of the duty of excise leviable thereon or are*

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chargeable to nil rate of duty] except when the final products are either-

(I) cleared to a unit in a Free Trade Zone; or

(ii) cleared to a hundred per cent. exportoriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Parks; or

(iv) supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95Central Excises, dated 28th August 1995."

(26)The second proviso to Rule 57 in General Exemption 62 MODVAT-Inputs/Outputs [Notification No.5/94 dated 01.03.1994] reads as follows:-

*"**Provided** further that the credit of specified duty insofar as it relates to the additional duty of excise specified under [iii] above or the additional duty specified under [iv]*

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[c] above, allowed in respect of inputs shall be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise [Goods of Special Importance] Act, 1957 [58 of 1957], on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under Rule 57F of the said Rules."

(27)The aforesaid provisions clearly stipulate that credit of duty is not allowable if final products are exempt under AED [GSI]. The provision also states that no "credit on specified duty" shall be allowed on such quantities of inputs used in the manufacture of final products which are exempt from duty of excise leviable thereon or chargeable to NIL rate of duty when the final products are either cleared to free trade zone etc.

(28)Rule 57C uses the expression "specified duty" for allowing credit for the quantity of inputs used to manufacture the final products. The The respondent indisputably claim AED [GSI] credit on inputsw used in the manufacture of tyres for paying BED liability. The provisions of Rule 57C, as clarified by the 2nd proviso in the Notification dated 01.03.1994, make it abundantly clear that the credit of specified duty

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insofar as it relates to AED[GSI] of inputs, shall be utilised only towards duty of excise leviable under the AED[GSI] Act, 1957, on the final products. Even as per the respondent's own case, the tyres are not chargeable under the AED[GSI] Act, 1957 and admittedly, the TCWS was exempted from the AED[GSI] Act, by virtue of the Notification No.11/1998 [CE] dated 02.06.1998. While so, unless and until there is some final product which is subject to duty of excise leviable under the AED[GSI] Act, 1957, credit for AED[GSI] paid for inputs on manufacture of such final products, does not arise. The respondent sought credit of AED[GSI] paid on the inputs, namely, the unprocessed nylon tyre cord fabrics used in the manufacture of tyres for the purpose of discharge of the liability under the MODVAT scheme, since the Notification No.5/1994, dated 01.03.1994, made it clear that AED[GSI] is also a specified duty for the purpose of claiming credit on duty under the MODVAT.

(29)At this juncture, it would be pertinent to advert to the MODVAT scheme. It is well established that the purpose of MODVAT scheme was to give relief against the multi-staged levy of duty so as to avoid the cascading effect. Rule 57C explicitly states that credit of duty

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cannot be allowed if final products are exempt from duty or chargeable at NIL rate. Therefore, to claim credit, there should be a nexus between the availment of credit and the dutiability of the final product. Keeping in view, the object and the purpose of MODVAT scheme, which is to avoid multi-staged levy of duty paid on inputs for the final products, we are of the view that unless and until the final product is chargeable to duty under AED [GSI] Act, 1957, the credit for specified duty on inputs cannot be availed. At the time when the credit for AED paid on unprocessed nylon tyre cord fabric was claimed, the MODVAT scheme was in force.

(30)Further, the second proviso to Clause [2] of the Notification No.5/1994, dated 01.03.1994, provides that the credit of the specified duty insofar as it relates to additional excise duty levied under the AED [GSI] Act, 1957, is allowed only towards payment of duty of excise leviable under the same Act on the final product. In view of the aforesaid second proviso in the Notification No.5/1994, dated 01.03.1994, it is clear that the credit of duty taken for additional duty of excise can be utilised only for the purpose of AED [GSI] Act, 1957, and not for any other type of duty. The respondent availed AED credit

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on unprocessed nylon tyre cord fabric towards MODVAT duty. However, in the written submissions, the respondent had stated that the credit can be availed even for discharging the basic excise duty liability. In our view, in the light of the provisions of Rule 57C and the Notification No.5/94, dated 01.03.1994, the respondent is not liable for credit both for MODVAT as well as BED.

(31)As already stated, the scheme in force at the relevant time was the MODVAT scheme. From the discussion of the provisions of Rule 57C and the Notification No.5/94, it is clear that no credit on specified duty is allowed on inputs used in the manufacture of final products which are exempt and as per the Notification, the credit on specified duty is allowed only in respect of inputs used towards payment of duty of excise leviable under the AED [GSI] Act, 1957, on the final products. Both under the Rule as well as in the Notification, the credit on processed grey nylon tyre cord fabrics can be taken only for the purpose of AED [GSI] Act, 1957, and not for any type of duty, either MODVAT or the BED.

(32)One more aspect is that in the present case, TCWS cannot be taken as a final product since as per Notification No.11/98, dated 01.03.1998, it

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is exempt from duty under the AED [GSI] Act. Even tyres cannot be considered as final product, since the tyres are not chargeable under the AED [GSI] Act, 1957, but only for the excise duty. Therefore, in our considered view, either way, the bar under Rule 57 will operate, since TCWS is exempt from AED [GSI] Act, 1957, and as per Notification No.5/94, dated 01.03.1994, the credit can be taken only for liability under AED [GSI] Act, 1957. We are therefore of the view that the revenue Authorities, namely, the Assistant Commissioner [CE] and the Commissioner [CE] were right in holding that the respondent is not entitled to the credit of AED paid on unprocessed nylon tyre cord fabrics for claiming credit for discharge of its MODVAT liability.

(33)The CESTAT, without considering the aforesaid aspects, in our view, erroneously relied on the Notification No.13/2003, dated 01.03.2003 and the Board Circular dated 12.03.2003 and allowed the appeals filed by the respondent. The Notification No.13/2003, dated 01.03.2003, was issued subsequent to the disputed period and as an amendment to the CENVAT Credit Rules, 2002. The Circular dated 12.03.2003 is also subsequent to the disputed period and therefore, we are of the view that the subsequent Notification and the Circular cannot be given

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retrospective effect so as to give a fresh right to the respondent since the law during the relevant period was unequivocal that the AED [GSI] credit could not be utilised for discharging any other liability. Further, in the view that we have taken on the basis of the facts of the case and the provisions of Rule 57C of the Central Excise Rules and the Notification No.5/94, dated 01.03.1994, we deem it unnecessary to travel beyond the said provisions and the Notification for the purpose of this case, since the disputed period in the present case relates to 02.06.1998 to 31.10.1998 and 01.11.1998 to 31.03.1999, i.e., much before the CENVAT Rules came into force.

(34)The learned counsel for the respondent, relying on Section 88, relating to the amendment of the CENVAT Credit Rules, 2002, submitted that by virtue of retrospective effect given under the said provision, the respondent is entitled to claim credit of the AED [GSI] paid by it towards its BED liability and the bar under Rule 57C will not operate. We are afraid we cannot subscribe to the submissions of the learned counsel for the respondent, for the reasons already stated above and also on the interpretation placed as below, by us on Section 88 of the Amendment of CENVAT Credit Rules, 2002.

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(35)Section 88 reads as follows:-

> ***"88.Amendment of the CENVAT Credit Rules, 2002:-***
>
> ***[1]****In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), in rule 3, in sub-rule (6), in clause (b), the Explanation shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly, notwithstanding anything contained any judgement, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said Eaton shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said Explanation as amended by this sub - section had been in force at all material times.*
>
> *[2]For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective ef-fect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944 (1 of 1944), retrospectively, at all material times.*

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[3]The CENVAT credit shall be allowed of all such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times.

(36)Second Schedule to Section 88 reads as follows:-

THE SECOND SCHEDULE

[See Section 88[1]]

Provision of the CENVAT Credit Rules, 2002, to be amended	***Amendment***	***Date of effect of amendment***
[1]	[2]	[3]
Explanation to clause [b] of sub rule [6] to rule 3	In the CENVAT Credit Rules, 2002, I rule 3, in sub-rule [6], in clause [b], for the explanation, the following Explanation shall be substituted, namely- *"Explanation:-For the removal of doubts it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise [Goods of Special Importance] Act, 1957 [58 of 1957], and paid on or*	1st March 2003.

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	after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 [5 of 1986]".	

(37)Under Section 88, Clause [1], retrospective effect is given as specified in the Second Schedule. As per the Second Schedule, the AED [GSI] paid on or after 1st April, 2000, alone is allowed to be utilised towards payment of duty of excise leviable under the First or Second Schedule of the Central Excise Tariff Act, 1985. In our view, since the present case, the duty was leviable and paid before the cut-off date, i.e., 01.04.2000, the said provision is inapplicable. The learned counsel for the respondent, in the written submissions has also relied on the subsequent development of law in support of the respondent's case. However, in the view that we have taken, we deem it unnecessary to travel beyond the provisions of the Rules and relevant Notifications that were prevalent during the relevant periods, i.e., 02.06.1998 to 31.10.1998 and 01.11.1998 to 31.03.1999.

(38)Since we have found that the respondent is not entitled to credit of AED [GSI] paid on unprocessed nylon tyre cord fabric and to utilise

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the same for the purpose of BED liability, we hold that the respondent is not entitled to refund of the disputed claim under Rule 57F[13].

(39)Before parting with the case, we would like to mention that though the issues in the appeals are found to be within a short compass, the respondent has, by referring to several case laws and the subsequent legal developments, tried to enlarge the issues. It is trite that the judgments cannot be construed as letters of statute and that the binding precedent, has to be read in the light of the facts of the case. Since on the facts of the present case, we have found that the law prevalent during the disputed period alone prevails, we have not travelled beyond the same. We would particularly like to mention that the reference to the CENVAT Credit Rules, 2002, Finance Act, 2004, and the GST Act, by the respondent to project as if the disputed issue survives even under the present regime of GST, in our view, is a futile attempt to dilate the issue.

(40)In view of the aforesaid discussions, we find merit in the appellant/Revenue's appeals and therefore, both the substantial questions of law are answered ***in favour of the Revenue/appellant.***

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(41)In the result, the Civil Miscellaneous Appeals are ***allowed*** and the common order dated 25.11.2003, in Final Orders Nos.1003 and 1004 of 2008 of the Tribunal , is ***set aside.*** Consequently, the writ petition filed seeking direction to implement the Final Orders Nos.1003 and 1004 of 2008 of the Tribunal dated 25.11.2003, is ***dismissed.*** No costs. Consequently, the connected miscellaneous petitions are closed.

(G.J.,J.) **(N.M.,J.)**
28-09-2026

Index: Yes
Speaking/Non-speaking order
Neutral Citation: Yes/No

AP

CMA No. 2451 of 2004

To
1.M/s.Mrf Ltd.,
P.B.No.5285,Thiruvottiyur Chennai-19
2.Customs, Excise And Service
Tax Appellate Tribunal, Chennai South Zonal
Bench, Chennai-6

CMA No. 2470 of 2004

To
1.M/s.Mrf Ltd.,
P.B.No.5285, Thiruvottiyur, Chennai-19
2.Customs, Excise And Service
Tax Appellate Tribunal, Chennai South Zonal
Bench, Chennai-6

https://www.mhc.tn.gov.in/judis
www.taxcode.in

Case Citation: (2026) taxcode.in 1633 HC

Order QR

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WP No. 23840 of 2004

To

1.Union Of India, Rep. By: The
Deputy Commissioner Of Centralexcise, `c`
Division, Chennai I Commissionerate,
Chennai-101.

2.The Commissioner Of Central
Excise, Chennai I Commissionerate, 26/1(old
No.121)mahatma Gandhi Road, Chennai - 34.

3.Customs, Excise And Service Ta
X Appellate Tribunal(cestat) South Zonal Bench,
Shastri Bhavan Annexe, Chennai - 6.

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DR.G.JAYACHANDRAN J.

AND

N.MALA J.

AP

Common Judgment in
CMA Nos. 2451 & 2470 of 2004
AND
WP Nos. 23840 OF 2004

28-09-2026

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