2026 INSC 285

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2219-20 OF 2013

M/S. RASHTRIYA CHEMICALS AND FERTILIZERS LIMITED **APPELLANT(S)**

VERSUS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX (LTU) **RESPONDENT(S)**

WITH

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 21441 OF 2013)

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted in Special Leave Petition (Civil) No. 21441 of 2013.

2. The subject matter in the three civil appeals being inter-connected, those were heard together and are hereby disposed of by this common judgment and order.

3. Civil Appeal No. 2219 of 2013 arises out of the order dated 27.03.2012 passed by the Customs Excise and

Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (CESTAT) in Appeal No. E/671/10-Mum whereas Civil Appeal No. 2220 of 2013 is preferred against the same final order dated 27.03.2012 passed by the CESTAT in Appeal No. E/801/10-Mum.

3.1. It may be mentioned that Appeal No. E/671/10-Mum was filed before the CESTAT against the order-in-original dated 27.01.2010 passed by the Commissioner of Central Excise and Service Tax as the original adjudicating authority. On the other hand, Appeal No. E/801/10-Mum was filed before the CESTAT against the order-in-original dated 04.02.2010 passed by the aforesaid Commissioner. By the common order dated 27.03.2012, both the appeals were disposed of by the CESTAT affirming the levy of duty *qua* the two orders-in-original. CESTAT also upheld the penalty imposed by the adjudicating authority under Section 11AC of the Central Excise Act, 1944 but set aside the penalties imposed under Rule 173Q of the Central Excise Rules, 1944 and under Rule 25 of the Central Excise Rules, 2002.

4. Aggrieved thereby, the two appeals came to be filed. This Court *vide* the order dated 04.03.2013, admitted the appeals but declined the prayer for stay.

5. Civil Appeal No. _____ of 2026 (arising out of Special Leave Petition (Civil) No. 21441 of 2013) has been preferred against the final order dated 21.02.2013 passed by the High Court of Judicature at Bombay (briefly 'the High Court' hereinafter) in Central Excise Appeal No. 129 of 2012 (*M/s. Rashtriya Chemicals and Fertilizers Limited Vs. Union of India*). The aforesaid appeal was filed assailing an order dated 16.07.2012 passed by the CESTAT on an application filed by the appellant for rectification of the order dated 27.03.2012. Rectification was sought for on the ground that issues raised in the memo of appeal were not considered by the CESTAT. CESTAT had rejected the application filed by the appellant stating that those grounds were not argued during the hearing; it had considered only those grounds which were argued. By the impugned order, High Court did not find any merit in the said appeal and dismissed the same.

Facts

6. On 13.02.2001, officers belonging to the Central Excise Department visited the premises of the appellant and scrutinized the record. It was observed that appellant was procuring Naphtha at nil rate of duty from Hindustan Petroleum Corporation Limited (HPCL) by claiming benefit of exemption under notification Nos. 75/84-CE dated 01.03.1984 and 4/97-CE dated 01.03.1997, as amended, for 'intended use' in the manufacture of fertilizer. It was further observed that the said Naphtha was also used alongwith the natural gas as fuel for generation of steam in the steam generation plant.

7. Thereafter, the revenue issued show cause notice dated 29.08.2001 to the appellant demanding duty amounting to Rs. 28,55,95,491.00 for the period from November, 1996 to March, 2001 by alleging that Naphtha procured by the appellant was being used not only in the manufacture of fertilizer but also in the manufacture of other chemicals; thus rendering the appellant ineligible for nil rate of duty under the aforesaid notifications.

8. Appellant submitted reply to the aforesaid show cause notice on 02.11.2001 denying the allegation made by the revenue. It was contended by the appellant that Naphtha was being utilized for its intended purpose and not diverted as alleged.

9. Following adjudication proceedings, the demand of duty amounting to Rs. 28,55,95,491.00 was confirmed by the Commissioner of Central Excise *vide* the order-in-original dated 04.02.2002.

10. This was followed by issuance of eight show cause notices by the revenue to the appellant on the same issue covering the period from April, 2001 to November, 2001.

11. Appellant preferred appeal before the CESTAT against the order-in-original dated 04.02.2002. On the stay application, an amount of Rs. 2 crores against the demand of Rs. 28.56 crores i.e. approximately 10 percent amount was ordered to be pre-deposited *vide* the order dated 17.01.2003.

12. While the appeal was pending, fourteen more show cause notices were issued by the department to the

appellant on the same issue but covering the period from December, 2001 to January, 2003. It is stated that appellant had submitted a reply dated 30.04.2003 to one of the show cause notices dated 31.03.2003.

13. Appeal filed by the appellant was disposed of by the CESTAT *vide* the order dated 14.01.2004 remanding the matter back to the original adjudicating authority for a fresh consideration on merit as well as on quantum.

14. Notwithstanding the order of remand, three more show cause notices came to be issued by the revenue to the appellant covering the period from February, 2003 to February, 2005.

15. The original adjudicating authority conducted *de novo* adjudication in the remanded matter. This time the adjudicating authority not only adjudicated the first show cause notice dated 29.08.2001 but also adjudicated the subsequent twenty five show cause notices issued covering the period from April, 2001 to February, 2005.

16. The original adjudicating authority confirmed the demand of duty amounting to Rs. 9,66,38,054.00 on the appellant *vide* the order-in-original dated 28.02.2006.

17. Appellant preferred an appeal before the CESTAT against the order-in-original dated 28.02.2006. *Vide* the order dated 10.11.2006, CESTAT waived the condition for pre-deposit but remanded the matter back to the original adjudicating authority to afford an opportunity to the appellant to make its submissions on merit as well as on computation of duty and thereafter to decide the matter afresh.

18. In the personal hearing granted to the appellant by the original adjudicating authority, it was submitted on behalf of the appellant that Naphtha was in short supply which was an admitted fact. This short fall was bridged by natural gas; both were used as fuel to generate the required quantum of steam to manufacture fertilizer. It was contended that when Naphtha was itself in short supply, it could not have been diverted for the manufacture of other chemicals, as alleged.

19. The original adjudicating authority issued two separate orders: (i) order-in-original dated 27.01.2010 in respect of the show cause notice dated 29.08.2001; and (ii) order-in-original dated 04.02.2010 for the remaining

twenty five show cause notices. By the aforesaid orders, the original adjudicating authority rejected the contention of the appellant and affirmed the levy of duty and penalty.

20. Aggrieved by the order-in-original dated 27.01.2010, appellant preferred Appeal No. E/671/10-Mum before the CESTAT alongwith a stay application. However, CESTAT directed pre-deposit of Rs. 2 crores.

21. Appellant also filed another appeal being Appeal No. E/801/10-Mum alongwith a stay application before the CESTAT against the second order-in-original dated 04.02.2010.

22. Against the decision of the CESTAT directing the appellant to pre-deposit Rs.2 crores, appellant preferred an appeal before the High Court which was registered as Central Excise Appeal No. 68/2011. High Court allowed the aforesaid appeal *vide* the order dated 28.06.2011 and waived the condition of pre-deposit against execution of bond for the amount of duty and directed CESTAT to hear the appeal on merit.

23. CESTAT heard both the appeals i.e. Appeal No. E/671/10-Mum and Appeal No. E/801/10-Mum and thereafter pronounced the impugned final order dated

27.03.2012 partially allowing the appeals filed by the appellant by confirming the duty demanded alongwith interest and also upholding the imposition of penalty under Section 11AC of the Central Excise Act, 1944 but dropped the penalty imposed under Rule 173Q of the Central Excise Rules, 1944 and under Rule 25 of the Central Excise Rules, 2002.

24. Aggrieved thereby, appellant has preferred the two civil appeals being Civil Appeal Nos. 2219 of 2013 and 2220 of 2013.

25. In the meanwhile, an application was filed by the appellant before the CESTAT for rectification of the order dated 27.03.2012 under Section 35C(2) of the Central Excise Act, 1944. However, the same was rejected by the CESTAT *vide* the order dated 16.07.2012. Against such rejection, appellant preferred Central Excise Appeal No. 129 of 2012 before the High Court. *Vide* the order dated 21.02.2013, High Court held that there was no error committed by the CESTAT in declining to entertain the application of the appellant for rectification. Holding that

the appeal did not disclose any substantial question of law, the High Court dismissed the said appeal.

26. Aggrieved by the final order of the High Court dated 21.02.2013, appellant preferred Special Leave Petition (Civil) No. 21441 of 2013. This Court *vide* the order dated 22.07.2013 had issued notice while staying operation of the impugned order dated 21.02.2013. It was further directed that Special Leave Petition (Civil) No. 21441 of 2013 be tagged alongwith Civil Appeal Nos. 2219-20 of 2013.

Submissions

27. Mr. Balbir Singh, learned senior counsel for the appellant submits that the core controversy in these batch of appeals is the eligibility of the appellant for grant of exemption from payment of central excise duty on Naphtha, intended for use in the manufacture of fertiliser and ammonia. The ancillary question which arises for consideration is whether, in a case of this nature, the extended period of limitation was available to the revenue?

27.1. Learned senior counsel submits that for a proper appreciation of the aforesaid two issues, it would be

most appropriate if he could place the facts in proper perspective.

27.2. Appellant is a public sector undertaking operating a fertilizer manufacturing factory at Thal, Alibaug in the State of Maharashtra. In the said factory, it manufactures urea and ammonia. It is stated that appellant is a registered fertilizer manufacturer as per the Fertilizer (Control) Order, 1985.

27.3. The Fertilizer (Control) Order imposes a restriction on the appellant from selling the manufactured fertilizer at the market price. It mandates that the fertilizer should be sold at the maximum retail price determined by the Central Government. As a consequence, appellant is required to sell the manufactured fertilizer at a price much below the cost incurred in producing the same. The difference in the cost and the maximum retail price is compensated to the appellant by way of subsidies granted by the Central Government.

27.4. That apart, the raw material i.e. the inputs used in the manufacture of fertilizer and ammonia are also exempted from paying excise duty with a view to reduce the cost of inputs used in the manufacture of fertilizer. Naphtha is one such product which is exempted from excise duty

when intended for use in the manufacture of fertilizer or ammonia.

27.5. During the relevant period, appellant procured Naphtha from HPCL without payment of excise duty by availing the benefit of exemption under notification No. 4/1997-CE dated 01.03.1997, as amended from time to time. It is stated that Naphtha is used along with natural gas as fuel to generate steam which in turn is used in the manufacture of ammonia and fertilizer.

27.6. Stating that the primary activity carried out at the appellant's plant is the manufacture of ammonia and fertilizer, Mr. Balbir Singh submits that the plant also has turbo generators which generate power for captive consumption of the plant itself. Further, the plant has a heavy water plant which supplies heavy water to the Department of Atomic Energy. Additionally, manufacture of certain chemicals like Di Methyl Formamide with Di Methyl Acetamide are also carried out at the plant of the appellant.

27.7. During the relevant period, Naphtha was used in the appellant's plant as fuel along with natural gas to generate steam in the steam generating unit which had a

common boiler wherein both Naphtha and natural gas were fed as inputs (fuel) in order to generate steam. The steam so generated was sent to the ammonia plant, urea plant, turbo generators, chemical plant and heavy water plant. Due to the simultaneous use of Naphtha and natural gas as fuel in the common boiler, it was not possible to ascertain what was the quantity of Naphtha or natural gas used or going to each respective unit as steam.

27.8. Learned senior counsel submits that during the relevant period, around 20-25% of the total steam generated in the steam generation plant was sent to the turbo generators which generated and supplied power to the entire plant. He submits that out of such power generated, a negligible portion was used in the chemical plant.

27.9. He also clarified that the steam generated from Naphtha and natural gas was primarily used for manufacture of fertilizer and for production of electricity which, in turn, was used in the fertilizer plant.

27.10. Adverting to the first show-cause notice dated 29.08.2001, learned senior counsel submits that revenue initially demanded duty on the entire amount of steam

consumed in the turbo generators amounting to Rs. 25,55,40,133.00 which was subsequently reduced to Rs. 1,66,46,517.00. He submits that as per revenue's own assessment, only 6.5% of the electricity generated by the turbo generators was used for non-fertilizer purposes. Clarifying further, learned senior counsel submits that for the period from 1996 to 2001 covered by the first show cause notice dated 29.08.2001, the total Naphtha procured was 7,30,721.88 metric tons which could have produced 89,52,671 units of steam. The total quantity of steam required for the fertilizer plant during that period was 1,48,64,232. Thus, the Naphtha procured was insufficient to produce enough steam to be consumed in fertilizer alone. Therefore, there was no question of it being used elsewhere.

27.11. Learned senior counsel thereafter referred to the scheme of the exemption notifications bearing No. 75/1984-CE and No. 04/1997-CE, as amended from time to time. By the aforesaid notifications issued under Section 5A(1) of the Central Excise Act, 1944, the Central Government has exempted the excisable goods specified in column (3) of the table appended thereto from so much of the duty of excise

leviable thereon subject to the conditions specified therein. He submits that Naphtha and natural gasoline liquid for use in the manufacture of fertilizer or ammonia are mentioned at serial No. 8 with the rate of duty mentioned as nil. Adverting to the conditions of exemption, learned senior counsel submits that the exemption was subject to proving to the satisfaction of an officer not below the rank of Assistant Commissioner of Central Excise that such goods were cleared for the intended use specified in column (3) of the table (in this case, for the manufacture of fertilizer or ammonia). As per the second condition, where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944 would have to be followed. As per Chapter X, the procurer has to make an application to the Commissioner declaring that the goods are required for the 'intended use' as per the exemption notification. The Commissioner upon being satisfied that the goods are 'intended to be used' for the purpose set out in the exemption notification, issues a CT-2 certificate, authorizing the procurer to remove the goods from the factory of production without payment of excise

duty. Mr. Singh submits that appellant has all along been issued such CT-2 certificates by the Commissioner upon furnishing the requisite details and execution of bond.

27.12. Learned senior counsel submits that there is no dispute to the proposition that appellant was entitled to the exemption under the notifications. Referring to the decision of this Court in *Commissioner of Customs (Import), Mumbai Vs. M/s Dilip Kumar and Company*[1], he submits that once an assessee is held to be eligible for exemption under a notification, a liberal construction has to be given to such notification. When once the ambiguity or doubt is resolved by interpreting the applicability of the exemption clause strictly, the court may construe the notification by giving full play bestowing wider and liberal construction. In other words, the legal principle is: do not extend or widen the ambit at the stage of applicability. But once that hurdle is crossed, construe it liberally.

27.13. It is also submitted that it is not the case of the respondent that appellant is not eligible to avail the exemption at all. Case of the respondent is that Naphtha was

[1] (2018) 9 SCC 1

not being exclusively used for the purpose for which it was procured. He submits that once eligibility is not disputed, the exemption notification has to be liberally construed with regard to the scope of 'intended use'. It is the case of the appellant that Naphtha was procured from HPCL with the intention to be used as a fuel for the production of ammonia and fertilizer. However, the quantity of Naphtha procured by the appellant during the relevant period was not even sufficient to generate enough steam for the manufacture of ammonia and fertilizer. Therefore, it cannot be said that Naphtha was diverted to be used for non-fertilizer products.

27.14. It is also the admitted position that the proportion of Naphtha or natural gas which went on to produce steam for the fertilizer or non-fertilizer plants could not be ascertained. Therefore, any calculation of demand on the premise that Naphtha was being diverted for non-fertilizer products is based on mere speculation.

27.15. It is also the contention of Mr. Balbir Singh, learned senior counsel that the claim for exemption as per the exemption notifications hinges on the interpretation of the expression 'intended use' of the exigible good(s) in the

manufacture of fertilizer. He submits that when an exemption is conditioned on intended use, the benefit should be granted if the declared intended use is fulfilled. Explaining the principle, he submits that exemptions are granted to encourage or facilitate certain end uses and if an assessee uses the goods for that intended purpose, exemption's purpose is satisfied. In this connection, he has placed reliance on a decision of this Court in *Steel Authority of India Vs. Collector of Central Excise*[2] which has held that requirement of the exemption notification is the proof that raw Naphtha was intended for use in the manufacture of fertilizer and not that the raw Naphtha was used in the manufacture of fertilizer. In this regard, he has also referred to another decision of this Court in the case of *State of Haryana Vs. Dalmia Dadri Cement Limited*[3], where this Court has held that from a plain reading of the relevant clause, it is clear that the expression 'for use' must mean intended for use. In the present case, merely because Naphtha and natural gas were put into a common steam generation plant for the generation of steam making it impossible to ascertain

[2] (1996) 5 SCC 484
[3] 1987 Supp SCC 679

which fuel ultimately ends up in which part of the factory, it cannot be said that Naphtha was not procured with the intention for use in the manufacture of fertilizer and ammonia. Merely because the final destination of Naphtha could not be conclusively determined, the benefit of exemption cannot be denied, more so when the appellant has continuously complied with the procedure prescribed under Chapter X of the Central Excise Rules, 1944. Further, despite issuance of multiple show cause notices, the department continued to show CT-2 certificates to the appellant on satisfaction that the intended use of the Naphtha procured was for manufacture of fertilizer and ammonia. That apart, appellant being a public sector undertaking cannot be attributed with an intention to evade duty which in any case would not arise in as much as there would be no gain to the appellant by evading payment of duty. Any duty paid by the appellant would be receivable by way of Central VAT credit as the chemicals manufactured are liable to central excise duty.

27.16. Learned senior counsel also submits that there was no case for invocation of the extended period of

limitation by the respondent under the proviso to Section 11A(1) of the Central Excise Act, 1944 and to impose a penalty under Section 11AC by alleging that appellant had suppressed and withheld information in his applications for CT-2 certificates. There was no material to support such an allegation. Placing reliance on a decision of this Court in *Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay*[4], he submits that this Court has held that in order to invoke the extended period of limitation, the act of suppression must be deliberate. Respondent has failed to make out any case for positive effect of suppression; neither could it attribute any such intention to the appellant.

27.17. He further submits that even if it is accepted for the sake of argument that some portion of Naphtha was not eligible for the fertilizer exemption, the duty impact is revenue neutral. Any excise duty payable on Naphtha would have been available to the appellant as Central VAT credit for payment of excise duty on its other products. Therefore, no *mala fide* intent could be attributed to the appellant for the alleged evasion of payment of duty to justify invocation

[4] (1995) Supp 3 SCC 462

of the extended period of limitation. This Court in *Nirlon Limited Vs. Chief Commissioner of Excise*[5] has held that where the exercise would result in revenue neutrality and the appellant could not derive any benefit from it, it was not permissible for the revenue to invoke the extended period of limitation under the proviso to Section 11A(1). In any case, appellant being a public sector undertaking receiving subsidy from the Central Government for manufacture of fertilizer and ammonia, there ought not to be any apprehension on the part of the respondent about intention of the appellant to evade payment of excise duty as any excise duty paid by the appellant would ultimately be reimbursed by the Central Government by way of subsidies. Therefore, invocation of the extended period of limitation and imposition of penalty under Section 11AC of the Central Excise Act, 1944 is totally unwarranted.

27.18. Concluding his submissions, learned senior counsel asserts that there is no substance in the contention of the respondent that the requirements laid down in the exemption notifications have not been fulfilled. Appellant

[5] (2015) 14 SCC 798

has complied with the requirements and is therefore entitled to the exemption of the duty on the Naphtha procured. This being the position, the impugned order dated 27.03.2012 passed by the CESTAT as well as the orders-in-original dated 27.01.2010 and 04.02.2010 are liable to be set aside and quashed.

27.19. In view of the above, Mr. Singh submits that it becomes wholly academic in so far the issue in Civil Appeal No. _____ of 2026 (arising out of Special Leave Petition (Civil) No. 21441 of 2013) is concerned. Consequently and in the light of the above, Civil Appeal Nos. 2219-2220 of 2013 should be allowed and Civil Appeal No. _____ of 2026 (arising out of Special Leave Petition (Civil) No. 21441 of 2013) may be disposed of as having been rendered infructuous.

28. *Per contra*, Mr. Vikramjit Banerjee, learned Additional Solicitor General of India appearing for the respondent strongly supports the impugned order passed by the CESTAT as well as the order passed by the High Court. According to him, the issue involved in the present case is as to whether or not Naphtha procured by the appellant from HPCL would be eligible for the benefit of exemption under

notification No. 4/97 dated 01.03.1997, as amended from time to time, in the given circumstances of the case.

28.1. In this connection, Mr. Banerjee has drawn the attention of the Court to the relevant facts. He submits that appellant is engaged in the manufacture of fertilizer (urea), ammonia, organic chemicals etc. falling under Chapters 31, 28 and 29 respectively of the First Schedule to the Central Excise Tariff Act, 1985 and is registered with the central excise authorities. Pursuant to intelligence received, officers of the Central Excise Department visited the premises of the appellant on 13.02.2001 during which records were scrutinized. Such scrutiny revealed that appellant was procuring Naphtha at nil rate of duty from HPCL claiming benefit of exemption under the notifications No.4/97 dated 01.03.1997, No.5/98 dated 28.02.1999 and No.6/2000 dated 01.03.2000 for manufacture of fertilizer and ammonia by following Chapter X procedure. The scrutiny also revealed that Naphtha was burnt in the steam generation plant to generate steam which in turn was consumed by various plants, such as, urea plant, ammonia plant, turbo generators, chemical group plant and heavy water plant.

28.2. Based on such scrutiny, it appeared to the department that appellant had claimed exemption incorrectly to the extent of steam generated by burning Naphtha and consumed in turbo generators for generating electricity consumed in the chemical group plant for manufacturing organic chemicals and also for use in the heavy water plant. Therefore, a view was taken that appellant had suppressed the actual use of Naphtha, thereby made mis-declaration while filing applications for CT-2 certificates to the effect that Naphtha which was procured under exemption would be used only in the manufacture of fertilizer and ammonia. In this regard, statements of various persons were recorded in which it was admitted that Naphtha was used as fuel to supplement deficiency of natural gas. Thus, a *prima facie* view was taken that Naphtha procured by the appellant without payment of excise duty under CT-2 certificates was not used exclusively in the manufacture of ammonia or fertilizer but was also used in the manufacture of other goods which were not specified in the said exemption notifications. Further, it also appeared to the respondent that part of the electricity

generated from the turbo generator plant was being sold by the appellant to Maharashtra State Electricity Board.

28.3. Learned Additional Solicitor General submits that Naphtha and natural gas were burnt simultaneously in the steam generation plant to generate steam. Therefore, percentage of consumption of Naphtha for generation of steam in the plants other than fertilizer and ammonia could not be arrived at directly. However, it was noticed that 1,77,733.64 MT of Naphtha was consumed in other plants (i.e. plants manufacturing other than fertilizer and ammonia), valued at Rs. 181,68,33,704.00 during the period from 27.11.1996 to 31.03.2001 on which central excise duty worked out to Rs. 28,55,95,491.00.

28.4. Accordingly, a show cause notice dated 29.08.2001 was issued to the appellant calling upon it to show cause as to why duty of excise to the tune of Rs. 28,55,95,491.00 for the period from 27.11.1996 to 31.03.2001 should not be levied and recovered from it under the proviso to Section 11A(1) of the Central Excise Act alongwith interest under Section 11AB of the said Act, besides

proposing imposition of penalty on the appellant under Section 11AC also of the said Act.

28.5. In its reply dated 02.11.2001 to the aforesaid show cause notice, appellant denied the allegation brought by the respondent against it and submitted that steam was used in the urea and ammonia plant; besides, part of the steam was also used in the turbo generator plant for generating electricity. The electricity so generated was consumed mainly in the production of urea and ammonia. However, a small quantity of electricity was also used in the chemical plant. While earlier only natural gas was used for generating steam, now because of the shortage of natural gas, Naphtha was also being used to supplement the shortage. Appellant contended that calculation of steam generated and percentage of steam consumed was incorrect having been calculated from the stage of the total quantity of steam generated in the steam generation plant. It was also contended that the expression 'exclusively' was not used in the exemption notification nor was it a condition precedent for availing the benefit of exemption as per such notification. Appellant denied that electricity generated in the turbo generation plant was not

used in the manufacture of fertilizer. Appellant also denied that it had intentionally sold electricity to the Maharashtra State Electricity Board but the same had to be sold under technical compulsion. Denying that Naphtha was not being used directly in the manufacture of fertilizer, appellant asserted that it had fulfilled the conditions of the exemption notifications. Appellant, therefore, sought for dropping of the show cause notice.

28.6. However, the reply of the appellant was not accepted by the revenue resulting in the passing of the order-in-original dated 04.02.2002.

28.7. Though the appellant had challenged the aforesaid order-in-original before the CESTAT, the same resulted in several rounds of litigation back and forth and also requiring the appellant to approach the High Court regarding pre-deposit. Ultimately, the original adjudicating authority passed two separate orders i.e. order-in-original dated 27.01.2010 in respect of the first show cause notice dated 29.08.2001 and secondly, order-in-original dated 04.02.2010 for the balance twenty five show cause notices. By both the

orders, the adjudicating authority upheld the revised demand with interest besides confirming the penalty imposed.

28.8. Appellant challenged the two orders-in-original before the CESTAT in two separate appeals, both of which were disposed of *vide* the common order dated 27.03.2012 confirming the duty demanded alongwith interest and upholding the penalty imposed under Section 11AC of the Central Excise Act, 1944 but setting aside the penalties imposed under Rule 173Q of the Central Excise Rules, 1944 and under Rule 25 of the Central Excise Rules, 2002.

28.9. Mr. Banerjee submits that the impugned order is fully justified; it is legal and valid and no case has been made out for interference, either on facts or on law.

28.10. In so far the appeal arising out of the order of the High Court is concerned, learned Additional Solicitor General submits that the application seeking rectification was rightly rejected by the CESTAT. It is one thing to plead grounds of challenge in the memo of appeal but altogether another thing to argue those grounds during the hearing. If the grounds are not argued, it is not incumbent upon the CESTAT to return

findings on such grounds. Therefore, High Court rightly rejected the appeal and upheld the order of the CESTAT.

Analysis

28.11. Learned Additional Solicitor General submits that no case has been made out for interference by the appellant. Therefore, all the appeals should be dismissed.

29. Submissions made by learned counsel for the parties have received the due consideration of the Court.

30. Let us first deal with the show cause notices. For the sake of convenience, the first show cause notice issued by the Director General of Central Excise Intelligence to the appellant dated 29.08.2001 may be adverted to. After referring to the manufacturing activities of the appellant and the availing of central excise duty on obtaining of CT-2 certificates and after examining the statements of officials of the appellant, it was mentioned that from a scrutiny of the record and the statements of the officials recorded, it had come to light that Naphtha procured by the appellant without payment of duty under CT-2 certificates was not used exclusively for the manufacture of fertilizer or ammonia but

was also being used in the manufacture of other goods which were not specified in the exemption notifications. Exemption granted for Naphtha to be used in the manufacture of fertilizer or ammonia could not be extended to goods other than fertilizer or ammonia.

30.1. Further observation was made that part of the electricity generated from the turbo generator plant was being sold by the appellant to Maharashtra State Electricity Board. The show cause notice noted that there was a digital control system in the steam generation plant which could measure the flow of steam. It was also observed that Naphtha and natural gas were burnt simultaneously in the steam generation plant to generate steam. Therefore, the percentage of consumption of Naphtha in the generation of steam used in the plants other than fertilizer and ammonia could not be arrived at directly. However, on the basis of the statements of the officials, percentage of steam consumed in plants other than fertilizer and ammonia was worked out and thereby the quantum of Naphtha consumed to generate this steam was arrived at. Applying the above methodology, the total Naphtha consumed in the plants other than fertilizer and

ammonia was determined at 1,77,733.64 MT valued at Rs. 181,68,33,704.0 on which the central excise duty which was payable during the period from 27.11.1996 to 31.03.2001 worked out to Rs. 28,55,95,491.00 which was liable to be paid by the appellant.

30.2. A view was taken by the revenue that appellant had contravened the provisions of Rule 192 of the Central Excise Rules, 1944 in as much as it had suppressed actual use of Naphtha by mis-declaring in its applications for CT-2 certificates that the Naphtha procured without payment of excise duty would be used for fertilizer and ammonia. Because of such suppression, appellant was liable for penalty under Rule 173Q of the Central Excise Rules, 1944 read with Section 11AC of the Central Excise Act, 1944. Appellant was also liable to pay interest on the amount adjudged to be payable by it in terms of Section 11AB of the Central Excise Act, 1944. Thus, the proviso to Section 11A(1) of the Central Excise Act, 1944 would be attracted. Therefore, appellant was called upon to show cause to the Commissioner, Central Excise, Mumbai-VII as to why:

i. central excise duty amounting to Rs. 28,55,95,491.00 (Rs. Twenty Eight Crore Fifty Five Lakhs Ninety Five Thousand Four Hundred Ninety One Only) as detailed in Annexures-A, B, C and D to the notice, should not be demanded and recovered from the appellant under Rule 196 of the Central Excise Rules, 1944 read with the proviso to Section 11A(1) of the Central Excise Act, 1944 by invoking the extended period of limitation of five years;

ii. penalty should not be imposed upon the appellant under Rule 173Q of the Central Excise Rules, 1944 and Section 11AC of Central Excise Act, 1944;

iii. interest on the amount adjudged to be payable by the appellant should not be charged and recovered from it under Section 11AB of the Central Excise Act, 1944.

31. In its reply dated 02.11.2001, appellant denied the allegations made by the respondent in the show cause notice dated 29.08.2001. Thereafter, appellant stated that it is a public sector undertaking under the Ministry of Fertilizers and Chemicals, Government of India. It is engaged *inter alia* in the manufacture of fertilizer falling under Chapter 31 of the Central Excise Tariff Act, 1985

having its factory at Thal, Alibaug in the State of Maharashtra. Appellant stated that it scrupulously follows and observes all the formalities and procedures in the manufacture and clearance of the excisable goods.

31.1. Explaining the process of manufacture, appellant stated that it had an annual installed capacity for manufacture of 14.85 lakh MT of the fertilizer urea at its factory. In the manufacturing process, steam is used in the urea and ammonia plant. The steam is generated in the steam generation plant. A part of the steam so generated is also used in the turbo generation plant for generation of electricity mostly for in-house consumption.

31.2. The steam is produced in the steam generation plant by using both natural gas and Naphtha simultaneously as the appellant is equipped with a dual fuel firing system for which it is also maintaining the data of natural gas and Naphtha used. Thereafter, appellant explained the procedure which is followed in the steam generation plant. However, steam is not only generated in the steam generation plant by using Naphtha and natural gas but it is also generated in the ammonia plant.

31.3. Appellant explained that the steam generation plant was totally a utility plant providing steam and power to the factory as a whole. It was essential because without a reliable and efficient supply system of steam, a modern fertilizer plant cannot operate on a sustained and competitive basis. To ensure the smooth and continuous running of the boilers, those were always kept on dual firing mode.

31.4. Appellant pointed out that the principal allegation in the show cause notice was that appellant had procured Naphtha without payment of central excise duty against CT-2 certificates by availing exemption under the relevant exemption notifications; however, the same was not exclusively used in the manufacture of fertilizer or ammonia but was also used in the manufacture of other goods which were not specified in the exemption notifications. Referring to the exemption notifications, appellant pointed out that nowhere in the said notifications was the word 'exclusively' used; neither has it been a condition for extending the benefit of exemption. Revenue had erroneously read into the exemption notifications the word 'exclusively'.

31.5. Appellant stated that it appeared that the revenue sought to recover the duty on the quantity of Naphtha procured on the ground that the electricity generated by using steam in the turbo generation plant was not used in the manufacture of fertilizers but used elsewhere and that the steam generated from Naphtha was not directly used in the manufacture of fertilizer but used in the turbo generation plant for generating electricity which in turn was used in the plant manufacturing fertilizer. In other words, appellant pointed out that what the revenue was articulating was that the benefit of the exemption notifications would be available only if the Naphtha was directly used in the manufacture of fertilizer.

31.6. Denying and contesting the same, appellant stated that it would be wrong to assume that the electricity generated in the turbo generation plant was not used in the manufacture of fertilizer. Insofar the allegation *qua* selling of electricity to Maharashtra State Electricity Board was concerned, it was pointed out that appellant did not generate electricity for the purpose of selling it to the Maharashtra State Electricity Board but it was a technical compulsion under which appellant had

to import and export electricity from Maharashtra State Electricity Board, the methodology of which was explained in the reply.

31.7. Appellant pointed out from the exemption notifications that exemption is allowed if the goods are cleared for the 'intended use' as specified in column (3) of the table to the notifications. It would be an incorrect interpretation to say that if Naphtha was not used directly in the manufacture of fertilizer then the benefit of exemption would not be available to the Naphtha consumed in the manufacture of fertilizer. Naphtha was procured from HPCL after submitting necessary CT-2 certificates categorically stating that Naphtha would be used in the manufacture of fertilizer. The use of Naphtha could be both direct and indirect. In so far appellant is concerned, Naphtha was used as a supplementary fuel for generation of steam at the steam generation plant. Out of the total quantity of steam so generated, around 75% was used directly in the fertilizer plant and balance 25% was used in the production of electricity in the turbo generation plant. However, the

generated electricity was not used elsewhere but used in the fertilizer plant only.

31.8. Asserting that appellant had used the Naphtha so procured in the generation of steam which in turn was used in the manufacture of fertilizer directly and also through generation of electricity in the turbo generation plant, it was contended that the appellant had fulfilled the conditions of the exemption notifications issued for Naphtha.

31.9. In the circumstances, appellant requested the respondent to drop the show cause notice.

32. As already noticed above, adjudication of the show cause notices passed through several rounds of litigation. Ultimately, the adjudicating authority passed two orders-in-original, one dated 27.01.2010 pertaining to the show cause notice dated 29.08.2001 and the other dated 04.02.2010 in respect of the subsequent twenty-five show cause notices, though all the show cause notices were on the same issue. The reasonings being the same, we may advert to the order-in-original dated 27.01.2010.

32.1. After noticing the reply of the appellant that there was shortfall of Naphtha to manufacture the steam for

production of fertilizer which was met by using natural gas so as to bridge the gap and, therefore, there was no question of diversion of Naphtha for manufacture of other goods, the adjudicating authority did not accept the same. Referring to the statements of the officials, the adjudicating authority came to the conclusion that Naphtha was not in short supply; rather it was natural gas which was in short supply. The steam generated out of natural gas and Naphtha, apart from being used for the specified purpose i.e. in the manufacture of fertilizer and ammonia, was also used for certain non-specified purposes i.e. in the manufacture of organic chemicals, heavy water plant as well as for generation of electricity. Further, part of the electricity generated was sold to Maharashtra State Electricity Board.

32.2. The adjudicating authority also held that both Naphtha and natural gas were burnt simultaneously in the steam generation plant to generate steam. However, the percentage of consumption of Naphtha in the generation of steam used in the plants other than fertilizer and ammonia could not be arrived at directly but revenue has worked out a mechanism to determine the demand. Therefore, the

adjudicating authority rejected the explanation of the assessee saying that it was not possible to quantify the natural gas and Naphtha used *qua* the specified quantities of the final product manufactured.

32.3. In so far the contention of the assessee that in order to be eligible for the benefit of exemption what was required to be established was only the 'intended use', the adjudicating authority held that in addition to being used for the manufacture of fertilizer and ammonia, the procured Naphtha was certainly used for other purposes which disentitled the appellant from availing the benefit of the exemption notifications.

32.4. As regards the extended period of limitation is concerned, the adjudicating authority held as under:

> **35.** In the present case, the assessee very well knew that the percentage of consumption of naphtha in generation of steam used in plants, other than fertilizer and ammonia cannot be arrived at directly. Despite this fact, they chose to avail the exemption (which was available only when the basic feed is used in the manufacture of fertilizer) and continue to justify it by arithmetical calculations. There should have at least been a proportionate payment (to the extent of naphtha not used in the manufacture of fertilizer, using the very

same arithmetical calculations). This was not the case, even at the adjudication stage, they continued to maintain the same stand. As such the allegations in the notice to this extent are correct.

32.5. Therefore, the adjudicating authority confirmed the central excise duty besides the penalty imposed under Rule 173Q of the Central Excise Rules, 1944 read with Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002. That apart, the adjudicating authority ordered that interest under Section 11AB of the Central Excise Act, 1944 was also required to be paid by the appellant.

33. We may now turn to the impugned order dated 27.03.2012 passed by the CESTAT. It has been noted that appellant had received Naphtha under Chapter X procedure and under Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 from HPCL under Notification Nos. 4/97, 5/98, 5/99, 6/2000 and 6/2002 which were prevalent during the relevant time. Adverting to the said notifications, it was pointed out that exemption of excise duty was granted to Naphtha and natural gasoline liquid for use in the

manufacture of fertilizer or ammonia subject to the conditions that it should be proved to the satisfaction of an officer not below the rank of Assistant Commissioner of Central Excise/ Deputy Commissioner of Central Excise that such goods were cleared for the intended use as specified (in this case, for use in the manufacture of fertilizer or ammonia); and where such use was elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944 was followed.

33.1. CESTAT noted that both Naphtha and natural gas were used together to produce steam in the steam generation plant. CESTAT also noted that as the steam produced out of Naphtha and natural gas was not separately stored, it was difficult to say steam produced out of which fuel was going to the manufacture of fertilizer and non-fertilizer products. It was observed that as both the fuels were used together, it was not possible to extricate the quantities of the steam produced out of Naphtha and natural gas as shown in the chart submitted by the appellant. Therefore, CESTAT was of the view that the ratio of the total steam used for non-fertilizer use and the total

steam generated out of both fuels should be taken for ascertaining the quantity of Naphtha or natural gas consumed for non-fertilizer purposes. Since revenue relied upon the statement of one Shri V.G. Londhe, Finance Manager of the appellant wherein he stated that natural gas was the main fuel and Naphtha was used as a supplement and held that from such statement, the percentage of steam consumed for non-fertilizer purposes could be ascertained which in fact was relied upon by the revenue in the show cause notice. Therefore, CESTAT concluded that demanding duty on the basis of proportionate use for non-fertilizer purposes was a reasonable method for determining and demanding duty.

33.2. CESTAT also rejected the contention of the appellant that Naphtha was in short supply which was admitted by the department and that when something was in short supply, allegation of diversion of the same cannot survive.

33.3. As regards the exemption notifications, CESTAT was of the view that in so far the description of goods for exemption was concerned, the expression used

was Naphtha and natural gasoline liquid 'for use' in the manufacture of fertilizer or ammonia whereas in the first condition, the expression used was that the exemption would be allowed if it was proved to the satisfaction of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise that such goods were cleared for the 'intended use'. According to CESTAT, in the present case, Naphtha was manufactured by HPCL and when the goods (Naphtha) was cleared from HPCL, the first condition would be satisfied if the Assistant Commissioner or Deputy Commissioner was satisfied about such 'intended use' but the appellant was the recipient of Naphtha under Chapter X procedure or under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Thus, it was for the appellant to satisfy, if it wanted to avail the exemption, that the goods were 'for use' in the manufacture of fertilizer and ammonia which it failed to do. Therefore, appellant cannot avail any benefit out of the expression 'intended use'.

33.4. After differentiating the various citations relied upon by the appellant, CESTAT held that in the present case,

it was not the supplier of Naphtha who was proposed to be denied the benefit of exemption. Demand of duty was against the user of the good and the question is whether the user was eligible for exemption or not. Adverting to the relevant provisions of Chapter X and the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, CESTAT held that the recipient was required to pay the duty on the goods (Naphtha) procured if the goods were not used in the manufacture of fertilizer. Therefore, CESTAT concluded that duty was rightly demanded on the quantity of Naphtha not used in the manufacture of fertilizer or ammonia and accordingly upheld the finding of the adjudicating authority in this regard.

33.5. After adverting to Rule 173Q of the Central Excise Rules, 1944 and Rule 25 of the Central Excise Rules, 2002 as well as Section 11AC of the Central Excise Act, 1944, CESTAT held as under:

> **16.** We find that the appellants in this case are not manufacturer of raw naphtha which was received by them under Chapter X procedure and under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Therefore, we are of the view that they will not be covered

under the definition of manufacturer, producer, registered person of a warehouse or a registered dealer as mentioned in Rule 173Q or Rule 25 of the Central Excise Rules. Therefore, they are not liable to penalty under the provisions of these Rules. However, we find that on going through Section 11AC, the person who is liable to pay duty as determined under sub-section (2) of Section 11A shall be liable to pay a penalty equal to the duty so determined. We also find that Section 11A has been made applicable to the recipient of the goods under Chapter X procedure and under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 as Section 11A is separately mentioned in Rule 196 of the Central Excise Rules and in Rule 6 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. We, therefore, uphold the penalty imposed by the adjudicating authority in Order No. 31/2009 dated 27.01.2010 under Section 11AC of the Act on the appellant. However, penalty imposed under Rule 173Q and Rule 25 of the Central Excise Rules in Order No. 32-56/2009 dated 05.02.2010 is set aside.

34. Let us now have a broad overview of the relevant statutory framework.

35. Section 5A of the Central Excise Act deals with the power to grant exemption from duty of excise. As per sub-section (1), if the Central Government is satisfied that it

is necessary in the public interest so to do, it may, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon.

36. Heading of Section 11 is recovery of sums due to Government. In this case, we are concerned with sub-section (1). It says that in respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of the Central Excise Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs to levy such duty or require the payment of such sums may deduct or require any other Central Excise Officer or a proper officer referred to in Section 142 of the Customs Act, 1962 to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer or may recover the amount by attachment and sale of excisable

goods belonging to such person. Prior to 10.05.2013, this provision provided for deducting the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may recover the amount.

37. We may mention that we are dealing with the demand of the revenue for the period from November, 1996 to February, 2005. Therefore, the law which prevailed during that point of time would be relevant. As noticed in the previous paragraph, Section 11 as it stood prior to 10.05.2013 would be applicable. In so far Section 11A is concerned, the provision which stood in the statute book prior to its amendment with effect from 08.04.2011 would be applicable. Section 11A as it stood prior to 08.04.2011 deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Sub-section (1) says that when any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or

valuation of excisable goods under any other provisions of the Central Excise Act or the rules made thereunder, a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short levied or short paid or to whom the refund has erroneously been made, requiring him to show cause as to why he should not pay the amount specified in the notice.

37.1. Thus, as would be evident from the above, the normal limitation period for issuance of show cause notice in case of duty not levied or not paid or short-levied or short paid or erroneously refunded in terms of Section 11A was one year from the relevant date prior to 08.04.2011.

38. This brings us to the proviso to sub-section (1) of Section 11A, as it stood at the relevant point of time, which is relevant and is therefore extracted hereunder:

> Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of

this sub-section shall have effect, as if for the words one years, the words “five years” were substituted.

38.1. Thus, the proviso to sub-section (1) of Section 11A provides that where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act or of the rules made thereunder with the intent to evade payment of duty, by such person or his agent, the limitation period of one year would stand extended to 5 years. In the aforesaid circumstances as enumerated hereinabove, the normal period of limitation of one year would stand extended to five years. However, the non-levy or non-payment or short levy etc., in which event, the limitation period of issuing show cause notice would stand extended to five years, is dependent upon fulfilment of two conditions. The first condition is that it should be by reason of fraud, collusion or any willful mis-statement or suppression of facts; secondly, it can also be for contravention of any of the provisions of the Central Excise Act and the Central Excise

Rules but with the intention to evade payment of duty. In the second case, the intention to evade payment of duty is crucial and, therefore, must be discernible.

39. Section 11AA provides for interest on delayed payment of duty. Prior to 08.04.2011, Section 11AA and Section 11AB of the Central Excise Act provided for interest on delayed payment of duty under different situations. However, with effect from 08.04.2011, the two provisions have been merged and have now become Section 11AA.

40. On the other hand, Section 11AC of the Central Excise Act says that there shall be imposition of penalty for short-levy or non-levy of duty in certain cases.

41. We may now turn to the Central Excise Rules, 1944 which has since been replaced by the Central Excise Rules, 2002.

42. Rule 173Q of the Central Excise Rules, 1944 deals with confiscation and penalty. Sub-rule (1) says that subject to the provisions contained in Section 11AC of the Central Excise Act and Rule 57AH, if any manufacturer, producer, registered person of a warehouse or a registered dealer:

a) removes any excisable goods in contravention of any of the provisions of the Central Excise Rules, 1944; or

b) does not account for any excisable goods manufactured, produced or stored by him; or

bb) takes credit of duty in respect of inputs or capital goods for being used in the manufacture of final product or capital goods for use in the factory of manufacturer of final product, as the case may be, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods has been paid etc. or takes credit of duty which he knows or which he has reason to believe, is not permissible under the Central Excise Rules do not utilises the inputs or capital goods in the manner provided for in the rules or utilizes credit of duty in respect of inputs or capital goods in contravention of any of the provisions of the Central Excise Rules etc.; or

bbb) enters wilfully or incorrect particulars in the invoice issued for the excisable goods dealt by him with intent to facilitate the buyer to avail of credit of the duty of excise or the additional duty under Section 3 of the

Customs Tarriff Act, 1975 in respect of such goods which are not permissible under the Rules; or

c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate; or

d) contravenes any of the provisions of the Central Excise Rules with intent to evade payment of duty,

then all such goods shall be liable to confiscation and the manufacture, producer or registered person of a warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to above has been committed or ten thousand rupees, whichever is greater.

43. Chapter X deals with remission of duty on goods used for special industrial purposes. Rules 192 to 196BB comprise Chapter X. Provisions under this chapter provide that where the Central Government has by notification under Rule 8 or Section 5A of the Central Excise Act, as the case may be, sanctioned the remission of duty on excisable goods other than salt, used in a specified industrial process,

any person wishing to obtain remission of duty on such goods shall make application to the Commissioner in the proper Form detailing the requirements including the purpose and manner in which it is intended to use the excisable goods and declaring that the goods will be used for such purpose and in such manner. It provides for granting the application subject to satisfaction of the Commissioner.

43.1. Rules 196 also provides that if any excisable goods obtained under Rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application or are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes etc. the applicant shall on demand by the proper officer, immediately pay the duty leviable on such goods. In such an event, the concession may be withdrawn by the Commissioner besides forfeiture of the security deposited and confiscation of the excisable goods and all goods manufactured from such goods, in store at the factory.

44. Rule 25 of the Central Excise Rules, 2002 deals with confiscation and penalty. Four conditions are mentioned

in sub-rule (1) which may lead to confiscation of the excisable goods besides imposition of penalty. Rule 25 read thus:

> **Rule 25. Confiscation and penalty.** (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or an importer who issues an invoice on which CENVAT credit can be taken or a registered dealer, -
>
> (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
>
> (b) does not account for any excisable goods produced or manufactured or stored by him; or
>
> (c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or
>
> (d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,
>
> then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or an importer who issues an invoice on which CENVAT credit can be taken or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is greater.

An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.

45. In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944, the Central Government has made the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. These rules are applicable to a manufacturer who intends to avail of the benefit of a notification issued under sub-section (1) of Section 5A of the Central Excise Act, 1944 granting exemption of duty to excisable goods when used for the purpose specified in that notification. The procedure for availing of such benefit is laid down in the Rules 3 to 5.

45.1. Rule 6 of the aforesaid rules deals with recovery of duty in certain cases. It says that where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods alongwith interest and provisions of Section 11A and Section 11AB of the Central Excise Act, 1944 shall

apply *mutatis mutandis* for effecting such recovery. The Explanation clarifies that such goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transportation from the place of procurement to the manufacturer's premises or during handling or storage in the manufacturer's premises. Rule 6 is extracted as under:

> **6. Recovery of duty in certain cases.-** Where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of Section 11A and Section 11AB of the Central Excise Act, 1944 (1 of 1944) shall apply *mutatis mutandis* for effecting such recoveries.
>
> *Explanation.* – For the removal of doubts, it is hereby clarified that subject goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the manufacturer's premises or

during handling or storage in the manufacturer's premises.

46. Let us now turn our attention to the exemption notification No. 75/1984-CE dated 01.03.1984. This notification was issued by the Central Government in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 exempting the goods described in column (3) of the table appended thereto and included in the first Schedule to the Central Excise Act, 1944 from so much of the duty of excise leviable thereon subject to the intended use or the conditions laid down in the corresponding entry in the table appended. At serial No. 6.02 is mentioned raw Naphtha at the concessional rate of duty as mentioned in column (4). In column (5) of the table, it is mentioned that such concessional rate of duty would be available if the raw Naphtha was procured for the intended use in the manufacture of fertilizers and ammonia. As per the proviso, where the intended use was in the manufacture of ammonia, such ammonia was used elsewhere in the manufacture of fertilizers and the procedure set out in Chapter X of the Central Excise Rules, 1944 was followed. However, the notification clarified that such exemption for the

intended use would be subject to the following further conditions:

(i) It was proved to the satisfaction of an officer not below the rank of Assistant Collector of Central Excise that such goods were used for the intended use specified in column (5) of the appended table; and

(ii) Where such use was elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Act, 1944 was followed.

47. The next notification is notification No. 4/1997-CE dated 01.03.1997. In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944, the Central Government being satisfied that it is necessary in the public interest so to do, exempted the excisable goods specified in column (3) of the appended table and included in the Schedule to the Central Excise Tariff Act, 1985 as specified in the corresponding entry to column (2) of the table from so much of the duty of excise leviable thereon as specified in the corresponding entry in column (4), subject to any of the conditions specified in the

annexures to the said notification, which were mentioned in the corresponding entry in column (5) of the appended table. At serial No. 8 is mentioned the excisable goods Naphtha and natural gasoline liquid for use in the manufacture of fertilizer or ammonia. The rate of duty is nil and it is subject to condition Nos. 3 and 4 as per the annexure. Condition Nos. 3 and 4 are the same as the conditions mentioned in the proviso to the notification No. 75/84-CE. Since this notification is important, relevant portion thereof is extracted hereunder:

Notification No. 4/1997-CE Dated 01-03-1997

S. No.	**Chapter or heading No. or sub-heading No.**	**Description of goods**	**Rate**	**Condi-tions**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
*	* *	* * * *		*
8.	27	Naphtha and Natural Gasoline Liquid for use in the manufacture of fertiliser or ammonia	Nil	3 and 4
*	* *	* * * *		*

ANNEXURE

Condition No.	**Conditions**
* * *	* * * * *
3.	The exemption shall be subject to proving to the satisfaction of an officer not below

	the rank of the Assistant Commissioner of Central Excise, that such goods are cleared for the intended use specified in column (3) of the said Table.
4.	Where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.
* * * * * * * *	

48. Having surveyed the law and the exemption notifications, let us now turn to the show cause notices. The first show cause notice is dated 29.08.2001. This show cause notice covers the period from 27.11.1996 to 31.03.2001. Within the aforesaid period, the last period in respect of which the aforesaid show cause notice was issued was from 16.02.2001 to 31.03.2001. The subsequent 25 show cause notices are from dated 05.10.2004 to dated 03.08.2005. The show cause notice dated 05.10.2004 covered the period from September, 2003 to June, 2004. As regards the show cause notice dated 03.08.2005 is concerned, the same covered the period from July, 2004 to February, 2005.

49. As we have noted above, prior to 08.04.2011, the limitation period under Section 11A of the Central Excise Act was one year. It is thus evident that all the show cause notices issued to the appellant pertained to periods

which were beyond one year. In such circumstances, respondent invoked the extended period of limitation under the proviso to sub-section (1) of Section 11A of the Central Excise Act. We have also noted that the extended limitation period of five years would be available to the respondent in a case where any duty of excise has not been levied or not paid or has been short levied or short paid or erroneously refunded by reason of fraud or collusion or on account of any willful mis-statement or suppression of facts or contravention of any of the provisions of the Central Excise Act or of the Rules made thereunder with the intent to evade payment of duty.

50. Thus, fraud, collusion, willful mis-statement or suppression of facts stand in one category and contravention of any of the provisions of the Central Excise Act or the rules made thereunder is another category. In the first category, the act is deliberate and is so egregious that such omission or infraction would by itself be sufficient to attract the extended period of limitation. However, in the later category, the contravention of the statute would have to be accompanied

by an intent to evade payment of duty to attract the extended period of limitation.

51. Let us now examine some of the judgments cited at the Bar and their applicability to the facts of the present case.

52. In *Dalmia Dadri Cement Ltd.,* this Court was examining applicability of an exemption granted under Section 5(2)(a) of the Punjab General Sales Tax Act, 1948 to the assessee, who had claimed the exemption on the cement sold by it to the Punjab State Electricity Board for use by it in the generation or distribution of electrical energy. This Court examined the import of the expression *for use* as appearing in Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948. After noting that the important words used in the said provision are 'goods *for use* by it in the generation or distribution of such energy', this Court opined that on a plain reading of the relevant clause, it was clear that the expression *for use* must mean *intended for use*. It was explained that if the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of

electrical energy, the phraseology used in the exemption clause would have been different as, for example, 'goods actually used' or 'goods used'.

52.1. Thus, this Court expressed the view that the real question which it was called upon to determine was whether the cement supplied was *intended for use* directly in the generation or distribution of electrical energy. If it was so intended, the exemption was attracted but not otherwise. Certificates issued by the Punjab State Electricity Board clearly showed that the intention of the Board was that the cement should be used for a purpose directly connected with the generation or distribution of electrical energy. The mere fact that some of the cement supplied was infact used by the Board for activities not directly connected with the generation or distribution of electrical energy would not make any difference regarding the availability of the exemption.

53. This expression *intended for use* again came up for consideration in the case of *Steel Authority of India Ltd.* That was a case where Steel Authority of India Limited (SAIL) procured Naphtha from the market at concessional

rate of duty in terms of the extant exemption notification *for use* in its plant at Rourkela for manufacturing of fertilizer. It was the case of the revenue that a substantial quantity of raw Naphtha was not infact utilised by SAIL in the manufacture of fertilizer. SAIL was, therefore, served with show cause notices demanding amounts of excise duty of raw Naphtha allegedly not utilized for the manufacture of fertilizer. When the matter reached this Court, it was noted that the exemption notification required proof that the raw Naphtha was *intended for use* in the manufacture of fertilizer and not that the raw Naphtha was used in the manufacture of fertilizer. This Court did not agree with the view taken by CESTAT that it was a requisite that it should be proved that the raw Naphtha had been actually used in the manufacture of fertilizer and held that what was required to be shown was that the raw Naphtha was used for the purpose and with the intention of manufacturing fertilizer. In the facts of that case, this Court observed that raw Naphtha that was fed by SAIL into its plant was for the purpose and with the intention of manufacturing fertilizer and that it was only because of supervening circumstances

i.e. the low, uncertain and fluctuating availability of power that the reformed gas produced during the interim stage of manufacture had to be vented out. Therefore, the benefit of the exemption notification was available to SAIL in regard to the raw Naphtha that it utilized in its plant for the manufacture of fertilizer but which for reasons over which it had no control did not, infact, result in the manufacture of fertilizer but had, at the interim stage of reformed gas, to be vented out. This Court held thus:

> **6.** It is important to note that the exemption notification required proof that the raw naphtha was "intended for use" in the manufacture of fertiliser and not that the raw naphtha was used in the manufacture of fertiliser. Due emphasis has to be given to the clear language of the first condition of the exemption notification and its effect cannot be nullified by an interpretation placed on the second condition. Both conditions must be so read as to give full effect to the clear language of the first condition. The emphasis in this behalf upon Rule 196 in the first order of the Tribunal appears to us misplaced. Rule 196 says that if any excisable goods obtained under Rule 192 are not accounted for as having been used for the purpose and in the manner required, full excise duty thereon is payable. It does not appear to be correct to hold, as the Tribunal did in the first order, that this meant that it was a requisite that it should be proved that the raw naphtha

had been actually used in the manufacture of fertiliser. In the context, what was required to be shown was that the raw naphtha was used for the purpose and with the intention of manufacturing fertiliser. Duty at the full rate on the raw naphtha would be leviable only if it could not be shown to have been used for the purpose and with the intention of manufacturing fertiliser.

7. There can be no doubt that the raw naphtha that was fed by SAIL into its plant was for the purpose and with the intention of manufacturing fertiliser and that it was only because of supervening circumstances, namely, the low, uncertain and fluctuating availability of power, that the reformed gas produced during the interim stage of manufacture had to be vented out. The benefit of the exemption notification is, therefore, available to SAIL in regard to the raw naphtha that it utilised in its plant for the manufacture of fertiliser but which, for reasons over which it had no control, did not, in fact, result in the manufacture of fertiliser but had, at the interim stage of reformed gas, to be vented out.

54. Applying the above to the facts of the present case, it is quite evident that Naphtha which was procured from HPCL was *intended for use* by the appellant in the manufacture of fertilizer and ammonia. It is immaterial that a fraction of such procured Naphtha had to be used for generation of electricity which was also mostly used in the manufacture of fertilizer and ammonia but a portion of

which had to be used in the chemical plant beside being supplied to the Maharashtra State Electricity Board. If that be the position, appellant would be entitled to avail the benefit of concessional rate of duty in terms of the exemption notifications alluded too hereinabove.

55. Though this would clinch the issue, nonetheless we are of the view that it would be appropriate to render a pronouncement on the question of limitation or the extended period of limitation as well.

56. *Pushpam Pharmaceuticals Company* is a case where the question which fell for consideration before this Court was whether the revenue was justified in initiating proceedings for short levy of duty by invoking the proviso to Section 11A of the Central Excise Act for the years 1978-79 to 1981-82. In that case, the department invoked the extended period of limitation as according to it the duty was short levied due to suppression of the fact that if the turnover was clubbed then it would have exceeded Rs. 5 lakhs in which event it would have attracted regular duty. Be it stated that appellant in that case manufactured an item falling under tariff item 14-E as well as another item

under item 68 which was fully exempted from payment of duty. The item manufactured under tariff item 14-E in each year was less than Rs. 5 lakhs. Notification No. 111 of 1978 exempted the turnover of goods manufactured under item 14-E if it was below Rs. 5 lakhs. In such circumstances, appellant had surrendered its license and it was cancelled. Notices were however issued because according to the revenue, if the turnover of the two items i.e. exempted under item 68 for the years under consideration was clubbed together with the turnover of item 14-E then it would have exceeded Rs. 5 lakhs and the goods would have become liable to duty. In the facts of that case, this Court held as under:

> **4.** Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates

> that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

56.1. Thus, this Court was of the view that for invoking the extended period of limitation, the act of the assessee should be deliberate. Where facts are known to both the parties, the omission by one to do what he might have done and not that he must have done does not render it suppression.

57. Similarly, in *Nirlon Limited,* this Court noted from the facts of the case that the entire exercise was revenue neutral and held that when the entire exercise was revenue neutral, the appellant (assessee) could not have achieved any purpose by evading payment of excise duty. Therefore, it was not permissible for the respondent (revenue) to invoke the

proviso to Section 11A(1) of the Central Excise Act and apply the extended period of limitation.

58. Reverting back to the facts of this case, it is evident that all along appellant had furnished the requisite particulars to the central excise authorities based on which the jurisdictional officer had issued CT-2 certificates. On the strength of such certificates, appellant had availed exemption from payment of excise duty on the procured Naphtha which was mostly used in the manufacture of fertilizer and ammonia. Applicability of the exemption notifications is dependent on interpretation of the expression *intended for use* used therein. When the availing of exemption is dependent on interpretation of a statutory notification, which interpretation we have upheld, it cannot be said that the assessee (appellant herein) had any intention to evade payment of excise duty. That apart, we need to keep in mind that appellant is after all a central government public sector undertaking. It is on record that appellant receives subsidy to maintain the regulated price. Whatever excise duty it would have had to pay had it not been for the exemption notifications, would have been reimbursed by the Central Government by way of subsidy.

Therefore, it is a clear case of revenue neutrality. In such a case, as has been pointed out by this Court in *Nirlon,* question of invoking the extended period of limitation does not arise.

Conclusions

59. Therefore, we are of the considered opinion that the appellant has to succeed both on merit as well as on limitation.

60. Consequently, impugned orders-in-original dated 27.01.2010 and 04.02.2010 as well as the impugned order passed by CESTAT dated 27.03.2012 are liable to be set aside. In so far the Civil Appeal arising out of Special Leave Petition (Civil) No. 21441 of 2013 is concerned, in view of the conclusions reached hereinabove, the same has become academic and hence would require no adjudication.

61. Consequently and in the light of the above, Civil Appeal Nos. 2219-2220 of 2013 are allowed. Orders-in-original dated 27.01.2010 and 04.02.2010 as well as the impugned order of CESTAT dated 27.03.2012 are hereby set aside. Civil Appeal No. _____ of 2026 (arising out of

Special Leave Petition (Civil) No. 21441 of 2013) is disposed of in the light of the decision rendered in Civil Appeal Nos. 2219-2220 of 2013.

62. No Costs.

.....J.
[MANOJ MISRA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MARCH 24, 2026.