

(1986) 08 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No's. 2010 and 4098 of 1985

Digvijay Cement Company Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 178(1), 192, 56(1), 56A, 56A(1)
Central Excises and Salt Act, 1944 — Section 12, 37, 6
Constitution of India, 1950 — Article 134
Customs Tariff Act, 1975 — Section 3
Tariff Act, 1934 — Section 2A

Citation : (1986) 10 ECC 359 : (1987) 10 ECR 7 : (1986) 25 ELT 879 : (1987) 1 GLR 641

Hon'ble Judges : S.B. Majmudar, J; P.R. Gokulakrishnan, J

Bench : Division Bench

Advocate : V.B. Patel and D.G. Chauhan, for the Appellant; S.B. Vakil, S.D. Shah and Hamid Quarashi, Attorney General, for the Respondent

Judgement

Majumdar, J.—In these two petitions under Article 226 of the Constitution, a short question arises for our consideration. It is as follows :

Whether the first petitioner company is entitled to proforma credit under Rule 56-A of the Central Excise Rules, 1944 framed under the provisions

of the Central Excises and Salt Act, 1944 on the two inputs viz. cement and asbestor raw (fibre) which are utilised by petitioner No. 1 company at

its Ahmedabad Office for manufacturing finished excisable goods viz. asbestos cement products.

2. Introductory facts : A few relevant facts leading to these petitions and the controversy raised therein deserve to be noted at the outset. Petitioner

No. 1 is a company incorporated under the Indian Companies Act, 1956. Petitioner No. 2 is a director and shareholder of the said company.

Both these petitioners are common to both the petitions. Petitioner No. 1 company owns a factory at Digvijay Nagar gram (Sikka) in Jamnagar

district. It is engaged in manufacture and sale of cement. It also owns a factory at Digvijaynagar, Ahmedabad for manufacture and sale of asbestos

cement products such as sheets, corrugated or plain asbestos pressure pipes, roofing accessories and couplings etc. Petitioner No. 1 company

holds L. 4 licence for manufacture of asbestos cement products. Cement and asbestos are raw materials used in the manufacture of asbestos

cement products. For the purpose of manufacturing asbestos cement products in the factory at Ahmedabad, cement clinker in the form of pallets is

transported from Sikka factory to the cement grinding unit of petitioner No. 1 in Ahmedabad. The clinker is ground into cement primarily for

captive consumption, viz. manufacture of asbestos pressure pipes and sheets etc. Petitioner No. 1 company pays excise duty on the quantity of

cement cleared from the cement grinding unit.

3. The other component or raw material used by the petitioner company for manufacture of asbestos raw fibre was excisable under T.I. 22F of the

First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act") at the relevant time, prior to reshuffling of the tariff

items in 1986. The said raw material is imported from Canada, U.S.S.R., Brazil, U.S.A., etc. So far as other raw material or input which is utilised

by the petitioner company for manufacturing its finished excisable products viz., asbestos cement products, is concerned, it is cement. Cement was,

at the relevant time, excisable under T.I. 23 while the finished excisable products manufactured out of utilisation of the inputs of cement and

asbestos raw (fibre) viz. asbestos cement products was excisable under T.I. 23-C, as existed at the relevant time. It is, therefore, obvious that

excise duty on such material or component parts viz. cement and asbestos raw (fibre) was payable under different tariff items as compared to the

duty that was payable on the finished excisable goods viz., asbestos cement products. Petitioner company's contention is that inputs or raw

materials i.e. cement and asbestos raw (fibre) are received into the petitioner company's factory for the purpose of use in the manufacture of

asbestos cement products. That in respect of cement and asbestos raw obtained from outside, excise duties were duly paid under the relevant tariff

items 23 and 22-F; while in respect of imported asbestos additional duty i.e. countervailing duty equivalent to excise duty was paid. Thus, asbestos

and cement received in the petitioner's factory were duty paid. That the finished excisable product manufactured by the petitioners out of utilisation

of these inputs was excisable as seen above under tariff item 23-C and the finished product was not exempted from excise duty leviable thereon

nor was it chargeable to nil rate of duty.

4. The petitioner's case is that finished products manufactured by the petitioner company viz., asbestos cement products are notified by the Central

Government under rule 56-A(1) as one of the specified excisable goods in respect of which proforma credit procedure under Rule 56-A(2) is

available. That asbestos cement products are listed at Sl. No. 11 of the list of such classified goods under sub-rule (1) of rule 56-A. The

petitioners contend that they are, therefore, entitled to avail of the proforma credit procedure in connection with their finished products as the

proforma credit procedure laid down by rule 56A(2). That the petitioners applied for being granted benefit of the aforesaid procedure vide an

application dated 4.2.1985 moved before respondent No. 3 herein who is the competent authority for the purpose. By an order dated 7.2.86

respondent No. 3 rejected the said application on the ground that the petitioners were not entitled for availing the proforma credit under rule 56A

because the inputs and outputs did not fall under the same tariff item. The said order is at annexure "A" to special civil application No. 2010 of

1985 which is the main petition. The petitioners have challenged the said order at Annexure "A" and have contended that the third respondent had

patently erred in rejecting the application and in refusing the benefit of the proforma credit procedure to the petitioner's final product asbestos

cement products. The petitioners have prayed for suitable writ, direction or order calling upon the respondents to allow petitioner No. 1 company

to avail of the proforma credit on duty paid on asbestos and cement used in the manufacture of asbestos cement products at the petitioner's

factory at Ahmedabad in accordance with the provisions of rule 56-A of the Rules. The petitioners have also prayed for interim relief in that

connection. Special Civil application No. 2010 of 1985 reached admission hearing before a Division Bench of this court consisting of B.K. Mehta

(as he then was) and G.T. Nanavati, JJ. By an interim order dated 10.4.1985 the aforesaid Division Bench of this court restrained the respondents

from refusing to grant permission of proforma credit in account No. 23 to the petitioners equivalent to the amount of duty paid on raw materials on

certain conditions laid down in the said interim order.

5. It appears that the petitioners subsequently felt aggrieved by the action of the respondents in not fully complying with the interim order passed by

this court and consequently, they filed special civil application No. 4098 of 1985 requesting this court in the light of the earlier interim orders to

direct the respondents to grant the petitioner's application dated 4.2.85 for proforma credit and for quashing the notice at annexure "B" issued by

the respondents in July, 1985 calling upon the petitioners to show cause why their request for grant of benefit of rule 56-A should not be rejected

on the grounds mentioned in the show cause notice. It is obvious that special civil application No. 4098 of 1985 is an off-shoot of the main special

civil application No. 2010 of 1985 and it will stand or fall with the main special civil application No. 2010 of 1985. Both these petitions were,

therefore, heard together by us and the learned advocates representing the parties also addressed us accordingly.

6. Rival Contentions : Mr. V. B. Patel for the petitioners submitted that petitioners No. 1 company is entitled to the benefit of procedure laid down

by rule 56A in as much as the finished products manufactured by the petitioners are already specified excisable commodities as per the notification

issued by the Central Government. That once that happens, rule 56A(1) applied to such commodity and the benefit of the procedure of sub-rule

(2) of rule 56A automatically applied to such commodity. In this connection, he submitted that the reasoning adopted by the third respondent in

passing the impugned order is not patently fallacious in as much as once an excisable commodity is specified for the benefit of procedure under rule

56A, the question whether the inputs that is material or component parts from which the final product is manufactured are excisable under the same

Tariff item or not would be totally immaterial. That if such a view is not taken, the very act of specifying under rule 56A(1) by the Central

Government would be otiose and an exercise in futility as many excisable goods are specified by the Central Government under rule 56A(1) which

consist of inputs thereof falling under different tariff items. If they are not to be given benefit of rule 56A(2), the very specification thereof under rule

56A(1) would be a null and void exercise. Mr. Patel next contended that proviso to sub-rule (2) of rule 56A refers to finished excisable goods

which are genus of which excisable goods are species and that proviso (i) contemplates a separate category of finished excisable goods while

proviso (ii) contemplates entirely a different category of finished excisable goods. That both sub-parts of the proviso apply in distinct and different

fields and try to cater to different requirements. In this connection, Mr. Patel further submitted that employment of the word "and" by the rule

making authority between proviso (i) and proviso (ii) indicates that two different situations are dealt with by these two parts of the proviso and in

either case, proforma credit benefit would be available to finished excisable goods which satisfy the requirements of these two separate categories

of cases contemplated by these two parts of the proviso. Mr. Patel next contended that if any other view is taken of the proviso, then in that case,

proviso would cut across the operation of the main sub-rule (1) and sub-rule (2) of rule 56A and to that extent, the proviso would be repugnant to

the main provisions which constitute a complete Code. Mr. Patel, therefore, submitted that the impugned order at annexure "A" is liable to be

quashed and set aside and the petitioners are entitled to the relief's claimed in the petition.

7. Mr. S. B. Vakil for the respondents, on the other hand submitted that rule 56A(1) has to be read with sub-rule (2) and rule 56A(2) brings in its

wake operation of the proviso attached to the said sub-rule. It was submitted by Mr. Vakil that if sub-rule (1) and sub-rule (2) of rule 56A

represent credit rule, the proviso represents "no credit rule" and that it has to be read harmoniously with sub-rule (2). He submitted that specified

excisable goods can also be finished excisable goods as contemplated by the proviso and in fact, specified excisable goods are genus while the

finished excisable goods are species thereof. That both the parts of the proviso operate in the same field and they have to be read conjunctively

and cumulatively. He submitted that employment of the word "and" between proviso (i) and proviso (ii) indicates that not only the requirement of

part (i) has to be satisfied but also the requirement of part (ii) of the proviso has to be satisfied before any proforma credit can be made available

to the concerned specified excisable goods. In this connection, Mr. Vakil submitted that the words "and unless" would mean "and except when"

and if so read, the proviso can be harmoniously construed with the main part of sub-rule (2) read with sub-rule (1) of rule 56A. He further

submitted that even though finished excisable goods may consist of inputs not falling under the same tariff item and even though such excisable

goods are specified, such specification would not be otiose as the Parliament itself may change the schedule to the Act and may reshuffle the inputs

from one tariff item to the other. He further submitted that in any case, proviso (ii)(b) indicates that in cases where inputs fall in different tariff items,

if the Central Government specifically sanctions remission or adjustment of duty thereon, the procedure of rule 56A would be available to the

specified excisable goods manufactured out of them and consequently the specification made by the Central Government under rule 56A(1) quo

these articles cannot be said to be otiose. He lastly submitted that as the proviso has to be read harmoniously with sub-rule (1) and sub-rule (2) of

rule 56A, there is no question of repugnancy between them. He, therefore, submitted that the order passed by respondent No. 3 is perfectly legal

and valid and justified on the facts of the present case.

8. Points for determination : In the light of the aforesaid rival contentions, the following points arise for our consideration :-

(1) Whether rule 56A(1) procedure is available for specified excisable commodity which is manufactured out of inputs not excisable under the

same tariff items of the Central Excise Tariff.

(2) If the answer is in the negative, whether proviso (ii) of sub-rule (2) of rule 56A becomes repugnant to the provisions of rule 56A(1) read with

(2).

Point No. 1 :- Before proceeding to deal with the first point for determination, it become necessary to have a look at the relevant provisions of rule

56. Before we look at rule 56A in its present form, it would be profitable to quickly glance through the previous forms in which it was couched

from its inception till it reached its present shape. Rule 56A of the rules was enacted, amongst others, by the rule making authority in exercise of its

powers under sections 6, 12, and 37 of the Act. It was originally introduced on 8.12.1962. At that time, it read as under :-

56A. Special procedure for movement of duty paid or countervailing duty paid materials or component parts for use in the manufacture of finished excisable products :-

(1) Notwithstanding anything contained in these rules, the Central Government may by notification in the Official Gazette, specify the excisable

goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the condition mentioned in sub-rule (3) and such other conditions as may

from time to time be prescribed by the Central Government, permits a manufacturer of any excisable goods specified under sub-rule (1) to receive

duty paid material or components parts in his factory for the manufacture of these goods and allow a credit of the duty already paid on such

material or component parts, under proforma credit amount as in form No. 23"".

9. On 8.1.1983, proviso with clauses (a) and (b) was added to sub-rule (2) of rule 56A. The added proviso read as under :-

Provided that no credit of duty shall be allowed in respect of any material or component part used in the manufacture of finished excisable goods

unless :

(a) duty has been paid for such material or component part under the same items or sub-items and at the same rate as is appropriate to the finished

excisable goods; or

(b) remission or adjustment of duty paid for such material or component part has been specifically sanctioned by Central Govt.

10. Thereafter, on 26.10.1963, certain marginal changes were made in rule 56A(1) and (2) read with proviso, clauses (a) and (b). After these

changes, rule 56A read as under :-

56A. Special procedure for movement of duty paid or countervailing duty paid materials or components parts for use in the manufacture of

finished excisable products. (1) Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official

Gazette, specify the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may

from time to time be prescribed by the Central Government permit a manufacturer of any excisable goods specified under sub-rule (1) to receive duty paid material or component parts or finished product (like asbestos cement). In his factory for the manufacture of these goods or for the mere convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be :

Provided that no credit of duty shall be allowed in respect of any material or component part used in the manufacture of finished excisable goods

unless :-

(a) duty has been paid for such material or component part under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment of duty paid for such material or component part has been specifically sanctioned by the Central Government.

11. Thereafter on 27.12.1968, proviso to sub-rule (2) of rule 56A was recast and it was divided in sub-paras (i) and (ii). The said recast proviso

alongwith rule 56A as substituted for the original rule 56A with effect from 28.12.1968 read as under :-

56A. Special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods

(1) Notwithstanding anything contained in these rules, the Central Government may by notification in the Official Gazette, specify the excisable

goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions, as may

from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive

material or component parts or finished product (like asbestos cement), on which the duty of excise or the additional duty u/s 2A of the Indian

Tariff Act, 1934 (32 of 1934) (hereinafter referred to as "the countervailing duty") has been paid, in his factory for the manufacture of these goods

or for the mere convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or

finished product, as the case may be :

Provided that no credit of duty shall be allowed in respect of any material or

component parts used in the manufacture of finished excisable goods

(i) if such finished excisable goods produced by the manufacturer are exempted from the whole of the duty of excisable leviable thereon are

chargeable to nil rate of duty, and

(ii) unless -

(a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Govt :

Provided further that if the duty paid on such material or component parts (of which credit has been allowed under this sub-rule) be varied

subsequently due to any reason, resulting in payment of refund to, or recovery or more duty from the manufacturer or importer, as the case may be

of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule

(3) or in the account current maintained under sub-rule (3) or rule 9 or rule 178(1) or if such adjustment be not possible for any reason, by cash

recovery from or, as the case may be, refund to the manufacturer availing of the procedure contained in this rule"".

12. Thereafter, rule 56A(2) underwent further modification and ultimately, rule 56A(1) and (2) stood in the following form at the relevant time :-

56A. Special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods. (1)

Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods

in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector, may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may

from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive

material or component parts or finished product (like asbestos cement), on which the duty of excise or the additional duty u/s 3 of the Customs

Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the countervailing duty) has been paid in his factory for the manufacture of these goods or

for mere convenient distribution of finished product and allow a credit of the duty

already paid on such material or component parts or finished product, as the case may be :

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods

(i) if such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise leviable thereon or are

chargeable to nil rate of duty, and

(ii) unless -

(a) duty has been paid for such material or component parts under the same item as the finished excisable goods, or

(b) remission or adjustment of duty for such material or component parts has been specifically sanctioned by the Central Government :

Explanation :- Where, as a result of an amendment to the first schedule to the Act, the item No. of any material, or component parts, or finished

excisable goods in the manufacture of which such material or component parts are used, undergoes a change, the credit of duty paid before such

amendment on such material or component parts shall be allowed, if -

(i) before such amendment, the credit of duty was allowable in respect of such material or component parts used in the manufacture of such

finished excisable goods under this rule or under a notification issued under rule 8 of these rules requiring the procedure set out in this rule to be

followed; and

(ii) after such amendment, such material or component parts and such finished excisable goods fall under the same item, and such finished excisable

goods are specified under sub-rule (1)".

13. A look at various forms in which rule 56A(1) and (2) were couched from time to time shows that during the short interval between 8.12.1962

and 8.1.1963, there was no proviso to sub-rule (2) of rule 56A. The proviso with clauses (a) and (b) got inserted from 8.1.1963 and with

subsequent modifications, it remained operative till 27.12.1968. As clauses (a) and (b) of the proviso to sub-rule (2) of rule 56A operated at the

relevant time during this period, even though excisable commodity was specified under sub-rule (1) of rule 56A, it could not earn benefit of

proforma credit procedure unless inputs utilised for manufacturing finished

excisable goods were excisable under the same tariff item as the finished excisable goods as per clause (a) in absence of application of clause (b). It is only on account of recasting of the proviso to sub-rule (2) of rule 56A with effect from 28.12.1968 that the question which is posed for our consideration has assumed importance. In our view, the question has to be answered in the light of the express language of rule 56A(1) and (2) read with the proviso attached to sub-rule (2) as held the field at the relevant time when order Ex. A was passed. It is pertinent to note that the caption of rule 56A in terms refers to the special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods. Thus, the whole scheme of rule 56A contemplates proforma credit procedure to be made available in connection with those finished excisable goods which have been manufactured by utilising duty paid material or component parts as inputs. It is true, as submitted by Mr. Patel for the petitioners, that sub-rule (1) of rule 56A refers to specification of excisable goods by the Central Government. However, in the context of the caption to Rule 56A(1) it must be held that specification of excisable goods would be specification of the finished excisable goods. Once that specification is made under sub-rule (1) of rule 56A, procedure of sub-rule (2) would get attracted, as provided by sub-rule (1) of rule 56A itself. Once that eventuality takes place, the entire machinery of sub-rule (2) of rule 56A will be made available for the specified excisable goods in question. It is not possible to countenance the situation where in the proviso to sub-rule (2) can be kept aside while applying the procedure of sub-rule (2) of rule 56A to such specified excisable goods. When the procedure laid down under sub-rule (2) gets attracted to the specified excisable goods, the entire sub-rule (2) would get attracted and not sub-rule (2) dehors the proviso. On the express language of sub-rule (2) of rule 56A, it must be held that proviso which forms a part and parcel of sub-rule (2) also gets attracted in case of specified excisable goods, duly notified in the official gazette by the Central Government under sub-rule (1) of rule 56A in the settings in which proviso to sub-rule (2) of rule 56A has been placed, it leaves no room for doubt that any finished excisable goods duly specified under sub-rule (1) of rule 56A will have to follow the procedure of sub-rule (2) laid down in

the main part of sub-rule (2) as well as in the proviso. In fairness to Mr. Patel for the petitioners, it must be stated that it was not his contention that sub-rule (2) should be read in isolation and dehors the proviso. But his submission was that the proviso contemplate entirely a different situation and operates in a different field. We will deal with this submission a little later. For the present, it is sufficient to note that for all specified finished excisable goods, procedure of sub-rule (2) alongwith the proviso gets attracted. Once the specified finished excisable goods stand the test on the main sub-rule (2) and its proviso, then on account of the mandate of sub-rule (2) of rule 56A, the concerned Collector, on an application by the manufacturer of specified finished excisable goods, has to take available the facility of proforma credit to such manufacturer enabling him to receive the material or component parts of finished goods like asbestos cement on which duty of excise or additional duty u/s 3 of the Customs Tariff Act, as the case may be, have been paid, in his factory for the manufacture of these goods or for more convenient distribution of finished goods, so received and the Collector has to allow credit of duty already paid on such material or component parts or finished goods, to the manufacturer, as the case may be. This is the "credit rule" contemplated by sub-rule (2) of rule 56A. However, that rule is fettered or hedged by the proviso which is most relevant for our present purpose. The proviso which enacts "no credit rule" is in a way an exception to the main provisions of sub-rule (2) of rule 56A or to put it differently, it dilutes or whittles down the general sweep and mandate of rule 56A(2).

14. It is now time for us to have a close look at the proviso alongwith its sub-paras (i) and (ii), as they stood at the relevant time when the impugned order was passed. The proviso mandates that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods in the contingencies contemplated by sub-paras (i) and (ii) of the proviso. It is pertinent to note that the very opening part of the proviso enjoins that no credit of duty will be available in respect of the inputs which are used in the manufacture of finished excisable goods in the contingencies contemplated by the succeeding sub-paras (i) and (ii) of the proviso. Thus, the proviso contemplates no credit rule in connection with the finished excisable goods which are made up of material or component parts, as are dealt in the later part of the proviso.

It is not possible to agree with the contention of Mr. Patel for the petitioners that the phrase ""finished excisable goods as employed in the proviso

seeks to travel in the field different from the field covered by the phrase"" specified excisable goods as mentioned in sub-rule (1) of rule 56A. In

fact, conjoint reading of the caption of rule 56A with sub-rule (1) clearly indicates that excisable goods that are to be specified under sub-rule (1)

will be those excisable goods which are finished excisable goods and which duty paid material or component parts in their manufacturing process.

If at all, finished excisable goods" as contemplated by the proviso would be the species while the excisable goods mentioned in sub-rule (1) of rule

56A would be the genus and not vice-versa as contended by Mr. Patel for the petitioners.

15. Now, coming to the proviso itself, it must be observed that the proviso embodying no credit rule contemplates a situation wherein finished

excisable goods which are made up of inputs viz. material or component parts are not to earn benefit of the proforma credit in the contingencies

contemplated by the later part of the proviso. The later part of the proviso is made up of two sub-parts (i) and (ii). Consequently, both of them

have to be read together to find out whether finished excisable goods made up of the material or component parts would remain qualified for the

benefit of proforma credit or not. So far as sub-para (i) of the proviso is concerned, it in terms provides that if finished excisable goods are wholly

exempt from the duty of excise or are chargeable to nil duty, they will not qualify for the benefit of proforma credit. But sub-para (i) of the proviso

only deals with finished excisable goods. It represents only one side of the picture projected by the proviso. The second part of the picture deals

with the inputs. As we have seen above, the proviso which enacts no credit rule deals with both the inputs and outputs and their interaction on each

other. Scheme of the proviso is an integrated one wherein inputs and ultimate output resulting therefrom are dealt with together. Sub-para (i) of the

proviso deals with outputs. It is not complete without the provision about inputs which is laid down in sub-para (ii). Consequently, both sub-paras

(i) and (ii) of the proviso will have to be read together to get a complete picture about the no credit rule as enacted by the proviso. If sub-para (i) is

read in isolation as a separate scheme and situation as suggested by Mr. Patel, only a truncated picture of the proviso will emerge and the real

intent of the rule making authority underlying the proviso will not become highlighted. Sub-para (i) of the proviso tells us that if specified finished excisable commodity is totally exempted from excise duty and is assessed to nil duty, it will not earn the benefit of proforma credit procedure. But that is not all. Further question arises as to how the inputs from which such specified excisable commodity is manufactured are treated by the rule making authority so that the finished excisable commodity produced out of them can earn proforma credit. It is to be kept in view that proforma credit of duty is to be given in connection with the inputs and not the outputs. If the outputs are not specified no further question arises. If they are specified as per rule 56A(1), then the further and more important question will arise as to which inputs can be covered, which inputs can be covered by the scheme of proforma credit procedure. Hence, no scheme of proforma credit is complete without a comprehensive, interconnected and simultaneous consideration of inputs and outputs. As seen earlier, inputs resulting into finished excisable goods are dealt with for the purpose of no credit rule by sub-para (ii) of the proviso to sub-rule (2). Between sub-para (i) and (ii) are sandwiched the words "and unless". We agree with Mr. Vakil, learned advocate for the respondents that these words "and unless" would mean "and except when". When these two words are so read, it becomes at once clear that sub-para (i) and sub-para (ii) of the proviso to rule 56A(2) will have to be read in a conjoint and cumulative manner. They do not reflect two separate situations as submitted by Mr. Patel for the petitioners. But on the contrary, they represent a composite well knit scheme in connection with the no credit rule enacted by the proviso. As discussed earlier, the provision about proforma credit on duties paid on inputs while assessing the duties on finished excisable product out of them has of necessity to deal with both the inputs and outputs. Consideration of one without the other will fall short of making the proforma credit procedure complete and workable. In fact, if such a truncated consideration is done, the scheme of proforma credit will not click at all. That is the reason why the rule making authority has advisedly employed the words "and unless" interconnecting sub-para (i) and (ii) of the proviso which mean "except when". When so read, it becomes clear that specified finished excisable goods will not be entitled to the benefit of the proforma credit if (a) they are wholly exempt from excise duty or

chargeable to nil rate of duty; (b) and if the inputs out of which such finished excisable commodities are manufactured are not excisable to tax

under the same tariff item as the finished excisable goods which are manufactured out of them and (c) or in the alternative, the inputs viz. material or component parts out of which such finished excisable goods are manufactured even though they may be excisable under different tariff items as

compared to the finished excisable goods which result from them, these inputs have not earned any remission or adjustment of duty paid on them

on account of specific enactment by the Central Government. Thus, a harmonious reading of two sub-paras of the proviso projects the following

picture. The specified finished excisable commodity will not get benefit of the proforma credit if it is wholly exempt from excise duty or chargeable

to nil duty. Thus, only those finished excisable goods duly specified under sub-rule (1) of rule 56A will not get the benefit of proforma credit which

are exigible to excise duty. But that is not sufficient. Such finished excisable goods which have to pay excise duty will also have to satisfy further

requirement of sub-para (ii) of the proviso before becoming entitled to the benefit of the proforma credit. The inputs which go to manufacture

these specified finished excisable goods which bear excise duty must themselves either be exigible to tax under the same tariff item or alternatively

even though those inputs are exigible to tax under the different tariff items, then, they must be covered by the specific sanction of the Central

Government granting remission or adjustment of duty on those inputs. In this connection, it is necessary to note that under rule 8, the Central

Government has been empowered to grant remission of excise duty on various excisable commodities either wholly or partially. Under rule 192

also, such remissions in given circumstances are contemplated when read with rule 8. Even otherwise, as per the scheme of the Act and the rules it

is open to the Central Government in exercise of its power flowing from the relevant provisions to grant remissions or adjustment of duties if though

fit. If these requirements are satisfied, then only, the proviso enacting no credit rule would not hit the concerned specified finished excisable goods

and such goods only can get the benefit of the procedure of sub-rule (2) of rule 56A for earning proforma credit. Mr. Patel's submission that sub-

paras (i) and (ii) of the proviso to sub-rule (2) of rule 56A contemplates different situations cannot be countenanced for the simple reason that if

sub-para (i) of the proviso operated in a different field as submitted by Mr. Patel, then all finished excisable goods which are specified would earn

the proforma credit if they ultimately bear some excise duty. However, under the scheme of rule 56A(1) read with sub-rule (2), the very concept

of giving proforma credit to finished excisable goods implies that there must be possibility of running account in which excise duty would be

chargeable on finished excisable goods and only question of giving credit that running account in connection with inputs utilised for manufacture of

such finished excisable goods arises for consideration. If finished excisable goods are chargeable to nil duty or they are wholly exempt from excise

duty, no occasion would ever arise for maintaining a running account for such commodity and for giving any credit for the duty on the inputs

producing such commodities. It is interesting to note that between 8.1.1968 and 27.12.1968, rule 56A(2) did not contain any proviso like proviso

(i) and there was a categorical mandate in the then existing proviso in the form of clauses (a) and (b) that no specified excisable goods would get

the benefit of the procedure of proforma credit unless the inputs and the finished goods fall in the same tariff item in cases not covered by proviso

(b). It is only for the first time that proviso (i) was inserted on 28.12.1968. Thereby what was implicit between 1963 and 1968 was made explicit

by the rule making authority. Thus, by inserting sub-para (i) to the proviso, no new category of situations has been added by the rule making

authority. Further, requirements of the proviso to clauses (a) or (b) have got to be satisfied by the concerned finished excisable commodity which is

specified, to remain within the sweep of credit rule envisaged by sub-rule (2) of rule 56A and for not being hit by no credit rule laid down by the

proviso. It is necessary to note that requirements of proviso (i) and (ii) have remained all throughout operating from 8.1.1963 upto date. Only

because proviso (i) was added on 20.12.1968 while retaining the then existing requirements in the newly cast sub-para (ii) of the proviso, it cannot

be said that the aforesaid basic requirements of the rule which had existed all throughout have been given a go-bye. In this connection, it is also

profitable to have a look at rule 56A, sub-rule (3)(vi)(a) and (b). Sub-rule (3)(vi)(a) provides that the credit of duty allowed in respect of any

material or component parts may be utilised towards payment of duty on any finished excisable goods for the manufacture of which such material

or component parts were permitted to be brought into the factory under sub-rule (2) or where such material or component parts are cleared from

the factory as such, on such material or component parts, Sub-rule (3)(vi)(b) read as under :-

No part of such credit shall be utilised save as provided in sub-clause (a) or shall be refused in cash or by cheque"".

The aforesaid provision clearly indicates and highlights the salient features of the proforma credit scheme as envisaged by rule 56A itself. It

indicates that proforma credit facilities will be available only to those specified finished excisable goods which bear some excise duty. If that is so,

the provisions of sub-para (i) of proviso to rule 56A(2) must be held to have been made by way of abundant caution and it cannot be held, as

submitted by Mr. Patel for petitioners, that it contemplates a separate category or fact situation, meaning thereby, that these finished excisable

goods which are wholly exempt from the excise duty which bear nil rate of duty will not get the benefit of proforma credit, but these finished

excisable goods which bear some excise duty ipso-facto become entitled to the proforma credit. In fact, these specified finished excisable goods

which are wholly exempt from excise duty go out of the scheme of rule 56A altogether and such goods are not contemplated by the proforma

credit procedure under rule 56A. Only those excisable goods which bear some excise duty can except to get the benefit of proforma credit

procedure provided they satisfy other requirements of that procedure and those other requirements are laid down by rule 56A(2) read with whole

of the proviso to that sub-rule. It is, therefore, not possible to agree with the contention of Mr. Patel for the petitioners that when the proviso to

para (i) was added on 26.12.1968 the rule making authority wanted to depart from the basic requirements of the proviso which had existed all

throughout and any new class of situation or cases was introduced for the first time by sub-para (i) of the proviso to rule 56A(2) in 1968. In this

connection, it is also necessary to keep in view the salient features of the scheme of proforma credit as envisaged by the rule making authority while

enacting rule 56A. This scheme postulates for its operation not only taxable finished excisable specified goods but the inputs which themselves have

borne the excise duty and which are utilised in manufacture of specified finished excisable commodities. It is axiomatic to say that when the finished

specified excisable commodity is exigible to tax under a given tariff item, if the inputs which have been utilised for its manufacture are also exigible

to excise duty under the same tariff item, the manufacturer of such manufactured central excise commodity would get exposed to the burden of

double taxation. When the either manufactures inputs or raw material in his own factory, for the purpose of utilising them for the manufacture of

finished specified products or even if purchases such inputs and raw materials from outside when these raw materials bear excise duty, such

manufacturer has to bear the burden of this duty because the duty paid inputs which he might have purchased from outside or inputs which he may

have manufactured which in his turn will attract excise duty, would add to his cost of production. When these inputs are exigible to tax under the

same tariff item and when they are utilised in the manufacture of finished excisable duty under the same tariff item, the manufacturer has to bear

double burden of excise duty viz. outputs which are also exigible to excise duty under the same tariff item. The duty paid inputs utilised in

manufacture of the finished excisable commodity would swell the price of the finished manufactured articles at the factory gate and this price at the

factory gate would attract larger excise duty under the very same tariff item so far as finished excisable specified commodity is concerned. That

burden also will in the first instance fall on the manufacturer. With a view to avoiding such situation and possibility of double taxation for the same

excisable commodity under the very same tariff item that the rule making authority has envisaged the scheme of proforma credit under rule 56A so

that suitable credit can be given for the inputs viz. the raw materials insofar as they attract duty under the same tariff item as the finished excisable

commodity which is manufactured out of them. This question would not arise if the inputs are exigible to excise duty under tariff item different from

the tariff item in which the final specified excisable commodity viz. outputs fall. This is the reason why the rule making authority had to enact the

proviso to rule 56A(2) bringing out the aforesaid scheme of proforma credit in its bold relief.

16. It cannot, therefore, be urged that the proviso to the effect that specified finished excisable commodity will not be entitled to the procedure of

proforma credit if the inputs out of which it is manufactured are not subject to excise duty under the same tariff item is in any way foreign to the

scope of rule 56A(1) read with sub-rule (2). On the contrary, it is an essential part and parcel of the said provisions. It has also to be kept in view that the intention of rule making authority gets further highlighted when we look at sub-clause (b) of para (ii) of the proviso to rule 56A(2). If the material or component parts which are inputs are not exigible to excise duty under the same tariff item, as the specified product, manufactured out of them, than in that case, unless excise duty payable on such inputs viz. material and component parts are specifically remitted or permitted to be adjusted by clear cut sanction from the Central Government, finished excisable goods even though specified would not be entitled to earn the benefit of proforma credit procedure. It is pertinent to note that the same Central Government which is entitled to specify finished excisable goods as per rule 56A(1) for enabling them to earn the benefit of procedure of proforma credit can as contemplated under proviso para (iii)(b), be an authority which can sanction remission or adjustment of duty on material or component parts which would otherwise be payable on the under different tariff items and if specifying authority specifically sanctions such remission or adjustment of duty on such inputs even though they may be excisable under different tariff items as compared to the finished excisable commodity manufacturer out of them. Then, of course, the procedure of proforma credit will be available to such finished excisable goods despite the fact that inputs are not taxable under the same tariff items. Thus the entire scheme of proforma credit procedure and the benefit available to specified excisable goods mentioned therein is a well-knit and composite scheme as reflected by rule 56A(1)(2) read with the proviso with both its sub-para (i) and (ii). No part thereof is redundant and all these provisions operate in the same field and not in separate water tight compartments or fields nor would they reflect different tact situations as tried to be suggested by Mr. Patel for the petitioners. If Mr. Patel's contention is accepted, the very scheme of the proforma credit as envisaged by rule 56A(1) and (2) by the rule making authority would get frustrated and would become lapsed. It is, therefore, not possible to agree with Mr. Patel when he contends that the scheme underlying sub-rule (1) and (2) of rule 56A is a different or separate one as compared to the scheme projected by the proviso through both its sub-para (i) and (ii)

17. We may turn to the next contention of Mr. Patel to the effect that if the proviso to rule 56A(2) is read in the light which Mr. Vakil for the respondents wanted us to read, then in that case, the procedure laid down by rule 56A(1) would be rendered otiose. Mr. Patel submitted that the Central Government in exercise of its power under rule 56A(1) has specified number of excisable goods which are entitled to the benefit of proforma credit as envisaged by sub-rule (2) of rule 56A. That many of these specified excisable goods may be manufactured out of inputs which may not be taxable under the same tariff items the finished excisable goods which are manufactured out of them. That of such finished excisable goods are not to earn the benefit of the procedure of proforma credit under rule 56A(1), then, where is the need to specify them for the benefit under rule 56A(1), and it would be an excisable in futility on the part of the Central Government to specify such excisable goods for earning the benefit of the procedure of proforma credit as in any case, they are not to be given that benefit in view of the language of the proviso, sub-para (ii) (a) as the inputs out of which these specified excisable goods are manufactured are not exigible to tax under the same tariff item. In short, Mr. Patel contended that rigid insistence on this aspect of this matter would render the entire exercise under rule 56(1) and exercise in futility and totally meaningless so far as such excisable finished commodities are concerned. In our view, this contention of Mr. Patel cannot be accepted for two reasons. Firstly, the contention ignores the thrust of proviso sub-para (ii)(b) which provides that even in cases where specified excisable goods are manufactured out of the material or component parts which may not be taxable under the same tariff item, even then, if the Central Government has specifically sanctioned remission or adjustment of duty paid on them, manufacturer of such specified excisable goods can legitimately claim benefit of the procedure of proforma credit as per rule 56A(2). As we have already seen earlier, proviso to sub-rule (2) of rule 56A when read in a conjoint manner along with its parts and sub-parts, the intention of the rule making authority becomes at once clear that all excisable specified goods which are liable to pay excise duty can get the benefit of proforma credit procedure provided either (a) inputs out of which they are prepared or manufactured have borne the excise duty under the same tariff item under which finished excisable goods are excisable or (b)

alternatively, if inputs out of which such duty paid finished specified excisable goods are manufactured have earned the benefit of remission or adjustment of duty paid on them under specific sanction by the Central Government. Thus, in both these types of cases, no credit rule as enacted by the proviso will be out of way and the main provisions of rule 56A(1) and (2) will operate in full swing without being truncated in any manner. If, however, any of these two situations does not exist, then of-course, specified duty paid excisable goods will not earn the benefit of the proforma credit procedure. It is, therefore, not possible to agree with Mr. Patel that when the Central Government specifies finished excisable goods under rule 56A(1) merely because their inputs are exigible to central excise duty under different tariff items, the exercise would be in futility. It is possible that the same Central Government which specifies such excisable commodity for the benefit of rule 56A(1) read with (2) can in its wisdom, by passing a specific sanction order, remit or adjust the duty payable on the material or component parts which are the inputs for the specified excisable goods despite these inputs being eligible to excise duty under different tariff items and once that happens, specification directed by the Central Government of such excisable goods under sub-rule (1) of rule 56A would remain fully operative and would not become otiose as suggested by Mr. Patel.

18. The second reason why Mr. Patel's aforesaid contention cannot be accepted is to the effect that enactment of excise tariff in the schedule to the Act and its modifications from time to time is in the domain of the Parliament. That is entirely a different authority as compared to the delegated authority viz. the Central Government which acts in exercise of its powers under rule 56A as delegate of the rule making authority. The Central Government in exercise of its powers under rule 56A(1) may specify excisable goods which, at a given point of time, may be manufactured out of the inputs that may not be taxable under the same tariff item as the finished excisable goods manufactured out of them. But even after some time, the very inputs, on account of modification of the excise tariff and the schedule thereof by the Parliament, may be brought within the same tariff item or the finished excisable goods themselves may be brought in the same tariff item under which the inputs are taxable. That power of the Parliament

is a plenary power which is not touched and cannot be touched by the rule making authority which enacted rule 56A(1). Consequently, once the

Central Government in exercise of its powers under rule 56A(1) specifies excisable goods, if not today then even tomorrow, when the Central

Excise Tariff schedule gets modified, the concerned specified excisable commodity may start earning benefit of rule 56A(1). The Central

Government at the time of specification of excisable goods under rule 56A(1) cannot naturally visualise all future changes in the central excise tariff

schedule to be made by the Parliament from time to time according to the exigencies of situations. Under these circumstances, if the Central

Government in its wisdom specifies excisable goods at a given point of time for the benefit of procedure of rule 56A(1), if some of them are not

entitled to get benefit on account of the fact that they did not meet with the requirements of proviso (ii)(a) at a given point of time, it is not as if, in

future, they will not start earning the benefit once by reshuffling of the central excise tariff schedule by the Parliament, the inputs and outputs are

brought on par and are covered for the purpose of central excise liability, by the same tariff item, such future contingencies cannot be ruled out and

that is the additional reason why specification made of certain excisable goods in anticipation of future changes in the tariff schedule by the

Parliament cannot be considered to be an exercise of futility. Such eventuality is not only open but it is clearly visualised by the rule making

authority which has enacted explanation to rule 56A(2) which reads as under :-

Where as a result of an amendment to the first schedule to the Act, the item No. of any material or component parts, or finished excisable goods

in the manufacture of which such material or component parts are used, undergoes a change, the credit of duty paid before such amendment on

such material or component parts shall be allowed if,

(i) before such amendment, the credit of duty was allowable in respect of such material or component parts and in the manufacture of such finished

excisable goods order this rule or under a notification issued under rule 8 of these rules requiring the procedure set out in this rule to be followed;

and

(ii) after such amendment, such material or component parts and such finished excisable goods are specified under sub-rule (1)".

19. Mr. Patel's next contention in this connection was that once the Central Government specifies excisable goods for the purpose of benefit of rule 56A, as per sub-rule (1) thereof, because of the mandate of sub-rule (2) of rule 56A, the Collector has, on an application made in this behalf, to make available the benefit of the proforma credit procedure to such specified commodity, subject to the conditions mentioned in sub-rule (3) and such other conditions from time to time prescribed by the Central Government. He submitted that provisions to sub-rule (2) of rule 56A do not lay down any condition. However, conditions are laid down only by sub-rule (3) and consequently, the fetters imposed by the proviso to sub-rule (2) cannot be projected in the working of sub-rule (2) of rule 56A. It is not possible to agree with this contention for the obvious reason that the conditions mentioned in sub-rule (3) are all procedural conditions indicating how a manufacturer of specified excisable goods can apply for being given the benefit of proforma credit. But so far as the proviso to sub-rule (2) of rule 56A is concerned, it enacts substantive "no credit rule" and cuts across the otherwise general sweep of sub-rule (2) of rule 56A. Consequently, even though the provisions laid down by the proviso to sub-rule (2) of rule 56A may not be imposing any procedural conditions, as these provisions impose substantive fetters on the right to earn benefit of proforma credit procedure qua any excisable specified commodity, these fetters enacted by the rule making authority in its wisdom cannot be by-passed or ignored, and as we have seen earlier, but for these fetters, the scheme of proforma credit procedure would be denuded of its real content and substance. This is the full and complete of proforma credit as envisaged by the rule making authority as per of rule 56A(1) read with sub-rule (2) and the proviso with both of its sub-parts. For earning this benefit, all the aforesaid requirements have to be strictly followed by the concerned excisable specified goods. If these requirements are not fully met, the benefit of proforma credit will stand denied to such specified excisable goods and they will remain outside the beneficial sweep of rule 56A(1) despite their specification under rule 56A(1). Another relevant provision which is also required to be noted in this connection is found in rule 56A(2B) alongwith its proviso. This provision reads as under :-

Where a manufacturer was not in a position to make the application under sub-rule (2) on the date of the notification issued under sub-rule (1) or

rule 8 and has made such application subsequently the Collector may, for reasons to be recorded in writing condone the delay in filing of such

application and allow the manufacturer to take credit of the duty already paid on the material or component parts even though the procedural

requirements laid down under this rule have not been complied with :

Provided that such permission may be granted by the Collector only when he is satisfied that the

(a) manufacturer could not make the application earlier due to -

(i) late communication of such notification, or

(ii) change in assessment of raw material or component parts of finished goods from a particular item No. in the first schedule to the Central

Excises and Salt Act, 1944 (1 of 1944) to another item No. in the said Schedule....

The aforesaid provisions made by the rule making in rule 56A itself clearly indicate the intention of the rule making authority that there is possibility

on account of supervening events beyond the control of the Central Government that the inputs and outputs resulting in specified excisable goods

may get their excise duty liability changed from time to time by reshuffling to the tariff schedule by the Parliament and that a manufacturer of

specified excisable commodity who may not be entitled at a given point of time to apply for the benefit of proforma credit procedure, may become

entitled later on because of change in tariff items and in that eventuality he can apply for grant of such benefit of the procedure and the concerned

Collector can condone delay in filing such applications. This is the additional reason why the contention of Mr. Patel that specification under rule

56A(1) will get otiose if the interpretation canvassed by the respondents is accepted, cannot be countenanced. It is therefore, not possible to agree

with the present submission of Mr. Patel.

20. Mr Patel then invited our attention to a decision rendered by the Collector of Central Excise, Calcutta reported in 1977 Excise Law Times (J-

34) wherein the said officer has taken the view on the introduction of rule 56A(1) (2) read with the proviso, that because sub-rule (1) of rule 56A

starts with non-obstante clause to the effect ""Notwithstanding anything contained in these rules"", what is mentioned in the proviso and sub-proviso

(ii)(a) is rendered ineffective. It is not possible to agree with the aforesaid view

of the officer concerned. The non-obstante clause with which rule 56A(1) starts only indicates that whatever might have contained in any other rules, rule 56A would operate of its own. Moment that result is achieved, full effect has to be given to what is stated in rule 56A(i) namely that the concerned specified excisable goods would be entitled to the proforma credit procedure laid down by sub-rule (2). Consequently, the whole of sub-rule (2) gets attracted vis-a-vis such excisable goods. Once the whole procedure of sub-rule (2) gets attracted, it brings in its wake not only sub-rule (2), first part, but also the proviso attached to sub-rule (2) which travels alongwith sub-rule (2), first part and gets attached to the specified excisable goods. It is not as if that the procedure laid down in sub-rule (2) which is made applicable to specified excisable goods by virtue of rule 56A(2) has to be split up in two parts and only first part of sub-rule (2) viz. its main part would get attracted to the specified excisable goods and not the second part of sub-rule (2) which is made up of the proviso with both of its sub-paras (i) and (ii). Either sub-rule (2) applies as a whole or does not at all. If excisable commodity is specified under sub-rule (1) attracts the entire procedure of sub-rule (2) in connection with such specified excisable goods and not only a part of sub-rule (2) as tried to be suggested by Mr. Patel, Consequently, the decision of the Collector of Central Excise, Calcutta relied upon by Mr. Patel cannot be accepted as correct. It lies in the face of the entire scheme or rule 56A (1) and (2) as observed by us earlier.

21. In view of the aforesaid discussion, it is clear that specified excisable commodity which is excisable under the Act will be entitled to earn the benefit of procedure of proforma credit envisaged by rule 56A provided the inputs from which it is manufactured viz. the material or component parts, are themselves taxable under the same tariff item except in contingencies provided by the proviso (ii)(b) of sub-rule (2) of rule 56A. The first point raised for our consideration, therefore, has to be answered against the petitioners.

Point No. 2 :- That takes us to the consideration of point No. 2. So far as this point is concerned, the contention of Mr. Patel has to be stated to be rejected. Mr. Patel submitted that if his contention on the first point is not accepted, it would result into a situation in which the proviso to sub-

rule (2) of rule 56A would become repugnant to rule 56A(1) and (2). It is not possible to agree with this submission of Mr. Patel for the obvious reason as discussed earlier that rule 56A(1) itself brings in its wake the entire procedure and machinery of sub-rule (2). It is not as if sub-rule (1) of rule 56A stands in isolation. Once excisable goods are specified under sub-rule (1) of rule 56A, the entire procedure of sub-rule (2) gets attracted to such specified excisable goods. Once that happens, the proviso which is part and parcel of sub-rule (2) also gets attracted to the specified excisable goods by the very thrust of rule 56A(1) itself. It is not as if rule 56A(1) provides for an independent contingency or carves out an independent water tight field for itself which is sought to be diluted or whittled down or truncated by the thrust of the proviso to sub-rule (2) of rule 56A. Only in such a contingency it can be urged with any emphasis that proviso to sub-rule (2) of rule 56A would cut across the field occupied by sub-rule (1) of rule 56A or for that matter, main part of sub-rule (2) of rule 56A. In fact, the proviso itself gets projected into the operation of sub-rule (2) of rule 56A by the very mandate of sub-rule (1) and consequently, instead of being repugnant to rule 56A(1) or main part of sub-rule (2), it becomes a part and parcel of the entire well knit composite scheme of rule 56A and consequently, all these parts of rule 56A can harmoniously co-exist and there would never arise any occasion for repugnancy between them as tried to be suggested by Mr. Patel. We have already discussed earlier how all these provisions can co-exist and they do co-exist and do operative on the very same field. Consequently, the alternative contention of Mr. Patel which has given rise to point No. 2 also has to be rejected as being totally devoid of any substance.

22. It is not dispute between the parties that so far as the facts of the present case are concerted, specified finished excisable commodity manufactured by the petitioner No. 1 concern is asbestos cement products. They were exigible to excise duty under T.I. 23-C while the inputs which went into manufacture of these finished products are cement and asbestos raw (fibre). The first inputs viz. cement was exigible to excise duty under T.I. 23 at the relevant time while the other inputs viz. asbestos raw (fibre) was eligible to control excise duty under T.I. 22-F. Thus, the petitioner's specified finished excisable product was not manufactured out of the inputs bearing duty under the same tariff item as the finished

excisable commodity manufactured out of them. Consequently, the petitioners were not entitled to earn proforma credit benefit under of rule

56A(1) read with sub-rule (2) read with proviso part (ii)(a). It is not the case of Mr. Patel for the petitioners that on the facts of the present case,

proviso part (ii)(a) applies viz. that there is any specific sanction granted by the Central Government permitting remission or adjustment of duties on

these inputs. Consequently, once the aforesaid contention of Mr. Patel are rejected on facts, the order at Annexure "A" passed by the respondent

No. 3 has to be held to be correctly and validity passed.

23. These were the only contentions canvassed by Mr. Patel in support of these petitions and as these contentions fail, the inevitable result is that

these petitions fall and they are liable to be dismissed. As we have already indicated above, special civil application No. 2010 of 1985 is the main

petition. Rule issued therein will have, therefore, to be discharged with cost. Special Civil application No. 4098 of 1985 is a more off-shoot of that

petition. Rule issued therein also will have to be discharged with cost. Interim relief granted earlier by this court in both these petitions will stand

vacated forthwith. Orders accordingly.

24. Mr. Patel for the petitioners orally asked for leave to appeal to the Supreme Court under article 138(1) read with Article 134-A of the

Constitution. Request is rejected as in our view, the case does not involve any substantial question of law of general importance which is required

to be decided by the Supreme Court. We have interpreted the proviso on its express language and therefore, the leave prayed for is refused.

25. Mr. Patel for the petitioners then requested us to continue the interim relief granted by this court in these two petitions for eight weeks to enable

him to approach the Supreme Court against the present order, Mr. S. B. Vakil for the respondents vehemently opposed this request. Mr. Vakil

submitted that by now, the tax liability has gone up to Rs. 3 crores. Large amount of arrears of interest has also accrued thereon. He also stated

that every month, an amount of Rs. 15,00,000/- by way of excise duty will have to be paid by the petitioners towards the disputed claim and if any

stay is granted or continued, this liability will remain un-discharged. Mr. Vakil, therefore, submitted that this court may direct the petitioners to pay

up the past arrears of duty which were not paid by the petitioners on account of

interim relief of this court with 15% interest and in any case, suitable conditions may be imposed against the petitioners on that basis, if any interim relief is to be granted by this court.

26. Having given our anxious consideration to the rival contentions canvassed by Mr. Patel for the petitioners and Mr. Vakil for the respondents,

we have reached the conclusion that once the petitions are dismissed, whatever tax liability has accrued due and payable by the petitioners to the

respondents can obviously be enforced by the respondents alongwith their claim for interest of legally permissible and for that, appropriate legal

proceedings can always be taken by the respondents against the petitioners. But while dismissing the petitions of the petitioners on merits, on the

facts of this case, we are not inclined to accept the submission of Mr. Vakil that we should issue directions to the petitioners to pay up all tax

arrears until now due with 15% interest, especially when interim orders passed by this court after hearing the parties did not impose any such

condition on them. However, we agree with Mr. Vakil for the respondents that if we extend the stay even for a day further from today, having held

that the petitioners have no case on merits, it would be necessary for us to impose proper conditions on the petitioners if they want any further stay

from this court. These conditions are necessary to be imposed to protect public revenue. We have to note that as per the interim orders of this

court, bank guarantees of Rs. 25,00,000/- are furnished by the petitioners. Considering Mr. Vakils submission that the respondents have to pay

Rs. 15,00,000/- by way of excise duty per month, we extend for six weeks the interim relief granted by this court earlier in these two petitions

subject to all the terms and conditions mentioned in these interim orders and also subject to the following further conditions :-

(i) petitioners shall furnish a bank guarantee of a nationalised bank to the satisfaction of the Assistant Collector of Central Excise, Division. VI,

Ahmedabad in a sum of Rs. 25,00,000/- within a period of four weeks from today.

(ii) In addition to the aforesaid bank guarantee, the petitioners shall also file an undertaking to pay interest at the rate of 13% per annum on all the

arrears of excise duty due and payable by the petitioners to the respondents pursuant to the present decision, in case the petitioners fail to obtain

any contrary orders from the Supreme Court. Undertaking to the aforesaid effect

shall be filed in this court within two weeks from today.

27. It is clarified that the present interim which will enure six weeks, it passed without prejudice to the rights and contentions of both the sides and

will of course be subject to further orders, if any, that the Supreme Court may pass in these matters. If the aforesaid conditions or any of the

aforesaid conditions are not complied with by the petitioners within the time schedule provided herein, interim relief granted by us will automatically

stand vacated.