Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 1115 of 2009– SM

(Arising out of OIA-160/2009-AHD-III-CE/KCG/COMMR-A- dated 29/04/2009 passed by Commissioner of Central Excise-AHMEDABAD-III)

S Kumar Industries Ltd **........Appellant**
515-a, Kothari Industrial Estate,
Rakanpur, Taluka-kalol,
Gandhinagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Ahmedabad-iii **......Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat- 380009

APPEARANCE:
Shri Sudhanshu Bissa, Advocate for the Appellant
Shir P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. 11688/2024

DATE OF HEARING: 18.07.2024
DATE OF DECISION: 18.07.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant can utilize the Cenvat credit during the default period of monthly payment in the terms of sub-rule (3A) of Rule 8 of Central Excise Rules, 2002.

2. Shri Sudhanshu Bissa, Learned Counsel appearing on behalf of the appellant at the outset submits that Rule 8(3A) has been held ultra vires by the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. Vs. Union of India reported at 2014 (310) ELT 833 (Guj.). He submits that relying on this judgment in various cases the same view has been taken. He placed reliance on the following judgments:-

- Jayanta Lamp Industries Pvt. Ltd. v/s Commissioner of CGST & CX. Kolkata North Commissionerate - 2024 (2) TMI 955-CESTAT KOLKATA
- Shreeji Plastic v/s C.C.E. & S.T.-Surat-l Ahmedabad 2023 (10) TMI 222 - CESTAT
- TRIM Plastic Ltd. v/s C.C.E. & S.T.-Surat-12023 (5) TMI 237 Ahmedabad CESTAT
- Indus Tropics Ltd. V/s CCE & ST- Rajkot 2023 (3) TMI 950 - CESTAT Ahmedabad
- Andhra Cylinders Pvt. Ltd., Nalinkhara, Managing Director v/s Commissioner of Customs, C.Ex. & ST, Hyderabad- 2020 (1) TMI 189 CESTAT Hyderabad
- Commissioner of Central Excise, Delhi-lll v/s M/s. Proform Interiors Pvt. Ltd.-2023 (8) TMI 657-CESTAT Chandigarh
- M/s. Goyal MG Gases Pvt. Ltd. vs Union of India -2017 (8) TMI 1515-Calcutta High Court

3. Shir P Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, I find that the limited issue to be decided is whether the appellant is entitled to utilize the Cenvat credit for payment of Excise duty when they have defaulted monthly payment for the period of August,2006 - November, 2006. However, the appellant have paid the entire dues along with interest. As regard the bar for utilizing the Cenvat credit, the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. (Supra) held Rule 8(3A) as ultra vires. As a result there is no bar in utilizing

the Cenvat for payment of duty, even when there is a delay in monthly payment of Excise duty.

5. Since, the appellant have paid entire amount of duty along with interest, the demand is not sustainable. Accordingly, impugned order is set aside. Appeal is allowed.

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha