

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10073 of 2013-DB

(Arising out of OIO-50/COMMR/2012 dated 08/10/2012 passed by Commissioner of Central Excise-RAJKOT)

Nilkanth Concast Pvt Ltd

Survey No 221, Vill- Vadala
Taluka Mundra
Kachchh, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

.....Respondent

WITH

Excise Appeal No. 10074 of 2013- Nilkanth Concast Pvt Ltd

Excise Appeal No. 10075 of 2013- Nilkanth Concast Pvt Ltd

Excise Appeal No. 10076 of 2013- Nilkanth Concast Pvt Ltd

Excise Appeal No. 10078of 2013- Nilkanth Concast Pvt Ltd

APPEARANCE:

None appeared for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

Final Order No. A/ 11480 -11484 /2023

DATE OF HEARING: 12.06.2023

DATE OF DECISION:10.07.2023

RAMESH NAIR

The issue involved in the present case is that in the case of default in monthly payment on duty paid and thereafter the payment of duty can be made by utilizing cenavt credit or otherwise in terms of Rule 8(3A) of Central Excise Rules, 2002.

2. None appeared on behalf of the appellant.

3. Heard Shri. Tara Prakash, Learned Deputy Commissioner (AR) appeared on behalf of the Revenue.

4. On careful consideration of submission of Learned AR and perusal of record, we find that the entire demand was raised on the ground that due to default in the monthly payment of duty paid in all respect of the subsequent payment the appellant should have paid duty in cash without utilizing the cenvat credit. This issue is no longer res-integra as the same stands decided in favour of the assessee, in the case of Indsur Global Ltd Vs. Union of India -2014 (310) ELT 833 (Guj.) wherein Rule 8 (3A) was held ultra vires, therefore, prima facie the appellant was correct in making payment of duty from cenvat account. However, the said judgment of the High Court was passed after the adjudication order in the present case was passed. Therefore, we are of the view that the matter may be reconsidered.

5. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority to pass a fresh order after considering the Hon'ble Gujarat High Court Judgment in the case of Indsur Global Ltd Vs. Union of India(Supra).

6. Appeals are allowed by way of remand.

(Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)