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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10387 of 2015- DB

(Arising out of OIO-VLD-EXCUS-000-COM-001-14-15 dated 30.10.2014 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

Krishnanad Textiles Pvt Ltd **........Appellant**
Village & Post Kakarkopar,
Vapi - Dharampur State Highway
Valsad, Gujarat

VERSUS

Commissioner of C.E & S.T.-Valsad **......Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat, 396191

WITH

Excise Appeal No. 10389 of 2015- DB

(Arising out of OIO-VLD-EXCUS-000-COM-001-14-15 dated 30.10.2014 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

Kapil Tiwari **........Appellant**
Director of Krishannad Textiles Pvt Ltd
Village & Post Kakarkopar,
Vapi Dharampur State Highway,
Valsad, Gujarat

VERSUS

Commissioner of C.E & S.T.-Valsad **......Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat, 396191

AND

Excise Appeal No. 10390 of 2015- DB

(Arising out of OIO-VLD-EXCUS-000-COM-001-14-15 dated 30.10.2014 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

K M Shrivastava **........Appellant**
G M & Authorised Signatory of Krishnanad Textiles Pvt Ltd,
Village & Post Kakarkopar,
Vapi Dharampur State Highway,
Valsad, Gujarat

VERSUS

Commissioner of C.E & S.T.-Valsad **......Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat, 396191

APPEARANCE:

Shri R Subramanya, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10257-10259/2025

DATE OF HEARING: 01.04.2025
DATE OF DECISION: 21.04.2025

SOMESH ARORA

The brief facts of the case are that the appellant is engaged in the manufacturing of Laminated Textile Fabrics falling under Chapter 59 of the Central Excise Tariff Act, 1985 and are availing CENVAT credit facility in terms of CENVAT Credit Rules, 2004.

1.1 During preventive checks, it was found that the appellants had cleared finished goods valued at Rs. 8,06,73,120/- during the period from January, 2010 to March, 2012 under cover of Central Excise invoices, charging/collecting central excise duty from the buyers but they did not pay duty within the stipulated time period i.e. upto 5th February of the successive month except the month of March where due date was 31st March.

1.2 The appellant neither discharged their duty liability for January, 2010 by the due date i.e. 5th February, 2010 nor deposited the same along with applicable interest by the extended due date (7th March, 2010). Therefore, as per provisions of Rule 8(3A) of the Central Excise Rules, 2002, the facility of Cenvat Credit was not available to them. Statements of the Directors, authorised signatory / General Manager were recorded by the officers. During investigation, the Appellant paid an amount of Rs. 14,16,241/- vide GAR-7 challan dated 17.01.2012 towards duty for the month from April-2010 to January-2012 and also utilized the Cenvat Credit for payment of Central Excise Duty (as stated by the General Manager and Authorised signatory of appellant in his statement dated 23.02.2012).

1.3 The duty payment made by the appellant through Cenvat Credit was not valid as they were required to pay it consignment wise from PLA/ cash in terms the relevant Rules. Therefore, SCN dated 22.01.2013 was issued to the Appellant and duty was confirmed vide OIO dated 14.11.2014 along with interest and penalties on the directors and Authorized Signatory. The Rule 8(3A) provides that if there is default in payment of duty for any month and is continued beyond thirty days, then the duty liability is to be discharged consignment wise through PLA/cash without utilizing the Cenvat credit, till the date the said duty default is paid along with the interest thereon.

1.4 The Appellant in violation of the provisions of Rule 8(3) & 8(3A) of the Central Excise Rules, 2002, continued to utilize Cenvat Credit for payment of duty against clearances made in subsequent months. They did not pay consignment-wise duty and acted in a manner of habitual offender, thus deliberately contravened the provisions of Rule 8(3) & 8(3A) of Central Excise Rules, 2002 rendering the entire goods cleared during the above period liable for confiscation under section 11 r/w Rule 25 of the CER, 2002.

2. The Learned counsel for the appellants opening his arguments stated that the issue is no more res-intgra as Rule 8(3A) of the Central Excise Rules, 2002 was held to be ultra vires and declared unconstitutional by Hon'ble Gujarat High Court in the case of Indusr Global Ltd 2014 (310) ELT 833 (Guj)/ 2014 (12) TMI 585 (Guj). The Appeal No. 3344 of 2014 filed against the above said order was dismissed by Hon'ble Supreme Court on the grounds of monetary limits vide order dated 29-7-2024 cited in 2024 (7) TMI 1559SC Order (LB). The appellant wishes to submit and place reliance on the following judgements:-

- 2014 (12) TMI 585-Gujarat High Court - Indsur Global Ltd vs UOI
- 2014 (12) TMI 656-Gujarat High Court-Shreeji Surface Coatings Pvt Ltd vs UOI
- 2015 (5) TMI 603 Madras High Court Pharmaceuticals Ltd vs UOI Malladi Drugs &
- 2015 (5) TMI 661 - Madras High Court - A.R. Metallurgicals Pvt Ltd vs CCE

- 2015 (10) TMI 2455 Punjab & Haryana High Court Sandley Industries vs UOI
- 2016 (9) TMI 321-Allahabad High Court-ATV Projects India Ltd vs UOI & Others
- 2016 (9) TMI 527-Allahabad High Court-CCE, Meerut vs Anand Tissues Ltd
- 2018 (9) TMI 1582 Bombay High Court-CCE, Nashik vs Nashik Forge Pvt Ltd
- 2020 (1) TMI 189-CESTAT Hyderabad - Andhra Cylinders Pvt Ltd vs CCE & ST
- 2024 (7) TMI 1559-SC Order (LB) - UOI vs Indsur Global Ltd

3. In response, the learned AR pleaded for confirmation of demand, relying upon the following judgments and the force of statutory Provision of Rule 8(3A) of the Central Excise Rules, 2002:-

- Unirols Airtex Vs. CCE Coimbatore- 2013 (296) ELT 449 (Mad)
- Bakewell Agro Ltd Vs. CCE Meertu- 2015 (323) EKT 128 (All)
- Elson Packaging Inds. P Ltd Vs. CCE, Surat- 2004 (169) ELT 171

4. This court has considered the rival submissions. It finds that Hon'ble Jurisdictional High Court of Gujarat in its decision (cited Supra) in the matter of Indusr Global Ltd Vs. Union of India, has already declared that part of Rule 8(3A) which prescribes "payment of duty without utilizing the Cenvat Credit till an assessee pays the outstanding amount including interest" as unconstitutional. As far as liability to pay interest for the default period is considered, the Hon'ble Court held that this liability continues as per subrule (3) of Rule 8. Also, consignment wise payment of duty during the default period has not been declared unconstitutional. No Contrary decision of the Apex Court has been bought to our knowledge. This being the position, demand having been made under the authority of unconstitutional provision declared as such by Hon'ble Gujarat High Court, cannot be sustained. Appeals are allowed to the extent of utilising Cenvat Credit for payment of duty. Penalty on Shri Kapil Tiwari the Director of the company and Shri K M Shrivastava General Manager of the company & Authorised signatory are also set aside.

However, liability of interest due to delayed payment of duty if any and penalty on account of delayed filing of returns sustains. Appeals allowed in above terms.

5. Appeals partly allowed.

(*Order Pronounced in the open court on 21.04.2025*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha