

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.13255 of 2013

(Arising out of OIO-74-COMMR-2013 dated 28/06/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Indus Tropics Ltd

Survey No. 636, Galpadar,
Anjar Road, N.H.8a, Anjar,
KUTCH, GUJARAT

.....Appellant

VERSUS

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

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

.....Respondent

APPEARANCE:

Shri Amal Dave, Advocate 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/ 10500 /2023**

DATE OF HEARING: 16.02.2023
DATE OF DECISION: 22.03.2023

C L MAHAR

The appellant is a company engaged in the business of manufacture of excisable goods. The appellant has been holding the required central excise registration under the Central Excise Act and has been clearing the goods on payment of central excise duty as required under the Central Excise Act. The appellant has been maintaining all the statutory records like RG-1, Invoices, Monthly returns were also filed as required.

02. During scrutiny of the ER-1 return of the appellant for the month of October 2011 to July 2012, it has been observed by the department that the appellant failed to pay full amount of central excise duty payable by them for the month of October 2011 to July 2012. It has been alleged by the department that the appellant have cleared the finished goods namely Plywood & Veneer valued at Rs. 13,29,26,801/- for home consumption on which central excise duty amounting to Rs. 1,47,38,289/- was payable. The appellant paid central excise duty of Rs. 83,20,396/- by utilizing cenvat

credit as against the total liability of Rs.1,47,38,289/-. The balance amount was paid by the appellant in cash from their PLA account.

03. It has been the case of the department that appellant failed to make full payment of duty within prescribed time limit as provided under Rule 8 of Central Excise Rules, 2002 and since the appellant defaulted in payment of excise duty in terms of Rule 8(1) and Rule 8(3) of the said rules, therefore, as per the provisions of Rule 8 Sub-rule (3A) of Central Excise Rules, 2002 the appellant should have paid the entire default amount of Rs. 1,41,36,316/- from their PLA account (in cash).

04. On the basis of above findings, a show cause notice dated 05.11.2012 came to be issued to the appellant which was adjudicated by the learned Commissioner of Customs, Central Excise vide his order dated 05.07.2013 where under, the learned Commissioner has ordered as follows:-

- (i) *I confirm the demand of Central Excise duty amounting to Rs. 1,39,76,931/- (Rupees One Crore Thirty Nine Lakh Seventy Six Thousand Nine Hundred and Thirty One only) against M/s Indus Tropics Limited under Section 11A of the Central Excise Act, 1944 read with Rule 8(3A) of the Central Excise Rules, 2002 to be paid by them without utilization of CENVAT credit. As M/s Indus Tropics Limited has paid duty of Rs.75,31,370/- through PLA during the default period, I appropriate Rs.75,31,370/- towards the confirmed demand.*
- (ii) *I drop the demand of Rs. 1,59,385/- in view of discussion above at para 15.2.*
- (iii) *I confirm the demand of interest, as due and payable under Section 11AB/11AA of the Central Excise Act, 1944 on the amount of Central Excise duty as per Sl. No. (i) above, payable by M/s. Indus Tropics Limited without utilization of CENVAT credit. As M/s Indus Tropics Limited has paid interest of Rs.3,33,764/- through PLA during the default period, I appropriate Rs.3,33,764/- towards interest on the confirmed demand.*
- (iv) *I hold the excisable goods totally valued at Rs. 12,07,58,753/- cleared by M/s. Indus Tropics Limited as liable to confiscation under Rule 25 (1) of the Central Excise Rules, 2002 in view of discussion above at para 17. However, no redemption fine is imposed in lieu of confiscation considering that the goods are not available for confiscation.*

- (v) *I impose penalty of Rs. 15,00,000/- (Rupees Fifteen Lakh only) against M/s. Indus Tropics Limited under Rule 25 (1) of the Central Excise Rules, 2002.*

The appellants are before us against above Order-In-Original.

05. We have carefully heard both the sides in detail. The issue in brief is that though entire defaulted amount of central excise duty along with interest stands deposited with a delay of few weeks, the Department is of the view that as per the provisions of Rule 8(3A) of Central Excise Rules, 2002, the appellant should have paid the entire delayed payment of Rs. 1,41,36,316/- in cash rather than same being paid by utilizing Cenvat credits.

5.1 We have considered the matter carefully and we find that the matter is no longer res-integra. The matter has been decided by this tribunal in the case of PRINCIPAL COMM. OF C.EX. DELHI-I V/S. SPACE TELELINK LTD. reported under 2017 (355) ELT 189 (Del.), SUPERMAX PERSONAL CARE P. LTD.V/s. CCE & ST MUMBAI reported under- 2022 (7) TMI 920-CESTAT MUMBAI and ANDHRA CYLINDER P. LTD. reported under 2020 (1) TMI 189-CESTAT Hyderabad. The operative portion of M/s. ANDHRA CYLINDER P.LTD. is reproduced below:-

12. We have considered the arguments on both sides and perused the records. We find the entire issue revolves around the vires of Rule 8(3A) of Central Excise Rules, 2002. In the case of Indsur Global Ltd (supra) the Hon'ble High Court of Gujarat has struck it down as unconstitutional. This judgment of the Hon'ble High Court of Gujarat has been stayed by the Hon'ble Apex Court. Similar decision was taken by the Hon'ble High Court of Gujarat in the case of Shreeji Surface Coatings Pvt Ltd (supra) and it does not appear that this order has been struck down or stayed by the Hon'ble Supreme Court. However, an appeal against this appears to have been admitted by the Hon'ble Apex Court. In the case of Malladi Drugs & Pharmaceuticals Ltd (supra) a batch of writ petitions filed by various parties were decided by the Hon'ble High Court of Madras striking down Rule 8(3A) as ultra vires. Against this batch order three appeals have been admitted by the Hon'ble Apex Court which are as follows:

- a) SVM Auto Products [2017 (349) ELT A220 (SC)]*
- b) Hari Alloys Pvt Ltd [2016 (342) ELT A228 (SC)]*
- c) Titan Industries Ltd [2016 (341) ELT A155 (SC)]*

13. Revenue's appeal against judgment of the Hon'ble High Court of Punjab & Haryana in the case of Sandley Industries Ltd (supra) was dismissed on monetary limits by the Hon'ble Apex Court. Further, we

find from the website of the Hon'ble Supreme Court of India that a batch of several appeals have been tagged with the appeal of Union of India in the case of Indsur Global Ltd (supra).

14. In view of the above, we find that at least four different High Courts have struck down the constitutional validity of Rule 8(3A) of Central Excise Rules, 2002 and appeals against such judgments have been admitted by the Hon'ble Supreme Court and have yet to be decided. There was a stay in one case i.e., Indsur Global Ltd (supra) only but there was no stay in respect of the other judgments. Learned departmental representative relies on the judgment of Larger Bench of Hon'ble Supreme Court in the case of West Coast Paper Mills (supra) to assert that once an appeal has been admitted before the Hon'ble Supreme Court, the judgment of the High Court or Tribunal is in jeopardy and cannot be followed. We find that this judgment was of the year 2004. What needs to be decided in this factual matrix is where there are judgments by four different High Courts holding Rule 8(3A) as ultra vires and there is no judgment of any High Court upholding it and where the appeals against these judgments have been admitted and are under consideration of the Hon'ble Apex Court, whether the ratio of these judgments bind this tribunal or otherwise. We find that the last in the series of judgments was passed by the Hon'ble High Court of Bombay in the case of Nashik Forge Pvt Ltd (supra) on 17.09.2018 holding that the ratio of the judgment of the Hon'ble High Court of Madras, Gujarat and Punjab & Haryana apply. Respectfully following the decision of the Hon'ble High Court of Bombay, we follow the ratio of the aforesaid judgments of the Hon'ble High Courts and hold that the demand is unsustainable and needs to be set aside. Consequently, penalties imposed upon the appellant also need to be set aside and we do so.

15. The appeals are allowed and the impugned order is set aside with consequential relief, if any.

06. Since the given facts of the appeal are identical to the one which has been decided by the above mentioned order, we follow the same and decide to allow the appeal.

(Pronounced in the open court on 22.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)