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

REGIONAL BENCH-COURT NO. 2

**EXCISE Appeal No. 742 of 2012- DB**

(Arising out of OIA-719/2012/COMMR-A-/RBT/RAJ dated 07/08/2012 passed by the Commissioner (Appeals) of Central Excise, Customs-Rajkot)

**Ruchi Power & Steel Industries Ltd** ........**Appellant**
Survey No. 332, Phase-II, GIDC Industrial Estate,
Village: Mithi Rohar, Taluka: Gandhidham,
Kutch, Gujarat- 370201

*VERSUS*

**Commissioner, Central Excise &**
**Customs– Rajkot** ......**Respondent**
Central Excise Bhavan,
Race Course Ring Road,
Rajkot, Gujarat-36001

**APPEARANCE:**
Shri Dhaval K Shah, Advocate for the Appellant
Shri P Ganesan, Superintendent (AR) for the Respondent

**CORAM:**
**HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)**
**HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)**

**Final Order No. 10078/2026**

DATE OF HEARING: 13.10.2025
DATE OF DECISION: 12.02.2026

**SATENDRA VIKRAM SINGH**

The appellant M/s Ruchi Power & Steel Industries Ltd., Gandhidham (Kuchchh) are engaged in the manufacture of Sponge Iron, MS Billets, SS Billets, TMT Bars, MS Roll, MS Channel, MS Angles, MS Flat, SS Flat etc. falling under Chapter 72 of the Central Excise Tariff Act, 1985. They are availing Area Based exemption under Notification 39/2001-CE dated 31.07.2001.

1.1 On verification of their records, it was found by the Audit officers that the appellant had paid Central Excise duty for the month of December, 2008 and January, 2009 on 30.03.2009 and 27.04.2009 respectively which is beyond the time limit prescribed under Rule 8 of the Central Excise Rules, 2002. Therefore, as per Rule 8(3A) of the Central Excise Rules, 2002, the appellant was required to pay excise duty for each consignment at time of removal without utilizing the Cenvat credit till the appellant pays outstanding amount including interest thereon. In the event of failure, it shall be deemed that such goods have been cleared without payment of duty and consequences shall follow.

1.2 The department issued a show cause notice dated 17.02.2011 asking them to pay Central Excise of Rs. 26,74,513/- under proviso to Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AB and penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The said show cause notice was adjudicated by the Additional Commissioner vide order dated 28.01.2012 who confirmed the above duty under Section 11A along with interest under Section 11AB and imposed penalty equal to duty amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the said Act. Aggrieved with the above order, the appellant filed appeal before the Commissioner (Appeals) who vide impugned order dated 07.08.2012 rejected their appeal and upheld the order of the lower authority. Hence, the appeal before this Tribunal.

2. In their appeal, they took the following grounds:-

- Both the lower authorities have confirmed demand of Central Excise duty without considering the fact that the appellant has been very regular and meticulous in maintaining all the records and documents and always complied with the provision of law. Because of their adverse financial position and lower sales, they could not pay duty in time. Their accounting staff had left the job and the new person lacked sufficient knowledge. As a result, duty for December 2008 and January 2009 could not be paid in time. Otherwise, they have been very regular in payment of duty.
- They had paid the amount of duty later on when their financial condition revived alongwith interest and therefore, there is no loss to the Government. They rely on the decision in case of Sibar Auto Parts Ltd Vs CCE, Tirupathi reported in 2008 (227) ELT 255 (Tri.-Bang.).

- They have paid duty by utilizing Cenvat credit and therefore, no duty can be demanded from them for payment through PLA only. The Larger Bench of the Tribunal in the case of M/s Noble Drugs Ltd Vs CCE, Nasik reported in 2007 ELT (215) 500 (CESTAT-Mum-LB), has held that duty, paid through CENVAT Credit Account instead of PLA, during the period of forfeiture of the facility, of duty payment, on Fortnightly or Monthly basis, is not demandable as the Central Excise Assessee would be entitled to Cenvat Credit, if duty is paid through PLA and thus, the exercise is Revenue Neutral.
- They rely on the decision of Hon'ble Tribunal in case of Arjay Apparel Industries Ltd Vs CCE reported in 2008 (232) ELT 662, wherein it is held that there is no prohibition in payment of short paid/unpaid/defaulted duty amount using the Cenvat credit.
- Where Provision of Rule 8(3A) of the Central Excise Rule, 2002 is invoked for default in payment of duty and where entire duty is paid alongwith interest, no penalty is imposable under Rule 25 of the Central Excise Rules, 2002, and penalty can be only imposed under Rule 27 of the said Rules. In their case, penalty under Rule 25 read with Section 11AC has wrongly been imposed. They rely on the decision of the Tribunal in the case of Saurashtra Cement reported at 2008 (225) E.L.T. 395 (Tri. - Ahmd.), wherein it was observed that where goods are cleared under the cover of invoices and the only default is delay in payment of duty, Provisions of Rule 27 would get attracted and not Rule 25 or Section 11AC. Similar finding was given by the Tribunal in the case of CCE, Allahabad v. R.K. Cigarettes (P) Ltd. reported in 2007 (3) LCX 22, M/s Asoj Soft Caps P Ltd decided vide Order No. A/514-515/WZB/AHD/2011 dated 11/03/2011 and M/s Saligram Laminates P. Ltd Vs CCE, Ahmedabad reported in 2009 (247) ELT 649 (Tri. Ahmd.).

In view of the above, the appellant requested to set aside the impugned order and allow their appeal.

3. During arguments, learned Advocate mentioned that the issue has already been decided by Hon'ble Gujarat High Court in the case of Indsur Global Ltd Vs. UOI reported at 2014 (310) ELT 833 (Guj.) wherein, Rule 8 (3A) of the Central Excise Rules, 2002 has been held as ultra vires and therefore, demand confirmed by the lower authorities and the penalty of equal amount imposed against them is not sustainable. He also relied on the decision of Hon'ble Calcutta High Court in the case of Commissioner of CGST and Central Excise, Howrah Vs. Hindustan Windows Manufacturing reported at 2025 (31) Centex 182 (Cal.), wherein, it was held that the matter relating to duty payment by utilizing Cenvat credit during default period in terms of Rule 8(3A) of Central Excise Rules, 2002 which was declared ultra vires and struck down by Hon'ble Gujarat High court in Indsur Global Ltd. has attained finality as department's appeal against above order of Hon'ble Gujarat High Court has been dismissed by Hon'ble Supreme Court Lokadalat vide order dated 24.07.2024, on the ground that tax effect was below threshold. He further relied on the following case laws, to impress the Bench that their appeal be allowed by setting aside the impugned order.

a) M/s. Sejal Architectural Glass Ltd Vs. CCE & ST., Vapi 2019 (3) TMI 760- CESTAT Ahmedabad-
b) Order No. A/12812-12813/2018 Dated 5.12.2018 in case of M/s. Dhanuka Agritech Ltd; Unnati Specialty Firms Vs. CCE., Ahmedabad II.
c) Order No. A/10892-10903/2019 Dated 14.05.2019 in the case of M/s. Bodal Chemicals Ltd Vs. CCE., Bharuch
d) Commissioner of Central Excise, Customs and Service Tax, Silvasa Vs Shanti Engineering- 2019 (5) TMI 143-Bombay High Court
e) CCE, Kolkata Vs. M/s. Star Battery Ltd., Vice Versa-2019 (4) TMI 1254- CESTAT Kolkata

f) Commissioner Vs. Ambalal Sarabhai Enterprise-2017 (9) TMI 503 Gujarat High Court

g) CCE, Mumbai Vs. Geet Enterprise-2018 (3) TMI 1114-CESTAT Mumbai

h) Commissioner of Central GST Vs. Jay Chemical Industries Ltd. -2018 (19) ELT 459 (Guj.)

4. Learned AR reiterated the findings of the lower authority to justify confirmation of demand interest and penalty by the lower authority. He however agrees that the position of Rule 8(3A) as decided by Hon'ble Gujarat High Court in the case of Indsur Global Ltd has become final after the decision dated 24.07.2024 of Hon'ble Supreme Court Special Lokadalat.

5. We have considered the rival submissions. We find that Hon'ble High Court of Gujarat in its decision in the case of Indsur Global Ltd (cited supra) has declared that part of sub-Rule (3A) of Rule 8 which prescribes "payment of duty without utilizing the Cenvat Credit till an assessee pays the outstanding amount including interest" as unconstitutional. This decision has attained finality after dismissal of Revenue's appeal against this order, by Hon'ble Apex Court on monetary grounds. Relevant paras 34,35 & 36 of the said decision is reproduced below:-

***"34.*** *By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. It prevents him from availing credit of duty already paid by him. It also is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail.*

***35.*** *The situation can be looked at slightly different angle. With or without the provisions of sub-rule (3A), liability to pay interest for the default period as per sub-rule (3) of Rule 8 continues. Sub-rule (3A) is basically a mechanism for stringent recovery and does not create a new liability unless this mechanism itself* *is breached. In such a mechanism to provide for withdrawal of CENVAT credit facility for paying the duty borders to creating a penalty. Insisting on an assessee in default to clear all consignments on payment of duty would be a perfectly legitimate measure. However, to insist that he must pay such duty without utilising CENVAT credit which is nothing but the duty on various inputs already paid by him would be a restriction so harsh and out of proportion to the aim sought to be achieved, the same must be held to be wholly arbitrary and unreasonable. We may recall, the delegated legislature in its wisdom now dismantled this entire mechanism and instead has provided for penalty at the rate of 1% per month on delayed payment of duty.*

***36.*** *In the result, the condition contained in sub-rule (3A) of Rule 8 for payment of duty without utilizing the Cenvat credit till an assessee pays the outstanding amount including interest is declared unconstitutional. Therefore, the portion "without utilizing the Cenvat credit" of sub-rule (3A) of Rule 8 of the Central Excise Rules, 2002, shall be rendered invalid."*

5.1 Therefore, payment of duty by the appellant by using Cenvat credit during the default period is no more in dispute after the order dated 24.07.2024 of the Hon'ble Apex Court. This being the position, demand of duty having been made under the authority of unconstitutional provision declared as such by Hon'ble Gujarat High Court, cannot be sustained. As far as, liability to pay interest for the default period is concerned, Hon'ble Gujarat High Court has held that this liability continues as per sub-rule (3) of Rule 8 of the said Rules. Hon'ble Court also validated Revenue's stand that an assessee in default has to clear all consignments on payment of duty during the default period. The appeal is therefore allowed to the extent of duty demand confirmed by the lower authorities. We however add that the appellant would be liable to pay interest in case there is any delay in payment of excise duty.

5.2 As far as, contravention of the provisions of Central Excise Rules is concerned, we find that the appellant has not paid excise duty on each consignment basis as per the above Rule. The lower authorities have imposed penalty on the appellant under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 which has been challenged by the appellant. We agree with the contention of the appellant that penalty under Rule 25/Section 11AC is not imposable on them as intention to evade payment of duty is absent because goods have been removed on invoices against payment of duty. However, as discussed, provisions of Rule 8 have been contravened, for which we hold the appellant liable to pay penalty under Rule 27 of the Central Excise Rules, 2002. The appellant has pleaded that Rule 27 has not been invoked in this case for imposing penalty. However, there are a number of decisions where it has been held that mentioning wrong provision or not mentioning provision does not vitiate the proceedings. We rely on the following orders.

(a) Karnawat International Pvt Ltd. Vs. Commissioner of Customs, Mundra reported at (2024) 25 Centax 24 (Tri.- Ahmd.). Para 4.8 is reproduced below:-

> *"It has been held in various judicial pronouncements that mere mentioning of wrong provisions or not mentioning of it does not vitiate the proceedings till the time statutory authority has requisite authority therefor."*

(b) In P.K.Palanisamy v. N Arumugham while disposing SLP (Civil) No. 2308 of 2009 Hon'ble Supreme Court in para 13 held that-

> *" It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor,"*

(c) In Ram Sunder Ram v. Union of India while disposing Appeal (civil) 2951 of 2007, Hon'ble Supreme Court held in para 20 that;

> *It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise (2004) 12 SCC 278). Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act."*

(d) Hon'ble Supreme Court expressed similar view in MERINO PANEL PRODUCTS LTD-2023 (383) ELT 129 (SC) (2022) 1 Centax 59 (SC) judgement. Para 16 is reproduced below:

*"16. It is clear that the latter question goes to the heart of the matter, rather than the issue of whether the show cause notice becomes legally untenable for failure to expressly mention that the valuation of the goods is to be done under Rule 11 read with Rule 9 of the CEVR. On the legal proposition advanced by Learned ASG, we readily affirm that citation of an incorrect source of power does not vitiate the exercise of the power itself provided the power vests in the authority to begin with."*

5.3 Thus, in view of above judicial pronouncements, mentioning of a wrong provision i.e. Rule 25 and not mentioning of correct rule 27 does not vitiate the proceedings as the adjudicating authority has power to pass an order which is unquestionably present with the adjudicating authority. Accordingly, we set aside penalty of Rs. 26,74,513/- imposed under Rule 25 read with Section 11AC of the Central Excise Act, 1944 and instead impose a penalty of Rs. 5000/- under Rule 27 of the Central Excise Rules, 2002.

6. With these observations, the appeal is partially allowed in favour of the appellant.

*(Pronounced in the open court on 12.02.2026)*

**(DR. AJAYA KRISHNA VISHVESHA)**
**MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)**
**MEMBER ( TECHNICAL )**

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