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

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 1004 of 2010

(Arising out of OIO-06&07/DEM/DAMAN/2010 dated 31/03/2010 passed by the Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Remco Paper & Board Industries Limited **.....Appellant**
Plot No. 205-206, GIDC,
Vapi, Gujarat

VERSUS

C.C.E & S.T- Daman **.....Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road,
Vapi Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

WITH
Excise Appeal No. 1281 of 2010

(Arising out of OIO-06&07/DEM/DAMAN/2010 dated 31/03/2010 passed by the Commissioner of Central Excise, Customs and Service Tax-DAMAN)

C.C.E & S.T- Daman **.....Appellant**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road,
Vapi Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

VERSUS

Remco Paper & Board Industries Limited **.....Respondent**
Plot No. 205-206, GIDC,
Vapi, Gujarat

APPEARANCE:
Shri Amber Kumrawat, Advocate for the Appellant
Shri A R Kanani, 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. 10086-10087/2026

DATE OF HEARING:14.10.2025
DATE OF DECISION:13.02.2026

SATENDRA VIKRAM SINGH

M/s. Remco Paper & Board Industries Limited, Vapi are engaged in manufacture of Paper & Paper Board under Chapter 48 of the Central Excise Tariff Act, 1985. It was observed by the Officers that they have part paid part Central Excise Duty for the month of July 2007 by using Cenvat Credit by the due date but the balance duty which was to be paid through PLA, was not paid even after expiry of more than 30 days from the due date. Same, again happened in September 2007 when only a part of duty was paid from Cenvat Credit by the due date and the rest to be paid from PLA, was delayed by more than 30 days from the due date. The department alleged that during the default period, the party did not pay duty on consignment basis, in cash and therefore, they have violated the provisions of Rule 8 (3A) of the Central Excise Rules, 2002 which was amended Vide Notification No. 30/2006-CE (N.T) dated 01.06.2006. The said Rules provides as under:-

> *"If the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub rule (1), then notwithstanding anything contained in said sub-rule (1) and sub rule (4) of Rule 3 of Cenvat Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removed, without utilizing the Cenvat Credit till the date the assessee pays the outstanding amount including interest thereon, and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow"*

1.1. The goods cleared by the party during default period in contravention of the provisions of Rule 8(3A) are presumed to be cleared without payment of duty and consequences as per Rule 25 of the Central Excise Rules, 2002 and Section 11AC of the Central Excise Act, 1944 are attracted in their case. The department therefore, issued two show cause notices dated 05.08.2008 & 07.11.2008 to the appellant proposing recovery of defaulted duty amount in cash, confiscation of the goods cleared during the violation period and imposition of penalty on them. The said two show cause notices were adjudicated by the Commissioner vide inpugned order dated 31.03.2010 wherein, he confirmed the Central Excise Duty demand of Rs. 4,35,889/- in respect of show cause notice F.No. V(Ch48) 3-50/DEM/08-09 dated 05.08.2008 and duty of Rs. 57,01,109/- as per second show cause notice bearing F No. V (Ch48)3-17/DEM/08-09 dated 07.11.2008 along with interest. He also imposed penalty of Rs. 5 Lakhs on the appellant under Rule 25 of the Central Excise Rules 2002. Aggrieved with this order, both the appellant as well as the department filed separate appeals before this Tribunal.

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

- The impugned order is contrary to the facts on records. They paid excise duty for the month of July 2007 in its entirety on 03.09.2007 which is within 30 days from the due date of payment i.e. 05.08.2007 and therefore, there is no default in duty payment. There is however some delay in payment of duty for the month of September 2007 which can be condoned in view of decision of Hon'ble Gujarat High Court in the case of Banian & Berry Bearing Private Limited Vs. Union of India-2002 (52) RLT 755 (Guj) which held that marginal delay in making fortnight payment of duty should be ignored when the duty has been paid along with interest.
- The amount paid through PLA in subsequent months should first be appropriated towards October 2007 dues and if that is done, there is no duty default and accordingly, no further demand of duty arises against them. They rely on the decision in the case of Telco Vs. Municipal Corporation of Thane-1993 Supp (1) SCC 361.
- With the help of a table showing duty to be paid for each month and the amount paid by them, they submitted that entire demand stands paid by them and hence, no further demand is maintainable.

They relied on the decision of the Tribunal in the case of Fedders Lloyed Vs. CCE-1995 (78) ELT 207 (T) and Krishna Chemical Vs. CCE-2009 (244) ELT 580 (T).

- Decisions relied upon by the Learned Adjudicating authority in the impugned order do not support the case of the department. Rule 8(3A) applies only where full amount was not paid within the permissible time whereas in their case, only a small amount was left to be paid and major amount was already paid through PLA.
- Penalty should have been proportionate to the default amount whereas a very high penalty has been imposed against them by the learned adjudicating authority. Penalty under Rule 25 of the Central Excise Rules cannot be imposed against them as ingredients of Rule 25 (1) (a) are not present in their case: In fact, Rule 8 of the Central Excise Rules, 2002 which seeks to withdraw certain facilities, itself amount to penalty.
- Interest cannot be demanded under Section 11AB of the Central Excise Act, 1944 as this Section is attracted where there is non-payment or short payment or erroneously refunded Central Excise Duty. In their case, full amount of duty has been paid either using Cenvat Credit or in cash. Therefore, this provision is not attracted.

In view of the above, they prayed to set aside the order and allow their appeal.

3. The department in it's respective appeal, challenged the order of the Learned Adjudicating authority on the ground that he has erred by not confiscating the goods cleared during default period without paying duty in cash on consignment basis and imposing redemption fine. Further, he has allowed re-credit of duty paid by utilizing Cenvat Credit during default period which is beyond the show cause notice. They have relied on the provisions of Rule 8(3A) of the Central Excise Rules, 2002 as amended Vide

Notification No. 13/2006-CE(NT) dated 01.06.2006. It is the contention of the department that the goods on which the duty was not paid through cash on consignment basis during the period of default are to be treated as clearance of goods without payment of Central Excise Duty and therefore, consequences of confiscation and penalties should automatically follow. They relied on the decision in the case of Venus Enterprises Vs. CCE, Chennai reported at 2006 (199) ELT 66 (Tri.-Chennai)

4. During argument, Learned Advocate highlighted the relevant legal provisions of Section 11AB of the Central Excise Act, 1944 and Rule 8(3A) of the Central Excise Rules, 2002. He pleads that Hon'ble Gujarat High Court in the case of Indsur Global Ltd. Vs. Union of India reported in 2014 (12) TMI 585 has held that provisions of Rule 8 (3A) of the Central Excise Rules, 2002 are ultra virus to the extent **"payment of duty without utilizing the Cenvat Credit till an assessee pays the outstanding amount including interest".** The Revenue challenged the above decision of Hon'ble Gujarat High Court before Hon'ble Apex Court which vide order dated 24.07.2024 dismissed the petitions filed by revenue on the ground of low tax impact. He states that the decision of Hon'ble Gujarat High Court in the case Indsur Global Ltd has become final and therefore, impugned order passed by considering Rule 8 (3A) may be set aside and their appeal may be allowed.

4.1 The Appellant places reliance on the following case laws:-

- Indsur Global Ltd. Vs. Union of India 2014 (12) TMI 585
- Shreeji Surface Coatings Pvt. Ltd. Vs. Union of India 2014 (12) TMI 656
- Precision Fasteners Ltd. Vs. CCE-2014 (12) TMI 655
- Malladi Drugs & Pharmaceuticals Ltd. Vs. UOI-2015 (5) TMI 603
- Sandley Industries Vs. UOI-2015 (10) TMI 2455
- Goyal MG Gases Pvt. Ltd. Vs. Union of India 2017 (8) TMI 1515
- CCE Vs. Nashik Forge Pvt. Ltd. 2019 (368) E.L.T. 20 (Bom.)

- CCE Vs. Twenty First Century Wires Rods Ltd. 2019 (26) GSTL 478 (Bom)
- Gujarat Colours and Coatings (P) Ltd. Vs. CCE, Thane-I 2022 (3) TMI 504
- Supermax Personal Care Pvt. Ltd. Vs. Commissioner of CE & ST, LTU, Mumbai 2022 (7) TMI 920
- Munis Forge Ltd. Vs. CCE, Nagpur MANU/CM/0035/2021
- Utkal Alloys Pvt. Ltd. Vs. CCE & ST., Bhubaneswar-II 2021 (4) TMI 625
- Vrajeshwari Steel Pvt. Ltd. Vs. CC- 2017 (346) E.L.T. 490 (Tri. Ahmd.)
- Neesa Infrastructure Ltd. Vs. CCE-2015 (10) TMI
- Impact Metal Parts Pvt. Ltd. Vs. CCE - AHMEDABAD MANU/CS/0299/2014
- Commissioner Vs. DRD Body Techs India Private Limited-2022 (379) E.L.T. 106 (Telangana)
- DRD Body Techs India Private Limited Vs. Commissioner of Cus., C. E. & S.T. 2020 (374) E.L.T. 270 (Tri. - Hyd.)
- Principal Commissioner of C. Ex. Vs. Space Telelinks Ltd. 2017 (355) ELT 189 (Del)
- CCE Vs. Mysore Concrete Products, 2022 (380) ELT 242 (SC)

5. Learned AR agrees that after the decision of Hon'ble Supreme Court Lok Adalat in department's appeal against the decision in case of M/s. Indsur Global Ltd and some other decisions, the position has attained finality. The duty paid by the appellant using Cenvat credit during default period is also to be treated as proper duty payment. He though pleads that the remaining provisions of Rule 8(3A) are still intact and therefore, the appellant is liable to pay interest as well as penalty for contravention of Rules. While conceding on the issue of confiscation of goods cleared during default period by utilising Cenvat Credit, he pleads that the departments appeal be allowed to the extent of imposition of penalty. He fairly accepts that as per decision of Hon'ble Gujarat High Court, goods cleared during default period by paying duty through Cenvat Credit cannot be treated as goods cleared without payment of duty.

6. We have considered the rival submissions. We find that Hon'ble High Court of Gujarat 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. Para 34,35 & 36 of the decision of Hon'ble Gujarat High Court 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."*

6.1 Therefore, payment of duty from Cenvat Credit account by the appellant during the default period is no more in dispute after the decision 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 of the party is therefore allowed by setting aside the duty demand confirmed by the lower authorities. We also add that the appellant would be liable to pay interest in case there is any delay in payment of excise duty.

6.2 We also find that the appellant has challenged imposition of penalty of Rs. 5 Lakhs on them under Rule 25 of the Central Excise Rules, 2002 on the ground that the goods have been removed under cover of invoices and on payment of duty, though, by utilizing Cenvat Credit. We agree with the contention of the appellant that there is no intent to evade payment of duty and therefore, penalty under Rule 25 is not imposable on the appellant. We therefore, set aside above penalty imposed on the appellant. As discussed above, provisions of Rule 8 have been contravened by the party for which we hold them liable to penalty under Rule 27 of the Central Excise Rules, 2002. Though, Rule 27 has not been invoked in this case, 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 of2009 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). 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."*

6.3 In view of above judicial pronouncements, mentioning of a wrong provision in the show cause notice does not vitiate the proceedings as the adjudicating authority has power to pass an order under this rule too. Accordingly, we set aside penalty of Rs. 5 Lakh imposed on the appellant under Rule 25 of the Central Excise Rules, 2002 and instead, impose a penalty of Rs. 5000/- under Rule 27 of the said Rules.

6.4. Coming to the department's appeal, it has been pleaded that the learned adjudicating authority has failed to confiscate the excisable goods cleared by the respondent during the period of default which were without payment of duty. The provisions of Rule 25 (1) of the Central Excise Rules, 2002 are as under:-

> ***Confiscation and penalty**. — RULE 25. (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse [or an importer who issues an invoice on which CENVAT credit can be taken] or a registered dealer, -*
>
> *(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or (b) does not account for any excisable goods produced or manufactured or stored by him; or*
>
> *(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or*
>
> *(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,*
>
> *then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse [or an importer who issues an invoice on which CENVAT credit can be taken] or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [five thousand rupees], whichever is greater.*

6.5 As discussed above and as held by the Hon'ble Gujarat High Court in the case of M/s. Indsur Global Ltd and further upheld by the Hon'ble Supreme Court, portion of Rule 8 (3A) of the Central Excise Rules, 2002 to the extent **"payment of duty without utilizing the Cenvat Credit till an assessee pays the outstanding amount including interest"** is held to be ultra virus. This means that duty paid by the party by utilizing Cenvat Credit during default period is also to be considered as payment of proper Central Excise Duty. Therefore, Rule 25(1) is not invokable in this case for confiscating excisable goods cleared during the default period. In view of the above, appeal filed by Revenue is not allowable and hence, the same is dismissed.

6.6 Similarly, when payment of duty by utilizing Cenvat Credit has been held proper as discussed above, allowing the credit by the Learned Commissioner has become infructuous. However, we agree with the view of the department that learned Commissioner should not have gone beyond the scope of the show cause notice.

7. The appeal of the party is partially allowed and the appeal filed by the revenue is dismissed.

(Pronounced in the open court on 13.02.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi