

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 214 OF 2012

[Arising out of OIO-AHM-CEX-003-COM-003-12 dated 31/01/2012 passed by
Commissioner of Central Excise-AHMEDABAD-III]

M/S. SHAIFALI STEELS LTD

Appellant

1563, Sola-kalol Road, Village : Santej, Taluka : Kalol,
Gandhinagar, Gujarat

Vs.

**COMMISSIONER OF CENTRAL EXCISE-
AHMEDABAD-III**

Respondent

Custom House... 2nd Floor, Opp. Old Gujarat High Court,
Navrangpura, Ahmedabad, Gujarat-380009

WITH

EXCISE APPEAL NO. 215 OF 2012

[Arising out of OIO-AHM-CEX-003-COM-003-12 dated 31/01/2012 passed by
Commissioner of Central Excise-AHMEDABAD-III]

RAMESHBHAI FULSHANKAR TRIVEDI

Appellant

Excise In Charge Of M/s, Shaifali Steels Ltd,
1563, Sola Kalol Road, Village : Santej, Taluka : Kalol,
Gandhinagar, Gujarat

Vs.

**COMMISSIONER OF CENTRAL EXCISE-
AHMEDABAD-III**

Respondent

Custom House... Near all India Radio,
Navrangpura, Ahmedabad, Gujarat-380009

Appearance:

Shri Amal Dave, Advocate for the Appellant

Shri R. Kumar, 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. 10343-10344/2026

Date of Hearing : 01.12.2025
Date of Decision : 15.05.2026

SATENDRA VIKRAM SINGH

M/s. Shaifali Steels Limited, Kalol (Appellant 1) are engaged in manufacturing of Ferro Silicon Magnesium Alloy, CI Castings, Metal Roll etc. In ER-1 return for February-2009, duty payable was shown as Rs. 91,91,803/- against which, the Appellant has shown payment of Rs. 85,52,903/- from Cenvat Credit account and the balance payment of Rs. 6,38,900/- through TR6 Challan No. 16 dated 16.03.2009. Later on, it was found during investigation that they had paid the said amount of Rs. 6,38,900/- on 20th August, 2009 as against 5th March, 2009 which was the due date of payment. As appellant had paid the balance duty beyond 30 days from the due date, in view of Rule 8 (3A) of the Central Excise Rules, 2002, they were required to pay excise duty for each consignment without utilizing the Cenvat Credit. It was found that the appellant had utilized Cenvat credit of Rs. 3,60,18,851/- for payment of Central Excise duty for the period 05.04.2009 to 01.09.2009.

1.1 The department issued a Show Cause Notice dated 06.05.2010 proposing recovery of duty of Rs. 3,60,18,851/- under Section 11A of the Central Excise Act, 1944 read with Rule 8 (3A) of the Central Excise Rules, 2002 along with interest and penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Separate penalty under Rule 27 was proposed on them for delayed filing of ER-1 returns of March and April 2009. A separate penalty was also proposed under Rule 26 on their Authorised Signatory Shri Rameshbhai Fulshakar Trivedi (Appellant-2) for his role.

1.2 The Show Cause Notice was adjudicated vide order dated 31.01.2012 wherein the Adjudicating Authority confirmed recovery of duty from the appellant along with interest. He imposed equal penalty under Section 11AC,

a penalty of Rs. 10,000/- under Rule 27 of the Central Excise Rules, 2002 for late filing of each of the returns. He also imposed penalty of Rs. 50,000/- on the Authorised Signatory Shri Rameshbhai Fulshankar Trivedi under Rule 26 of the Central Excise Rules, 2002.

2. Aggrieved with this order the appellant filed appeal before this Tribunal taking the following grounds with prayer to set aside the impugned order with consequential benefits:-

- The proposition of Rule 8 (3A) was illegal and contrary to law as laid down by Hon'ble Gujarat High Court in the case of Banian & Berry bearings Pvt Ltd. He also cites the decision in the case of Noble Drugs Ltd 2007 (215) ELT 500 wherein it was held that what is lying in the credit is the amount of duty already paid on the imports and its utilization was equal to payment of duty through account current.
- Reliance is also placed on the decision of Tribunal in the case of MM Silk Mills where it is held that amount debited in Cenvat account was to be treated as amount debited in account current.
- If they again pay duty by PLA, amount already paid by them would be available as Credit. Therefore, it becomes revenue neutral situation. He relies on the decision of Hon'ble Supreme Court in the case of Narmada Chematur Pharmaceuticals Ltd reported in 2005 (179) ELT 276 (SC) wherein it was held that no demand or Show Cause Notice was necessary in revenue neutral transactions.
- Action of ordering recovery of interest is without any authority as Section 11AB gets attracted only when there is short levy or non-levy of duty which is not in their case.

- Equal penalty is not imposable on them as there was no illegal activity or malafide intent on their part. They had paid duty by utilizing Cenvat Credit which is also equal to account current as held in various case laws. They rely on the decision in the case of Rajasthan Spinning and Weaving Mills 2009 (238) ELT 3 (SC), judgment of Hon'ble Gujarat High Court in the case of Saurashtra Cement Ltd 2010 (260) ELT 71 (Guj.) and judgment dated 26th April, 2011 in the case of Prince Multiplast Pvt Ltd, order dated 07.06.2010 of the Tribunal in the case of Tejal Papers Mills Pvt Ltd and decision in the case of Solar Chemferts Pvt Ltd 2012 (276) ELT 273. Likewise, penalty under Rule 27 is also illegal.
- Imposition of penalty on Appellant -2 under Rule 26 is illegal and contrary to the principles. He was acting in his capacity as an employee of the Company and therefore, no personal penalty could be imposed on him. Reliance is placed on the decision in the case of Vinod Kumar reported in 2006 (199) ELT 705 (Tri.-Delhi) and R. K. Ispat Udhyog reported in 2007 (211) ELT 464 (Tri.-Delhi).

3. During arguments, learned Advocate mentioned that the said issue has already been decided by Hon'ble Gujarat High Court in the case of M/s. Indsur Global Ltd as reported at 2014 (310) ELT 833 (Guj.) which has also been affirmed by Hon'ble Supreme Court reported at 2018 (362) ELT A67 (SC) by dismissing the petition filed by Union of India. Further, this Tribunal in their own case vide order dated 28th August, 2019 has decided this issue in their favour. Interest due to delayed payment of duty and penalty on account of delayed filing of returns has only been confirmed. He also cites various other case laws as mentioned below:-

- a. Frontier Alloy Steels Ltd. V/s. Union of India reported at 2017(354) ELT 54 (All.) and further upheld by Hon'ble Supreme Court vide 2017 (354) ELT A17 (S.C.)
 - b. A.T.V. Projects India Ltd. V/s. Union of India reported at 2016(341) ELT 603 (All.) and further upheld by the Apex Court 2017(349) ELT A90 (S.C.)
 - c. Malladi Drugs & Pharmaceuticals Ltd. V/s. UOI reported at 2015(323) ELT 489 (Mad.)
 - d. Commr. V/s. Titan Industries Ltd. reported at 2016(341) ELT A 155 (S.C.)
 - e. Commr. V/s. Hari Alloys Pvt.Ltd. reported at 2016(342) ELT A228 (S.C.)
 - f. Principal Commr. Of C.Ex., Delhi-I V/s. Space Telelink Ltd. reported at 2017(355) ELT 189 (Del.)
 - g. Institute of Aeronautics & Engineering V/s. CCE Bhopal reported at 2018(10) GSTL 267 (Tri.-Del.)
 - h. GEI Industrial Systems Ltd. V/s. CCE, Bhopal reported at 2017(347) ELT 289 (Tri.-Del.)
 - i. Claris Lifescience Ltd. V/s. Union of India reported at 2016(336) ELT 612 (Guj.)
4. Learned AR reiterates the finding of the Lower Authority. On being specifically asked about his arguments after the decision of Hon'ble Supreme Court in the case of Indsur Global Ltd, he fairly agrees with the proposition that demand in the light of various case laws is not sustainable and so is the penalty.
5. We have heard the rival submissions. We find that the department has issued Show Cause Notice for recovery of duty of Rs. 3,60,18,851 by virtue of the provisions of Rule 8 (3A) of the Central Excise Act, 2002. The appellant had delayed payment of cash portion of excise duty for the month of February-2009 by almost six months which they could pay only on 28th August, 2009

instead of 5th March 2009. The provisions of Rule 8 (3A) existing at that time provided that if a manufacturer fails to pay excise duty within 30 days from the due date of payment, the excise duty in respect of goods cleared by him in succeeding months has to be paid on consignment basis and without utilizing the Cenvat credit.

5.1 We find that the issue is no more res-integra as Hon'ble Gujarat High Court in the case of Indsur Global Ltd has already held that the provisions of Rule 8 (3A) of the Central Excise Rules, 2002 are ultra-vires. Subsequently, appeal filed by Union of India against this order was dismissed by the Apex Court (cited supra). Therefore, we are of the view that when provision itself has been declared ultra-vires, the demand of duty and consequential penalty on the Appellant-1 cannot be sustained. Accordingly, we set aside the demand of duty of Rs. 3,60,18,851/- along with equal penalty under Section 11AC. However, liability of interest due to delayed payment of excise duty if any, sustains.

5.2 As regards penalty on Appellant-1 under Rule 27 of the Central Excise Rules, 2002, we find that ER-1 returns for the month of March and April 2009 have been filed after the due date. In the impugned order, the Adjudicating Authority at para 19 has held that the appellant had filed ER-1 return for both March & April 2009 on 15.05.2009 which were due to be filed on 10.04.2009 and 10.05.2009 respectively. Therefore, it clear that the appellant has delayed filing of these two ER-1 returns. Rule 27 of the Central Excise Rules, 2002 is reproduced below:-

"27. General penalty

A breach of these rules shall, where no other penalty is provided herein or in the Act, be punishable with a penalty which may extend to five thousand

rupees and with confiscation of the goods in respect of which the offence is committed."

5.3 We find that the Adjudicating Authority has rightly imposed penalty on which Appellant-1 under Rule 27 of the Central Excise Rules, 2002 which we also uphold.

5.4 As regards imposition of penalty on Shri Rameshbhai Fulshakar Trivedi Authorised Signatory of the Company, we find that the Adjudicating Authority has in para 20 of his order, justified imposition of penalty on Shri Trivedi on the ground that he had wrongly shown full payment of Excise duty in ER-1 for February-2009 (i.e. Rs. 85,52,903/- from cenvat credit and Rs. 6,38,900/- through TR6) whereas amount of Rs. 6,38,900/- was actually paid on 28.08.2009. He also admitted suppression and mis-statement regarding payment of duty of Rs. 6,38,900/- vide challan no.12 dated 16.03.2009 in monthly ER-1 return for February-2009. This amount was actually paid by them on 20th August, 2009. It therefore appears that Shri Rameshbhai Fulshakar Trivedi was fully aware about non payment of Central Excise Duty amount, still he misdeclared payment particulars in ER-1 return of February-2009. In his statement dated 08.05.2010, he admitted in very clear terms by stating as under:-

"Yes, it was in my knowledge that the said amount of Rs. 6,38,900/- was not paid vide challan dated 16.03.2009, and the same was mentioned in the monthly return filed for the month of February, 2009 to mislead the department about the payment of duty. The fact that the said amount of Rs. 6,38,900/- was deposited vide challan did. 20.08.2009 was purposefully mentioned wrongly in ER-I return for the month of February, 2009. It was suppressed from the department with an intention to continue utilising the cenvat account for the purpose of payment of duty on the clearances of finished goods subsequent to the date 05.04.2009. Thus, in order to evade the payment of duty from account current, consignment wise, during the period of default, starting from 05.04.2009, the department was misled by us that the payment has been made on 16.03.2009 and the fact that the amount of duty payable for the month of February, 2009 remained to be unpaid."

5.5 We therefore agree with the findings of the learned Adjudicating Authority and accordingly, uphold imposition of penalty on Shri Rameshbhai Fulshakar Trivedi under Rule 26 of the Central Excise Rules, 2002.

6. Appeals filed by both the appellants are disposed of in above terms.

(Order Pronounced in the open Court on 15.05.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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