IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos. E/22/2011, E/512-513/2012, E/50892/2014 & E/51081, 51767/2015-EX[DB]

Sr. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	E/22/2011-EX[DB]	M/s Bakewell Agro Ltd.	CCE, Meerut-I	OIA No.187-CE/MRT-I/2010-11 Dated 30.08.2010 passed by Commr. (Appeals) C & CE, Meerut-I
2.	E/512/2012-EX[DB]	M/s India Shoes Ltd.	CCE, Kanpur	OIA No.254-255-CE/APPL/KNP/2011 Dated 22.11.2011 passed by Commr. (Appeals) C & CE, Kanpur
3.	E/513/2012-EX[DB]	Rishi Mahajan, Director	CCE, Kanpur	OIA No.254-255-CE/APPL/KNP/2011 Dated 22.11.2011 passed by Commr. (Appeals) C & CE, Kanpur
4.	E/50892/2014-EX[DB]	M/s Enershell Alloys & Steel Pvt. Ltd.	CCE, Meerut-I	OIO No.65/Commr./MRT-I/2013 Dated 04.11.2013 passed by CC & CE, Meerut-I
5.	E/51081/2015-EX[DB]	M/s S.P. Metaltech India Pvt. Ltd.	CCE, Noida	OIA No. NOI/EXCUS/000/APP/253/2014 Dated 28.11.2014 passed by Commr. (Appeals-2) C & CE, Noida
6.	E/51767/2015-EX[DB]	M/s Mohit Paper Mills Ltd.	CCE & ST, Meerut	OIO No.03/Commr./Meerut/2015 Dated 19.01.2015 passed by CCE & ST, Meerut

<u>Appearance:</u>

Shri Aalok Arora (Advocate) &
(In Appeal No. E/22/2011, E/50892/2014)
Ms. Shreya Dahiya (Advocate)
(In Appeal No. E/51767/2015) for Appellants
Shri Sandeep Kumar Singh (Dy. Commr.) AR &
Shri Pawan Kumar Singh (Supdt.) AR for Respondents

<u>CORAM:</u>

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/09/2018
Date of Decision : 28/09/2018

FINAL ORDER NOs. - **72503-72508/2018**

Per: Archana Wadhwa

All the appeals are being disposed of by a common order as the issue involved is identical. The appellants had defaulted in payment of duty in terms of Rule 8 of Central Excise Rules, 2002, which requires them to pay duty within a stipulated period. In terms of Rule 8(3A) of the said rule, in case of default of duty, the assessee is debarred from using the Cenvat credit and is required to pay duty in cash, during the subsequent period. Accordingly proceedings initiated against all the appellants resulted in confirmation of demands, required to be paid in cash and imposition of penalties, even though such duties were paid by the appellants by using the credit amount.

2. After hearing both the sides, we find that the issue is no more *res integra*. The Hon'ble Gujarat High Court in the case of M/s Indsur Global Ltd. vs. UOI 2014 (310) E.L.T. 833 (Guj.) has declared the provisions of Rule 8(3A) of Central Excise Rules, 2002 as unconstitutional. The said decision of the Hon'ble Gujarat High Court stands followed by the Tribunal in number of cases.

Subsequently the said decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. stands considered and followed by the Hon'ble Madras High Court in the case of M/s A. R. Metallurgicals Pvt. Ltd. vs. CESTAT, Chennai 2015 (322) E.L.T. 49 (Mad.) as also by the Hon'ble Punjab & Haryana High Court in the case of Sandley Industries vs. UOI 2015 (326) E.L.T. 256 (P & H) and by the Hon'ble Allahabad High Court in the case of A.T.V. Projects India Ltd. vs. UOI 2016 (341) E.L.T.603 (All.)

3. It is noticed that though the issue has been held in favour of the assessee by the above referred decisions of various High Courts but Revenue has challenged the Hon'ble Gujarat and Madras High Court's decision by filing a Special Leave Petition against the said judgment before the Hon'ble Supreme Court. The SLP stands admitted by the Hon'ble Supreme Court alongwith grant of stay of proceedings. The Revenue's contention is that inasmuch as the said decision stand stayed by the Hon'ble Supreme Court, the same should not be followed and applied to the facts of the present case.

4. We note that Tribunal in the case of Principal Commissioner of Central Excise, Delhi vs. Space Telelink

Ltd. 2017 (355) E.L.T. 189 (Del.) has taken note of the said development of staying the proceedings by the Hon'ble Supreme Court. However it stands observed that the said submission of the Revenue is fallacious because the Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association (1992) 3 SCC 1 has observed that an order keeping in abeyance the judgment of a Lower Court or Authority does not deface the underlying basis of the judgment itself i.e. its reasoning. As such the Tribunal has followed the decisions of various High Courts.

5. We also take note of this Bench decision in the case of Baba Vishwakarma Engineering Company Pvt. Ltd. in which case vide Final Order Nos.70429-70430/2017 dated 25/04/2017 as also in the case of Baba Vishwakarma Engineering Company Pvt. Ltd. vide Final Order No.70428/2017, the relief was granted to the assessee. Further vide Final Order No.70428/2017 dated 25/04/2017 passed in the same assessee's case. The Tribunal took note of the fact of the stay of Gujarat High Court's decision, by the Hon'ble Supreme Court in the case of M/s R.K. Machine Tools Ltd. vs. Commissioner of Central Excise, Ludhiana 2018 (1) TMI 39 CESTAT, Chandigarh. The entire development was taken note of

and the Gujarat High Court decision was followed. The Tribunal in the case of Kalson Automotives Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Faridabad reported as 2017 SCC Online CESTAT 6865 took note of the latest decision of the Hon'ble Delhi High Court in the case of Space Telelink Ltd. in Central Excise Appeal No.05/2016 wherein vide its order dated 08/03/2017, and held as under:-

> *"6. I find that the Hon'ble Delhi High Court has observed that although the decision in the case Indsur Global Ltd. (supra) has been stayed by the Hon'ble Apex Court but the decision, unless until decided by the Hon'ble Apex Court, holds the field as on date and the Court is not persuaded to take a view different from those already taken. Therefore, the Hon'ble High Court holds that the impugned order and the reasoning of the CESTAT does not call for any interference as a view has already taken by Hon'ble Gujarat, Allahabad, Punjab & Haryana and Madras High Courts. In that circumstance, relying on the decision in the case of Space Telelink Ltd. (supra), I hold that proceedings against the appellants are not sustainable and the impugned order is set aside. Appeal is allowed with consequential relief to the appellant."*

6. Inasmuch as the issue stands decided by various above referred decisions, we set aside the impugned

orders holding against the appellants and allow the appeals with consequential relief to the appellants.

(Pronounced in Court)

Sd/-	**Sd/**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

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