CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70496 of 2023

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-837-17-18 dated 12.09.2017 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s TSAC Polymers, **.....Appellant**
(N-65, 1st Floor, Panchsheel Park,
New Delhi-110017)

VERSUS

Commissioner of Central Excise &
CGST, Noida **....Respondent**
(C-56/42, Sector-62, Noida-201309)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70125/2025

DATE OF HEARING : 10.03.2025
DATE OF DECISION : 10.03.2025

The Appellant is in appeal assailing the Order-in-Appeal No.NOIDA-EXCUS-001-APP-837-17-18 dated 12.09.2017 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida.

2. The facts of the case in brief are that the Appellant is engaged in the manufacture of excisable goods namely CFL falling under Chapter Sub-heading No.85393110 of the First Schedule to the Central Excise Tariff Act, 1985. During the scrutiny of the ER-1 return filed by the Appellant for the month of April, 2014, it was observed that against the total Central Excise duty liability of Rs.18,80,034/- an amount of Rs.18,39,777/- was paid through their **CENVAT account** and Education Cess of Rs.26,837/- and Higher Education Cess

Rs.13,420/- assessed by the Appellant against clearance of excisable goods during the month of April, 2014 was not paid by the Appellant assessee. Further, the duty liability of Rs.41,000/- including an amount of Rs.1,390/- as interest was finally paid by the Appellant vide Challan No.70019 dated 15.07.2014 and Rs.647/- through Cenvat credit vide debit entry No.214 dated 15.07.2014. The Central Excise duty liability of Rs.40,257/- not paid for the month of April, 2014 was liable to be paid by the Appellant by 5th day of May, 2014 as per the provisions of Rule 8(1) of the Central Excise Rules, 2002. Further, as per the provisions of Rule 8(3A) of the Central Excise Rules, 2002, during the period of default i.e. 05.06.2014 to 15.07.2014, the Appellant was required to pay the duty for the month of April, 2014 alongwith interest under Rule 8(3) of the Central Excise Rules, 2002. Therefore, demand for the said period was raised by issuance of Show Cause Notice against the Appellant and the matter was adjudicated holding that the Appellant again utilized the Cenvat credit during the intervening period instead of paying through PLA. Vide the Order–in-Original, following order was passed:-

"*ORDER*

1. *I confirm the demand and order for recovery of Central Excise duty amounting to Rs.27,55,851/- (Rupees Twenty Seven Lacs Fifty Five Thousand Eight Hundred and Fifty One only) in lieu of the Excise Duty payable for each consignment of excisable goods at the time of removal, without utilization of Cenvat Credit, during the period of default i.e. 05.06.2014 to 15.07.2014 under the provisions of Rule 8(3A) of Central Excise Rules, 2002 read with Section 11A of the Central Excise Act, 1944 and the Ed. Cess & SHE Cess amounting to Rs.26837/- + Rs.12773/- already deposited by the party is appropriated against the amount of duty demanded.*

2. *I order for recovery of interest at applicable rate in respect of the duty demanded above under the Section 11AA of the Central Excise Act, 1944 and the interest of Rs.29,316/- + Rs.1390/- already deposited by the party is appropriated against the amount of interest liability.*
3. *I also impose penalty of Rs.27,55,851/- (Rupees Twenty Seven Lacs Fifty Five Thousand Eight Hundred and Fifty One only) in terms of Rule 27 of Central Excise Rules, 2002 and for contravention of various provisions of Central Excise Act, 1944 and Central Excise Rules made there under, as discussed, supra."*

On appeal before the learned Commissioner (Appeals), the learned Commissioner (Appeals) vide the impugned Order-in-Appeal passed the following order as under:-

ORDER

(1) The impugned Order-in-Original No.04/ADDL COMMR/NOIDA/2016-17 dated 13-05-2016 passed by the Additional Commissioner, Noida-1 is upheld to the extent of confirmation of demand of duty alongwith interest.

(2) The penalty imposed in excess of Rs.5,000/- in the impugned order is set aside.

The appeal is thus partially allowed.

3. Against the said order, the Appellant has filed the present appeal before the Tribunal.

4. Heard both the sides and perused the appeal records.

5. I find that the issue involved in the present appeal relates to failure to discharge monthly payment of duty under Rule 8(3A) of the Central Excise Rules, 2002. I find that the issue involved in this matter has been decided by the Hon'ble Gujarat High Court in the case of Indsur Global Limited Vs. Union of India, 2014(12) EMI 525 (Guj) and Sandley Industries Ltd. Vs. Union of India, 2015 (326) E.L.T. 256 (Punjab & Haryana High Court) wherein provision of Rule 8(3A) of Central Excise Rules,

2002 was held *ultra virus.* Therefore, no demand can be raised against the Appellant and the decision of the Hon'ble Gujarat High Court in the case of Indsur Global Limited was taken up by the Revenue before the Hon'ble Supreme Court and vide order dated 29.07.2024 reported in 2024 (7) TMI 1559, Larger Bench of the Supreme Court disposed of the SLP filed by the Revenue as not pressed. Under these circumstances, I hold that the decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. (Supra) is holding the field. Accordingly, relying on the decision of Hon'ble Gujarat High Court in the case of the Indsur Global Ltd. (Supra), I hold that the demand against the Appellant is not sustainable. Consequently, no penalty is imposable.

6. In view of the above discussion, the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS