

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
REGIONAL BENCH : ALLAHABAD  
COURT No. I**

**APPEAL No. E/2490/2008-EX[DB]**

(Arising out of Order-in-Original No. 23/Commr/MRT-I/2008 dated 27/08/2008 passed by Commissioner of Central Excise, Meerut-I)

**N.S. Papers Ltd.**

**Appellant**

Vs.

**Commissioner of Central Excise, Meerut-I**

**Respondent**

Appearance:

Shri B.L. Narsimhan (Advocate)

for Appellant

Shri Pradeep Kumar Dubey (Superintendent) AR

for Respondent

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 26/12/2018

Date of Decision : 26/12/2018

FINAL ORDER NO **72924 / 2018**

**Per: Ashok Jindal**

The appellant is in appeal against the impugned order wherein demand has been raised against the appellant for violation of the provisions of Rule 8(3A) of Central Excise Rules, 2002.

2. The facts of the case are that during the period February, 2007 the appellant could not pay the duty in time and the same was paid during the period from 04.04.2007 to 18.05.2007 along with interest. As in terms of Rule 8(3A) of

Central Excise Rules, 2002, the assessee is required to pay duty on the 5<sup>th</sup> day of the subsequent month in which demand has been arisen. If same is not paid in time the assessee cannot utilize Cenvat Credit account for payment of duty during the intervening period. Admittedly, the appellant has utilized Cenvat Credit for payment of duty during the intervening period. Therefore, the proceedings were initiated against the appellant which was resulted in demand of duty along with interest and penalties also imposed. Against the said order the appellant is before us.

3. Heard the parties.

4. Considering the facts that the said issue has been decided by the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. vs. Union of India reported as 2014 (310) E.L.T. 833 (Guj.) and in the case of Sandley Industries vs. Union of India reported as 2015 (326) E.L.T. 256 (P & H) wherein the provisions of Rule 8 (3A) of Central Excise Rules, 2002 has been declared *ultra vires*. The contention of the Revenue is that as the decision of Indsur Global Ltd. (supra) is pending before the Hon'ble Apex Court wherein the Hon'ble Apex Court has granted Stay against the order of the Hon'ble Gujarat High Court, therefore, the issue cannot be decided at this stage. We have considered the said argument of the Revenue also. We find that after taken care of the Stay Order of the Hon'ble Apex Court in the case of Indsur Global Ltd.

(supra), the Hon'ble Delhi High Court has dealt the issue in the case of Principal Commissioner of C. Ex., Delhi-I vs. Space Telelink Ltd. reported as 2017 (355) E.L.T. 189 (Del.) wherein the Hon'ble High Court has held that although there is a stay by the Hon'ble Supreme Court in the case of Indsur Global Ltd. (supra), the stay order is not applicable unless until, the order of the Hon'ble High Court is set aside by the Hon'ble Apex Court. Therefore, following the decision of the High Court of Delhi in the case of Space Telelink Ltd. (supra), we hold that the provisions of Rule 8(3A) of Central Excise Rules, 2002 are ultra vires, accordingly, the demands against the appellant are not sustainable.

5. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and Pronounced in Court)

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

**Sd/-**  
**(Ashok Jindal)**  
**Member (Judicial)**

*Ankit*