CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD
E-Hearing
REGIONAL BENCH - COURT NO.I

Excise Appeal No.70310 of 2022

(Arising out of Order-in-Appeal No.18-CE/APPL/LKO/2022 dated 11.01.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s Advance Lamp Component and Tableware Pvt. Ltd., ...**Appellant**
(Mohammadpur, Nawada Makkhanpur, Firojabad)

VERSUS

Commissioner of CGST, Lucknow ....**Respondent**
(Commissionerate, Lucknow)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70598/2025

DATE OF HEARING : 08.05.2025
DATE OF PRONOUNCEMENT : 26.08.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.18-CE/APPL/LKO/2022 dated 11.01.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow.

2. The facts of the case in brief are that the Appellant was having Central Excise registration since 10.02.2003 and claiming credit on inputs and capital goods and input services and filing monthly returns. The Appellant was discharging its statutory liabilities in accordance with Central Excise Act read with Central Excise Rules. It is the submission of the Appellant that at times due to financial crisis, they could not deposit the duty by due date and at times, the returns could not be filed within the given time. However, the Appellant deposited the duty belatedly but

alongwith appropriate interest thereon. That there occurred an omission on the part of the Appellant in filing of ER-1 Returns for the period from April to June, 2017 due to confusion prevailing while transiting from Central Excise/Service Tax/VAT to GST. That neither any query nor objection was raised by the Department (Range/Division Officer) having jurisdiction over the Appellant before whom relevant returns were being filed from time to time. That during the course of audit of records on 27.02.2020 for the period from 2015-16 to 2017-18 (April to June), certain discrepancies, including late payment of duty/late or non-filing of returns by due date and non-payment of service tax were pointed out by the auditors to which the Appellant submitted its explanation to the best of their efforts. However, the Department did not agree with the explanation of the Appellant which resulted in issuance of Show Cause Notice[1] dated 23.07.2020 demanding interest for delay in making payment of duty and penalty in terms of Rule 8(3A) of Central Excise Rules and proposing penalty for late/non-filing of returns. It was the prime contention of the Appellant that the period involved in the SCN was from June, 2016 to June, 2017, the audit was conducted during the period on 27.02.2020 for the period from 2015-16 to 2017-18 (April to June) whereas the SCN was issued on 23.07.2020 i.e. much beyond the normal period of limitation. The Appellant also contested the applicability of Rule 8(3A) in the facts and circumstances of the present case. However, the Original Authority did not agree with the contentions of the Appellant which resulted in passing of original order confirming demand on account of interest and penalties were also imposed. That the Appellant filed appeal before the First Appellate Authority contesting the order passed by the Original Authority. Though the Appellate Authority partly agreed with the submission of the Appellant on imposition of penalty for delay in filing of return and on demand of interest, but he has upheld the order of Original Authority on confirmation of demand

[1] SCN

on account of penalty under Rule 8(3A) of Central Excise Rules, 2002. Hence, the present appeal before the Tribunal.

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

4. The issue involved in the present appeal relates to applicability of Rule 8(3A) of Central Excise Rules, 2002. I find that the issue is squarely covered by the judgements of the jurisdictional High Court in the case of A.T.V. Projects India Ltd. vs. Union of India reported as 2016 (341) E.L.T. 603 (All.) wherein the Hon'ble High Court held thus:-

> ***"2.*** *Petitioner is challenging validity of Rule 8(3A) of Central Excise Rules, 2002 (hereinafter referred to as "Rules, 2002") and the notices issued by authorities concerned under the aforesaid provision.*
>
> ***3.*** *At the outset, it is stated that three different High Courts of the Country have already declared Rule 8(3A) of Rules, 2002 ultra vires of Constitution being unreasonable, irrational, arbitrary and violative of Article 14 of Constitution. Gujarat High Court has struck down the aforesaid Rule in Indsur Global Limited v. Union of India - 2014 (310) E.L.T. 833. Madras High Court has done so in Malladi Drugs and Pharmaceuticals Limited v. Union of India - 2015 (323) E.L.T. 489 and Punjab and Haryana High Court has also taken the same view in Sandley Industries v. Union of India - 2015 (326) E.L.T. 256.*
>
> ***4.*** *Learned Additional Solicitor General also stated that in the aforesaid matters, appeals are pending before Apex Court in which notices have been issued but no interim orders have been passed. He also could not advance any submission so as to persuade us to take a different view.*
>
> ***5.*** *Relying on the aforesaid judgments and for the reasons given therein and on the grounds whereupon the aforesaid provision has been struck down, Rule 8(3A) of Rules, 2002 is declared violative of Article 14 of*

Constitution and as a result thereof, impugned notices dated 26-10-2010, 24-11-2010 and 20-12-2010 (Annexures 5, 7 and 9 to the writ petition) which have been issued under the aforesaid provision, are also set aside.

6. *The writ petition is, accordingly, allowed."*

5. By respectfully following the aforesaid ratio of the Hon'ble High Court, the demand of Rs.14,55,663/- is set aside. The appeal filed by the Appellant is partly allowed in the above terms.

(Order pronounced in open court on - **26.08.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS