CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1747 of 2010

(Arising out of Order-in-Original No.28/2010 dated 26.5.2010 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bangalore.)

M/s. Parallel Track Engineering Pvt Ltd.
No.37/1, 6th Main,
Singasandra,
Hosur Main Road,
Bangalore – 560 068.

Appellant(s)

Versus

The Commissioner of Central Excise,
Bangalore-I Commissionerate,
Post Box No.5400,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

Appearance:

Mr. Pradyumna G.H, Advocate — For the Appellant

Mr. H. Jayathirtha, AR — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21224 /2023

Date of Hearing: 03.11.2023
Date of Decision: 03.11.2023

Per : DR. D.M. MISRA

This appeal has been filed by the appellant against the Orde-in-Original No.28/2010 dated 26.5.2010 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods falling under Chapter 83 and 84 of Central Excise Tariff Act, 1985. They were availing CENVAT credit of duty paid on inputs used in the manufacture of final products. They have been discharging duty in terms of Rule 8 of Central Excise Rules, 2002. During the course of scrutiny of ER-1 returns for the month of May 2008, it was noticed that they have defaulted in making payment of duty for the month of May 2008 beyond 30 days. Consequently, further payments made by utilising the CENVAT credit was held to be contrary to the provisions of Rule 8 of the Central Excise Rules, 2002. Accordingly, demand of Rs.74,26,040/- paid during the default period by utilising the CENVAT credit was held to be irregular and recoverable from them. Show-cause notice was issued to the appellant for recovery of the said amount in cash, which is confirmed by the learned Commissioner along with interest and penalty of Rs.15,00,000/-. Hence the present appeal.

3. The learned advocate at the outset submits that the differential amount had been paid by debiting the Current Account on 14.6.2008 and 15.5.2009. Also interest of Rs.59,423 was paid on 23.5.2009. He further submits that Rule 8(3A) of the Central Excise Rules, 2002 has been struck down by the Hon'ble Gujarat High Court in the case of **Indsur Global Ltd. vs. UOI: 2014 (310) ELT 833 (Guj.)** being ultra vires. Also, he submits that other High Courts viz., Bombay High Court, P & H High Court and Madras High Court have also struck down the

said provisions as *ultra vires* to the Constitution. Further he submits that even though the Hon'ble Supreme Court has stayed the judgment in the case of Indsur Global Ltd., however, in other cases the appeals were admitted and no stay has been granted by the Hon'ble Supreme Court. Thus, following the consistent view taken by various High Courts on the said issue, the Tribunal at Ahmedabad in the case of **Indus Tropics Ltd. vs. CCE & ST, Rajkot: 2023 (3) TMI 950 – CESTAT AHMEDABAD** recently allowed the assessee's appeal.

4. The learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (A). He submits that irrespective of whether stay has been granted or not, once the appeal is pending before the Hon'ble Supreme Court, the ratio of the judgment cannot be implemented as held in the case of **UOI vs. West Coast Paper Mills Ltd.: 2004 (164) ELT 375 (SC)**.

5. We have carefully considered the submissions advanced by both sides. We find that the short issue for determination of the present appeal is whether the demand can be upheld against the appellant for default in making monthly payment of duty under Rule 8 of Central Excise Rules, 2002. We find that the said Rule has been struck down by the Hon'ble Gujarat High Court, Bombay High Court and P & H High Court. Following the implications of the said judgment, this Tribunal in **Indus Tropics Ltd.** held as follows:

> "13. Revenue's appeal against judgment of the Hon'ble High Court of Punjab & Haryana in the case of Sandley Industries Ltd

(supra) was dismissed on monetary limits by the Hon'ble Apex Court. Further, we find from the website of the Hon'ble Supreme Court of India that a batch of several appeals have been tagged with the appeal of Union of India in the case of Indsur Global Ltd (supra).

14. In view of the above, we find that at least four different High Courts have struck down the constitutional validity of Rule 8(3A) of Central Excise Rules, 2002 and appeals against such judgments have been admitted by the Hon'ble Supreme Court and have yet to be decided. There was a stay in one case i.e., Indsur Global Ltd (supra) only but there was no stay in respect of the other judgments. Learned departmental representative relies on the judgment of Larger Bench of Hon'ble Supreme Court in the case of West Coast Paper Mills (supra) to assert that once an appeal has been admitted before the Hon'ble Supreme Court, the judgment of the High Court or Tribunal is in jeopardy and cannot be followed. We find that this judgment was of the year 2004. What needs to be decided in this factual matrix is where there are judgments by four different High Courts holding Rule 8(3A) as ultra vires and there is no judgment of any High Court upholding it and where the appeals against these judgments have been admitted and are under consideration of the Hon'ble Apex Court, whether the ratio of these judgments bind this tribunal or otherwise. We find that the last in the series of judgments was passed by the Hon'ble High Court of Bombay in the case of Nashik Forge Pvt Ltd (supra) on 17.09.2018 holding that the ratio of the judgment of the Hon'ble High Court of Madras, Gujarat and Punjab & Haryana apply. Respectfully following the decision of the Hon'ble High Court of Bombay, we follow the ratio of the aforesaid judgments of the Hon'ble High Courts and hold that the demand is unsustainable and needs to be set aside. Consequently, penalties imposed upon the appellant also need to be set aside and we do so."

6. We agree with the view expressed by this Tribunal in **Indus Tropics Ltd.** case. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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