CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/21184/2016-SM

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-038-16-17 dated 26/04/2016 passed by the Commissioner of Central Excise, Cochin (Appeals)]

Commissioner of Central Excise,
Customs and Service Tax, Calicut
Central Revenue Building,
Mananchira, Calicut,
Kozhikode – 673 001
Kerala

Appellant(s)

Versus

Southern Ispat And Energy Ltd.
Sreyas, Near Yakkara Bus Stop,
West Yakkara
Palakkad – 678 001
Kerala

Respondent(s)

Appearance:

Mrs. Kavitha Poduwal, Superintendent (AR) — For the Appellant

None — For the Respondent

Date of Hearing: 27/02/2018
Date of Decision: 27/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20495 / 2018

Per : S.S GARG

The present appeal has been filed by the Revenue against the impugned order dated 26.04.2016 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has modified the Order-in-Original and has only demanded the interest from the respondent for the defaulted period. Briefly the facts of the present case are that the assessee are engaged in the manufacture of MS Ingots under Heading No. 72061090 of Central Excise Tariff Act, 1985 and are paying the duty as determined under Section 4(1)(a) of the Central Excise Act, 1944. The assessee was paying duty electronically on the value determined under Section 4(1)(a). They had defaulted in the payment of duty beyond thirty days from the due date and discharged the duty liability on a monthly basis utilizing cenvat credit on clearing goods during the period from May 2010 to March 2011 instead of paying the Central Excise duty on consignment basis. A show-cause notice dated 23.05.2011 was issued to the assessee demanding the excise duty amounting to Rs. 4,56,574/- (Rupees Four Lakhs Fifty Six Thousand Five Hundred and Seventy Four only) under Rule 14 of the Cenvat Credit Rules 2004 read with 11A of the Central Excise Act, 1944 along with interest and penalty. Another show-cause notice dated 13.09.2011 was also issued demanding the excise duty amounting to Rs. 11,74,876/- (Rupees Eleven Lakhs Seventy Four Thousand Eight Hundred and Seventy Six only) under Rule 14 along with interest and penalty. Additional Commissioner vide Order-in-Original dated 17.06.2013 held that the assessee has cleared the goods without payment of duty in contravention of Rule 8(3A) of the Central Excise Rules, 2002 and denied the utilization of cenvat credit amounting to Rs. 16,31,450/- (Rupees Sixteen Lakhs Thirty One Thousand Four Hundred and Fifty only) for payment of duty as per the provisions of Rule 8(3A) of the Central Excise Rules, 2002 and confirmed the demand along with interest and penalty. Aggrieved by the said order, respondent filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) has observed that the Tribunal in a number of cases ruled that instead of payment of duty amount liable to be paid on consignment basis in cash and availing the credit once again, it would suffice if the respondent pays interest on the dues relating to clearances on consignment basis and the appellant is liable to pay interest for the defaulted payment during the said period and reversal of cenvat credit is unwarranted. The Commissioner (Appeals) dropped the penalty under Rule 15(1) as well as under Rule 26. Aggrieved by the said order, Revenue has filed the present appeal.

2. Heard the learned AR for the Revenue. None appeared on behalf of the assessee. Learned AR submitted that the impugned order is not sustainable in law as the same is contrary to the provisions of Rule 8(3A). She further submitted that the assessee has contravened the provisions of Rule 8(1), 8(2), 8(3) and 8(3A) of Central Excise Rules, 2002 and they have intentionally flouted the Rules by declining to pay the duty in cash on consignment basis without utilizing the cenvat credit. She further submitted that the findings in the impugned order are not backed by statutory provisions.

3. After considering the submissions of the learned AR and perusal of the material on record, I find that the provisions of Rule 8(3A) has been declared as unconstitutional by the High Court of Gujarat in the case of ***Indsur Global Ltd. Vs. Union of India*** *reported in* **2014 (310) E.L.T.**

833 (Guj.). Learned AR further submitted that the Department has filed an appeal before the Apex Court and the matter is pending before the Apex Court for final determination regarding the constitutional validity of Rule 8(3A) of the Cenvat Credit Rules. Further I find that the other High Courts have also followed the Gujarat High Court in the case of **Indsur Global Ltd.** cited supra and has held that the payment of excise duty by utilizing the cenvat credit is not violative of Rule 8(3A) of the Central Excise Rules, 2002. Further the Division Bench of the Delhi Tribunal in the case of ***Weldon Cello Plast Ltd. V. CCE, Delhi IV*** *reported in* ***2013 (287) E.L.T. 141 (Tri.-Del.)*** have also followed the other High Courts and held that the ratios of the decision is still binding and therefore, Division Bench held that payment through cenvat credit is not bad in law. Therefore, by following the ratios of the above decision, I am of the view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **27/02/2018**)

(S.S GARG)
JUDICIAL MEMBER

iss...