

Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/61725/2018

(Arising out of OIA-LUD-EXCUS-001-APP-1487-18 dated 24.07.2018 passed by the Commissioner (Appeals) of Central Excise and Service Tax-LUDHIANA)

M/s Twinkle Papers Pvt. Ltd. : Appellant (s)

Vs

CCE & ST- Ludhiana : Respondent (s)

**Represented by:**

For Appellant (s) : Shri Sanjay Mahlotra, CA

For Respondent (s): Shri H. Singh, AR

**CORAM :**

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

Date of Hearing/Decision: 13.12.2018

**ORDER No. A/63589 / 2018**

**Per : Mr. Ashok Jindal**

The appellant is in appeal against the impugned order wherein the demand of duty has been confirmed on account of contravention of provision of Rule 8 (3A) of CER, 2002. As the duty during the intervening period, the appellant was required to pay in cash instead of utilizing their cenvat credit account.

2. The facts of the case are that during the period January 2013 the appellant defaulted the payment of duty by making a short payment of duty for 20 days. During the period of payment of duty and till actually was paid, the appellant utilized cenvat credit account for payment of duty. By way of issuance of show cause notice, it was alleged that in terms of Rule 8 (3A) of the CER, 2004 during the period of default, the appellant was not

entitled to utilize cenvat credit account for payment of duty. The matter was adjudicated, the demand has been confirmed alongwith interest and penalty was also imposed. Against the said order, the appellant is before me.

3. Heard the parties.

4. Considering the fact that the provision of Rule 8 (3A) of CER, 2004 has been declared ultra virus by the Hon'ble Gujarat High Court in the case of ***Indsur Global Ltd. Vs. Union of India-2014 (12) TMI 585 (Guj.)*** and the said order has been stayed by the Hon'ble Apex Court, but, considering the said situation this Tribunal in the case of ***R.B. Industries vs. CCE-Delhi-IV-2017 (10) TMI 611-CESTAT Chandigarh*** has held that in terms of the decision of the Hon'ble High Court of Delhi in the case of ***M/s Space Telelink Ltd in Appeal No. C.E.A.C No. C.No. 5/2016 vide order dated 08.03.2017*** the demand are not sustainable. Therefore, I hold that the provision of Rule 8 (3A) of CER, 2002 has been declared ultra virus, therefore, the proceedings against the appellant are not sustainable. Accordingly, the impugned order is set-aside and the appeal is allowed with consequential relief, if any.

*(Dictated & pronounced in the Court)*

**(Ashok Jindal)**  
Member (Judicial)

G.Y.