IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/42204/2017

(Arising out of Order-in-Appeal No.18/2017 (CTA-II) dated 30.6.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

M/s. Swasthik Preforms Pvt. Ltd. Appellant

Vs.

CCE, Puducherry Respondent

Appearance

Shri G. Derrick Sam, Advocate for the Appellant
Shri R.Subramaniam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **30.05.2018**

Final Order No. **41673 / 2018**

Brie facts are that the appellants are engaged in manufacture of PET performs and PET bottles. They paid an amount of Rs.5,53,107/- being duty liability pertaining to the month of December 2011 belatedly on 21.2.2012 after a delay of 47 days and also paid interest thereon. As per the provisions of Rule 8(3A) of Central Excise Rules, 2002, the duty liability for the clearances made by them during the default period was Rs.14,38,915/-, which on insistence, they paid by cash. However, they did not pay interest thereof for the duty paid belatedly. Hence show cause notice was issued which after adjudication confirmed the demand of Rs.8,61,064/- and imposed penalty of Rs.5,000/-. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. At the time of hearing, the ld. counsel Shri G. Derrick Sam appearing for the appellant submitted that the issue whether the appellant is entitled to use CENVAT credit while discharging the duty liability of the default period is under consideration before the Hon'ble Supreme Court vide appeal filed by department in the case of M/s. Indsur Global Ltd. Vs. Union of India – 2014 (310) ELT 833 (Guj.). The judgment of the Hon'ble Madras High Court in the case of Malladi Drugs and Pharmaceuticals Ltd. is also tagged along that appeal. That the Tribunal taking note of these facts, on a similar case, remanded the matter back to the original authority with the direction for denovo consideration based on the outcome of the decision of the Hon'ble Supreme Court in the matter.

3. The ld. AR Shri R. Subramaniam supported the findings in the impugned order.

4. Heard both sides.

5. The Tribunal vide Final Order No. 41932/2016 dated 21.10.2016 had remanded a similar matter on the grounds stated above to the adjudicating authority for denovo consideration. Following the said order, I set aside the impugned order and remand the matter to the adjudicating

authority with direction for denovo consideration based on the outcome of the decision of the Hon'ble Supreme Court in the cases cited above. The appeal is allowed by way of remand.

(Operative portion of the order was
pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex