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

Appeal No. E/380/2009

(Arising out of Order-in-Appeal No.36/2009 dated 23.1.2009 passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of GST & Central Excise,
Madurai   Appellant

Vs.

M/s. Sri Naga Nanthana Mills Ltd.   Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Shri M. Kannan, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **18.07.2018**

Final Order No. **42036 / 2018**

Per Bench

The above appeal is filed by the department against the order passed by Commissioner (Appeals) who set aside the demand, interest and penalties.

2. The respondents are engaged in manufacture of cotton yarn and polyester yarn and are also selling through their consignment agents. During the period June 2001 to April 2002, the respondents cleared cotton yarn and polyester yarn to their consignment agents. They had paid the differential duty of

Rs.21,57,955/- by deducting from their CENVAT account instead of paying through their current account / PLA. Show cause notice was issued for recovery of the duty paid from the CENVAT account with interest and for imposing penalties for the period January 2002 to April 2002. The original authority confirmed the duty demand along with interest and imposed penalty of Rs.25,000/- under Rule 25 of Central Excise Rules, 2002. In appeal, Commissioner (Appeals) set aside the same. Hence department is now before the Tribunal.

3. On behalf of Revenue, ld. AR Shri S. Govindarajan reiterated the grounds of appeal.

4. On behalf of the respondent, ld. counsel Shri M. Kannan submitted that under Rule 8(4) of Central Excise Rules, 2002, as it stood then, the assessee is required to pay "excise duty for each consignment by debit to the current account" and hence the assessee can pay the differential through CENVAT account. The respondents had the facility of payment of differential duty and paid the same through their CENVAT account for which the show cause notice was issued. He submitted that during the relevant period the issue has been decided by the Larger Bench of the Tribunal in the case of Noble Drugs Ltd. Vs. Commissioner of Central Excise – 2007 (215) ELT 500 (Tri. LB) and the same has also been considered by the Hon'ble Supreme Court in the case of Jayaswal Neco Ltd. Vs. Commissioner of Central Excise, Raipur – 2015 (322) ELT 587 (SC). The Larger

Bench as well as the Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Chennai Vs. Star Drugs & Research Lab Ltd. – 2016 (338) ELT 652 (Mad.), has held that during the period of forfeiture of facility of the payment of duty on fortnightly basis, an assessee can discharge duty liability either out of current account / PLA or by utilizing CENVAT account. The period involved in the present appeal is prior to 31.3.2005 on which date the non-obstante clause was introduced in Rule 8 of Central Excise Rules, 2002.

5. Heard both sides.

6. The period involved is prior to 31.3.2005 on which date the non-obstante clause was introduced in Rule 8, wherein there has been a restriction imposed for paying duty liability using the CENVAT account when there is a delay in payment of duty. The issue being settled by the decisions relied by the ld. counsel for respondent, we find no ground to interfere with the order passed by the Commissioner (Appeals), who has relied the decision of the Larger Bench. The appeal filed by Revenue is devoid of merit and the same is dismissed.

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

(**Madhu Mohan Damodhar**)
Member (Technical)

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

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