

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No.42340 of 2016

(Arising out of Order-in-Original No.48/2016 (CE) dated 28.06.2016
passed by Commissioner of Central Excise, Chennai)

**M/s. Aditya Auto Products
& Engineering India Pvt. Ltd.,**
No.B7/B8, Government Industrial Colony,
Gandhi Nagar,
Vellore-632 006.

....Appellant

Versus

Commissioner of GST & Central Excise ... Respondent
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE:

Shri M.V. Sridhar, Consultant for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.41401/2025**DATE OF HEARING: 04.07.2025**
DATE OF DECISION: 28.11.2025**Per: Shri P. Dinesha**

The present Appeal is filed by M/s. Aditya Auto Products & Engineering India Pvt. Ltd, aggrieved by the Order-in-Original No.48/2016 (CE) dated 28.06.2016 passed by Commissioner of Central Excise, Chennai.

2. The Appellant is engaged in the manufacture and clearance of excisable goods, viz., motor vehicle parts, falling under CETSH No.87089900. On scrutiny of ER-1 Returns filed by the Appellant-Assessee for the month of November 2014 to September 2015, it was noticed that the Assessee had declared an amount as 'Central Excise Duty payable', under the column 'duty payable for clearance', but had been paying the declared amount, after a period of more than a month, by utilizing the CENVAT credit. The Cenvat credit so

utilized had been earned by them, during the subsequent period, i.e. duties of excise payable for a given month was paid with interest, in the subsequent months, by utilizing the CENVAT credit accrued in the later months. It is the case of the Revenue that the Appellant have paid penalties (to the tune of Rs.69,676/-) under Rule 8(3A) of Central Excise Rules, 2002 and interest (to the tune of Rs.3,76,296/-) under Rule 8(3) of Central Excise Rules upto the period they have discharged the duties through CENVAT credit and hence these payments appear to be incorrect. The same should be calculated and demanded in cash after the Assesseees pay the Excise Duty in cash. Hence, Show Cause Notice No. 54/2015-CE dated 07.12.2015 was issued to the Appellant proposing to demand Excise Duty under Rule 8(3A) of Central Excise Rules, 2002 along with interest and to impose penalty. After due process, Adjudicating Authority *vide* impugned Order-in-Original No.48/2016 dated 28.06.2016 confirmed the proposals made in Show Cause Notice. Aggrieved by the order of Adjudicating Authority the present Appeal is filed by the Appellant before this forum.

3. Heard Shri M.V. Sridhar, Ld. Consultant for the Appellant and Shri M. Selvakumar, Ld. Assistant commissioner for the Revenue-Respondent.

4. After hearing both sides and on perusal of records, we find that the issue that arises for our consideration in the present Appeal is, "whether demand of Central Excise Duty Raised under the provisions of Rule 8(3A) of Central Excise Act is sustainable or not?"

5. We find that the provisions of Rule 8 (3A) have been held *ultra vires* as unconstitutional by the Hon'ble Gujarat High Court in **Indsur Global Ltd. v. Union of India** - 2014 (310) ELT 833 (Guj.) which has been followed by the Jurisdictional Hon'ble High Court of Madras in **Malladi Drugs & Pharmaceuticals Ltd. vs. Union of India** - 2015 (323) ELT 489 (Mad) and **A.R. Metallurgicals P. Ltd.** - 2015 (322) ELT 49 (Mad.). The judgement (*supra*) has been followed by the Tribunal in the following decisions:

- (i) **DRD Body Tech's (India) Pvt. Ltd. vs. Commissioner of Customs, Excise & Service Tax, Hyderabad** – 2020 (374) ELT 270 (Tri.-Hyd)
- (ii) **Praweg Conveyors vs. Commissioner of Customs, Excise, Kalyan-III**, 2016 (337) ELT 450 (Tri.-Bom).

Following the judicial discipline, the demand in the impugned order cannot sustain and accordingly the impugned order is set aside. Appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 28.11.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)