CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51222/2019-SM

(Arising out of order-in-appeal No. BHO-EXCUS-001-APP-266-16-17 dated 07.09.2016 passed by the Commissioner (Appeals-I), Customs, Central Excise & Service Tax, Bhopal, M.P.)

M/s Ambika Engineering **Appellant**
Plot No. 11-J, Sector-I
Industrial Area, Pithampur.

VERSUS

Commissioner, Central Goods and Service Tax, Central Excise **Respondent**
Manic Bagh Palace
Indore (M.P.)

APPEARANCE:

Shri Manish Saharan, Advocate for the appellant
Ms. Tamanna Alam & Shri N. Chandra, Authorised Representatives for the respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 50366/2020

DATE OF HEARING/DECISION: 19.02.2020

ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein duty has been demanded from the appellant by invoking the provisions of Rule 8(1) of the Central Excise Rules, 2002.

2. Brief facts of the case are that during the course of scrutiny of ER-1 return for the month of April, 2011 wherein some short payment was detected. The appellant paid the said differential amount alongwith interest. As the amount was paid in July, 2012, therefore, in terms of Rule 8(3)(a) of Central Excise Rules, 2002 for the period May,

2011 to September, 2012, the appellant were asked to pay duty on consignmentwise without availing the cenvat credit through PLA. During the impugned period, the appellant paid duty by utilising cenvat credit, therefore, duty was demanded from the appellant after issuance of show cause notice alongwith interest and equivalent amount of penalty imposed on the appellant. Against the said order, the matter is before me.

3. Learned Counsel submits that in the case of **Pr. Commissioner of C. Ex. Delhi-I vs. Space Telelink Ltd., -2017 (355) ELT 189 (Del.),** this Tribunal has held that as the provision of Rule 8(3)(a) has been declared ultra vires by the Hon'ble Gujarat High Court in the case of **Indsur Global Ltd. vs. Union of India -2014 (310) ELT 833 (Guj.)** and by the Hon'ble Punjab & Haryana High Court in the case of **Sandley Industries vs. Union of India -2015 (326) ELT 256 (P&H).** Although the order in the case of Indsur Global Ltd., (supra) has been stayed by the Hon'ble Apex Court but the appellant are not liable to pay duty in terms of Rule 8(3)(a) of Central Excise Rules, 2002. In view of the decision of the High Court in the case of **Space Telelinks Ltd.,** (supra), I hold that the appellant are not liable to pay duty in terms of Rule 8(3)(a) of Central Excise Rules. Therefore, no penalty is imposable on the appellant.

4. In these terms, the appeal is disposed of.

(Dictated and pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Pant