CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

E-HEARING

Excise Appeal No. 52037 of 2018 - SM

(Arising out of Order-in-Appeal No. 132(SJ)CE/JPR/2018 dated 03.05.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax Jaipur)

M/s Aman Pipes (P) Ltd. **Appellant**
94-C-E, Industrial Area,
Jhotwara, Jaipur (Rajasthan).

Versus

Commissioner, Central Excise & Service Tax, Jaipur **Respondent**
NCRB, C-Scheme,
Jaipur (Rajasthan)

Appearance:

Present for the Appellant: Shri Madhu Sudan Sharma, Authorized Representative

Present for the Respondent: Shri Rohit Issar, Authorized Representative

CORAM:

Hon'ble Ms. Binu Tamta, Member (Judicial)

Date of Hearing : 16/01/2025
Date of Decision : 22/01/2025

Final Order No. 50068/2025

Binu Tamta

Challenge in the present appeal is to the order[1] passed by the Commissioner (Appeals), rejecting the refund claim on the ground that the interest was payable under Rule 8(3A) of the Central Excise Rules, 2002[2].

---

1. Order-in-Appeal No. 132(SJ)CE/JPR/2018 dated 03.05.2018
2. the Rules

2. The appellant is engaged in the manufacture of ERW Steel Tubes falling under Chapter Heading 7306 9011. It was observed that they had defaulted in payment of Central Excise duty for the month from May 2012 to February 2013 and as a result, duty was payable for the default period and out of total amount of Rs. 1,08,70,234/- the appellant paid Rs. 20,60,000/- in cash and Rs. 88,10,234/- from Cenvat Credit account. The department objected in terms of the provisions of Rule 8(3A) as utilisation of credit was not permissible for delayed payment of duty and therefore the said clearances were considered as made without payment of appropriate duty. The appellant thereafter paid the entire duty in cash along with interest amounting to Rs.37,47,573/- for the delay under the provisions of Rule 8(3A) of the Rules.

3. In the writ petition filed before the Gujarat High Court, challenge was made to the constitutionality of Rule 8(3A) of the Rules in so far as it prohibits an assessee from utilising Cenvat credit for payment of excise duty. The learned Division Bench in the judgement titled as **M/s Indsur Global Vs. UOI**[3] declared the condition contained in sub rule 3A of Rule 8 for payment of duty without utilizing the credit till an assessee pays that outstanding amount including interest as unconstitutional. The portion "without utilising in the Cenvat Credit" of sub rule 3A of Rule 8 was declared invalid by the Court.

4. In view of the law laid down by the High Court, the appellant filed a refund claim of interest amounting to Rs. 37,47,577/- on

---

3. 2014 (310) ELT 833 (Guj.)

30.11.2015, under Section 11B of the Central Excise Act, 1944[4], on the ground that interest was not required to be paid by them as utilisation of credit was proper at the relevant time, and there was no delay in payment warranting any interest liability. Both the adjudicating authority and the appellate authority rejected the refund claim on the ground that the decision of the Gujarat High Court has been challenged by the Revenue and the Supreme Court has stayed the operation of the said judgement pending consideration[5]. Hence the present appeal has been filed before this Tribunal.

5. The learned Counsel for the appellant has brought to notice the order dated 29.07.2024 passed by the Supreme Court whereby the Revenue had withdrawn the appeal on account of low monetary effects. Therefore, the findings arrived at by the High Court of Gujarat have attained finality. The learned Authorised Representative has not disputed the submissions made by the learned Counsel for the appellant.

6. The present appeal has been adjourned *sine die* by this Tribunal as the issue on the validity of the condition that Cenvat Credit cannot be utilised for payment of duty in case of delayed duty was pending before the Supreme Court. Now that the Revenue has withdrawn the appeal itself, the judgement of the High Court of Gujarat, declaring the provisions of Rule 8(3A) as *ultra virus* governs the present case. Consequently, the duty

---

4. the Act
5. 2016 (335) ELT A109

amount of Rs. 88,10,234/- paid by the appellant by utilising the Cenvat credit was proper and therefore, no interest was payable thereon. Hence, the appellant is entitled to the refund of the amount paid by them by way of interest amounting to Rs.37,47, 573/- on the delayed payment of duty with interest @ of 12% per annum from the date of the final order of the Supreme Court till the date of payment.

7. The impugned order, is therefore set aside. The appeal, accordingly stands allowed with consequential relief.

(Pronounced in open Court on 22nd January 2025)

(Binu Tamta)
Member (Judicial)

RM