CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 56052 of 2014

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-37-14-15 dated 19.09.2014 passed by the Commissioner, Central Excise, Jaipur I)

M/s Siddh Chemiplast Ltd **...Appellant**
Unit- 2, F-205, A-206
RIICO Industrial Area,
Khushkhera, Bhiwadi
Alwar, Rajasthan- 301019

VERSUS

Commissioner of Central Excise, Jaipur I **...Respondent**
New Central Revenue Building
Statue Circle, C-Scheme
Jaipur- 302005

APPEARANCE:
Ms. Vandana Singh and Shri R.S. Yadav, Advocates for the Appellant
Shri S.K. Ray, Authorized Representative of the Department

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: 23.05.2025

FINAL ORDER NO. 50806/2025

JUSTICE DILIP GUPTA

M/s Siddh Chemiplast Pvt Ltd.[1] has filed this appeal to assail the order dated 19.09.2014 passed by the Commissioner, by which demand of central excise amounting to Rs. 74,45,385/- has been confirmed under rule 8 (3A) of the Central Excise Rules, 2002[2] read with section 11A (10) of the Central Excise Act, 1944[3] has ordered to be recovered from the appellant with interest. A penalty of Rs. 15 lakhs has also been imposed upon the appellant under rule 25 of the 2002 Rules.

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1 the appellant
2 the 2002 Rules
3 the Central Excise Act

2. It transpires from the records that during the checking of the ER-1 returns for the month of May 2012 to April 2013, it appeared that the appellant defaulted in payment of duty for the month of May, 2012 beyond thirty days as this duty amount of Rs. 1,11,100/- was paid on 22.04.2013 with interest. In terms of rule 8 (3A) of the 2002 Rules, the appellant was required to pay excise duty in cash without utilizing the CENVAT credit in respect of the consignment cleared by the appellant during the period of default from 05.07.2012 to 21.04.2013.

3. As the excise duty was paid utilizing the CENVAT credit, a show cause notice dated 03.07.2013 was issued to the appellant. The appellant submitted a reply and denied the allegations made therein.

4. The Commissioner held as follows in the order dated 19.09.2014:

> "**Therefore I hold that the goods cleared by the assessee during the aforesaid default period by payment of duty by utilizing Cenvat credit as goods cleared without payment of duty in contravention of rule 4(1), 8(1), 8(3) & 8(3A) of the Central Excise Rules, 2002. Accordingly the amount of Central Excise duty involved in the clearances effected during the aforemen-tioned period amounting to Rs. 74,45,385/- is required to be recovered from them through account current (i.e. PLA) under Rule 8(3A) of the Central Excise Rules, 2002 read with Section 11A(1) of the Central Excise Act, 1944 along with interest.** Since the assessee has already paid Rs 1,95,264/-(BED Rs.5,500/- Ed. Cess Rs.1,26,544/- SH Ed. Cess Rs. 63,220/-) vide various challan and Rs 26,321/- towards interest as mentioned in the show cause notice itself same is liable for appropriation in govt. account toward their duty liability."

5. The Commissioner also imposed a penalty of Rs. 15 lakhs on the appellant.

6. Ms. Vandana Singh, learned counsel appearing for the appellant submitted that rule 8 (3A) of the 2002 Rules to the extent it requires the defaulter assessee to pay excise duty without availing CENVAT credit to his account has been struck down by the Gujarat High Court in **Indsur Global Ltd.** versus **Union of India**[4] and, therefore, the demand that has been confirmed placing reliance upon rule 8 (3A) of the 2002 Rules deserves to be set aside. Learned counsel also submitted that in this view of the matter, penalty could also not have been imposed upon the appellant.

7. Shri S.K. Ray, learned authorised representative appearing on behalf of the department has, however, supported the impugned order.

8. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

9. The only reason assigned in the impugned order dated 19.09.2014 passed by the Commissioner for confirming the demand is that the goods were cleared by the assessee during the aforesaid default period by utilizing CENVAT credit in contravention of the provisions of rule 8 (3A) of the 2002 Rules.

10. Rule 8 (3A) of the 2002 Rules is reproduced below:

> "If the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in said sub-rule (1) and sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including

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4 2014 (310) E.L.T. 833 (Guj.)

> interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow."

11. It would be seen that rule 8 (3A) provides that if the assessee defaults in payment of duty beyond thirty days from the due date, then the assessee shall pay excise duty for each consignment at the time of removal without utilizing the CENVAT credit till the date the assessee pays the outstanding amount, including interest thereon.

12. The Gujarat High Court in **Indsur Global Ltd.,** while examining the constitutional validity of Rule 8(3A), observed as follows:

> "**34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extend it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing Cenvat credit to his account can be stated to be a reasonable restriction**. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. **This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of Article 14 of the Constitution. It prevents him from availing credit of duty already paid by him.** It also is a serious affront to his right to carry on his trade or business guaranteed under Article 19(1)(g) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail.
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> **35.** The situation can be looked at slightly different angle. With or without the provisions of sub-rule (3A), liability to pay interest for the default period as per sub-rule (3) of Rule 8 continues. Sub-rule (3A) is basically a mechanism for stringent recovery and does not create a new liability unless this mechanism itself is breached. In such a mechanism to provide for withdrawal of CENVAT credit facility for paying the duty borders to creating a penalty. Insisting on an assessee in default to dear all consignments on payment of duty would be a perfectly legitimate measure. However, to insist that he must pay such duty without utilising CENVAT credit which is nothing but the duty on various inputs already paid by him would be a restriction so harsh and out of proportion to the aim sought to be achieved, the same must be held to be wholly arbitrary and unreasonable. We may recall, the delegated legislature in its wisdom now

> dismantled this entire mechanism and instead has provided for penalty at the rate of 1% per month on delayed payment of duty.
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> **36. In the result, the condition contained in sub-rule (3A) of Rule 8 for payment of duty without utilizing the Cenvat credit till an assessee pays the outstanding amount including interest is declared unconstitutional. Therefore, the portion "without utilizing the Cenvat credit" of sub-rule (3A) of Rule 8 of the Central Excise Rules, 2002, shall be rendered invalid**."

(emphasis supplied)

13. The aforesaid decision of the Gujarat High Court in **Indsur Global** was followed by the Delhi High Court in **Principal Commissioner of Central Excise, Delhi- I** versus **Space Telelink Ltd.**[5] After referring to various decisions of the Madras High Court, the Punjab & Haryana High Court and the Allahabad High Court, the Delhi High Court held:

> "**5.** The Gujarat High Court took note of the revenue's contention with regard to the justification of Rule 8 (3A). It was of the opinion that the restrictions imposed under the Rule were unreasonable to the extent that it only required a default, irrespective of the extent or nature of the default, and consequently, excise duty had to be paid without availing Cenvat credit. xxx The reasoning of the Gujarat High Court in Indsur Global Ltd vs Union of India, 2014 (310) E.L.T. 833, quoted above, was upheld by A.R. Metallurgicals P. Ltd. v. CESTAT, Chennai 2015 (322) E.L.T. 49 (Mad.); Sandley Industries v. Union of India 2015 (326) E.L.T. 256 (P&H) and ATV Projects India Ltd. vs Union of India, 2016 (341) E.L.T. 603 (All.)"

14. It also needs to be noted that Civil Appeal No. 6652/2018 filed by the Union of India before the Supreme Court against the decision of the Gujarat High Court in **Indsur Global** was ultimately dismissed on 29.07.2024 as not pressed as the tax effect fell below the threshold contained in the Circular dated 22.08.2019 issued the Central Board of Indirect Taxes and Customs.

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5 2017 (355) E.L.T. 189 (Del.)

15. As that portion of rule 8 (3A) that requires payment of duty without utilizing the CENVAT credit has been declared unconstitutional by the Gujarat High Court and the demand in the present case has been confirmed by the Commissioner by taking recourse to this portion of rule 8 (3A) of the 2002 Rules, the confirmation of demand with penalty would have to be set aside.

16. The order dated 19.09.2014 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Diksha