

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

EXCISE APPEAL NO. 50111 OF 2015

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-030-14-15 dated 01.09.2014 passed by the Commissioner of Central Excise, Jaipur)

M/s Rathi TMT Saria Pvt. Ltd.

SP-71 & 72, RIICO Industrial Area
Khushkhera, Bhiwadi
Distt. Alwar – 301 019 (Rajasthan)

.....Appellant

VERSUS

Commissioner of Central Excise

Commissionerate Jaipur-I
NCRB, Statue Circle. C-Scheme
Jaipur

....Respondent

APPEARANCE:

Ms. Nimisha Jain, advocate for the appellant
Shri Ratnesh Kumar Mishra, authorized representative of the department

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

FINAL ORDER NO. 51881/2025

DATE OF HEARING/DECISION : December 16, 2025

JUSTICE DILIP GUPTA :

This appeal seeks the quashing of the order dated September 01, 2014 passed by the Commissioner confirming the demand of central excise duty under rule 8(3A) of the Central Excise Rules, 2002¹ read with section 11A(1) of the Central Excise Act, 1944² with interest and penalty.

2. It has been pointed out that in terms of the order dated April 16, 2019 passed by the National Company Law Tribunal

1 2002 Rules

2 the Central Excise Act

at New Delhi, an Interim Resolution Professional was appointed and Ms. Nimisha Jain, learned counsel has appeared for the Interim Resolution Professional.

3. It appears from the records that the appellant had not paid central excise duty of Rs. 14,14,74,233/- through cash on consignment basis even after default of 30 days in payment of central excise duty for the month of September 2012.

4. A show cause notice dated July 04, 2013 was issued to the appellant to pay the said amount of duty through cash in terms of the provisions of rule 8(3A) of the 2002 Rules on consignment basis without utilizing the CENVAT Credit. The appellant submitted a reply dated August 29, 2013 and denied the allegations made therein. The Commissioner, however, by order dated September 01, 2014 confirmed the demand of central excise duty under rule 8(3A) of the 2002 Rules with interest and penalty.

5. Sub-rule (3A) of rule 8 of the 2002 Rules as it stood prior to July 11, 2014 is reproduced below :

“(3A) 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 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.”

6. The said rule was amended on July 11, 2014 and the amended rule is reproduced below :

“(3A) If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent. on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.”

7. The submission that has been made on behalf of the appellant is that sub-rule (3A) of rule 8 of the 2002 Rules has been struck down by the Gujarat High Court in **Indsur Global Ltd. vs Union of India**³ and, therefore, the demand needs to be set aside.

8. In **Indsur Global** the Gujarat High Court held as under:

“34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of Rule 8 to the extent 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.

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 clear 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.

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."

9. Against the aforesaid judgment of the Gujarat High Court, the department has filed a Civil Appeal which was dismissed as not pressed by order dated July 29, 2024 passed by the Supreme Court.

10. The aforesaid judgment of the Gujarat High Court was subsequently followed by various High Courts **(i)** Allahabad High Court in **A.T.V. Projects India Ltd. vs Union of India⁴**; **(ii)** Punjab and Haryana High Court in **Sandley Industries vs Union of India⁵**; **(iii)** Delhi High Court in **Commissioner of Central Excise, Delhi-I vs Vikrant Auto Industries⁶**; and **(iv)** Madras High Court in **Malladi Drugs & Pharmaceuticals Ltd. vs Union of India⁷**.

11. The learned authorized representative appearing for the department has very fairly stated that the issue involved in this

4 2016 (341) ELT 603 (All.)

5 2015 (326) ELT 256 (P&H)

6 2016 (340) ELT 291 (Del.)

7 2015 (323) ELT 489 (Mad.)

appeal is covered by the decision of the Gujarat High Court in **Indsur Global.**

12. As sub-rule (3A) of rule 8 of the 2002 Rules has been struck down as being unconstitutional, the demand raised in this appeal under sub-rule (3A) of rule 8 of the 2002 Rules cannot be sustained and is set aside.

13. The impugned order dated September 01, 2014 is, accordingly, set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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