

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

PRINCIPAL BENCH - COURT NO. 1

**EXCISE APPEAL NO. 53661 OF 2018**

(Arising out of Order-in-Appeal No. 320(SM)CE/JPR/2018 dated 10.07.2018 passed by the Commissioner of Central Excise, Jaipur)

**M/s Finproject India Pvt. Ltd.** **.....Appellant**  
SP-1013, Phase-III, RIICO Industrial Area, Sitapura  
Jaipur (Rajasthan)

VERSUS

**Pr. Commissioner of CGST & Central Excise** **....Respondent**  
Commissionerate Jaipur  
NCRB, Statue Circle. C-Scheme  
Jaipur

**APPEARANCE:**

NONE 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. 51883/2025**

DATE OF HEARING/DECISION : December 16, 2025

**JUSTICE DILIP GUPTA :**

This appeal seeks the quashing of the order dated July 10, 2018 passed by the Commissioner (Appeals) by which the appeal has been dismissed and the order dated July 05, 2017 passed by the Joint Commissioner confirming the proposed demand of central excise duty under rule 8(3A) of the Central Excise Rules, 2002<sup>1</sup> has been confirmed with penalty.

2. It appears from the records that the appellant had not paid education cess of Rs. 1,392/- due in the month of March, 2014 and had made a remark in the ER-1 Return that it will be paid

shortly. However, the said amount was not paid even after a lapse of one month from the due date i.e March 31, 2014 and it was paid only on December 16, 2014.

3. A show cause notice dated May 20, 2015 was issued to the appellant for the period from May 01, 2014 to December 15, 2014 for payment of central excise duty with penalty.

4. The demand was confirmed by the Joint Commissioner by the order dated July 05, 2017 and the appeal filed by the appellant against the said order was dismissed by order dated July 10, 2018.

5. Though the learned counsel for the appellant has made a request that the appeal may be heard by virtual mode, but as the issue involved is covered by various decisions of the High Courts, it is considered appropriate to decide the appeal after hearing the learned authorized representative appearing for the department.

6. 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.”

7. 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.”

8. In view of the amendment, the demand of duty was reduced to Rs. 53,45,348/- against the earlier demand of Rs. 1,84,99,036/-.

9. 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**<sup>2</sup> and, therefore, the demand needs to be set aside.

10. In **Indsur Global** the Gujarat High Court has 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."

11. 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.

12. 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 India<sup>3</sup>**; **(ii)** Punjab and Haryana High Court in **Sandley Industries vs Union of India<sup>4</sup>**; **(iii)** Delhi High Court in **Commissioner of Central Excise, Delhi-I vs Vikrant Auto Industries<sup>5</sup>**; and **(iv)** Madras High Court in **Malladi Drugs & Pharmaceuticals Ltd. vs Union of India<sup>6</sup>**.

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3 2016 (341) ELT 603 (All.)

4 2015 (326) ELT 256 (P&H)

5 2016 (340) ELT 291 (Del.)

6 2015 (323) ELT 489 (Mad.)

13. The learned authorized representative appearing for the department has very fairly stated that the issue involved in this appeal is covered by the decision of the Gujarat High Court in **Indsur Global**.

14. As sub-rule (3A) of rule 8 of the 2002 Rules has been struck down 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.

15. The impugned order dated July 10, 2018 is, accordingly, set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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