IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:15.05.2017

Excise Appeal No.1577/2011-EX(SM)

[Arising out of Order-in-Appeal No.115(DKV)CE/JPR-I/2011 dated 24.03.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-I]

M/s.Arihant Transformers & Electricals Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance

Rep. by Ms. Rinki Arora, Advocate for the appellant.
Rep. by Shri K. Poddar, AR for the respondent.

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53317/2017

Per B. Ravichandran:

The appeal is against order dated 24.03.2011 of Commissioner (Appeals), Jaipur-I.

2. The brief facts of the case are that the appellant is discharging central excise duty on the transformers and parts thereof cleared by them. During the period December, 2007 to March, 2008, they have not discharged their monthly central excise duty liability in time. However, for the delayed payment of duty, they have discharged applicable interest. The delayed payment of duty was made by utilizing cenvat credit available with the appellant. This was objected to by the Revenue, stating that the appellant cannot utilize cenvat credit for discharging central excise duty, which was paid after the due date. The provisions of Rule 8 (3 A) of the Central Excise Rules, 2002 was held to be violated by the appellant.

3. Heard both the sides and perused the appeal records.

4. The issue regarding violation of Rule 8(3A) of Central Excise Rules, 2002 has been subject matter of decision, by the various High Courts and the issue also came-up before the Tribunal on many occasions. In one of the recent decisions, while disposing of the appeal by the Revenue, the Tribunal vide Final Order No.54071/2016 dated 28.09.2016 observed as below:-

> "3. The Revenue is aggrieved by the above order on the ground that the Cenvat Credit cannot be allowed to be used for discharging duty which is defaulted and the respondent has clearly violated the provisions of Rule 8(3A). Further, penalty imposed by the Commissioner is inadequate.
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> 4. We have heard both the sides and perused both the records.
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> 5. The Ld. Counsel for the respondents brought to our notice the order Hon'ble High Court and Gujarat in the case ***of Indsur Global Ltd. Vs. UOI 2014 (310) ELT 833 (Guj.).*** The High Court held that the condition mentioned in Rule 8 (3A) is unconstitutional. The said decision of the Hon'ble High Court of Gujarat was followed by the ***Hon'ble High Court of Punjab & Haryana in the case of Sandley Industries Vs. UOI 2015 (326) ELT 256 (P&H) and Hon'ble High Court of Madras in the case of Malladi Drugs & Pharmaceuticals Ltd. Vs. UOI 2015 (323) ELT 489 (Mad.).***

6. In view of the decisions of the High Courts as mentioned above, we find no support for the present appeal by the Revenue. Accordingly, the same is dismissed."

5. In view of the findings of the various High Courts mentioned above and the ratio adopted by the Tribunal in the above mentioned decision and following the said decision, I find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.