IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 9.6.2017

Appeal No. E/51354/2016-SM

(Arising out of Order-in-Appeal No. 43(SLM)CE/JPR/2015 dated 12.2.2015 passed by the Commissioner of Central Excise (Appeals), Jaipure)

M/s W.H. Wintech Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Shri Ankur Bansal, Advocate - for the appellant
Ms. Nikita Goel. Advocate

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53992/2017

Per Ashok K. Arya :

The appellant viz. M/s W.H. Wintech Pvt. Ltd is in appeal against Order-in-Appeal No. 43/2015 dated 12.2.2015 whereunder order-in-original dated 9.1.2013 passed by Addl. Commissioner inter alia confirming demand of Central Excise duty of Rs. 34,26,084/- along with interest has been sustained.

2. The brief facts are that:

(i) The appellant is engaged in the manufacture of PVC doors falling under Chapter Heading 39252000 of Central Excise Tariff.

(ii) The appellant after being defaulter in payment of duty did not pay Central Excise Duty consignment wise amounting to Rs.34,26,084/- in cash/through account current for the months of March, 2010 to March, 2011 by contravening the provisions of Rules 4(1), 8(1), 8(3) & 8(3A) of Central Excise Rules, 2002.

(iii) The department, therefore, issued a Show Cause Notice dated 23.12.2011 and adjudication of the same was done vide Order-in-Original No. 04/2013 dated 9.1.2013 by the Additional Commissioner confirming the demand of Central Excise duty of Rs.34,26,084/- along with interest.

(iv) The appellant went in appeal against the order in original before Commissioner (Appeals), who rejected the appeal and sustained the order-in-original passed by the Additional Commissioner.

(v) Now, the appellant is in appeal before Tribunal against the impugned order in appeal dated 12.2.2015.

3. The appellant has been represented by ld. Counsels, Shri Anukur Bansal and Ms. Nikita Goel and Revenue has been represented by ld. DR, Shri G.R. Singh.

4. The subject appeal mainly relates to payment of duty in cash through their PLA account (cash account), consignment wise, when the assessee appellant failed to pay duty of Central Excise on the goods cleared by 5th of the following month as per the provisions of Rule 8(3) of Central Excise Rules, 2002. Rule 8(3A) of Central Excise Rules, 2002 provides *that i*f the assessee defaults in payment of duty beyond thirty days from the due date, they have to pay excise duty for each consignment at the time of removal, without utilising the Cenvat Credit till the date the assessee pays the outstanding amount including the interest thereon. Rule 8(3A) further says that 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. For better appreciation, Rule 8(3A) is reproduced below:

> *"8(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 utilising the Cenvat Credit till the date the assessee pays the outstanding amount including the 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.*

5. The ld. Advocate mainly submits that the Hon'ble Gujarat High Court in the case of *Indsur Global Ltd. Vs. UOI* - 2014 (310) ELT 833 (Guj.) inter alia held that the condition contained in sub rule 3(A) of Rule 8 for payment of duty without utilising the Cenvat credit till the assessee pays the outstanding

amount including interest is not a reasonable restriction and is violation of Article 14 and Article 19(1)(g) of the Constitution. Thus, the wordings "without utilising the Cenvat credit." of sub Rule 3(A) of Rule 8 of Central Excise Rules, 2002 have been invalid. The ld. Advocate submits that, therefore, the impugned order cannot be sustained.

6. The ld. DR for the Revenue mainly submits that the decision of the Hon'ble Gujarat High Court (supra) has been stayed by the Hon'ble Supreme Court of India in the case of *Union of India and Ors. Vs. Indsur Global Ltd.* by the order dated 24.9.2015 in the Special Leave Petition to Appeal (C) CC Nos. 16523/2015. The ld. DR says that the matter is still pending for final disposal of the said Special Leave petition before the Hon'ble Apex Court.

7. The fact is that the Hon'ble Supreme Court in its interim order dated 24.9.2015 in the case of *Indsur Global Ltd.* (supra) has stayed the Hon'ble Gujarat High Court decisions (supra) and has restrained the petitioner which is Union of India in the said order to recover the amount mentioned therein from the respondent assessee viz. *Indsur Global Ltd.* Considering these developments, this is a fit case to be remanded back to the original adjudicating authority for fresh decision as and when Hon'ble Apex Court decides the subject matter.

8. In the light of above discussion, the impugned order is set aside and the matter remanded to the original adjudicating authority for fresh decision, whenever Hon'ble supreme Court's decision in the matter is pronounced and made available.

9. In the result, the appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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