CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/2306, 2348/2011 & E/2333/2012

(Arising out of Order-in-Original No. 01/2010 CE dated 22.01.2010 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

CCE & ST, Tirupati …..Appellant(s)

Vs.

M/s Panyam Cements & Mineral Industries Ltd., …..Respondent(s)
B. Satyanarayana Reddy G M

Appearance
Shri Dora Reddy, (AR) for the Appellant.
Shri Y. Sreenivasa Reddy, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 20/02/2018
Date of Decision: 20/02/2018

FINAL ORDER No. A/30408-30410/2018

[Order per: M.V. Ravindran]

These three appeals are filed by the Revenue against Order-in-Original No. 01/2010 CE dated 22.01.2010 has the issue involved in this case arising out of the same Order-in-Original their being disposed of by a common order.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the respondent herein is a manufacturer of cement and clears the same on payment of duty. During the period July, 2006 to November, 2007 the Panyam Cements and Minerals (main respondent) herein discharged the duty liability towards the final products cleared by presenting cheque along with TR-6 challans to the bank. Subsequently, during the investigation it was noticed that all these cheques were dishonoured and subsequently honoured on representation of the cheques. The main respondent discharged the interest liability on such delayed credit of duty liability in the Government treasury. Show cause notice was issued for invocation of Provisions of Rule 8(1) of Central Excise Rules, 2002 to direct appellant to make payment of the duty liability in cash on consignment basis as provided in Rule 8(3A) of the Central Excise Rules. A show cause notice proposed recovery of the amount during the period in question, which were debited in CENVAT account. Main respondent as well as other respondents contested the matter on merits brining to the knowledge of the Adjudicating Authority that duty liability has been credited to the Government treasury subsequently. The Adjudicating Authority considering the

factual matrix and also that the duty liability for the relevant period has been squared along with interest, dropped the proceedings initiated by the show cause notice.

4. Revenue in the grounds of appeal challenging the said order by relying upon the provisions of Rule 8(3A) of the Central Excise Rules, 2002 which amends for discharge of duty liability during the default period; that the main respondent was aware that there was no balance in their bank accounts despite for cheques were presented the duty was discharge; this return of the cheques is recorded by the Adjudicating Authority in the impugned order but still dropped the proceedings initiated by the show cause notice; that from plan reading of explanation to Rule 218 of Central Excise Rules indicates that the presentation of the bank cheques shall be deemed to be the date on which duty has been paid subject to realization of that cheque and the case in hand the cheques were realized subsequently which would indicate that there was default in duty. Learned Counsel submits that they have already discharged duty liability, albeit belatedly but paid the interest. It is his submission that provisions of Rule 8(3A) of Central Excise duty has been struck down by the Hon'ble High Court of Gujarat in the case of *Indsur Global Ltd.,* [2014 (310) ELT 833; *Precision Fasteners Ltd.,* [2015 (316) ELT 595] and Hon'ble High Court of Madras in the case of *AR Metallurgicals Pvt. Ltd.,* [2015 (322) ELT 49] and Hon'ble High Court of Punjab and

Haryana in the case of *Sandley Industries* [2015 (326) ELT 256]. He fairly submits that the judgment of Indsur Global Ltd., of the Gujarat High Court is stayed by the Hon'ble High Court of Supreme Court but other decisions are not stayed by the Apex Court.

5. On careful consideration of submissions made, we find that the Adjudicating Authority is correct and in the case in hand has considered the entire factual matrix in its correct perspective and came to a conclusion that there is no need for confirmation demands on duty which were debited in CENVAT credit by the main appellant and also there is no necessity to imposes on the respondents. The findings of Adjudicating Authority are very reasoned one and we concur with them by reproducing the same.

> ***4.15*** *It is seen from the foregoing provisions of rule 8(1) and the explanation (b) thereto, that if the assessee deposits the duty by cheque, the date of presentation of the cheques in the designated bank shall be deemed to be the date on which the duty has been paid subject to realization of the cheque. It is seen in the case that the cheques were presented to the designated bank i.e. State bank of India, Nandyal within the due date, as detailed above. However, the bank authorities have not presented them for clearing as the assessee had not maintained sufficient balance with the Drawee's bank (i.e. Syndicate Bank, Nandyal / Andhra Bank, Nandyal) and therefore, the same were returned by them to the assessee on the same day and that the same cheques were re-presented subsequently and the same were presented for clearing then and the same got realized and credited to the Government account, as was explained by the Chief Manager of State bank of India, Nandyal vide their letter dated 14.02.2008 detailed above. Thus, it is seen in the case that the clearing mechanism of cheques was meddled with by the assessee and the bank authorities and it was ensured that all the cheques that were presented to the designated bank were realized albeit belatedly. When this meddling was noticed by the Department, the assessee had paid the interest of Rs. 21,46,255/- due to the delay in realization of the aforesaid cheques and the genuineness of all the transactions were certified by the authorities of State Bank, Nandyal as detailed above. Thus, it is seen that the assessee had squared-up the loss to the exchequer owing to delay in realization of the cheques by paying the aforesaid interest amount. Thus, I find the instant case, more appropriately*

and precisely as a case of meddling of clearance mechanism of cheques than default of duty. Now in the light of the foregoing facts and circumstances, I examine the various case laws cited and relied upon by the assessee.

4.18 *From the foregoing case laws and the explanation (b) to rule 8(1) of the Central Excise Rules, 2002, the position of law is clear that in case of payment of duty by cheques, the date of presentation of cheques to the designated bank shall be deemed to be the date of payment of duty subject to realization of the cheques. In the instant case, the presentation of the cheques before the due date of payment of duty by the assessee is not disputed. The realization of the cheques is not in question. Hence, respectfully following the ratio of the aforesaid rulings, I hold that there is no default in duty payment by the assessee. However, one may raise the issue of re-presentation of cheques that occurred in the instant case. In this regard, I hold that going into the aspect of re-presentation of cheques is too-technical and has something to do with the Bank's Cheques clearances mechanism than with the Central Excise law and the Rules made there under as all the cheques presented/re-presented in the case were realized and encashed by the Revenue and none of them were dishonoured. Further, as pleaded by the assessee, the aspects of the unit being a sick unit referred to BIFR and the present management clearing all dues of duty including arrears of Rs. 400 lakhs after their taking over the present unit and since none of the cheques and the instances of cheques being realized belatedly having stopped in November, 2007 with no recurrence in the later period have to be considered. They have since emerged as a major revenue paying unit, more over the delay has occurred on account of acute financial crisis the sick unit was facing during the currency of the case. The assessee has also paid differential interest of Rs. 21,46,255/- towards interest for delayed realization of cheques. Therefore, the case needs to be viewed in pragmatic terms rather than in a very technical manner. Further, even if it is reckoned that the assessee defaulted in duty payment, considering the aspect of re-presentation of cheques, the amounts debited by them in the CENVAT account in the default period, towards duty liability should be considered as discharge of duty liability in terms of the ratio of the ruling of the jurisdictional Bench of the Honourable Tribunal in the case of Andhra Cements Ltd., Vs. CCE, Guntur 92009 (243) ELT 41 (Tri- Bang.)]. In view of the foregoing, I hold that since there is no default in payment of duty by the assessee in the case on hand, the proposal for denial of payment of duty in the CENVAT account in the alleged default period has no legal basis. Accordingly, I hold that the proposal for demand of duty of Rs. 4,13,37,940/- in the PLA/ Account Current by denying the payment of the assessee in the CENVAT credit account is not sustainable in law. Consequently, I hold that the proposals for charging of interest and imposition of penalties on M/s PCMIL and Shri P. V. Satyanarayan Murthy, Director (Finance) and Shri B. Satyanarayana Reddy, General Manager (Finance) also fail.*

6. Learned Counsel for the respondents was correct in brining to our notice that the provisions of Rule 8(3A) of Central Excise Rules, 2002 are struck down as alter by the Revenue's

High Court. We find that these decisions except the judgment of Hon'ble High Court of Gujarat none of them are stayed by the Supreme Court.

7. In view of the foregoing, we find no merits in the appeals filed by the Revenue. Appeals stands rejected.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

C.J. MATHEW
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….