CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench - Court No. – I

Excise Appeal No 980 of 2009

(Arising out of **Order-in-Original** No. 19/2009 – C.Ex-Commr, dated 17.07.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Triveni GlassLtd., .. **APPELLANT**
Kondagudem,
Devarapalli,
West Godavari District,
Andhra Pradesh-534313.

VERSUS

Commissioner of Customs, Central Excise and Service Tax-Guntur .. **RESPONDENT**
P.B.No. 331, C.R.Building,
Kannavari Thota,
Guntur, AP-522 004.

Appearance

Shri G. Prahlad, Advocate for the appellant.

Shri Arun Kumar, Joint Commissioner for the Respondent.

Coram: **Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30572/2019

Date of Hearing:10.04.2019
Date of Decision:10.04.2019

[ORDER PER: MR. ANIL CHOUDHARY]

1. The issue in this appeal is whether the appellant manufacturer of sheet glass under the facts that they have availed the CENVAT credit for payment of the duties, on inputs, capital goods and input services, during the period of default, which was restricted under Rule 8(3A) of Central Excise Rules, as applicable during the relevant period of default November 2007 to February 2008, whether they have been rightly imposed with penalty under Rule 25 read with Rule 8(3A) of the Central Excise Rules.

2. During pendency of this appeal, similar issue arose before the Hon'ble High Court of Gujarat in writ petition in the case of Indsur Global Ltd., [2014 (12) TMI 585-Gujarat] wherein the Gujarat High Court was pleased to struck down Rule 8(3A) to the extent it imposed restriction on utilization of CENVAT credit for payment of central excise duty. The Learned Counsel for the appellant have pointed out that the appellant have deposited the total amount in default, including amount which was earlier paid through CENVAT credit, have been again paid by challans along with interest. The copy of supporting challans which reflect that the appellant have deposited the total duty amount which was in default of Rs. 67,67,637/-, have been filed. The said amount has been paid along with interest of Rs. 8,75,514/- vide challan on 20.03.2010 and 22.03.2010. Further, the appellant have also deposited a penalty of Rs. 5,000/- under Rule 15A of CENVAT Credit Rules, 2004 on the alleged irregular utilization of CENVAT credit.

3. The Learned Counsel prayed for setting aside the penalties under Rule 25A read with Rule 8(3A).

4. Learned AR for Revenue relies on the impugned order and further states that the judgement of Hon'ble Gujarat High Court in Indsur Global Ltd., (supra) have been challenged by Revenue before Hon'ble Supreme Court and the appeal have been admitted and the operation of the judgment stayed, as reported at 2016 (335) ELT A109].

5. Having considered the rival contentions, we find that the ratio of the ruling of the Indsur Global Ltd., (supra) is applicable under the facts and circumstances and accordingly the very basis of imposition of penalty which was deemed removal without payment of duty, does not exist in view of the ruling of Hon'ble Gujarat High Court. Accordingly, we set aside the penalty

of Rs. 67,67,637/- under Rule 25 read with 8(3A) Central Excise Rules. Thus, the appeal is allowed with consequential benefits, if any.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya