IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA

Ex.Appeal Nos.51,52,53/09

(Arising out of Orders-in-Original Nos.CCE/BBSR I/26/2008 dated 30.10.2008, CCE/BBSR I/24/2008 dated 12.11.2008, CCE/BBSR I/25/2008 dated 30.10.2008 all passed by the Commissioner of Central Excise, Customs & S.Tax, BBSR I)

M/s I.P.Steel Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx., Cus. & S.Tax, BBSR I

Respondent (s)

Appearance:

None for the Appellant (s)
Shri S. Mukhopadhyay, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 23.10.2018
Date of Decision : 23.10.2018

ORDER NO…FO/A/76851-76853/2018

Per Bench :

The issue involved in all the three appeals are identical and hence, the same are being taken up together for disposal by this common order.

2. The appellant was paying Central Excise duty from time to time by making use of Cenvat Credit facility. During the period from February, 2005 to March, 2005, the appellant defaulted in payment of Central Excise duty on due dates. Such defaulted amounts were made good subsequently after over a year. Revenue was of the view that

during the period after March, 2005, until default is made good, the appellants were required to make payment of duty consignment-wise without making use of the credit available in the Cenvat Credit Account. This view was taken by the Revenue as per Rule 8(3A) of Central Excise Rules, 2002. But during this default period, the appellant paid duty partly in cash and partly by making use of Cenvat Credit. The latter was sought to be disallowed by the Revenue. By issuance of various show-cause notices, demand for duty to be paid in cash was raised for the amount paid by making use of Cenvat Credit. Such demand came to be confirmed by three orders impugned in the present appeals. The Adjudicating Authority observed that such amounts are required to be paid in cash only. Aggrieved by this decision, the present appeals have been filed.

3. When the three appeals were called, none appeared on behalf of the appellants. It is noticed that even on the earlier dates of hearing, none appeared on behalf of the appellants.

4. Heard the ld.D.R., Shri S.Mukhopadhyay, for the Revenue.

5. The ld.D.R. for the Revenue submitted that the present issue regarding applicability of Rule 8 (3A) of Central Excise Rules, 2002, has been decided by various High Courts against the Revenue. In the case of Indsur Global Ltd. Vs. Union of India reported in 2014 (310) ELT 833 (Guj.), the Hon'ble Gujarat High Court took the view that the assessee will be entitled to make payment by making use of Cenvat Credit in spite of the provisions of Rule 8 (3A). Similar view was taken by the Hon'ble Madras High Court in the case of Malladi Drugs &

Pharmaceuticals Ltd. Vs. Union of India reported 2015 (323) ELT 489 (Mad.).

6. The ld.D.R. further pointed out that against all such orders, appeals have been filed by the Revenue before the Hon'ble Supreme Court through SLPs. The Hon'ble Apex Court has admitted the said SLPs and has stayed the operation of all such decisions of the High Courts. In this connection, he cited the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Span Autotech Private Ltd. reported in 2018 (361) ELT A171 (S.C.). He further submitted that the present issue can only be decided after availability of the final verdict of the Hon'ble Supreme Court on this subject.

7. After considering the facts on record and the submissions made by the ld.D.R. for the Revenue, we are of the view that the appeals may be disposed off at this stage by granting liberty to both sides to come again after having final verdict from the Hon'ble Supreme Court within the prescribed time, if advised so.

8. With the aforesaid liberty, all the appeals are disposed off.

(Dictated and pronounced in the open court.)

Sd/
(P.K.Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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