

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Ex.Appeal No.76696/16 & CO-75180/17

Arising out of O/A No.48/CE/RKL/2016 dt.28.07.2016 passed by Commr. (Appeals) of Central Excise, Customs & S.Tax,BBSR.

Commr. of Central Excise , Customs & ST, Rourkela

...APPELLANT(S)

VERSUS

M/s Pioneer Industries Ltd.

RESPONDENT (S)

APPEARANCE

Shri S. S. Chattopadhyay, Supdt. (A.R.) for the Revenue
None for the Respondent (s)

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 01. 01. 2019

ORDER NO.FO/A/75010/2019

Per Shri P. K. Choudhary :

The present appeal is filed by Revenue against Order-in-Appeal No. 48/CE/RKL/2016 dt.28.07.2016. Respondent-Assessee has also filed Cross Objection.

2. When the matter was called, none appeared on behalf of the Respondent-Assessee despite notice. Since the issue involved in the instant appeal, lies in a narrow compass, the same is being taken up for disposal.

3. Facts of the case in brief are that the respondent is a manufacturer of industrial/or laboratory furnaces falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. I find that the respondent was making use of cenvat credit facility. During

the period from 06.07.2013 to 30.07.2013, the assessee was required to clear their finished goods on consignment basis for payment of Central Excise duty from their Account Current (PLA) without utilizing Cenvat Credit under Rule 8 (3A). Revenue was of the view that during the default period, the respondent was required to make payment of duty on consignment to consignment basis, only in cash, without making use of credit accumulated in Cenvat Credit. Show-cause notice dated 29.05.2014 was issued proposing to demand payment of Central Excise duty in cash, which has already been debited from cenvat credit account. The adjudicating authority disallowed the cenvat credit of Rs.3,07,665/- along with interest and imposed a penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. On Appeal filed by the assessee before the lower appellate authority, the Id.Commissioner (Appeals) by relying upon the decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. Vs. Union of India reported in 2014 (310) ELT 833 (Guj.) and the decision of the Hon'ble High Court of Madras in the case of A.R.Metallurgical Pvt.Ltd. Vs. CESTAT, Chennai reported in 2015 (322) ELT 49, set aside the adjudication order and allowed the appeal. The Appellant-Revenue is in appeal before the Tribunal on the ground that the decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. (supra), has not been accepted by the Department and SLP (Civil) has already been filed and the same is pending before the Hon'ble Supreme Court.

4. After hearing the Ld. DR for the Revenue and on perusal of the appeal records, it is seen that the provisions of Rule 8 (3A) of the Central Excise Rules, 2002, based on which the demand for duty has been raised by the Department has been struck down by the various High Courts as ultra vires. In this connection, he referred to some of the decisions, (i) 2014 (310) Excise Law Time 833 (Gujarat) (Indsur global Ltd. V. Union of India), (ii) 2015 (326) Excise Law Time 256 (Punjab & Haryana), (iii) (Sandley Industries v. union of India), 2015 (323) Excise Law Time 489, (iv) (Mad)-2015-VIL-208-MAD-CE (Malladi Drugs & Pharmaceuticals Ltd. v. union of India), (v) 2015 (316) Excise Law Time, 595 (Gujarat), (vi) Precision Fasteners Ltd. V. CCE and (vii) 2016 (314) and 2016 (341) Excise Law Time 603 (Allahabad)- A.T.V. Projects India ltd. v. Union of India, (viii) Goyal MG Gases Pvt. Ltd. vs. Union of India-2017-VIL-655-CAL-CE.

5. In view of the above decisions including the decision of the Jurisdictional High Court, there is no bar in making use of the accumulated Cenvat Credit for making payment of Central Excise Duty even during default period.

6. By following the decision of the Jurisdictional High Court, I come to the conclusion that there is no bar in making use of the accumulated Cenvat Credit in making payment of Central Excise Duty even during default period.

7. In view of the above, there is no justification for ordering payment of interest or penalty as sought by the Revenue. In the result, the appeal filed by the Revenue is rejected. Cross Objection also gets disposed off.

(Dictated and pronounced in the open court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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