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

<u>Appeal No. E/76304/2018</u>

(Arising out of Order-in-Appeal No. 15/CE/RKL-GST/2018 dated 14.02.2018 passed by the Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.)

Graphite India Ltd.
Appellant (s)

Vs.

CCE & ST, Rourkela Respondent (s)

<u>Appearance:</u>
Shri S. P. Majumadar, Advocate for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (AR) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
Date of Hearing: 22/02/2019
Order No. FO/75215/2019

<u>PER SHRI P. K. CHOUDHARY</u>

The facts of the case in brief are that the appellant is engaged in the manufacture of High Speed Steel/Alloy Steel Bars and Rods classifiable under Chapter 72 of the Central Excise Tariff Act, 1985. As mentioned in the statements of facts, the appellant was facing severe financial crisis during the period from September, 2008 and as a result they defaulted in making the payment of duty for the month of September, 2008 which was due by 5th of October, 2008. Accordingly, a show cause notice was issued on 29/10/2009 for the clearances made on 22/11/2008 treating the appellants in default since they had cleared the goods and paid the Excise Duty by utilizing the Cenvat Credit Account.

The Adjudicating Authority confirmed the demand along with interest and imposed penalty of Rs.5,000/- under Rule, 25 of the Central Excise Rules, 2002.

On appeal before the Lower Appellate Authority, the Ld. Commissioner Appeals upheld the Adjudication Order and rejected the appeal. Hence, the present appeal before the Tribunal.

2. The Ld. Advocate Appearing on behalf of the appellant submits that the entire amount of outstanding duty of Rs.57,21,000/- for the month of September, 2008, along with interest of Rs.97,806/- was deposited on 22/11/2008 vide GAR-7 Challan No. 09/08-09, dated 21/11/2008.

It is his submission that the duty was paid along with interest in the forenoon of 22/11/2008 and after confirming the payment from the nominated Bank, they effected clearances of 9.121 MT High Speed Steel Bars, valued at Rs.54,04,312/- involving payment of Central Excise Duty amounting to Rs.7,93,722/- vide invoice No. 282726 to 282746, all dated 22/11/2008 in the evening of 22/11/2008 (at 17:30 hrs.).

It is also his submission that the appellant had not made any clearance of finished goods from 01/11/2008 to 22/11/2008 (till 05:00 PM). Accordingly, the Ld. Advocate argues that since the default had already been removed, there is no bar in clearing the goods subsequently. He relied upon the decision of the Tribunal in the case of Mauli Steel Pvt. Ltd. Vs. CCE, reported in 2014 (314) ELT 158 (Tri.-Mumbai).

3. The Ld. DR reiterates the orders of the Lower Authorities and submits that the provision of Rule 8 (3A) clearly mentions and prohibits assessee from utilizing the Cenvat Credit till the date of payment of outstanding amount including interest thereof i.e. 22/11/2008 in the instant case.

It is his submission that they could not have cleared the goods without payment of duty in cash.

4. Heard both sides and perused the appeal records.

5. I find that the issue is no more res-entigra in view of the decisions of the various High Courts and also the Jurisdictional High Court at Kolkata, in the case of Goyal MG cases Pvt. Ltd. I find that the Hon'ble High Court has followed the decision of the Hon'ble Gujarat High Court in Indsur global Ltd. V. Union of India and has held the portion of Rule 8 (3A) as ultra vires.

6. In view of the above decision of the Jurisdictional High Court, I find that there is no bar in making use of the accumulated Cenvat Credit in making payment of Central Excise Duty even during the period of default.

In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

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

Pooja