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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.741 of 2010

(Arising out of Order-in-Original No.10/COMMR/CE/KOL-III/2010-11 dated 17.09.2010 passed by Commissioner of Central Excise, Kolkata-III.)

M/s. Jessop & Company Limted
(21 & 22, Jessore Road, DumDum, Kolkata-700028.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III
.....Respondent
(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

NONE for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 77014/2019

DATE OF HEARING : 27 November 2019
DATE OF DECISION : 27 November 2019

P.K.CHOUDHARY :

The present appeal is against the Order-in-Original No.10/COMMR/CE/KOL-III/2010-11 dated 17.09.2010. The appellant is a manufacturer of various excisable goods and were making use of facility of the Cenvat Credit. During the month of May 2009, the total duty liability was discharged partly making use of the Cenvat Credit. The balance amount which was required to be paid in cash was not paid by the due date. This resulted in default in the payment of Central Excise Duty. The Revenue was of the view that during the default period, the appellant was required to make payment of Central Excise Duty on consignment to consignment basis, only in cash, without making use of the credit accumulated in Cenvat Credit.

2. Citing the Rule 8(3A), the Show Cause Notice was issued proposing to demand payment of Central Excise duty in cash, which was already debited from the Cenvat Credit account. The SCN dated 11.03.2010 was adjudicated with the issue of the impugned order. The duty demand in the Show Cause Notice was confirmed along with interest. In addition, penalty of Rs.20.00 Lakhs under Rule 25(1)(a) of Central Excise Rules, 2002, was also ordered to be paid. This order is under challenge in the present proceedings.

3. None appeared on behalf of the Appellant assessee.

4. The learned Authorized Representative on behalf of the respondent Revenue submitted that the present issue regarding the applicability of Rule 8 (3A) of the Central Excise Rule, 2002, has been decided by various High Courts against Revenue. However, Revenue has challenged all such orders by filing SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court has admitted the SLP and has stayed the operation of all such decisions of the High Courts. Accordingly, he submitted that the issue may be kept pending until outcome of the decision of the Hon'ble Supreme Court.

5. Heard the learned Authorized Representative for the respondent Revenue and perused the appeal records.

6. We find 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, we find 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. We find that 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.

8. We have also carefully perused the decisions of the various High Courts. We also note that the Jurisdictional High Court at Calcutta, in the case of Goyal MG Gases Pvt. Ltd has followed the decision of the Gujarat High Court in Indsur global Ltd. V. Union of India and has held the portion of rule 8 (3A) as ultra vires.

9. By following the decision of the Jurisdictional High Court, we 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. In the result, the Impugned Order is set aside and the appeal allowed.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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