IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76201 of 2018

(Arising out of Order-in-Original No.56/CCE/CEX/RKL/2017-18 dated 29.12.2017 passed by Commr. (Appeals) of CGST & Excise, Rourkela)

M/s TRL Krosaki Refractories Ltd.
P.O.Gumadera, Belpahar, Dist.-Jharsuguda, Odisha

Appellant

VERSUS

CGST & Excise, Rourkela
KK-2, Civil Township, Rourkela-769004

Respondent

APPERANCE :

Shri S.P.Majumdar, Advocate for the Appellant
Shri D. Halder, Authorized Representative for the Appellant

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.C. J. MATHEWS, MEMBER (TECHNICAL)

FINAL ORDER NO. 77069/2019

DATE OF HEARING : 26.09.2019
DATE OF DECISION : 26.09.2019

PER P.K.CHOUDHARY :

The brief facts of the case are that the appellants, M/s Tata Refractories Ltd., presently known as M/s TRL Krosaki Refractories Ltd., are engaged in the manufacture of refractories in their factory at P.O.-Gumadera, Belpahar, Dist.-Jharsuguda in the State of Odisha and making use of the facility of cenvat credit on the input/capital goods and the input services used in the manufacture of duty paid final products. Show-cause notice dated 12.11.2010 was issued alleging wrong availment of cenvat credit. The Adjudicating Authority disallowed the cenvat credit amounting to Rs.14,44,343/- for the month of May, 2008 and ordered of recovery of the same along with interest. He also confirmed the demand of Rs.25,83,63,285/- for contravention of the provisions of Rule 8 (3) of the Central Excise Rules, 2002 during the period from July, 2008 to March, 2009 and imposed equal amount of penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. The Ld. Advocate appearing on behalf of the appellants submitted 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.

3. The Ld. Advocate submitted 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.

4. The Ld. DR 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 had 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. We have heard both sides and perused the record.

6. We have also carefully perused the decisions of the various High Courts cited by the Ld. Advocate. 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.

7. 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 is allowed.

(Operative part of the order was pronounced in the open court)

SD/

(P. K. Choudhary)
Member (Judicial)

SD/

(C.J.Mathews)
Member (Technical)

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