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

REGIONAL BENCH - COURT NO.2

Excise Miscellaneous Application No.924 of 2011 (Stay)
(On behalf of Appellant)
And
Excise Appeal No.780 of 2011

(Arising out of Order-in-Appeal No.23/JSR/2011 dated 29.03.2011 passed by Commissioner(Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Shri Krishna Laxmi Steel Ugyog Private Limited
(NS-116, Phase-VI, Adityapur Industrial Area, Jamshedpur, Jharkhand.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand-831001.)

APPEARANCE

Shri Prem Ranjan Kumar, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

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

MISCELLANEOUS ORDER NO. 75180/2021
FINAL ORDER NO. 75499/2021

DATE OF HEARING : 27 July 2021
DATE OF DECISION : 27 July 2021

P.K. CHOUDHARY :

The present appeal is against the Order-in-Appeal No.23/JSR/2011 dated 29.03.2011. The appellant M/s.Shri Krishna Laxmi Steel Ugyog Pvt.Ltd. is a manufacturer of MS ingots and were making use of facility of the Cenvat Credit. During the month of July 2007 to December 2008, the total duty liability was discharged by making use of the Cenvat Credit. It is the case of the Department that the Appellant have not paid Central Excise duty properly as assessed under Rule 6 of Central Excise Rules, 2002 during the months of May

2007 to November 2008 and thus they appear to have contravened the provisions of Rule 4, 6, 8(1) and 8(3A) ibid. It has been alleged that the appellant have paid the part payment of duty payable for the months of May 2007 to November 2008 amounting to Rs.97,06,836/- along with interest amounting to Rs.79,397/- through Current Account during the months of May 2007 to November 2008 and remaining part of the same through Cenvat Credit amounting to Rs.2,43,69,794/-, but they did not pay the duty in cash for each of their clearances during the period of default, but continued paying the same utilizing Cenvat Credit and thus the duty amounting to Rs.1,43,50,657/- so paid by them by utilizing Cenvat Credit during the said period of default appears to be treated as removal without payment of Central Excise duty under provision of sub-rule 3A of Rule 8 of Central Excise Rules, 2002. The Show Cause Notice dated 02.02.2009 (but mentioned in the Order-in-Original as 02.02.2010) was issued citing Rule 8(3A) and proposing to impose penalty under Rule 25(1)(a) read with Rule 8(3A) of the Central Excise Rules, 2002 and under Rule 27 of Central Excise Rules, 2002 for violation of Rule 4, 6, 8 & 12 of Central Excise Rules, 2002. The Show Cause Notice was adjudicated vide Order-in-Original No.77-MP/OFFENCE/2010 dated 23.02.2010 and penalties as proposed in the Show Cause Notice were imposed. On Appeal, the learned Commissioner(Appeals) upheld the Order-in-Original and rejected the appeal before him. Hence, the present appeal before the Tribunal.

3. In this connection, we heard Shri Prem Ranjan Kumar, learned Advocate for the appellant and Shri S. Mukhopadhyay, learned Authorized Representative for the Respondent-Revenue.

4. The learned Advocate 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.

5. The learned Advocate submitted that in view of the above decisions, there is no bar in making use of the accumulated Cenvat Credit for making payment of Central Excise Duty even during default period.

6. The learned Authorized Representative for 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 had stayed the operation of all such decisions of the High Courts. Accordingly, he submitted that the issue may be kept pending until the outcome of the decision of the Hon'ble Supreme Court.

7. We have heard both sides at length through video conferencing and perused the appeal records.

8. We have also carefully perused the decisions of the various High Courts cited by the learned Advocate. We also note that the 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 respectfully following the decision of the Hon'ble 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. Excise Miscellaneous Application (Stay), filed by the Appellant, also gets disposed of.

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

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

SD/

(RAJU)
MEMBER (TECHNICAL)

sm