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

REGIONAL BENCH – COURT NO.2

<u>Excise Appeal No.75577 of 2017</u>

(Arising out of Order-in-Appeal No.44/Hal/2016 dated 28.09.2016 passed by Commissioner (Appeals) of Central Excise, Kolkata

M/s Etal Enser Private Limited
Dhulagarh Industrial Park, Sankrail, Howrah-711302

Appellant

VERSUS

Commissioner of CGST & Excise, Haldia
15/1, Strand Road, Kolkata-700001

Respondent

<u>APPERANCE :</u>

Shri N.K.Chowdhury, Advocate
Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER No. 75051/2023

<u>DATE OF HEARING : 10 .02.2023</u>
<u>DATE OF DECISION : 10 .02.2023</u>

<u>Per Ashok Jindal :</u>

Heard the parties.

2. The facts of the case are that during the period June, 2006, the appellant defaulted in making payment of Central Excise duty through PLA in contravention of Rule 8(3A) of the Central Excise Rules, 2002. Later on, they continued to make payment by utilizing cenvat credit account till 16th October, 2006. Later on, they started making payment through PLA. Under Rule 8 (3A) ibid, the appellant was not allowed to utilize the cenvat credit on payment of duty. Therefore, the proceedings were initiated against the appellant for demanding duty along with interest.

3. Considering the facts that the present issue stands settled by the decision of the Hon'ble High Court of Gujarat in the case of Insur Global

Limited Vs. Union of India reported in 2014 (310) ELT 833 (Guj.), wherein it has been held that the provisions of Rule 8 (3A) of Central Excise Rules, 2002, were ultra-vires and if the assesse is made the payment of duty by utilizing the cenvat credit during the defaulted period is well enough for discharging duty liability. In these circumstances, I hold that the proceedings initiated against the appellants are invalid and accordingly, the same is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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