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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.335 of 2012

(Arising out of Order-in-Appeal No.21/JSR/2012 dated 07.03.2012 passed by Commissioner(Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Amba Rolling Mill Private Limited
(A-09, 1st Phase, Adityapur Industrial Area, Jamshedpur.)

...Appellant

VERSUS

Commissioner of Central Excise, Ranchi

.....Respondent

(605, Mahabir Tower, Main Road, Ranchi, Jharkhand.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO. 75355/2023

DATE OF HEARING : 4 May 2023
DATE OF DECISION : 4 May 2023

Per : P.K. CHOUDHARY :

The dispute in the present Appeal is with regard to payment of duty during intervening period when there was default in payment of Central Excise duty. The Appellant paid the duty from CENVAT Credit account. It is the case of the Appellant that they could not pay the duty for the month of May 2008 which was subsequently paid by them along with interest on 20.05.2009 from PLA as has been mentioned in the Show Cause Notice. There was no default of payment of duty on any of the months thereafter. It is the case of the Department that during the period of default i.e. July 2008 to June 2009 the Appellants have paid duty by utilizing CENVAT Credit a/c. in contravention of Rule 8(3A) of the Central Excise Rules, 2002. The Adjudicating authority imposed penalty under Rule 25(1) for violation of Rule 8(3A) and Rule 27 of Central Excise Rules, 2002. On Appeal, the Ld.Commissioner(Appeals) upheld the adjudication order and rejected the Appeal before him. Hence the present Appeal before the Tribunal.

2. It is submitted by the Appellant in their grounds of appeal that they have defaulted in payment of Central Excise duty for the month of June 2008 and subsequently they paid the amount of Rs.4,47,628/- with interest. Hence no further duty is payable by them. But in the meanwhile they paid the amount from June 2008 to March 209 from CENVAT Credit account instead of PLA for each consignment as required under the provisions of Rule 8(3A) of the Central Excise Rules, 2002.

3. We find that the issue is no more *res integra* and is squarely covered by the judgement of the Hon'ble Calcutta High Court in the case of M/s. Goyal MG Gases Pvt.Ltd. Vs. Union of India & Others reported in 2017 (8) TMI 1515 – CALCUTTA HIGH COURT, wherein it is categorically held that when Rule 8 (3A) is declared *ultra vires* by the different High Courts then the Revenue cannot take a different stand contrary to the said judgements. The Hon'ble Court further declared Rule 8(3A) as invalid which is not stayed by the Hon'ble Supreme Court.

4. We find that the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. v. UOI [2014 (310) E.L.T. 833 (Guj.) has declared the words "without utilizing Cenvat Credit" under Rule 8(3A) as *ultra vires* which means that the assessee can discharge duty by utilizing Cenvat Credit which is what exactly has been done in the instant case by the Appellant.

5. We find that the said judgment has been followed by the Hon'ble Calcutta High Court in the case of Goyal MG Gases Pvt.Ltd. v. UOI cited (supra) which is not stayed by the Hon'ble Supreme Court. The Hon'ble Calcutta High Court in the said case, has declared the provisions of Rule 8(3A) ibid as invalid and further has held that the Revenue cannot take a different stand and parity has to be extended to the assessee.

6. We find that the demand in the instant case has been raised for contravention of Rule 8(3A) ibid restricting utilization of Cenvat credit during the period of default which provision has been declared *ultra vires/*invalid by Court, hence the demand cannot be sustained and the Appeal, thus, succeed on this count.

7. We accordingly, set aside the impugned order and allow the appeal with consequential relief, if any.

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

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

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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