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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.558 of 2010

(Arising out of Order-in-Original No.21/Commr./Bol/2010 dated 12.04.2010 passed by Commissioner of Central Excise, Bolpur)

M/s KIC Metaliks Limited
Raturia, Angadpur, Durgapur, Burdwan

Appellant

VERSUS

Commissioner of Central Excise, Bolpur
SIAN, Bolpur, Dist.- Birbhum, West Bengal-731204

Respondent

APPERANCE :

Shri Anil Kumar Dugar, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75494/2023

DATE OF HEARING : 29 .05.2023
DATE OF DECISION : 29 .05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the demand was confirmed against the appellant on the ground that the appellant has cleared the old and rejected capital goods by reversing cenvat credit. During the month of December, 2007 to January, 2008, the appellant failed to deposit the duty on due date, therefore, in terms of the provisions of Rule 8 (3A) of the Central Excise Rules, 1944 for further clearance, the appellant was debarred from utilizing the cenvat credit towards payment of duty as the duty was to be paid consignment-wise from the account current and

the appellant has paid the duty and cleared the capital goods by utilizing the cenvat credit , which was not permissible. Therefore, show-cause notice was issued by reversing of cenvat credit for payment of duty in terms of the provisions of Rule 8 (3A) of the Central Excise Rules, 1944, for contravention.

3. Heard both the parties and considered the contentions raised before us.

4. We find that the impugned issue has already been settled by various judicial pronouncement latest by this Tribunal in the case of Commissioner of Central Excise, Kolkata-IV Vs. Star Battery Limited Vice-Versa reported in 2019 (4) TMI 1254-CESTAT Kolkata, wherein the provisions of Rule 8 (3A) of the Central Excise Rules, 1944, was declared as ultra vires. The observation of this Tribunal in the above cited case, is as under :

> *"9. We have also carefully perused the decisions of the various High Courts cited by the Ld. Consultant. 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.*
>
> *10. By following the decision of the Jurisdictional High Court, we come to the conclusion that there is no bar in making use of Cenvat Credit in making payment of Central Excise Duty even during default period, in view of the fact that the Rule 8 (3A) ibid which steps otherwise, has been struck down as ultra vires.*
>
> *11. In view of the above, we set aside the portion of the order imposing penalties as well as demand for Central*

Excise Duty. All the appeals stands disposed of as above. Cross Objection also stands dispose of.

5. As the issue has already been settled, therefore, we hold that the provisions of Rule 8 (3A) of the Central Excise Rules, 1944, are ultra vires. Therefore, the impugned demand is not sustainable against the appellant. Accordingly, the same is set aside.

6. In the result, the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

mm