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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.902 of 2011

(Arising out of Order-in-Original No.58/Commr./BOL/11 dated 22.07.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s. Om Shakti Ispat Industries Limited
(Formerly known as Golden Poly Products Limited)
(De-Gaulle Avenue, Durgapur-713206, Dist. Burdwan, West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

NONE for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76470/2023

DATE OF HEARING : 24 August 2023
DATE OF DECISION : 24 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are that during the course of scrutiny of documents it was revealed that the appellant has failed to pay central excise duty for the clearance of goods taken place in the month of April 2007 within 04.06.2007 (being the thirteenth day after 05.05.2007, the due date) and after which the assessee was bound to pay duty only from the account current only, i.e., from PLA and on consignment basis and this would continue till the said appellant pay the due amount from the PLA along with interest or in other words the cenvat credit account

utilization towards payment of central excise duty would remain suspended in terms of rule 8(3A) of the Central Excise Rules, 2002.

3. In view of this, it was concluded by the respondents that the appellant was not entitled to utilization of cenvat credit account for payment of duty during the period of default. Consequently, a show cause notice was issued to the appellant to deny cenvat credit and recovery thereof for the period October 2009 to March 2010. The adjudication took place and demand against the appellant was confirmed by denying utilization of cenvat credit for payment duty during the impugned period.

4. Against the said order, the appellant is before us.

5. Heard the Ld.AR for the revenue.

6. Considering the fact that provisions of Rule 8(3A) has been declared ultra vires by the Hon'ble Punjab & Haryana High Court in the case of Sandley Industriesi Vs. Union of India [2015 (326) E.L.T. 256 (P & H)], wherein it has been held that there is no bar on utilization of cenvat credit for payment of duty during the impugned period.

7. In that circumstances, we hold that the proceedings initiated against the appellant are not sustainable. Consequently, the utilization of cenvat credit for payment of duty during the impugned order is regularized.

8. In view of these terms, the impugned order is set aside and the appeal is allowed.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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