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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 988 of 2011

(Arising out of Order-in-Appeal No. 33/Kol-I/2011 dated 06.09.2011 passed by the Commissioner of Central Excise (Appeals), Appeal-I, Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. Bestlite Industries **: Appellant**
8/2, Gurudas Dutta Garden Lane,
Kolkata – 700 067

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-I Commissionerate

WITH

Excise Appeal No. 311 of 2012

(Arising out of Order-in-Appeal No. 12/RAN/2012 dated 21.02.2012 passed by the Commissioner (Appeals), Central Excise, 605, Mahabir Tower, Main Road, Ranchi – 834 001)

M/s. Data Alloys Limited **: Appellant**
A-1, Phase-IV, Industrial Area,
Balidih, Bokaro – 827 014 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Ranchi Commissionerate,
605, Mahabir Rower, Main Road, Ranchi – 834 001

AND

Excise Appeal No. 71459 of 2013

(Arising out of Order-in-Original No. CCE/BBSR-II/No.11/COMMISSIONER/2013 dated 24.09.2013 passed by the Commissioner of Central Excise & Customs & Service Tax, Bhubaneswar-II Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Rexon Strips Limited **: Appellant**
AT/PO – Kumakela,
Via – Lathikata, District: Sundergarh, Odisha

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Bhubaneswar-II Commissionerate
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

None for the Appellant(s)

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent(s)

CORAM:

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

FINAL ORDER NOs. 76226-76228 / 2024

DATE OF HEARING / DECISION: 28.06.2024

ORDER: [PER SHRI ASHOK JINDAL]

In all the appeals, the issue is common.

2. The facts in all the cases are that the appellants did not pay duty within the stipulated period as prescribed under Rule 8(1) of the Central Excise Rules, 2002. In terms of Rule 8(3A) of the Central Excise Rules, 2002, an assessee, if defaults in payment of duty within a period of thirty days from the due date, then, in terms of Rule 8(3A), cannot utilize the CENVAT Credit for payment of duty in future, till the default is made correct. In the present cases, the appellants had defaulted the payment and did not pay duty within thirty days and therefore, they were denied the utilization of CENVAT Credit account for payment of duty during the defaulted period. Later on, the appellants paid the defaulted duty along with interest, but the Department initiated proceedings against these appellants to deny CENVAT Credit utilized for payment of duty during the defaulted period.

3. In these set of facts, proceedings were initiated against the appellants and CENVAT Credit was denied; all the clearances made during the defaulted period were considered as cleared without payment of duty.

Therefore, duty was demanded along with interest and penalties were imposed vide the impugned orders. Against these orders, the appellants are before us.

4. None appeared on behalf of the appellants.

4.1. Considering the fact that the issue is on a narrow compass, therefore, the appeals are taken up for disposal.

5. Heard the Ld. Authorized Representative appearing on behalf of the Revenue.

6. We find that the issue has been settled by the Hon'ble Gujarat high Court in the case of *Indsur Global Ltd. v. Union of India [2014 (310) E.L.T. 833 (Guj.)]* wherein the provisions of Rule 8(3A) were declared *ultra vires.* In view of the above decision, we hold that the utilization of CENVAT Credit during the defaulted period cannot be denied to the appellants. In view of that, no demand is sustainable against the appellants and consequently, no penalties are imposable against the appellants.

7. Accordingly, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd