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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 675 of 2012

AND

Excise Appeal No. 676 of 2012

(Arising out of common Orders-in-Appeal Nos.: 26-27/KOL-V/2012 dated 23.07.2012 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. Chowdhury Industries Corporation Pvt. Ltd. **: Appellant**
62, Alipore Road,
Kolkata – 700 027

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-V Commissionerate,
180, Shantipally, 3rd Floor, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

None for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs. 76231-76232 / 2024

DATE OF HEARING / DECISION: 28.06.2024

ORDER: [PER SHRI ASHOK JINDAL]

In both the appeals, the issue is common.

2. The facts of the case are that the appellant did not pay duty within the stipulated period as prescribed under Rule 8 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 appellant 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 appellant paid the defaulted duty, but the Department initiated proceedings against the appellant to deny CENVAT Credit utilized for payment of duty during the defaulted period.

3. In these set of facts, proceedings were initiated against the appellant 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 order. Aggrieved from the said order, the appellant is before us.

4. None appeared on behalf of the appellant.

4.1. Considering the fact that the issue is on a narrow compass, therefore, both 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 appellant. In view of that, the demand is not sustainable against the appellant and consequently, no penalties are imposable against the appellant; accordingly, the

impugned order is set aside. If the appellant have not paid the interest, then they are liable to pay interest.

7. The appeals are disposed of in the above manner.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd