IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 433 of 2011

(Arising out of Order-in-Original No.17/Commr/CE/Kol-II/adjn./2010-11 dated 27.10.2010 passed by Commissioner of Central Excise, Kolkata)

M/s. Hindustan Windows MFG. Co. **: Appellant**
Baltikuri, Bakultala, Howrah-711113.

VERSUS

Commissioner of Central Excise, Kolkata. **: Respondent**
15/1, Strand Road M.S. Building Custom House, Kolkata-700001.

APPEARANCE:

Ms. Shreya Mundhra, Advocate for the Appellant

Shri B.K.Singh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76537/ 2024

DATE OF HEARING :24.07.2024

DATE OF DECISION:24.07.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein demand has been raised against the appellant by denying utilization of Cenvat Credit for payment of duty during the defaulted period in terms of Rule 8(3A) of Central Excise Rules, 2002.

2. The facts of the case are that the appellant is manufacturer of excisable goods and liable to pay duty monthly. In the month of January, 2008 the appellant defaulted in making the payment and did not pay duty in time. Therefore, a Show Cause Notice was issued to the appellant alleging that during the period 7th March, 2008 to 21st January, 2009 the appellant was required to pay duty

consignment wise through PLA and appellant is not entitled to utilize Cenvat Credit account during the impugned period. Therefore, proceedings were initiated against the appellant.

3. Consequently, by that adjudication, the demand on account of mis utilization of Cenvat Credit during the defaulted period was confirmed along with interest and penalty was also imposed.

4. Aggrieved from the said order, appellant is before us.

5. The Ld. Counsel for the appellant submits that the Hon'ble Gujrat High Court in the case of Indsur Global Ltd. V. Union of India -2014 (310) E.L.T. 833 (Guj.) has declared the provision of Rule 8(3A) as ultra vires and the same was taken by the Hon'ble Punjab & Haryana in the case of Sandley Industries v. UOI 2015 (326) E.L.T. 256 (P & H). Therefore, the utilization of Cenvat Credit cannot be denied to the appellant. As Cenvat Credit during the defaulted period cannot be denied, in that circumstances no penalty is imposable on the appellant.

6. Heard the parties.

7. Considering the fact that the provision of Rule 8(3A) of Central Excise Rule, 2002 has been declared ultra vires by the Hon'ble Gujrat High Court in the case of Indsur Global Ltd. (Supra) and Hon'ble Punjab & Haryana High Court in the case of Sandley Industries v. UOI 2015 (326) E.L.T. 256 (P & H) (Supra). Therefore, we hold that Cenvat Credit cannot be denied to the appellant for utilization of payment of duty during the defaulted period. In that circumstances the demand against the appellant for

recovery of Cenvat Credit during the defaulted period is not sustainable and consequently, no penalty is imposable on the appellant.

8. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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