IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 250 of 2012

(Arising out of Order-in-Appeal No.03/Kol-V/2012 dated 06.02.2012 passed by Commissioner of Central Excise, Appeal, Kolkata)

M/s. Advance Power Technologies Ltd. **: Appellant**
Chakmir Road, 24-Parganas(S), Kolkata-700142

VERSUS

Commissioner of Central Excise, Kolkata. **: Respondent**
Joka Division, Kolkata-V Commissionerate

APPEARANCE:

None for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76541/ 2024

DATE OF HEARING :26.06.2024

DATE OF DECISION:26.06.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order for setting aside the penalty imposed by way of issue of Show Cause Notice.

2. The facts of the case are that the appellant were the manufacturer of excisable goods and pay duty thereof. In the month of September, 2009, appellant had not paid the duty which was due on the payments of goods. Therefore, in terms of Rule 8(3A) of Central Excise Rules, 2002, the appellant was not entitled to utilize Cenvat Credit for payment of duty during the defaulted period. But appellant continued to avail utilized Cenvat Credit for payment of duty in the month of October, November, December, 2009. Later on appellant pay the duty along with interest on 24.12.2009 and make the

payments in terms of Rule 8(3A) of Central Excise Rules, 2002.

3. But proceedings were initiated against the appellant to deny the Cenvat Credit and to impose penalty on the appellant for utilizing Cenvat Credit during the defaulted period.

4. Against the order of imposing penalty, appellant is before us.

5. None appeared on behalf of the appellant.

6. Heard the Ld. Authorized Representative and perused the record.

7. We find that in terms of the provision of Rule 8(3A) of Central Excise Rules, 2002 the appellant is entitled to avail Cenvat Credit during defaulted period as the provisions of Rule 8(3) of Central Excise Rule, 2002 was declared as ultra-vires by the Hon'ble High Court of Punjab and Haryana in the case of Sandley Industries v. UOI 2015 (326) E.L.T. 256 (P & H). Further as appellant themselves has paid duty in default along with interest, in that circumstances, we hold that no penalty is imposable on the appellant.

7. Accordingly, penalty imposed on the appellant is set aside.

8. In result, appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RG