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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75220of 2016

(Arising out of Order-in-Original No.28/COMMR/BOL/15 dated 30.11.2015 passed by Commissioner of Central Excise, Bolpur)

M/s. Burnpur Cement Limited, **: Appellant**
Gujrat Mansion, 14, Bentinck Street, 2nd Floor, Suite No. 7,
Kolkata-700001, West Bengal

VERSUS

Commissioner of Central Excise, Bolpur. **: Respondent**
Nanoor Chandidas Road, Sian, Bolpur, Birbhum-700 014,
West Bengal.

APPEARANCE:

None for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75289/ 2025

DATE OF HEARING :10.02.2025

DATE OF DECISION:10.02.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein the demand of duty has been confirmed alleging that appellant has contravened the provision of Rule 8(1) and Rule 8(3)A of the Central Excise Rules as they have failed to make payment of duty for the month of May, 2013 by due date i.e. 6th June, 2013 as duty remain unpaid and they have utilized Cenvat Credit for payment of duty during the period 07.07.2013 to 10.09.2013 which was in contravention of Rule 8(3)A of the Central Excise Rules, 2002. Therefore, demand for the said period was raised by issuance of the Show Cause Notice against the appellant and matter was adjudicated demand holding that appellant cannot utilize the Cenvat Credit for payment of duty during the intravening period where they have utilized Cenvat Credit without making payment of duty in time alongwith interest and equivalent penalty was also imposed.

2. Against the said order appellant is before us.

3. None appeared on behalf of the appellant.

4. Heard the Ld. Authorized Representative.

5. We find that the issue involved in this matter has been decided by the Hon'ble Gujrat High Court in the case of Indsur Global Limited Vrs. Union of India, 2014(12) EMI 525 (Gujrat High Court) and Sandley Industries Ltd. Vrs.Union of India, 2015(326) ELT 256 (Punjab & Haryana High Court) wherein provision of Rule 8(3) A of Central Excise Rule, 2002 was held ultra virus therefore, no demand can be raised against the appellant and the decision of the Hon'ble Gujrat High Court in the case of Indsur Global Limited was taken up by the Revenue by the Hon'ble Apex Court and the Hon'ble Apex Court vide order dated 29.07.2024 reported in 2024(7) TMI 1559, Supreme Court Larger Bench disposed of the SLP filed by the Revenue as not pressed. In that circumstances, we hold that the decision of the Hon'ble Gujrat High Court in the case of Indsur Global Ltd. (Supra) is having the field. Accordingly, relying on the decision of the Hon'ble Gujrat High Court in the case of the Indsur Global Ltd. (Supra) we hold that demand against the appellant is not sustainable. Consequently no penalty is imposable.

6. In view of this we set aside the impugned order and allow the appeal with consequential relief,

if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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