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

REGIONAL BENCH – COURT NO. 2

[VIRTUAL MODE OF HEARING]

Excise Appeal No. 75551 of 2014

(Arising out of Order-in-Original No. CCE/BBSR-I/03/2014 dated 30.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I Commissionerate, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. SMV Beverages Private Limited **: Appellant**
(Formerly known as 'M/s. Tripty Drinks Private Limited'),
P.O.: Nimpur, Jagatpur Industrial Area,Cuttack – 754 021 (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-I Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007

AND

Excise Appeal No. 75552 of 2014

(Arising out of Order-in-Original No. CCE/BBSR-I/03/2014 dated 30.01.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I Commissionerate, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

Shri Pramod Kumar Sahu, GM (Finance & Accounts) **: Appellant**
M/s. SMV Beverages Private Limited
(Formerly known as 'M/s. Tripty Drinks Private Limited'),
P.O.: Nimpur, Jagatpur Industrial Area,Cuttack – 754 021 (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-I Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007

APPEARANCE:

Shri A.K. Prasad, Advocate, for the Appellant(s)

Shri S. Dey, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75751-75752 / 2025

DATE OF HEARING / DECISION: 20.02.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. SMV Beverages Private Limited (formerly known as M/s. Tripty Drinks Private Limited), P.O. Nimpur, Jagatpur Industrial Area, Cuttack – 754 021 (Odisha), (the appellant-company herein), are engaged in the manufacture of Aerated Water falling under Chapter 22 of the Central Excise Tariff Act, 1985 and registered with the Central Excise Department.

1.1. It was found that the appellant-company had defaulted payment of duty within the due date during the months of June, 2011, July, 2011, August, 2011, September, 2011, January, 2012 to May 2012 and July, 2012. As per Rule 8(3A) of the Central Excise Rules, 2002, the appellant is liable to pay duty, along with interest, within thirty days from the due date. If the duty has not been paid, then the appellant is liable to pay the duty consignment wise through PLA, without utilizing CENVAT Credit. As the appellant has not followed the provisions of Rule 8(3A) of the Central Excise Rules and utilized the Cenvat credit for payment of duty during the default period, it was alleged by the department that the clearances effected by the appellant during the impugned period were considered as clearances made without payment of duty. Accordingly, Show Cause Notices were issued to the appellant on the allegation that the appellant had cleared the goods without payment of duty in violation of the provisions of Rule 8(3A) of the Central Excise Rules, 2002 and hence the goods cleared during the default period are liable for confiscation.

2. The appellants were issued three Show Cause Notices which were collectively adjudicated by the Ld. Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar-I Commissionerate, vide the

impugned order, wherein it was alleged that the appellant had mis-utilized CENVAT Credit during the defaulted period. Accordingly, the ld. adjudicating authority confirmed the duty of Rs.3,18,07,083/- under Section 11A(1) of the Central Excise Act, 1944, along with interest, and imposed a penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules, 2002 and a penalty of Rs.1,00,00,000/- under Rule 15(1) of the CENVAT Credit Rules, 2004. A personal penalty of Rs.25,000/- was imposed on the appellant no. 2 viz. Shri Pramod Kumar Sahu, Manager (Finance & Accounts) of the appellant-company.

3. Aggrieved by the confirmation of demand of duty and imposition of penalties, the appellant-company and Shri Pramod Kumar Sahu, Manager (Finance & Accounts) of the appellant-company, have filed these appeals.

4. The Ld. Counsel appearing on behalf of the appellants submits that the Hon'ble Gujarat 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) ibid. as *ultra vires*. He further submits that the same view has been taken by the Hon'ble Punjab and Haryana High Court in the case of *Sandley Industries v. Union of India [2015 (326) E.L.T. 256 (P & H)].* Therefore, it is his contention that the utilization of CENVAT Credit during the default period cannot be denied to the appellant. He therefore prayed for setting aside the demands of duty along with interest confirmed and penalty imposed on the appellant.

5. On the other hand, the Ld. Authorized Representative of the Revenue submits that that the issue pertaining to demands made in terms of Rule

8(3A) of Central Excise Rules, 2002 was before the Hon'ble Calcutta High Court and the Hon'ble High Court vide their Order in *CEXA 21/2024, IA No: GA/1/2024 dated 09.07.2024* have passed an Order holding that the matter should be kept pending and is to be taken only after the judgment of Hon'ble Supreme Court in Special Leave to Appeal No.16523/2015 is passed.

6. Heard both sides and perused the records.

7. We observe that the Hon'ble High Court vide Order dated 09.07.2024 has held that matter should be kept pending and is to be taken only after the Special Leave to Appeal No. 16523/2015 is decided by the Hon'ble Apex Court.

7.1. However, during the course of hearing, the Ld. Counsel for the appellant informed that the Hon'ble Supreme Court has already disposed of the matter and the Department has already withdrawn the appeal *[Union of India &ors. v. Indsur Global Ltd. – 2024 (7) TMI 1559 – SC (LB); ref. Civil Appeal No. 6652 of 2018 &ors. dated 29.07.2024].* We have perused the Order passed by the Hon'ble Supreme Court and the relevant portion of the Order is reproduced below for ready reference: -

> *"1 The dispute between the parties has been referred for determination to the Lok Adalat.*
>
> *2 The tax effect of the subject matter of the special leave petitions and the appeals is falling below the threshold contained in the circular dated 22 August 2019 of the Central Board of Indirect Taxes and Customs.*
>
> *3 The Special Leave Petition and the Appeals are disposed of as not pressed."*

7.2. From the above, we find that the issue in the case of *Indsur Global Ltd.* has already been decided by the Hon'ble Supreme Court. In these circumstances, we find that the issue is presently not pending before the Hon'ble Supreme Court. Thus, in our view, there is no bar in taking up the issue for a decision based on the available documents.

8. We observe that the impugned order has confirmed the demand of central excise duty against the appellant on the allegation that the appellant had cleared the goods without payment of duty in violation of the provisions of Rule 8(3A) of the Central Excise Rules, 2002 and hence the goods cleared during the default period are liable for confiscation. However, if the payment of duty through CENVAT is considered as legal, then there is no violation and there is no liability of duty payment by the appellant.

9. Considering the fact that the provisions of Rule 8(3A) of Central Excise Rules, 2002 have been declared *ultra vires* by the Hon'ble Gujarat High Court in the case of *Indsur Global Ltd. (supra)* and also by the Hon'ble Punjab and Haryana High Court in the case of *Sandley Industries (supra*), we are of the view that CENVAT Credit cannot be denied to the appellant for utilization in payment of duty during the defaulted period. Thus, we are of the view that there is no infirmity in utilization of Cenvat credit for payment of duty during the default period.

9.1. We observe that this view has been held by this Tribunal in the case of *Hindustan Windows MFG. Co. v. Commissioner of Central Excise, Kolkata [Final Order No. 76537 of 2024 dated 24.07.2024 in Excise Appeal No. 433 of 2011 – CESTAT, Kolkata]*. The relevant portion of the said decision is reproduced below:

> *"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."*

10. Hence, with regard to the denial of payment through CENVAT Credit by invoking Rule 8(3A) of the Central Excise Rules, 2002, as already indicated above, since the denial of utilisation of CENVAT Credit under this Rule has been declared ultra vires by Courts, we hold that utilisation of CENVAT Credit during the impugned periods by the appellants was not irregular.

11. In view of the above, no amount can be demanded from the appellants either for using the CENVAT accruals of subsequent months or for using the CENVAT account for payment of duty during the period for the alleged contravention of Rule 8(3A) of the Central Excise Rules, 2002.

12. Since there has been no short levy of duty nor any contravention of any of the provisions of the Central Excise Rules, 2002, or the CENVAT Credit Rules, 2004, the question of demanding interest or imposing any penalty on either the appellant-company (appellant no. 1 herein) or their Manager (Finance & Accounts) (appellant no. 2 herein) does not arise. Further, we also observe that the contraventions, if any, alleged in the instant case, are procedural/technical in nature, and do not call for imposition of any penalty. Accordingly, the penalties imposed on the appellants are set aside.

13. In view of the above discussion and by relying on the decisions cited *supra*, we hold that the payments made by the appellants through debit in the CENVAT Account get regularized.

14. In these terms, the appeals are disposed of.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd