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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75688 of 2015

(Arising out of Order-in-Original No. 19/COMMR/BOL/2015 dated 31.03.2015 passed by the Commissioner of Central Excise and Service Tax Commissionerate: Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum (W.B.), PIN – 731 204)

M/s. Kunj Bihari Steel Private Limited **: Appellant**
Jamuria Industrial Estate,
P.O.: Nandi, Asansol – 713 344, Burdwan (W.B.)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Bolpur, Nanoor Chandidas Road,
Sian, Bolpur, District: Birbhum (W.B.), PIN – 731 204

APPEARANCE:

Shri H.K. Pandey, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)
HON'BLE SHRI ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO. 75795 / 2025

DATE OF HEARING / DECISION: 26.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

This appeal has been filed by M/s. Kunj Bihari Steels Private Limited, Jamuria Industrial Estate, P.O.: Nandi, Asansol – 713 344, Burdwan, West Bengal (hereinafter referred to as the "appellant") against the impugned Order-in-Original No. 19/COMMR/BOL/15 dated 31.03.2015 wherein the 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 for the period under dispute.

2. The facts of the case are that the appellant is a manufacturer of Sponge Iron falling under Tariff Item No. 72031000 of the First Schedule to the Central Excise Tariff Act, 1985. The Revenue has alleged that the appellant has failed to pay the Central Excise duty for the month of April, May and August, 2012 by the due date, also failed to pay the duty along with interest within thirty days from the due date of payment and finally, failed to pay the duty consignment-wise during the period from June, 2012 to August, 2014 in contravention of Rule 8(3A) of the Central Excise Rules, 2002. Therefore, a Show Cause Notice dated 23.04.2013 was issued to the appellant wherein the duty liability of the appellant has been calculated as Rs.65,97,528/- (including cesses) for clearances of goods during the period from 06.06.2012 to 11.12.2012, out of which the appellant-noticee had paid Rs.6,98,343/- by cheque and the balance amount of Rs.58,99,185/- from their CENVAT Credit account. It was alleged that the above amount of utilization of CENVAT Credit amounting to Rs. 58,99,185/- was inadmissible.

3. Thereafter, the matter was adjudicated and vide the impugned order, the demand on account of misutilization of CENVAT Credit during the defaulted period was confirmed along with interest thereon and penalty.

4. Aggrieved against the confirmation of the demands of duty and interest and imposition of penalty, the appellant is in appeal before the Tribunal.

5. The Ld. Counsel appearing on behalf of the appellant 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* and 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, the utilization of CENVAT Credit cannot be denied to the appellant. It is further submitted that the Hon'ble Supreme Court has already disposed of the matter as the Department has 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].* In view of these submissions, he has prayed for setting aside the demand of duty confirmed and penalty imposed on the appellant.

6. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order and accordingly, prays for upholding the demands raised against the appellant.

7. Heard both sides and perused the appeal records.

8. 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. However, during the course of hearing, it has been brought to the knowledge of the Bench 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."*

8.1. 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.

9. We observe that the impugned order has confirmed the demand of central excise duty against the appellant on the allegation that the appellant had failed to pay central excise duty in violation of the provisions of Rule 8(3A) of the Central Excise Rules, 2002 and hence, confirmed the impugned demand by treating the duty paid through utilization of CENVAT Credit as 'unpaid and recoverable'. However, we find that 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.

9.1. 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 defaulted period.

9.2. 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."*

9.3. Thus, since the denial of utilisation of CENVAT Credit by invoking Rule 8(3A) of the Central Excise Rules, 2002 has been declared ultra vires by Courts, we hold that utilisation of CENVAT Credit during the impugned period by the appellant was not irregular.

Accordingly, we find that 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 said period for the alleged contravention of Rule 8(3A) of the Central Excise Rules, 2002.

10. In view of the above discussion and by relying on the decisions cited *supra*, we hold that the demand confirmed in the impugned order by denying the payment made by the appellant through CENVAT Credit is not sustainable and accordingly, the same is set aside.

10.1. Since the demand raised against the appellant does not survive, the question of demanding interest or imposing penalty does not arise.

11. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

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

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

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Sdd