IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 2
E/EH/75335/2025

Excise Appeal No. 75955 of 2024

(Arising out of Order-in-Appeal No.305/HWH/CE/23-24 dated 21.03.2024 passed by Commissioner of CGST & CX, Kolkata)

M/s. Star Battery Limited, **: Appellant**
Vill. Chakundi, P.O.-Dankuni, Coal Complex, Dist. Hooghly (W.B.), Pin: 712310.

VERSUS

Commissioner of CGST & CX, Howrah Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata-700001. **: Respondent**

APPEARANCE:

Shri S.P.Sinha, Advocate for the Appellant

Shri P.Das, Authorized Representaive for the Respondent

CORAM:

HON'BLE SHRI R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75580/ 2026

DATE OF HEARING:11.05.2026

Order : [Per Shri R.Muralidhar]

The Ld. Counsel appearing on behalf of the appellant submits that the issue is squarely covered by the Hon'ble High Court and the decision of this Bench on identical issue. Therefore, he prays that the Early Hearing petition may be allowed.

2. After going through the Early Hearing petition, we find that the issue pertains to the alleged contravention of Rule 8 (3A) of Central Excise Rules, 2002. As canvassed by the Ld. Consultant, the issue stands decided by the Hon'ble High Court and Hon'ble Supreme Court. Relying on the judgement of the Hon'ble Supreme Court, this Bench has passed several decisions setting aside the confirmed demand. Considering these factual details, we allow the Early Hearing petition.

3. Since the issue is in a short compass, with the consent of both the sides, the appeal itself has been taken up for final hearing.

4. The Ld. Consultant submits that the appellant has defaulted in the timely payment of Excise duty of Rs. 48,39,200/- during the period March, 2006 within the stipulated date. Therefore, an order was passed under Rule of 8(3A) of Central Excise, 2002, directing them to clear all the future consignments on payment of Excise Duty by the way of cash (PLA).

5. This Order was challenged by the appellant before the Commissioner (Appeals). In the OIA, the Commissioner (Appeal) has noted that the decision of the Hon'ble High Court in the case of **Indsur Global Ltd. v. Union of India [2014 (310) E.L.T. 833 (Guj.)]** was pending before the Hon'ble Supreme Court. Therefore, holding that as on date of passing the O.I.A on 21.03.2024, the matter has not attained finality, he has dismissed the appeal filed by the appellant. Being aggrieved, the appellant his filed the present appeal before the Tribunal.

6. The Ld. Consultant appearing on behalf of the appellant, submits that the Hon'ble High Court in the case of **Indsur Global Ltd. v. Union of India [2014 (310) E.L.T. 833 (Guj.)],** has held that there is no necessity for making payment by way of cash on consignment to consignment basis in terms of Rule 8 (3A) of the CER 2002. This decision was agitated by the Revenue before the Hon'ble Supreme Court and subsequently they have withdrawn the appeal. Therefore, the issue stands decided in favour of the appellant as on date. He prays that the appeal may be allowed.

7. The Ld. Authorized Representative reiterated the findings of the lower authorities.

8. Heard both sides. Perused the appeal papers.

9. We find 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 held that the assessee cannot be made to pay by way of cash on consignment to consignment basis. Similar view was also taken by the Punjab and Haryana High Court in he case of **Sandley Industries v. Union of India [2015 (326) E.L.T. 256 (P & H)]**. Being agitated by the decision of the Gujrat High Court, the Revenue had filed their appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held as under:

> "*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*."

9. We note that notwithstanding the litigated amount, the Revenue can always pursue the Appeal, if the adverse decision by the High Court causes any ramification in respect of similar matters. But in spite of such avenue being open to them, Revenue has chosen not to press for the appeal. Thus, it becomes that the decision of the High Courts has attained finality with the order passed by the Hon'ble Supreme Court.

10. Subsequently, this Bench in the case of **Haragouri Steels Private Ltd. Vs Commissioner of**

Central Excise Tax vide Final Order No. 75321/2025 dated 04.02.2025, has held as under:

> "*8. Considering the fact that the provisions of Rule 8(3A) of the Central Excise Rules, 2002 have been declared ultra vires by the Hon'ble Gujrat High Court in the case of Indsur Global Ltd. (supra), we are of the view that CENVAT Credit cannot be denied to the appellant for utilization in payment of dutyduring the defaulted period.*
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> *8.1. This view has also 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:*
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> > *"7. Considering the fact that the provision of Rule 8(#A) 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 and Haryana High Court in the case of Sandley Industries v. UOPI 2015 (326) E.L.T. 256 (P & H) cannot be denied to the appellant for utilization of 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. Thus, by relying on the decisions cited supra, we hold that the demand of dutyalong with interest confirmed in the impugned order is not sustainable and accordingly, we set aside the same. As the demand for recovery of CENVAT Credit during the defaulted period is not*

> *sustainable, consequently, we hold that no penalty is imposable on the appellant.*
>
> *10. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequent relief, if any, as per law."*

11. Relying on the case laws discussed above, we set aside the impugned order and allow the appeal filed by the appellant.

12. The appeal could be eligible for consequential relief, if any as per law.

(Dictated and pronounced in the open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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