

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.78182 of 2018

(Arising out of Order-in-Appeal No.669/HWH/CE/2017-18 dated 19.03.2018 passed by Commissioner of CGST & C.Ex, Kolkata)

Commissioner of CGST & C.Ex, Howrah
15/1, Strand Road, Kolkata-700001.

Appellant

VERSUS

M/s. Encon Enterprises Pvt. Ltd.

Shed No. Y-62, Howrah Industrial Estate, Baltikuri, Howrah-711402.

Respondent

APPEARANCE :

Shri D.Sue, Authorized Representative for the Appellant
Shri Aditya Dutta, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO...75879/2026..

DATE OF HEARING: 09.07.2026
DATE OF DECISION : 09.07.2026

Per R.Muralidhar :

This appeal has been filed by the Revenue being aggrieved by the impugned OIA dated 19.03.1003, wherein the Commissioner (Appeals) has set aside the demand of Rs.20,77,269 on the ground that the issue is no more *res integra*. He has relied on the decisions of the High Court. Being dissatisfied with the impugned OIA Revenue is before the Tribunal.

2. The Ld. Authorized Representative reiterated the detailed findings of the Adjudicating Authority and the grounds of appeal and prays that the impugned order may be set aside and allow the present appeal filed by the Revenue.

3. The Ld. Counsel appearing on behalf of the Respondent submits that this demand is in terms of Rule 8 (A) of CER, 2002. The High Court and Supreme Court have been taking conflicting views that this Rule is legally not sustainable. He submits that relying on the case of F.S. Engineers vs. Commissioner of Central Excise, Ahmedabad-II [2013(293) ELT 61(Tri-Ahmd.)], the CESTAT and Customs vs.

Saurashtra Cement Ltd. [2010(260) E.L.T 71 (Guj)], the Order in Original was correctly set aside by the Commissioner (Appeals). He prays that the present appeal may be dismissed.

4. I find that the issue is no more *res integra* and it is held that the Rule 8(3A) is not legally sustainable. The Commissioner (Appeals) has gone through the factual details and passed considering the orders for relying on several decisions. I do not find any reason to interfere with the same.

5. On perusal of records, I also find that the amount involved in the present case is below the monetary limit of Rs.50.00 Lakhs which has been notified vide Board's Instruction being F.No.390/Misc./116/2017-JC dated 22nd August, 2019.

6. In view of the foregoing, the appeal filed by the Revenue stands dismissed.

(Pronounced in the open court)

(R.Muralidhar)
Member(Judicial)