CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No.365 of 2010

(Arising out of Order-in-Appeal No.SB/94/TH-II/09 dated 26/11/2009 passed by the Commissioner of Central Excise (Appeals),

M/s Ujwal Pharma Pvt.Ltd **.... Appellant**
Plot No. N-52, MIDC, Tarapur
Boisar-401506

Versus

Commissioner of Central Excise **.... Respondent**
Thane-II
3RD Floor, Navprabhat Chambers,
Ranade Road, Dadar West
Mumbai-400028.

Appearance:

Ms. Tejal Patil, Advocate for the Appellant

Shri Saikrishna Hattangadi, AC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87412/2019

Date of Hearing: 27.09.2019

Date of Decision: 27.09.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. SB/94/TH-II/09 dated 26/11/2009 passed by the Commissioner of Central Excise (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the appellant during the period December 2006, January, March, June and July 2007 defaulted in discharging duty beyond 30 days from the due

date prescribed under sub rule 8 of Central Excise Rule, 2002. Consequently, demand notice was issued to them alleging that utilization of CENVAT Credit of Rs. 22,67,640/- during the said period is irregular and accordingly, the amount proposed to be recovered in cash. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeal) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset the learned Advocate Ms. Tejal Patil for the Appellant has submitted that the relevant Rule 8(3A) of Central Excise Rules, 2002 under which proceedings were initiated, has been declared ultra vires by the Hon'ble Gujarat High Court in the case of Indsur Global Ltd vs. Union of India 2014(310) ELT 833 (Guj). It is her contention that the Hon'ble High Court has held that utilization of CENVAT Credit during the period of default cannot be considered to be irregular and struck down the said portion of the said Rule as ultra vires. She has further submitted that the said principle has been accepted by the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Customs & Service Tax, Silvassa Vs. Shanti Engineering 2019-TIOL-961-HC-MUM-CX and Commissioner of CGST & Central Excise, Vapi-Daman Vs. Twenty First Century Wire Rods Ltd. 2019(26) G.S.T.L 478(Bom).

4. Learned A.R. for the Revenue reiterated the findings of the Learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for determination is whether utilization of CENVAT credit during the period of default in discharging monthly duty liability is irregular and in breach of Rule 8(3A) of Central Excise Rules,2002. The issue is no more *res-integra* and considered by the Hon'ble Gujarat High Court in the case of Indsur Global Ltd vs. Union of India and also by the Hon'ble Bombay High Court in Shanti Engineering and Twenty First Century Wire Rods Ltd. case (supra). It has been held that during the default period payment of duty by utilization of CENVAT credit account is not irregular and consequently the said portion of the Rule 8(3A) of Central Excise Rules,2002 which debars utilization, has been held as ultra vires. Following the precedents laid down in the above cases, we do not find merit in the impugned order. Consequently, the same is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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