(2021) 03 CESTAT CK 0109

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 76995 Of 2016

M/s. Chowdhury Industries Corporation Private Limited — APPELLANT

Vs

Commissioner Of Central Excise, Kolkata-V — RESPONDENT

Date of Decision : 11-03-2021

Acts Referred:

Central Excise Rules 2002 — Rule 8(1), 8(3A)

Citation : (2021) 03 CESTAT CK 0109

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Advocate : S.Mukhopadhyay

Final Decision : Allowed

Judgement

1. When the matter was called, none appeared on behalf of the appellant. Heard the learned Authorized Representative for the respondent Revenue

through video conferencing. As the issue lies in a narrow compass, I take up the appeal for disposal in the absence of the Appellant.

2. The present appeal is against the Order-in-Appeal No.46-47/KOLV/2016 dated 26.08.2016. The appellant is a manufacturer of various excisable

goods and were making use of facility of the Cenvat Credit. The appellant failed to pay duty involving on goods removed for the months of November

& December 2006, amounting to Rs.1,44,791/- (total) within the due dates as specified in Rule 8(1) of the Central Excise Rules, 2002. This resulted in

default in the payment of Central Excise Duty. A show cause notice was issued to the appellant, which was confirmed by the Adjudicating Authority

vide Order-in-Original dated 08.10.2007 by confirming the demand of Rs.1,44,791/- and imposing a penalty of identical amount upon the Appellant.

Subsequently, another show cause notice dated 04.08.2010 raising a duty demand of Rs.93,278/-(total) for the months of July & September 2009 and

April, 2010, paid by debiting Cenvat Credit Account, along with interest chargeable thereon and also imposition of penalty for alleged contravention of

relevant Rule of Central Credit Rules, 2004, was also issued, which was confirmed by the Adjudicating Authority by Order-in-Original dated

30.08.2011. Revenue was of the view that the appellant was required to make payment of Central Excise Duty on consignment to consignment basis,

only in cash, without making use of the credit accumulated in Cenvat Credit. On appeal, learned Commissioner (Appeals) has upheld the order of

learned Adjudicating Authority. Hence, the present appeal before the Tribunal.

3. The learned Authorized Representative for the respondent Revenue submitted that the present issue regarding the applicability of Rule 8(3A) of the

Central Excise Rule, 2002, has been decided by various High Courts against Revenue. However, Revenue has challenged all such orders by filing

SLP before the Honâ??ble Supreme Court. The Honâ??ble Supreme Court has admitted the SLP. Accordingly, he submitted that the issue may be

kept pending until outcome of the decision of the Honâ??ble Supreme Court.

4. I find that citing Rule 8(3A), the Show Cause Notice was issued proposing to demand payment of Central Excise duty in cash, which was already

debited from the Cenvat Credit account. The SCN dated 04.08.2010 was adjudicated with the issue of the Order-in-Original dated 30.08.2011. The

duty demand in the Show Cause Notice was confirmed along with interest. In addition, penalty of amount equal to the due demand was also ordered

to be paid, which culminated into the impugned order passed by learned Commissioner(Appeals). This order is under challenge in the present

proceedings.

5. I find that the provisions of Rule 8 (3A) of the Central Excise Rules, 2002, based on which the demand for duty has been raised by the Department

has been struck down by the various High Courts as ultra vires. In this connection, reference can be made for the decisions, (i) 2014 (310) Excise

Law Time 833 (Gujarat) (Indsur global Ltd. V. Union of India), (ii) 2015 (326) Excise Law Time 256 (Punjab & Haryana), (iii) (Sandley Industries v.

union of India), 2015 (323) Excise Law Time 489, (iv) (Mad)-2015-VIL-208-MAD-CE (Malladi Drugs & Pharmaceuticals Ltd. v. union of India), (v)

2015 (316) Excise Law Time, 595 (Gujarat), (vi) Precision Fasteners Ltd. V. CCE and (vii) 2016 (314) and 2016 (341) Excise Law Time 603

(Allahabad)- A.T.V. Projects India ltd. v. Union of India, (viii) Goyal MG Gases Pvt. Ltd. vs. Union of India-2017-VIL-655- CAL-CE.

5. I also find that in view of the above decisions including the decision of the Jurisdictional High Court, there is no bar in making use of the

accumulated Cenvat Credit for making payment of Central Excise Duty even during default period.

8. I have carefully perused the decisions of the various High Courts. I note that the Jurisdictional High Court at Calcutta, in the case of Goyal MG

Gases Pvt. Ltd. has followed the decision of the Gujarat High Court in Indsur global Ltd. V. Union of India and has held the portion of rule 8 (3A) as

ultra vires.

9. By following the decision of the Jurisdictional High Court, I come to the conclusion that there is no bar in making use of the accumulated Cenvat

Credit in making payment of Central Excise Duty even during the default period. In the result, the Impugned Order is set aside and the appeal is

allowed.

(Dictated and pronounced in the open Court.)

