

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11115 of 2013-DB

[Arising out of Order-in-Original/Appeal No 72-73-DEMAND-2012 dated 28.02.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Baroda Rayon Corporation Limited

.... Appellant

P.O. Ftehnagar, Udhna, SURAT
GUJARAT-394220

VERSUS

Commissioner of Central Excise & ST, Surat-i

.... Respondent

New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

AND

EXCISE Appeal No. 11116 of 2013-DB

[Arising out of Order-in-Original/Appeal No 70-71-DEMAND-2012 dated 28.02.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Baroda Rayon Corporation Limited

.... Appellant

P.O. Ftehnagar, Udhna, SURAT
GUJARAT-394220

VERSUS

Commissioner of Central Excise & ST, Surat-i

.... Respondent

New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Willingdon Christian, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 22.03.2023

DATE OF DECISION: 28.06.2023

FINAL ORDER NO. 11378-11379/2023

RAMESH NAIR :

The present appeals are filed against the Order-in-Original No.70-71/Demand/2012 dated 28.02.2012 and 72-73/Demand/2012 dated 28-02-2012 passed by the Commissioner of Central Excise, Customs & Service tax,

Surat –I. A common issue is involved in these appeals and therefore, all are taken up together for disposal.

2. The relevant fact that arise for consideration are the appellant herein defaulted in making fortnightly payment hence the facility of paying duty fortnightly under the provisions of Rule 173G(1) was withdrawn from the Appellant vide the Assistant Commissioner, Central Excise, Division –I letter F.No. Div-I/Violation 173(G)(1)(a)/2K1 dated 09.01.2001 , and they were directed to discharge the duty liability consignment wise thru current account (PLA), without utilizing Cenvat Credit. However on scrutiny of the ER-1 return it was noticed by the department that appellant during the disputed period had started paying duty consignment wise from Cenvat credit account and account current (both the accounts instead of account current only) and hence has not paid duty in terms of Rule 8 of Central Excise Rules, 2002 and all those clearances made by the appellant from the Cenvat account shall be deemed to have been cleared without payment of duty. As a result, Appellant was issued show cause notices for recovery of duty in cash against the payment made through Cenvat Credit. The said show cause notices were adjudicated vide two separate impugned orders both dated 28.02.2012 wherein demand was confirmed against the appellant. Therefore the appellant is before us.

3. Shri Willingdon Christian, Ld. Counsel for the appellant submits that Rule 8(3A) of the Central Excise Rules 2002 [erstwhile Rule 173(G)(1)(e) / 8(3)] has been declared *ultra vires* in the Judgment of the Gujarat High Court in case of Indsur Global Limited vs. UOI reported in 2014(310)ELT 833 (Guj.) and therefore, utilization of Cenvat Credit cannot be considered an irregularity. That being so, there does not remain any question of recovery of short payment.

4. He also submits that Cenvat credit accrued after defaulted period is permissible to be utilized for payment of defaulted duty. In this context he placed reliance on the following judgments and Board Circular No. 766/82/2003-CX. Dated 15.12.2003

(i) Steel Tube of India Ltd. Vs. CCE- 2016(337) ELT 306 (Tri.)

(ii) Malladi Drugs & Pharmaceuticals Limited vs. UOI -2015(323) ELT 489

5. He further submits that the entire exercise is revenue neutral, inasmuch as even if everything goes against the Appellant and the Appellant company is required to pay the differential duty through cash, the entire amount of duty already paid by utilizing Cenvat credit will become refundable in cash. He placed reliance on the following judgments.

(i) CCE & C (Appeals) Ahmedabad vs. Narayan Polyplast- 2005 (179) ELT 20 (SC)

(ii) CCE vs. Narmada Chemature Pharmaceuticals Limited – 2005 (179) ELT 276 (SC)

(iii) CCE vs. Textiles Corporation Marathwada Limited – 2008(231) ELT 195 (SC)

(iv) CCE vs. Jamshedpur Beverages -2007(214) ELT 321 (SC)

(v) CCE vs. Coca Cola India Pvt. Limited. – 2007(213) ELT 490 (SC)

(vi) CCE vs. Ineos ABS Limited. – 2010(254)ELT 628 (Guj.)/ 2010(267) ELT A155 (SC)

6. Shri Tara Prakash, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

7. After hearing both the sides and on perusal of the records, we find that impugned orders were passed by the Ld. Adjudicating authority on 28.02.2013. Whereas the Hon'ble Gujarat High Court decision in the matter of Indsur Global Limited vs. Union of India decided on 26/27.11.2014. Therefore, the matter is remanded to the adjudicating authority to decide the case afresh in view of the Hon'ble Gujarat High Court's decision in the case of *Indsur Global Limited* (supra) after giving an opportunity of personal hearing to the appellant.

8. All the appeals are allowed by way of remand to the adjudicating authority in the above terms.

(Pronounced in the open court on 28.06.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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