

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10564 of 2014 (O&M)
Date of decision: 20.8.2015**

M/s Sandley Industries

.....Petitioner

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Jagmohan Bansal, Advocate for the petitioners in CWP
Nos.10564, 14114, 14741, 23128, 25335 & 25429 of 2014 and
4804, 4841, 4865, 4873, 2001 and 15514 of 2015.

Mr. Surjeet Bhadu, Advocate for the petitioner
in CWP No.4779 of 2015.

Mr. Rishi Chanan, Advocate for the petitioners in
CWP No.1298 of 2015.

Mr. Kamal Sehgal, Advocate,
Mr. Brijeshwar Singh Kanwar, Advocate,
Ms. Ranjana Shahi, Advocate (Sr. Panel Counsel),
for the respondents.

Ajay Kumar Mittal,J.

1. This order shall dispose of a bunch of 14 petitions viz. CWP
Nos.10564, 14114, 14741, 23128, 25335, 25429 of 2014, 4804, 4841, 4865,
4873, 2001, 15514, 4779 and 1298 of 2015 as the issue involved in all

these petitions is identical. However, the facts are being extracted from CWP No.10564 of 2014.

2. CWP No.10564 of 2014 has been filed by the petitioner for quashing Sub rule 3A of Rule 8 of Central Excise Rules, 2002 (in short, “the 2002 Rules”) being beyond the delegated powers of the respondents and is arbitrary and confiscatory in nature. Further direction has been sought to the respondents not to adjudicate show cause notice issued to the petitioner during the pendency of the writ petition.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.10564 of 2014 may be noticed. The petitioner is engaged in the manufacture of zinc and zinc ash falling under Chapter heading 7901100 and 26201900 of the First Schedule to Central Excise Tariff Act, 1985. The raw material used by the petitioner is zinc dross, zinc scrap and zinc blowing. The raw material as well as finished goods are subject to Central Valued Added Tax (CENVAT). The petitioner is availing CENVAT Credit in terms of CENVAT Credit Rules, 2004 (in short, “the 2004 Rules”). The value addition involved is very low as major part of duty is paid from CENVAT. The petitioner is also importing goods. It gets more input credit than duty payable on finished goods apart from basic customs duty. As per Section 3 of the Central Excise Act, 1944 (in short, “the Act”), duty of excise called as CENVAT is leviable on goods produced and manufactured in India. As per Rule 4 of the 2002 Rules, every person who produces or manufactures any excisable goods shall pay duty leviable on such goods in the manner provided in Rule 8 of the 2002 Rules or under any other law for the time being in force. As per Rule 8 of the 2002 Rules, duty on the goods removed from the factory or warehouse

during the month shall be paid by 6th day of the following month, if duty is paid electronically and by 5th day of the following month, in any other case.

As per Rule 3 of the 2004 Rules, a manufacturer or producer of final product is entitled to credit of duty of excise leviable under the Act apart from other duties of excise specified in the Rule. As per Rule 3(4) of the 2004 Rules, the CENVAT Credit may be utilized for the payment of any duty on any final product. The object of CENVAT Credit is to avoid cascading effect of duties leviable at different stages. Therefore, the Government has extended benefit of credit on duty paid on input used for the manufacture of finished goods. As per Rule 8(3A) of the 2002 Rules, if an assessee defaults in payment of duty beyond 30 days from the due date, he shall pay excise duty for each consignment at the time of removal without utilizing CENVAT Credit till the date he pays outstanding amount including interest thereon at the rate specified by the Central Government. The petitioner is availing CENVAT Credit on zinc dross, zinc scrap and zinc blowing. The finished product is zinc metal. During the process of conversion of zinc scrap/dross into zinc metal, a waste arises which is called as zinc ash. The petitioner is clearing zinc ash as well as zinc metal on payment of duty. The value addition is very low, so duty is mainly paid from CENVAT Credit account and very small amount is paid in cash. During the month of October 2012, the petitioner cleared goods involving duty amounting to ₹ 19,26,044/-. The petitioner paid a sum of ₹ 18,18,534/- through CENVAT account and ₹ 17000/- through personal ledger account i.e. cash. The accountant of the petitioner while calculating duty liability picked figure of one entry as ₹ 10057/- whereas actual figure was ₹ 100567/-. It resulted into short payment of duty amounting to ₹ 90,510/-.

The petitioner was having CENVAT Credit of ₹ 650410/- apart from credit utilized for payment of duty so there was no question of delaying the payment of duty. Due to mistake correct liability was disclosed but a sum of ₹ 90,510/- was paid short. This fact came to the knowledge of the petitioner when an official of the respondents pointed out about the same. The petitioner immediately deposited the said amount alongwith interest. The petitioner vide GAR 7 dated 31.10.2013 deposited a sum of ₹ 90510/- towards duty and ₹ 16292/- towards interest. In spite of deposit of duty alongwith interest, the respondent relying upon Rule 8(3A) of the 2002 Rules formed an opinion that the petitioner had delayed payment of duty so it was barred from paying duty from CENVAT account. Show cause notice dated 4.11.2013, Annexure P.4 was issued to the petitioner for recovery of Central excise duty, interest and penalty by treating ₹ 29,27,888/- as not paid for the month of December 2012. Similarly, another show cause notice dated 20.12.2013, Annexure P.5 was also issued to the petitioner on the ground that the petitioner had wrongly utilized CENVAT Credit amounting to ₹ 1,87,21,250/- during January 2013 to October 2013. According to the petitioner, sub-rule 3A of Rule 8 of 2002 Rules is contrary to the whole scheme of the CENVAT credit. Hence the instant writ petitions.

4. We have heard learned counsel for the parties.

5. Challenge in these petitions is to the vires of Rule 8(3A) of the 2002 Rules. Learned counsel for the petitioners relied upon decisions of the Gujarat High Court in *Indsur Global Limited vs. Union of India*, 2014 (310) ELT 833 and *Precision Fasteners Limited vs. Commissioner of Central Excise*, 2015(316) ELT 595 and Madras High Court in *M/s Malladi Drugs and Pharmaceuticals Limited vs. The Union of India and*

another, 2015-TIOL-1262-HC-MAD-C to urge that Rule 8(3A) of the 2002 Rules was bad to the extent it contains the words 'without utilizing CENVAT Credit', as it is unreasonable. To substantiate, it was contended that due to some calculation mistake, the petitioner inadvertently deposited the duty amount which was short by ₹ 90,510/- for which amount of ₹ 29,27,888/- and ₹ 1,87,21,250/- in pursuance to Rule 8(3A) of the 2002 Rules had been sought to be invoked to disallow the benefit of adjustment of CENVAT credit lying unutilised in its account by issuing show cause notices, Annexures P.4 and P.5. It was urged that Rule 8(3A) of the 2002 Rules is arbitrary and is very unreasonable and is liable to be struck down. Learned counsel further submitted that the legislature realizing the situation had withdrawn the aforesaid provision and amended Rule 8(3A) of the 2002 Rules w.e.f 11.7.2014. Further reliance was placed on judgments in **Gurudev Overseas Limited vs. Central Board of Excise and Cus. New Delhi**, 2008(229) ELT 195 (P&H), **Arvind Boards and Paper Products Limited vs. Commissioner of Income Tax, Gujarat IV**, 137 ITR 635 (Guj.), **Commissioner of Income Tax vs. Sae Head Office Monthly Paid Employees Welfare Trust**, 271 ITR 159 (Del.), **Om Kumar vs. Union of India**, (2001) 2 SCC 386 and **Bansal Alloys & Metals Pvt. Limited vs. Union of India**, 2010(260) ELT 343 (P&H).

6. On the contrary, learned counsel for the revenue besides supporting the impugned provision submitted that hardship cannot be a ground to hold a provision to be ultravires. The purpose of the provision was to curb evasion of excise duty. Support was drawn from judgments in **Government of Andhra Pradesh and others vs. Smt.P.Laxmi Devi**, AIR 2008 SC 1640, **Spences Hotel Pvt. Limited and another vs. State of West**

Bengal and others, (1991) 93 CTR 60 (SC), ***Aashirwad Films vs. Union of India (UOI) and others***, (2007) 6 SCC 624, ***USA Agencies vs. Commercial Tax Officer, Attur***, 2014 (305) ELT 404 (Mad.), ***State of Rajasthan vs. Basant Agrotech (India) Limited***, 2014(302) ELT 3 (SC), ***R.K.Garg and others vs. Union of India (UOI) and others***, (1982) 133 ITR 239 (SC), ***P.H. Ashwathanarayana Setty and others vs. State of Karnataka and others***, AIR 1989 SC 100, ***Shri Krishna Das vs. Town Area Committee, Chirgaon***, AIR 1991 SC 2096 and ***Indsur Global Limited's*** case (supra).

7. We do not find any substance in the submissions of learned counsel for the revenue.

8. Un-amended and amended Rule 8(3A) of 2002 Rules reads thus:-

Rule 8(3A) (unamended)

“(3A) If the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in said sub-rule (1) and sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.”

Rule 8(3A) [Amended w.e.f 11.7.2014]

“If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the

period during which such failure continues.”

9. As per unamended Rule 8(3A) of the 2002 Rules, in case of an assessee who has defaulted in payment of duty beyond thirty days from the due date, has to pay excise duty for each consignment at the time of removal without utilizing the CENVAT Credit till he pays the outstanding amount including interest. In the event of failure, it would be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in the rules would follow. The said rule has been amended w.e.f 11.7.2014 according to which the requirement of the defaulter to clear the goods on payment 'without utilizing the CENVAT Credit' has been done away with. Instead, such an assessee would invite penalty at the rate of one per cent for each month or part thereof calculated from the due date.

10. The matter is no longer *res integra*. In ***Indsur Global Limited's*** case, while delving into identical issue, the Gujarat High Court held that to insist the assessee to pay unpaid amount without utilizing CENVAT Credit, which is duty on various inputs already paid by him, is unreasonable and out of proportion to aim sought to be achieved. It was noted as under:-

“29. This brings us to the last limb of the petitioner's contention, namely, that the condition attached by sub-rule (3A) of rule 8 is unreasonable and therefore violative of [Article 14](#) of the Constitution and amounts to serious restriction on the petitioner's right to carry on trade or business of his choice guaranteed under [Article 19\(1\)\(g\)](#) of the Constitution. This contention requires a closer scrutiny. As noted earlier, the restrictions of sub-rule (3A) come in two folds. Firstly, a defaulter assessee has to clear the consignments on spot payment of excise duty and secondly, that such excise duty has to be paid in cash without availing CENVAT credit. This rule

does not make any distinction between the willful defaulter and the others. Though term 'willful defaulter' has not been defined in the statute, the concept is not an unknown one. [Section 11AC](#) of the Central Excise Act provides for penalty in case of non-levy, short levy or non-payment or short payment or erroneous refund of the duty where the same is occasioned by reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with an intent to evade payment of duty. Likewise, [section 11A](#) which pertains to recovery of duties not levied or not paid or short levied or short paid or erroneously refunded makes a clear distinction when it gives the period of limitation available to the department to institute proceedings, in such cases between such non-payment having been occasioned due to fraud, collusion, etc. in which case a longer period of limitation is available as against rest of the cases. Likewise, under rule 12CC of the Central Excise Rules as it stood at the relevant time, power was given to the Government by notification to withdraw facilities from the manufacturers, registered dealers or exporters under certain circumstances having regard to the extent of evasion of duty, nature and type of offences or such other factors as has been relevant. In exercise of such powers, notification No.17/2006 was issued providing for withdrawal of facilities and for imposition of restrictions against who are prima facie found to be knowingly involved in any of the following:

"(a) removal of goods without the cover of an invoice and without payment of duty;

(b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;

(c) taking of CENVAT credit without the receipt of goods

specified in the document based on which the said credit has been taken;

(d) taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;

(e) issue of excise duty invoice without delivery of goods specified in the said invoice;

(f) claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine."

This rule 12CC as well as the notification issued by the Government would apply to special class of assesseees who through their conscious act tried to evade duty.

30. It can be seen that the reasons for non-payment of excise duty can be manifold and not necessarily in all cases have to be willful default by an assessee despite availability of funds. Excise duty may remain unpaid due to economic reasons, due to slowness in the business or due to financial crunch temporarily felt by the manufacturer who though might have cleared the finished goods and also sold the goods in the market may not have received the payment as promised. All such cases of defaults willful or otherwise are clubbed together for the same treatment and a stringent condition of payment of excise duty without availing CENVAT credit is imposed. It can be appreciated that where a manufacturer falls behind the payment schedule on account of financial constraints, such as, slowing down of business, competition in the market reducing the profit margins, promised payments from the purchasers not coming forth or temporary labour disputes, would find it extremely difficult thereafter to raise further funds for payment of duty in addition to the duty which he has already paid. CENVAT credit is available to a manufacturer upon purchase of inputs which are duty paid. It is the duty element which the assessee has already suffered which is credited to his CENVAT

credit account available to him for adjustment for payment of excise duty liability upon clearance of the finished product. If such facility is withdrawn, it could be appreciated, his ability to continue the business under such adverse financial climate would further diminish. This would be a cyclical vicious pattern where in every month he would fall behind by the due date unable to raise cash flow for payment of duty for the clearance which he desires to make and is therefore further saddled with the burden of paying such duty in cash without availing CENVAT credit. This rule thus imposes a wholly unreasonable restriction which is not commensurate with the wrong sought to be remedied.

31. This extreme hardship is not the only element of unreasonableness of this provision. It essentially prevents an assessee from availing CENVAT credit of the duty already paid and thereby suspends, if not withdraws, his right to take credit of the duty already paid to the Government. It is true that such a provision is made because of peculiar circumstances the assessee lands himself in. However, when such provision makes no distinction between a willful defaulter and the rest, we must view its reasonableness in the background of an ordinary assessee who would be hit and targeted by such a provision. As held by the Supreme Court in the case of Eicher Motors Ltd (supra) an assessee would be entitled to take credit of input already used by the manufacturer in the final product. In the said case, the Supreme Court was dealing with rule 57F which was introduced in the Central Excise Rules, 1944 under which credit lying unutilized in the Modvat credit account of an assessee on 16th March 1995 would lapse. Such provision was questioned. The Supreme Court held that since excess credit could not have been utilized for payment of the excise duty on any other product, the unutilised credit was getting accumulated. For the utilization of the credit, all vestitive facts or necessary incidents thereto had taken place prior to

16.3.1995. Thus the assessee became entitled to take the credit of the input instantaneously once the input is received in the factory of the manufacturer of the final product and the final product which had been cleared from the factory was sought to be lapsed. The Supreme Court struck down the rule further observing that if on the inputs the assessee had already paid the taxes on the basis that when the goods are utilized in the manufacture of further products as inputs thereto then the tax on those goods gets adjusted which are finished subsequently. Thus a right had accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. We may also recall that in the case of *Dai Ichi Karkaria Ltd (supra)* it was reiterated that a manufacture obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable produce immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product.

32. As held by the Supreme Court in the case of *Chantamanrao (supra)*, the phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in [Article 19 \(1\)\(g\)](#) and the social control permitted by clause (6) of [Article 19](#), it must be held to be wanting in that quality.

33. In the case of *Om Kumar (supra)*, the Supreme Court recognized the applicability of the principle of proportionality in judging the validity of a provision on the touchstone of reasonableness under [Article 14](#) of the Constitution. It was

observed:

"53. Now under [Art. 19\(2\)](#) to (6), restrictions on fundamental freedoms can be imposed only by legislation. In cases where such legislation is made and the restrictions are reasonable yet, if the concerned statute permitted the administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the Administrator for imposing restriction or whether the Administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restriction etc. In such cases, the administrative action in our country, in our view, has to be tested on the principle of 'proportionality,' just as it is done in the case of the main legislation. This, in fact, is being done by our Courts.

34. By no stretch of imagination, the restriction imposed under sub-rule (3A) of rule 8 to the extent it requires a defaulter irrespective of its extent, nature and reason for the default to pay the excise duty without availing CENVAT credit to his account can be stated to be a reasonable restriction. It leads to a situation so harsh and a position so unenviable that it would be virtually impossible for an assessee who is trapped in the whirlpool to get out of his financial difficulties. This is quite apart from being wholly reasonable, being irrational and arbitrary and therefore, violative of [Article 14](#) of the Constitution. It prevents him from availing credit of duty already paid by him. It also is a serious affront to his right to carry on his trade or business guaranteed under [Article 19\(1\)\(g\)](#) of the Constitution. On both the counts, therefore, that portion of sub-rule (3A) of rule must fail.

35. The situation can be looked at slightly different angle. With or without the provisions of sub-rule (3A), liability to pay interest for the default period as per sub-rule (3) of rule 8

continues. Sub-rule (3A) is basically a mechanism for stringent recovery and does not create a new liability unless this mechanism itself is breached. In such a mechanism to provide for withdrawal of CENVAT credit facility for paying the duty borders to creating a penalty. Insisting on an assessee in default to clear all consignments on payment of duty would be a perfectly legitimate measure. However, to insist that he must pay such duty without utilising CENVAT credit which is nothing but the duty on various inputs already paid by him would be a restriction so harsh and out of proportion to the aim sought to be achieved, the same must be held to be wholly arbitrary and unreasonable. We may recall, the delegated legislature in its wisdom now dismantled this entire mechanism and instead has provided for penalty at the rate of 1% per month on delayed payment of duty.

36. In the result, the condition contained in sub-rule (3A) of rule 8 for payment of duty without utilizing the CENVAT credit till an assessee pays the outstanding amount including interest is declared unconstitutional. Therefore, the portion "without utilizing the CENVAT credit" of sub-rule (3A) of rule 8 of the Central Excise Rules, 2002, shall be rendered invalid."

11. Similar view was reiterated in a later decision by the Gujarat High Court in ***Precision Fasteners Limited's*** case, (supra).

12. Further, the Madras High Court in ***M/s Malladi Drugs & Pharmaceuticals Limited's*** case, following the judgments of Gujarat High Court, recorded thus:-

"5. It is not the case of the Department in this batch of writ petitions that the petitioners-assessees have illegally or irregularly taken the CENVAT credit. It is to be mentioned herein that sub-rule (1) of Rule 8 provides for the manner of payment of duty on the goods removed from the factory or the warehouse as provided thereunder. Sub-rule (2) of Rule 8

extends the benefit of duty to the third party purchaser, who buys the excisable goods removed by the assessee and such goods are deemed to have suffered duty of excise. Under sub-rule (3) of Rule 8, interest is liable to be paid on the outstanding amount, if the assessee fails to pay the duty by the due date. In contradiction to this procedure, sub-rule (3A) of Rule 8 provides that in default of the payment of duty beyond thirty days from the due date as prescribed under sub-rule (1), notwithstanding anything contained in sub-rule (1) and sub-rule (4) of Rule 3 of CENVAT Credit Rules, 2004, the assessee is bound to pay excise duty at the time of removal without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon. The right to pay duty by utilising the CENVAT credit that had accrued cannot be defeated, unless it is a case of illegal or irregular credit (See the decision of the Supreme Court in *Dai Ichi Karkaria Ltd.*, referred supra). To that extent, we find this sub-rule (3A) arbitrary and therefore violative of [Article 14](#). The right that has accrued to an assessee by way of CENVAT credit, that is duty paid on the inputs, cannot be taken away under a rule, which only provides for the manner and method of payment of duty and for levying of interest, if there is a default. The object of the term "without utilizing the CENVAT credit" would run counter to the scheme of availment of the CENVAT credit on the duty paid inputs. It is a legitimate right that has accrued to an assessee and that cannot be denied arbitrarily under the provision under challenge. We, therefore, have no hesitation to concur with the reasoning of the Gujarat High Court that Rule 8(3A) is ultra vires of [Article 14](#) on the ground of arbitrariness."

13. With reference to the judgments on which heavy reliance had been placed by learned counsel for the respondents, we proceed to examine them individually. In *Smt.P.Laxmi Devi's* case (supra), the Apex Court was

considering the issue of amendment in Section 47A of the Stamp Act, 1899 requiring a party to deposit 50% deficit stamp duty as a condition precedent for a reference to the Collector. It was held that it was an economic measure, whose aim was to plug the loopholes and secure speedy realization of stamp duty, and, therefore, could not be said to be unconstitutional. Again, the Supreme Court in *Spences Hotel Pvt. Limited's* case (supra), laid down that provisions requiring luxury tax to be equal and uniform had to be interpreted in the light of its characteristics. In *Aashirwad Films's* case (supra), it was opined by the Apex Court that taxation laws must pass the test of Article 14 of the Constitution of India and that there should be a reasonable classification which should bear a nexus with the object sought to be achieved. In *Basant Agrotech (India) Limited's* case (supra), it was observed by the Apex Court that no tax can be imposed by inference or by analogy or by trying to probe intentions of legislature and by considering what was substance of the matter. Court cannot import provisions in statutes so as to supply any assumed deficiency. In *R.K.Garg's case* (supra), the Supreme Court noted that since test of reasonableness was not passed as required under Article 14, the Act and the ordinance were invalid as both infringed Article 14 of the Constitution. In *P.M.Ashwathanarayana Setty's* case (supra), the Apex Court was dealing with the imposition of court fees and it was noted that it shall be considered on comprehensive level of services against totality of receipts. In *Shri Krishna Das's* case (supra), the Apex Court was considering the issue of imposing weighing dues on goods mentioned in the bye-laws. It was held that it is not for the court to question it on the ground that some similar commodities arriving by road were not subjected to tax. In *USA Agencies's* case (supra), the Madras High

Court held that input tax credit being in the nature of concession under the Tamil Nadu Value Added Tax Act, 2006, it has to be availed in the manner prescribed by the Act. There is no quarrel with the propositions enunciated by the courts in the above said decisions. The principles laid down therein are well recognized. The situation in the present case is different.

14. We express our concurrence with the judgments of the Gujarat High Court in *Indsur Global Limited & Precision Fasteners Limited's* cases (supra) and Madras High Court in *M/s Malladi Drugs and Pharmaceuticals Limited's* case (supra). In view of the above, we hold that Rule 8(3A) of the 2002 Rules to the extent it contains the words 'without utilizing the CENVAT Credit' is held to be arbitrary and unreasonable and is struck down. In other words, the unamended Rule 8(3A) of 2002 Rules whereby the benefit of CENVAT Credit for all the period till the actual payment was made, stands disallowed in the event of a minor default also is arbitrary and unreasonable. It may further be noticed that the respondents had themselves realized the unreasonableness of the provisions of Rule 8 (3A) of 2002 Rules and had withdrawn the words 'without utilizing the benefit of CENVAT Credit' and had amended the same w.e.f 11.7.2014 by incorporation that now a penalty shall be imposed at the rate of 1% of the defaulted amount for each month or part thereof calculated from the due date.

15. As a result, CWP Nos.10564, 14114, 14741, 23128 of 2014, 4804, 4841, 4865, 4873, 2001 and 15514 of 2015 are allowed. The competent authority shall pass orders keeping in view our above observations in pursuance to the show cause notices issued to the petitioners. While also allowing CWP Nos.25429 of 2014, 4779 and 1298

of 2015, where impugned orders of demand of duty have been issued, it is directed that the matter shall be adjudicated afresh by the competent authority after excluding the words “without utilizing the benefit of CENVAT Credit” from Rule 8(3A) of the 2002 Rules. In CWP No.25335 of 2014, the impugned Panchnama whereby respondent has attached moveable property in the form of plant and machinery is hereby quashed leaving it open to the competent authority to proceed further in the light of the observations recorded herein above. Consequently, the impugned orders in these cases are set aside and the matter is remanded to the respondent authority to pass fresh order after hearing learned counsel for the parties in accordance with law.

(Ajay Kumar Mittal)
Judge

August 20, 2015
'gs'

(Ramendra Jain)
Judge