IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

C.M.A.No.897 of 2016

Commissioner of Central Excise,
Chennai III Commissionerate,
No.26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034. .. Appellant/Respondent

versus

1. The Star Drugs & Research Labs Ltd.,
No.14, SIPCOT Industrial Complex,
Krishnagiri Road, Phase II,
Hosur 635 109, Tamil Nadu. ..1st Respondent/Appellant

2. Customs, Excise & Service Tax
Appellate Tribunal,
No.26, Shastri Bhavan Annexe Building,
Haddows Road, Chennai 600 006. ..2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 35G of Central Excise Act, 1944, against the Final Order No.41253 of 2015, dated 25.09.2015, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant: Mr.T.Chandrasekaran

JUDGMENT
(Judgement of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the Final Order No.41253 of 2015, dated 25.09.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006, setting aside the demand of duty and penalty.

2. Before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, M/s.Star Drugs & Research Labs Ltd., 1st respondent herein, has contended that they are engaged in the business of manufacture of P or P medicaments, falling under Chapter 30 of Central Excise Tariff Act, 1985. They defaulted in making the payment of duty under deferred monthly payment facility, during the months of April, May, June and July, 2000 and hence, they were directed to pay the duty amount, on consignment basis. They paid the duty liability through CENVAT Credit and subsequently, there was change in law. The Department contended that the punishment would continue, till the default is fully discharged and during that period, duty has to be paid through Personal Ledger Account (in short "PLA") on consignment basis.

3. Before CESTAT, Madras, a contention has been made by the 1st respondent-assessee that change of law would not apply to them. According to them, the deferred monthly payment facility was withdrawn by the Deputy Commissioner of Central Excise, vide C.No.V/1/13/2000-VC, dated 23.08.2000, only for a period of two months, commencing from 31.08.2000. A show cause notice was issued by the Deputy Commissioner and the matter was adjudicated upon. Vide order, dated 21.06.2001, the 1st respondent-assessee was directed to pay the duty on the goods cleared in respect of which, debit has been made in CENVAT account, on consignment basis, from the date on which, the facility of monthly payments was withdrawn and the extent of the debit to be calculated. Amount was directed to be paid in PLA within 15 days, from the date of receipt of the order. Being aggrieved by the order in Original, dated 21.06.2001, the 1st respondent-assessee has filed an appeal, which was dismissed on 28.05.2002. Further appeal filed with a delay has been dismissed by the CESTAT, Chennai, on 27.10.2004.

4. Whileso, on 19.06.2003, the 1st respondent-assessee was served with a show cause notice, dated 16.06.2003, wherein, it was averred, inter alia, that the Assistant Commissioner, in his letter, dated 14.01.2003, had ordered them to pay the excise duty on consignment basis, by debit, to account current and that the appellant neither complied with the order of the Deputy Commissioner nor the order of the Assistant Commissioner, dated 14.01.2003, to pay duty, in account current, but continued to pay through CENVAT. Therefore, the 1st respondent-assessee was directed to show cause, as to why, the total duty paid in CENVAT, amounting to Rs.51,95,144/-, from April' 2002 to March' 2003, should not be demanded, as arrears for having contravened Rule 8(4) of the Central Excise Rules, 2002 and the goods cleared under payment of duty in CENVAT, should not be construed to have been cleared, without payment of duty and why interest and penalty be not levied. A reply, dated 04.08.2003 has been sent, to putforth their objections. Written submissions were

also made. The appellant-department has rejected the contentions of the 1st respondent-assessee. Appeal was dismissed for want of compliance under Section 35F of the Central Excise Act. Subsequently, on the 1st respondent-assessee offering a Bank Guarantee for Rs.26 Lakhs, to the appellant, appeal has been taken up.

5. Before CESTAT, Madras, the 1st respondent-assessee has contended that the issue is covered by a decision in M/s.Noble Drugs Ltd., v. CCE, Nasik reported in 2007 (215) ELT 500 (Tri.LB). They also relied on the decisions in Indsur Global Ltd., v. UOI reported in 2014 (310) ELT 833 (Guj.), Precision Fasteners Ltd., v. CCE reported in 2014 (12) TMI 655 and CCE, Madurai v. Kaleeswarar Mills [2013-TIOL-1209-CESTAT-MAD]. Added further, the assessee has also contended that when this Court in M/s.Malladi Drugs & Pharmaceuticals Ltd., v. UOI and others reported in 2015 (323) ELT 489 (Mad.), held Rule 8(3A) as ultra vires of Article 14 of the Constitution of India, the same is binding on the Department.

6. Per contra, the appellant has contended that Rule 8(3A) of the Central Excise Rules, 2002, restrains the assessee from using CENVAT credit, until the entire outstanding demand, including the interest is paid. A contention has also been made to the effect that the consequence of non-payment of excise duty or failure, it shall be deemed that such goods have been cleared without payment of duty and that the consequence of penalty, as provided in the rules would follow. It has been further submitted that explanation is only for making the position clear. Reliance has been made to a decision in Unirols Airtex v. CCE, Coimbatore reported in 2013 (296) ELT 449.

7. After hearing the parties and perusal of the records, the CESTAT, Chennai, vide Final Order No.41253 of 2015, dated 25.09.2015, at Paragraph 7, ordered as follows:

> "we find that this being a small scale unit, the appellant assessee was paying excise duty on monthly basis, as per Rule 173G of CER, 1944 from 01.04.2000. SCN No.692/2003, dated 16.06.2003 was issued based on the amendment to Rule 173G(I)(e), w.e.f. 11.02.2001, which was later substituted by Rule 8 of CER, 2001. It cannot be disputed that the provision of Rule 8(4) are pari materia with Rule 173G(I)(e) and the non-obstantive clause was introduced by insertion of sub-rule 3A in Rule 8 of CER, 2002 only w.e.f. 31.03.2005, while the period in dispute in the present case is prior to that date. We also find that the above issue stands answered in favour of the appellant assessee by the decision of the Hon'ble Kerala High Court in the case of Thanikkudam Bhagawati Mills Ltd., v. CCE,

Calicut in Central Excise Appeal No.22/2005, dated 26.10.2005, wherein, the Hon'ble High Court held that during the period forfeiture of the facility of payment of duty on fortnightly basis, the assessee can discharge the liability either out of PLA or by utilizing CENVAT credit and failure to do so, would not attract interest and penalty. Further, the Hon'ble Madras High Court in the case of M/s.Malladi Drugs & Pharmaceuticals Ltd., (Supra), relying on the Division Bench decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd., v. Union of India (Supra) held that the condition contained in sub-rule (3A) of Rule 8 of CER, 2002, for payment of duty without utilizing the CENVAT credit till an assessee pays the outstanding amount including interest is unconstitutional and that the subsequent proceedings initiated by the department for demanding tax was set at naught. Both Hon'ble Gujarat High Court and Madras High Court have held that condition contained in Rule 8(3A) of CER, 2002 for payment of duty 'without utilization of CENVAT credit" is contrary to the scheme of availment of CENVAT credit under CCR and the said Rule 8(3A) is arbitrary and violative of Article 14 of the Constitution. Accordingly, the Hon'ble High Court was struck down the Rule 8(3A) as unconstitutional. The jurisdictional Madras High Court's ruling is binding on the jurisdictional adjudicating authority and also binding on this Tribunal."

8. Assailing the correctness of the order impugned, appeal has been filed, raising the following substantial questions of law,

"(1) Where the decision on the CESTAT is correct in law, especially with the introduction of non-obstante clause was introduced by the insertion of sub-rule (3A) of Rule 8 of the Central Excise Rules, with effect from 01.04.2005 and especially due to the reason that the present rule which is applicable to the issue on hand, ie., Rule 8(3A) clearly defined that the duty should be paid only in account current (PLA) if the assessee defaults in payment of duty beyond the time limit prescribed therein.

(b) Whether in the facts and circumstances of the case, the payment of duty utilizing CENVAT credit during default period is a valid discharge of duty liability under the Excise Law."

9. Reiterating the facts and the issues raised before the CESTAT, Chennai, arguments were advanced by Mr.T.Chandrasekaran, learned Standing Counsel appearing for the Commissioner of

Central Excise, Chennai. He further submitted that challenging the decision in Malladi Drugs & Pharmaceuticals' case (cited supra), the Department has filed an appeal before the Supreme Court.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Before adverting to the above substantial questions of law, it is necessary to extract Rule 8(3A) of the Central Excise Rules, 2002, as follows:

> "(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."

11. The Jurisdictional Officer, Deputy Commissioner of Central Excise, vide letter in C.No.V/1/13/2000-VC, dated 23.08.2000, has withdrawn the deferred monthly payment facility, for a period of two months, commencing from 31.08.2000. The assessee did not pay duty, through account current, but used the CENVAT Credit account. Therefore, the department has contended that the assessee has contravened Rule 173G(1)(e) of the Central Excise Rules. The said Rule is extracted hereunder:

> "(e). If the manufacturer defaults on account of any of the following reasons, namely:-
>
> (i) full payment of any one installment is discharged beyond a period of thirty days from the date on which the installment was due in a financial year, or
> (ii) the due date on which full payment of installments are to be made is violated for the third time in a financial whether in succession or otherwise,
> then the manufacturer shall forfeit the facility to pay the dues in installments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer

in this regard or till such date on which all the dues are paid, whichever is later and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in clause (b) and in the event of any such failure it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow."

12. After following the principles of natural justice and by observing that payment through CENVAT Credit Account was not proper; such payments through credit account were null and void; those clearances of goods were clearances without payment of duty; duty involved therein should be paid through Account Current, the Jurisdictional Officer, Assistant Commissioner of Central Excise, has passed orders in No.5 of 2001, dated 21.06.2001, imposing a penalty of Rs.10,000/-.

13. In Malladi Drugs & Pharmaceuticals Ltd., v. Union of India reported in 2015 (323) ELT 489 (Mad.), constitutionality of Rule 8(3A) of the Central Excise Rules, 2002, was challenged on the grounds that it was ultra vires to the object and scope of the Central Excise Act and CENVAT Credit Scheme. Proceedings initiated by the Department, invoking the said Rule, were also put to challenge. Arguments have been advanced that the said Rule is ultra vires to Explanation to Rule 8(4) of the said rules and contrary to the instructions of the Board in the CBEC Manual and also as well ultra vires of Articles 14 and 19 of the Constitution of India. Reliance has been placed on the judgment of Gujarat High Court in Indsur Global Ltd., v. UOI reported in 2014 (310) ELT 833 (Guj.), wherein, at Paragraphs 29 to 35, held as follows:

"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 assessees 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 assessees 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.'' The relevant portion of Rule 8(3A) has been held to be ultra vires by the Gujarat High Court. We are in agreement with the reasoning of the Gujarat High Court. We, however, would also like to add our view as to why such a restriction imposed under sub-rule (3A) of Rule 8 of the Central Excise Rules is totally untenable."

14. In Malladi Drugs & Pharmaceuticals Ltd.,'s case (cited supra), a Hon'ble Division Bench of this Court has observed that availment of CENVAT credit is a right that has accrued to an assessee and denial of such credit can be made only by procedure prescribed by the law and on that aspect, the Hon'ble Division Bench extracted Paragraph 17 of the Apex Court judgment in Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd., reported in 1999 (112) E.L.T.353 (SC) and the same reads as follows:

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product 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. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available. (emphasis supplied)

15. While considering the challenge to the proceedings initiated by the Department, by invoking Rule 8(3A) of the Central Excise Rules, 2002 and the consequential orders passed by the original authority or appellate authority, as the case may be, in demanding duty along with interest, the Hon'ble Division Bench of this Court in Malladi Drugs & Pharmaceuticals' case (cited supra), has also considered yet another decision of Gujarat High Court in Precision Fasteners Ltd., v. CCE reported in 2014 (12) TMI 655, wherein, at Paragraphs 4 to 7, the Court held as follows:

"4. When the statutory basis for issuance of a show cause notice and raising tax demand is knocked down, the very proceedings would have to be struck down.

5. Learned counsel Shri Oza for the revenue, however, submitted that during the pendency of this petition, the adjudicating authority passed the final order which has not been challenged. He drew our attention to the later portion of the said decision in case of Indsur Global Ltd. (supra) in which this Court even while striking down the portion of Sub Rule (3A) of Rule 8, did not disturb the orders passed by the revenue authorities as upheld by the Tribunal, since such dispute had achieved finality. Counsel would urge that in the present case also the same course should be adopted.

6. In our opinion, however, there is vital difference between the two sets of facts. In the present case, the petitioner had raised the challenge to the statutory provisions even before the adjudicating authority had taken a final decision. He

had, along with rule, also challenged the show cause notice. In the case of Indsur Global Ltd. (supra) the petitioner had unsuccessfully challenged the order of the adjudicating authority. The appeal was dismissed by the Commissioner on the ground of delay beyond his power to condone. The Tribunal had dismissed further appeal on the ground of gross delay of three years in preferring the appeal before the Tribunal as also on the ground that in any case the Commissioner was right in not entertaining the appeal of the assessee which was presented along with the application for condonation of delay after the maximum period which the Commissioner could have condoned. It was in this background the Court held that the issues which are closed cannot be reopened. It was noted that there were other proceedings between the same assessee and department pending at various stages on same issue. It was, therefore, provided that the particular order in challenge would not be disturbed but that the benefit of declaration of invalidity of the rule would be available to the petitioner in other pending proceedings.

7. In view of such clear distinction in facts, the modus adopted in the said case in case of Indsur Global Ltd., (supra) cannot be applied in the present case. The impugned tax demands and show cause notice are set aside. Resultantly, all subsequent actions, if any, taken by the department would be set at naught. Petition is allowed. Rule is made absolute accordingly.''

16. Though the learned standing counsel appearing for the appellant submitted that the decision in Malladi Drugs & Pharmaceuticals' case (cited supra), has been challenged, no copy of the order of stay is placed before us. Facts and the dictum laid down in Malladi Drugs & Pharmaceuticals' case (cited supra), are squarely applicable to the present case.

17. Though Mr.T.Chandrasekaran, learned counsel appearing for the appellant invited the attention of this Court to a decision of the Apex Court in Jayaswal Neco Ltd., v. Commissioner of Central Excise, Raipur reported in 2015 (10) SCC 651, the said judgment would not lend any support to the applicant, for the reason that Rule 8(3A) of the abovesaid Rules has been declared as ultra vires of Article 14 of the Constitution of India.

18. In view of the above discussion and decisions, the instant Civil Miscellaneous Appeal, on the substantial questions of law, extracted supra, cannot be entertained and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Customs, Excise & Service Tax Appellate Tribunal,
   No.26, Shastri Bhavan Annexe Building,
   Haddows Road, Chennai 600 006.

2. The Star Drugs & Research Labs Ltd.,
   No.14, SIPCOT Industrial Complex,
   Krishnagiri Road, Phase II,
   Hosur 635 109, Tamil Nadu.

+ 1 cc to M/s. T. Chandrasekaran, Advocate SR.30023

C.M.A.No.897 of 2016

RSK(CO)
EU 28.6.16