IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

CENTRAL EXCISE APPEAL NO. 01 OF 2015

M/s. Gajlaxmi Steel Pvt. Ltd. … Appellant

VERSUS

The Commissioner, Central Excise &
Customs, Aurangabad. … Respondent

……….
Mr Nagori, Advocate for the appellant
Mrs Kalpalata Patil Bharaswadkar & Mr D. S. Ladda, Advocate for respondent
………….

WITH

CENTRAL EXCISE APPEAL NO. 38 OF 2015

M/s. Mauli Steel Pvt. Ltd., Jalna. … Appellant

VERSUS

The Commissioner, Central Excise &
Customs, Aurangabad. … Respondent

……….
Mr Nagori, Advocate for the appellant
Mrs Kalpalata Patil Bharaswadkar & Mr D. S. Ladda, Advocate for respondent
………….

WITH

CENTRAL EXCISE APPEAL NO. 37 OF 2015

M/s. Bhadramaruti Concast Pvt. Ltd. … Appellant

VERSUS

The Commissioner, Central Excise &
Customs, Aurangabad. … Respondent

....
Mr Nagori, Advocate for the appellant
Mrs Kalpalata Patil Bharaswadkar & Mr D. S. Ladda, Advocate for respondent
....

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATE : 06TH FEBRUARY, 2018.

ORDER:

1. These appeals are filed by the assessee against the order of the Tribunal directing pre-deposit of the amount as a condition precedent for hearing the appeal.

2. Mr Nagori, the learned counsel submits that, the appellant had exercised the right of CENVAT Credit which is permissible. The learned counsel submits that, the defaulted amount is also paid by the appellant after the impugned order is passed by the CESTAT. The learned counsel submits that, Rule 8(3A) of the Central Excise Rules has been held to be *ultra vires* by the Gujarat High Court in a case of **Indsur Global Ltd. v Union of India** reported in **2014 (310) E.L.T. 833 (Guj.)**. According to the learned counsel, even if one High Court holds the provision to be *ultra vires* the same would operate throughout the country. The ld. counsel submits that, the Tribunal

be directed to hear the appeals without asking for pre-deposit of the amount utilised under CENVAT Credit.

3. Mrs Kalpalata Patil Bharaswadkar & Mr Ladda, learned counsel for the respondent-department, submits, that if an assessee defaults in payment of the excise duty then for the defaulted period, he is not entitled to avail the benefit of CENVAT Credit as the same is the mandate of rule 8(3A) of the Central Excise Rules. The assessee has to make the payment of the amount during the defaulted period in cash. The ld. advocate rely on the judgment in a case of **Sunland Metal Recycling Industries v Union of India** reported in **2014(2) LCX 0200**. The ld. counsel submits that, the Tribunal has not committed any error in passing the impugned order. It has rightly relied on the judgment of the Karnataka High Court in a case of M/s. **Manjunatha Industries v. Commissioner of Central Excise (Appeals-I)** reported in **2013-TIOL-285-HC-KAR-CX**.

4. With the assistance of the learned counsel, we have considered the submissions and gone through the orders.

5. It has been brought to our notice that the judgment of the Gujarat High Court holding Rule 8(3A) of the Excise Rules to be *ultra*

vires is assailed by the department before the Apex Court and the Apex Court has issued notice but has not stayed the said judgment.

6. Be that as it may, it is not disputed by the learned respective counsel for the department that, after the impugned order is passed by the CESTAT, the present appellants have deposited in cash the defaulted amount to show their *bona fide*. It is not disputed that, at the relevant time when the order was passed by the CESTAT the CESTAT had a discretion to waive the condition of pre-deposit.

7. Considering that the debate with regard to validity of rule 8(3A) of the Central Excise Rules is not yet concluded and is sub-judice before the Apex Court and further considering the fact that the present appellants have deposited the defaulted amount in cash with interest after the impugned orders are passed, we pass the following order.

ORDER

(i) The impugned order is set aside.

(ii) The CESTAT shall hear the appeals on their own merits filed by the present appellants without insisting for pre-deposit.

(iii) The parties shall appear before the CESTAT on 06.03.2018.

8. The appeals are, accordingly, disposed of. No costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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