



W.P.No.13902 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

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CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.P.No.13902 of 2014 and
MP.No.1 of 2014**

M/s.SNY Autotech Pvt., Ltd.,
Represented by its Director Mr.J.Bharath
Survey No.297, 300, 301 & 302,
Sugamtharumpedu Village Road,
Irungattukottai Village, Sriperumpudur Taluk,
Kancheepuram District,
Tamil Nadu-602 117.

.. Petitioner

VS

1.The Union of India,
Rep. by Secretary-Department of Revenue,
Ministry of Finance,
New Delhi.

2.Commissioner of Central Excise
Chennai IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam,
Chennai-35.

3.Assistant Commissioner of Central Excise
Head Quarters Preventive Unit
Chennai IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam,
Chennai-35.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Declaration, declaring the provisions of Rule 8(3A) and 8(4) of the Central Excise Rules, 2002 as being ultra vires the Central Excise and Salt Act, 1944 so far as the Petitioner is concerned and forbearing the respondents from taking action as stated in the letter C.No.IV/16/24/2014 HPU GR1 dated 08.05.2014, arising there from and all further proceedings initiated there upon.

For Petitioner : Mr.A.Velmurugan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH..J)

On 04.02.2025 when the matter was taken up for hearing the following order was passed:

'The prayer in this writ petition is for a declaration declaring the provisions of Rule 8 (3A) and 8(4) of the Central Excise Rules, 2002 as being ultra vires the Central Excise and Salt Act, 1944 and forbearing the respondents from taking action as stated in letter C.No. IV/16/24/2014 HPU GR I dated 08.05.2014.

2. *There is no appearance on behalf of the petitioner.*

3. *Mr.A.P. Srinivas, learned Senior Standing Counsel appearing on behalf of the Revenue would fairly bring to our notice the decision of the Division Bench of*



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this Court in Malladi Drugs and Pharmaceuticals Ltd. V. Union of India (2015 (323) E.L.T. 489 (Mad.). The challenge in that matter was to the constitutional validity of Rule 8(3A) of the Central Excise Rules, 2002 as in the present case.

4. *This Court taking note of the decision of the Gujarat High Court in the case of Indsur Global Ltd. V. Union of India (2014 (310) E.L.T. 833 (Guj.)) where the Gujarat High Court had declared that 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 unconstitutional, held in favour of the assessee holding that Rule 8(3A) to the extent to which it was challenged, was ultra vires. The relevant portions of the aforesaid decision are as follows:*

'4. The availment of CENVAT credit is a right that accrues to an assessee and denial of such credit can be made only by procedure prescribed by the law. The implication of CENVAT credit and the utilisation thereon has been clearly highlighted by the Supreme Court in paragraph-17 of the judgment in 1999 (112) E.L.T.353 (SC), and it 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)

5. It is not the case of the Department in this batch of writ petitions that the petitioners-assesseees 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



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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.

6. Now coming to 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 Gujarat High Court in the case of Precision Fasteners Ltd., v. Commissioner of Central Excise, 2014-TIOL-2211-HC-AHM-CX, has 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



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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 Limited, (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



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accordingly."

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7. In the light of the aforesaid judgment of the Gujarat High Court, to which view we are agreeable, all the proceedings initiated by the Department in respect of the respective assessees, invoking the said rule by demanding duty along with interest by denying the benefit of CENVAT credit have to be necessarily set aside. Accordingly, the impugned proceedings are set aside. In the result, all the writ petitions are allowed. Consequently, M.P.Nos.1 of 2009, 1 of 2010, 1 of 2011, 1 of 2012 & 1 of 2013 are closed. However, there is no order as to costs.'

5. List 'For Dismissal' on 24.02.2025.'

2.Today, Mr.A.Velmurugan, learned counsel appears for the petitioner and we have heard him as well.

3.The challenge in this writ petition is to Section 8(3) of the Central Excise Rules, 2002 which stands covered by a decision of this Court in *Malladi Drugs & Pharmaceuticals Ltd.* (2015 (323) E.L.T. 489 (Mad.).

4.As far as the challenge to Section 8(4) is concerned, that provision is a general provision which is applicable qua the other provisions in the Central Excise Rules as well. Hence, the question of declaring it as ultra vires does not arise. (See also *Sri Sivasakthi Auto Ancillaries Madras Private Limited v. Union of India and others* [WP.No.13129 of 2015 dated 20.11.2024]).



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5. This writ petition is disposed in terms of this order. No costs.

Connected miscellaneous petition is closed.

[A.S.M., J] [C.K., J]
24.02.2025

Index:No
Speaking order
Neutral Citation:Yes
vs

To

- 1.The Secretary-Department of Revenue,
Ministry of Finance,
New Delhi.
- 2.Commissioner of Central Excise
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MHU Complex, 692, Anna Salai,
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DR. ANITA SUMANTH,J.
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