

**IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION [CENTRAL EXCISE]  
ORIGINAL SIDE**

**CEXA 62 OF 2008**

**M/S. STAR BATTERY LIMITED  
VS  
COMMISSIONER OF CENTRAL EXCISE,  
KOLKATA – IV, COMMISSIONERAT**

**WITH**

**CEXA 64 OF 2008**

**M/S. STAR BATTERY LIMITED  
VS  
COMMISSIONER OF CENTRAL EXCISE,  
KOLKATA – IV, COMMISSIONERAT**

**BEFORE:**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ  
AND  
THE HON'BLE JUSTICE UDAY KUMAR**

*For the Appellant : Mr. Anil Kumar Dugar, Ld. Adv.  
Mr. Rajarshi Chatterjee, Ld. Adv.  
Ms. Sangita Das, Ld. Adv.*

*For the Respondent : Mr. Uday Sankar Bhattacharya, Ld. Adv.  
Mr. Tapan Bhanja, Ld. Adv.  
Mr. Gourab Karmakar, Ld. Adv.*

*Hearing concluded on : 20<sup>th</sup> April, 2026*

*Judgment on : 23<sup>rd</sup> April, 2026*

***Uday Kumar, J:-***

- 1.** The two appeals before us, CEXA No. 62 of 2008 and CEXA No. 64 of 2008, are in essence legal twins—born of the same industrial exigency, involving identical parties, and governed by a singular, persistent statutory conflict. Both matters assail the orders of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated February 26, 2008, which affirmed a Revenue demand predicated on a 'deemed non-payment' of excise duty. Given the absolute identity of the parties, the overlap in the period of dispute, and the complete commonality in the questions of fact, law, and findings, we find it not only judicially efficient but logically imperative to hear and dispose of these matters by this single, consolidated judgment.
- 2.** At the heart of this litigation lies a challenge to the Tribunal's decision which upheld the Department's invocation of the 'deeming fiction' under Rule 8(3A) of the Central Excise Rules, 2002. The Appellants have moved this Court feeling aggrieved by a mandate that requires them to discharge their duty liability a second time in Cash (PLA), despite having already satisfied the fiscal debt through the debit of their CENVAT Credit Account. The Appellants challenge the impugned order on the ground that it adopts a hyper-technical and draconian interpretation of a procedural default, seeking the primary relief of quashing the

demand for Rs. 71,10,894/- in cash, along with the associated interest and penal impositions. They contend that where the excise has already received the duty via credit, a further demand in cash constitutes an extra-legal recovery and a violation of the constitutional bar against double taxation.

**3.** For the purpose of this adjudication, we find that the following Substantial Questions of Law require our determination:

- I. Whether the restrictive mandate of Rule 8(3A), insofar as it prohibits the utilization of CENVAT credit during a period of default, is a mandatory substantive condition—the breach of which renders a clearance 'unauthorized'—or a mere procedural directory that can be cured by a subsequent credit debit.
- II. Whether the 'legal fiction' of 'deemed non-payment' can be invoked to demand duty in cash a second time in instances where the assessee has already satisfied the Revenue's quantum of claim via credit debit, without falling foul of Article 265 of the Constitution of India.
- III. Whether the imposition of penalty under Rule 25 is legally sustainable in the absence of *mens rea*, particularly in circumstances where the assessee has transparently disclosed all transactions in their statutory ER-1 returns, thereby negating any intent to evade payment of duty.

**FACTUAL MATRIX**

- 4.** The factual matrix of the case reveals a sequence of events rooted in a liquidity-driven default occurring in March 2006, where the Appellant failed to remit its Central Excise duty, totaling approximately Rs. 49.35 lakhs, within the prescribed statutory timeline. Under the scheme of the Central Excise Rules, such a default, when prolonged beyond thirty days, triggers a restrictive mechanism intended to enforce fiscal discipline. Consequently, on June 5, 2006, the jurisdictional Assistant Commissioner invoked the punitive provisions of Rule 8(3A), issuing a 'forfeiture order' that stripped the Appellant of its facility to pay duty on a monthly aggregate basis and strictly prohibited the utilization of CENVAT credit for future clearances. The Appellant was specifically directed to discharge its duty on a 'consignment-wise' basis, exclusively through the Account Current (PLA) or cash, until all outstanding dues were liquidated. The essence of the conflict lies in the Appellant's conduct during August to October 2006, where, despite the subsistence of this 'cash-only' mandate, it cleared goods valued at approximately Rs. 4.36 crores by debiting its CENVAT Credit Account to the tune of Rs. 71,10,894/-.
- 5.** The Revenue Department maintains that this was not a mere procedural irregularity but a categorical defiance of a statutory

embargo, leading to the issuance of a Show Cause-cum-Demand Notice on February 28, 2007. By operation of the 'legal fiction' contained in Rule 8(3A), the Department posited that these clearances must be treated as having been removed 'without payment of duty,' a view affirmed by the Adjudicating Authority which ordered a fresh recovery in cash. Upon reaching the CESTAT, the Tribunal adopted a legally rigorous yet balanced approach; while it upheld the duty demand and the applicability of the Rule, it reduced the penalty to Rs. 1.00 lakh noting the lack of clandestine intent. Crucially, to prevent an inequitable 'double-dip' by the exchequer, the Tribunal directed that upon the Appellant paying the duty in cash, the previously debited CENVAT credit should be restored to its account. It is this structured direction of 'pay in cash first, restore credit later' that the Appellant now impugns before us as being arbitrarily technical and commercially paralyzing.

### ***SUBMISSION FOR APPELLANT***

6. Opening the arguments for the Appellant, Mr. Anil Kumar Dugar, the learned counsel submits that the entire controversy centres upon a hyper-technical interpretation of the 'mode' of duty discharge, which ignores the substantive reality of the tax having reached the exchequer. It is his primary contention that the Revenue's demand for a second payment in cash—

specifically the sum of Rs. 71,10,894/- —is an exercise in fiscal redundancy that lacks the authority of law. The Appellant maintains that while there may have been a procedural deviation from the 'cash-only' mandate of the June 5th order, there was no substantive failure to pay the tax. By debiting its CENVAT Credit Account, the Appellant argues that the 'debt' to the State stood effectively extinguished, and to treat such an act as a 'non-payment' is to elevate form over substance, leading to a commercially paralyzing situation for a functional manufacturing unit.

7. Mr. Dugar places heavy reliance on the landmark ruling of the Hon'ble Supreme Court in *Eicher Motors Ltd. vs. Union of India [1999]* to fortify the argument that CENVAT credit, once earned on duty-paid inputs, constitutes a 'vested right' and is a form of 'property' in the hands of the assessee. Drawing strength from Article 300A of the Constitution of India, he forcefully submits that the Revenue cannot, by way of a 'deeming fiction' under Rule 8(3A), freeze a taxpayer's property and simultaneously demand fresh liquid capital for the same taxable event. Such a move, he contends, is not only confiscatory but also an unreasonable restriction on the fundamental right to carry on trade under Article 19(1)(g). Adverting to the equivalency of legal tender in tax matters, the Appellant cites the decision of the Hon'ble Bombay High Court in *Lloyds Steel Industries Ltd.*

*vs. Union of India [2005]*, pointing to the judicial observation that payment through a CENVAT account must be 'deemed' to be payment through the PLA. The logic presented before us is that since the Revenue's quantum of claim was satisfied, the invocation of 'deemed non-payment' to trigger a fresh cash demand results in an inequitable 'double-dip' by the State.

8. Furthermore, Mr. Dugar invites this Court's attention to the evolving jurisprudence concerning the 'draconian' nature of Rule 8(3A). Reference is made to the judgment in *Indsur Global Ltd. vs. Union of India [2014]*, wherein the portion of the Rule prohibiting the use of credit was struck down as being unconstitutional and arbitrary. He argues that forcing a financially distressed unit to clear goods only through cash—while its earned credit remains idle—is a recipe for industrial insolvency. Finally, on the aspect of penalty, the Appellant contends that the findings of the Learned Tribunal are inherently contradictory. It is submitted that since the Tribunal itself admitted that the Appellant had transparently disclosed all transactions in its ER-1 returns, the essential ingredient of 'intent to evade' or 'clandestine removal' is conspicuously absent. Relying on *Condor Power Products P. Ltd. vs. CCE [2007]*, Mr. Dugar submits that a mere technical breach in the manner of payment—openly disclosed to the authorities—cannot attract penal consequences under Rule 25. The Appellant,

therefore, prays that the 'debit' entry be recognized as a valid discharge of duty and the demand for interest and penalty be quashed in the interest of justice.

### ***SUBMISSION FOR REVENUE***

9. In response to the Appellant's contentions, Mr. Uday Sankar Bhattacharya, the learned Counsel for the Revenue argues that the bedrock of this dispute is not an equitable grievance but a categorical violation of a mandatory statutory command. The Revenue's case is founded upon the uncompromising nature of Rule 8(3A) of the Central Excise Rules, 2002, which operates as a self-contained code for enforcing fiscal discipline. It is submitted that once the Appellant defaulted in its March 2006 liabilities beyond the thirty-day statutory window, the law automatically triggered a 'forfeiture of facilities,' an administrative reality that was formalized by the Assistant Commissioner's order dated June 5, 2006. This order was not a mere suggestion but a binding directive that specifically prohibited the utilization of CENVAT credit for future clearances. The Revenue emphasizes that the Appellant, for reasons best known to itself, chose not to challenge this forfeiture order before any appellate forum, thereby allowing it to attain finality. Consequently, the Appellant's act of clearing goods worth Rs. 4.36 crores by debiting the CENVAT account was a deliberate

bypass of a settled administrative mandate, rendering the 'Substantial Compliance' argument legally untenable.

- 10.** Mr. Bhattacharya further contends that in the realm of taxation, there is no room for intendment, and the 'legal fiction' created by the legislature must be carried to its logical conclusion. By clearing goods via credit during a forfeiture period, the Appellant triggered the 'deeming clause' of Rule 8(3A), which stipulates that such goods shall be deemed to have been cleared 'without payment of duty.' Mr. Bhattacharya, learned counsel for the Respondent argues that the Appellant's reliance on the 'equivalency' ratio in *Lloyds Steel Industries Ltd. vs. Union of India [2005]* is misplaced. That judgment, it is submitted, was a consensus-based order rendered prior to the 2005/2006 Amendment, which specifically introduced the 'deeming fiction' to prevent precisely the kind of procedural defiance witnessed here. The Revenue relies heavily on the ratio in *Vidushi Wires Pvt. Ltd. vs. Union of India [2003]*, asserting that when the statute prescribes a specific 'manner' of payment (Cash/PLA), any other mode is a nullity in the eyes of the law. Thus, the demand for a fresh remittance in cash under Section 11A is not an attempt at 'double taxation' but a necessary statutory recovery of duty that was never 'paid' in the prescribed manner.
- 11.** Addressing the Appellant's invocation of the 'Vested Right' doctrine from *Eicher Motors Ltd. vs. Union of India [1999]*, the

Revenue clarifies that there has been no 'extinguishment' or 'lapsing' of the Appellant's credit. The State has merely regulated the timing and mode of its utilization as a punitive measure for a prior default. Mr. Bhattacharya argues that a vested right to property is not an absolute license to ignore valid regulatory restrictions. Furthermore, on the aspect of penalty and interest, the Revenue maintains that the Appellant's conduct constitutes a 'willful defiance' of a standing departmental order. Since the duty was not discharged in the 'prescribed manner' on the date of removal, the debt remained legally outstanding, making interest under Section 11AB a mandatory statutory by-product. Mr. Bhattacharya concludes by submitting that the Tribunal has already balanced the equities by allowing the 'restoration of credit' *after* the cash remittance is made. Therefore, the Revenue prays that the impugned order, which upholds the majesty of the Rules while providing a mechanism for restitution, should be affirmed in its entirety to prevent the systemic erosion of fiscal discipline.

### ***DISCUSSION***

- 12.** The foundational controversy in this appeal, preferred under Section 35G of the Central Excise Act, 1944, revolves around whether the discharge of excise duty through CENVAT credit, during a period of statutory forfeiture, can be recognized as a

valid 'payment' or if it remains a 'nullity' under the rigors of Rule 8(3A) of the Central Excise Rules, 2002. The facts are largely admitted: the Appellant defaulted in its March 2006 duty, which triggered a specific administrative 'Forfeiture Order' on June 5, 2006. This order stripped the Appellant of its monthly payment facility and strictly mandated 'consignment-wise' payments in cash (PLA), expressly prohibiting the utilization of CENVAT credit. Notwithstanding this embargo, the Appellant removed goods worth Rs. 4.36 crores between August and October 2006 by debiting its credit account to the tune of Rs. 71,10,894/-. The Revenue, viewing this as a 'deemed non-payment' under the statutory legal fiction, demanded a fresh remittance in cash, leading to the impugned order of the CESTAT which balanced the equities by ordering a cash payment followed by a restoration of credit.

**13.** Addressing the first limb of the Substantial Questions of Law—whether Rule 8(3A) is a mere procedural directory or a mandatory substantive condition—we find that the Appellant's reliance on the 'Substantial Compliance' doctrine and the ratio in *Lloyds Steel Industries Ltd. vs. Union of India [2005]* is legally fragile. While *Lloyds Steel* proposed that 'Credit is as good as Cash,' we must distinguish that case on the ground that it predated the 2005/2006 Amendment to Rule 8(3A). The legislature, by introducing the 'deeming fiction' of non-payment

for clearances made via credit during default, has elevated the 'mode' of payment from a procedural formality to a substantive 'condition precedent' for the lawful removal of goods. We find the ratio in *Vidushi Wires Pvt. Ltd. vs. Union of India [2003]* to be the correct guiding light; when a statute prescribes a specific 'manner' of payment for a defaulter, any deviation renders the clearance unauthorized. The Appellant, having failed to challenge the original Forfeiture Order, cannot now seek to bypass its restrictive mandate by claiming a 'procedural' error.

- 14.** This brings us to the second pivotal question: whether the Revenue can demand duty in cash a second time without violating the constitutional bar against double taxation under Article 265. The Appellant invokes the 'Vested Right' doctrine from *Eicher Motors Ltd. vs. Union of India [1999]*, asserting that once a credit is debited, the property of the assessee is utilized and the debt is extinguished. However, we find a significant distinction here: in *Eicher Motors*, the State sought to 'extinguish' or 'lapse' the credit entirely. In the present appeal, the Revenue is merely regulating the timing and mode of credit utilization as a punitive consequence for a prior default. A 'legal fiction' created by the legislature must be carried to its logical conclusion. If the law deems the goods as cleared 'without payment of duty,' the Revenue is within its statutory rights under Section 11A to demand the duty in the correct mode—

namely, cash. Nevertheless, to avoid the vice of 'Unjust Enrichment,' this demand must be reconciled with subsequent restitution. The Tribunal's direction to 'restore' the credit *after* the cash payment is made is the only legally sound way to satisfy the statutory 'deeming fiction' while ensuring that the Appellant is not penalized twice for the same taxable event.

**15.** Finally, on the issue of penalty under Rule 25, we have considered the Appellant's plea that the absence of *mens rea* should grant total immunity, citing *Condor Power Products P. Ltd. vs. CCE [2007]*. While we distinguish the current facts from cases of 'clandestine removal'—noting that the Appellant transparently disclosed all transactions in its ER-1 returns—we cannot ignore the element of 'willful defiance' of a specific, standing departmental order. The ratio in *Condor Power* serves to mitigate the quantum of penalty in cases of technical errors, but it does not absolve an assessee who consciously bypasses a statutory embargo.

**16.** Consequently, we hold that the Tribunal was justified in reducing the penalty to Rs. 1.00 lakh. This reduced amount serves as a necessary deterrent for the contravention of mandatory Rules without being confiscatory in nature. In view of the aforesaid, we conclude that the demand for duty and interest in cash is legally sustainable, provided it is followed by

the immediate restoration of the credit utilized, thereby disposing of this appeal on these balanced terms.

- 17.** Having extensively deliberated upon the statutory framework of Rule 8(3A) of the Central Excise Rules, 2002, and having distinguished the evolving judicial precedents in the light of the 2005/2006 legislative amendments, we proceed to define the legal principle governing this controversy. The Ratio Decidendi derived from this adjudication is as follows:

*"Where an assessee is under a specific, mandatory restrictive order of forfeiture passed under Rule 8(3A), prohibiting the utilization of CENVAT credit due to a persistent default, any subsequent discharge of excise duty through the credit account is a nullity in the eyes of the law. The statutory "deeming fiction" of non-payment is absolute and overrides general principles of substantial compliance. Consequently, the assessee must first satisfy the debt in the prescribed mode—namely, Cash/PLA—as a condition precedent, before seeking the equitable restoration or re-credit of the Cenvat amount previously utilized in contravention of the stay."*

- 18.** In view of the aforementioned findings and the determination of the Substantial Questions of Law in favor of the Revenue's statutory rigor, while acknowledging the Appellant's right against double taxation, we pass the following Consequential Orders and Directions:

- I. The demand for duty amounting to Rs. 71,10,894/- is hereby confirmed. The Appellant is directed to discharge this entire liability, along with mandatory interest as applicable under Section 11AB (now Section 11AA), strictly through the Account Current (PLA/Cash). This payment shall be completed within a period of eight (8) weeks from the date of receipt of a certified copy of this order.
- II. Taking note of the fact that the Appellant had transparently disclosed all clearances in its ER-1 returns and that the breach was one of 'mode' rather than 'clandestine removal,' the reduced penalty of Rs. 1.00 lakh, as modified by the CESTAT, is upheld. The same shall be deposited within the aforesaid period of eight weeks, if not already secured.
- III. Upon the production of valid proof of the aforesaid cash payment (Duty + Interest + Penalty) before the jurisdictional Assistant or Deputy Commissioner, the Respondent authorities are peremptorily directed to allow the Appellant to re-credit/restore the sum of Rs. 71,10,894/- into its CENVAT Credit Account. This direction is fundamental to ensure that the State does not benefit from Unjust Enrichment and to satisfy the constitutional mandate of Article 265, ensuring the

Appellant is not ultimately taxed twice for the same clearances.

IV. The Respondent authorities shall conduct a swift verification of the debit entries made between August and October 2006 to ensure the restoration corresponds accurately to the unauthorizedly utilized credit. No coercive action for recovery shall be initiated during the eight-week window provided for compliance."

- 19.** We clarify that these directions are tailored to the specific facts of this case to reconcile the 'legal fiction' of Rule 8(3A) with substantive equity.
- 20.** The Appeals being CEXA No. 62 of 2008 and CEXA No. 64 of 2008 are stand disposed of on the above terms.
- 21.** All connected applications, if any, are similarly disposed of.
- 22.** There shall be no order as to costs.
- 23.** Registry is directed to communicate this order to the parties and the concerned Commissionerate forthwith."

***I AGREE***

***(RAJARSHI BHARADWAJ, J.)***

***(UDAY KUMAR, J.)***