Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 1199 of 2011

(Arising out of OIA-COMMR-A-/187/VDR-I/2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

M/s. Janta Glass Ltd ......**Appellant**
410-411, Village-gavasad, Taluka-padra,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T- Vadodara-I ....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara,
Gujarat-390007

APPEARANCE:
None appeared for the Appellant
Sh. G. Jha, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11999 /2019

DATE OF HEARING: 18.10.2019
DATE OF DECISION:18.10.2019

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in manufacture of Glass Bottles. They have developed the moulds for the manufacture of Glass Bottles and against the cost of the moulds. The appellant have raised the Debit Note to their customer to recover the cost of moulds. The case of the department is that the cost of moulds should be included in the assessable value of the final product i.e. glass bottles, accordingly the demand was confirmed penalty under Section 11AC which is equal to the duty was imposed and interest under Section 11AB was also demanded. The appellant filling the appeal before the Commissioner (Appeals) paid the entire demand amount confirmed in the adjudication. The appellant filed an appeal before the Commissioner (Appeals) only for waiver of penalty which was dismissed by the Commissioner (Appeals), therefore, the present appeal.

2. None appeared on behalf of the appellant.

3. Sh. G.Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the

issue on merit has been settled by the Larger Bench in the case of Mutual Industries Ltd-2000 (117) ELT 578 (Tri.). He also relied upon the judgment of this Tribunal in the case of Tetra Pak India Pvt. Ltd-2017 (354) ELT 272(Tri-Mumbai).

4. We have carefully considered the submission made by Ld. AR and perused the records. We find that as per the submission made by the appellant in the grounds of appeal they only seek for waiver of penalty, on the ground that they were under belief that the duty should be paid on transaction value of the final product. The appellant submitted that as per the Chartered Accountant Certificate enclosed along with the appeal though they have issued a Debit Note for the cost of the moulds but the said amount was not recovered from the customer. They also relied upon the following judgments in support that the issue involved is of interpretation of Section 4 of Central Excise Act, 1944, accordingly penalty in the said judgments has been waived. We find that the entire case is based on the contention of the department that the Debit Note raised towards the cost of the moulds needs to be included in the assessable value. We find that though the Debit Note was raised but the cost of moulds was not recovered by the appellant in such case the cost was born by the appellant themselves. It also observed that the appellant have paid excise duty and they are not contesting the same.

5. Therefore, considering the overall facts and the circumstances of the case and judgments relied upon by the appellant, we are of the view that the appellant have made out a case for the waiver of penalty imposed under Section 11AC. Hence, we set aside the penalty. Demand of excise duty, interest and payment there against stand maintained.

6. Appeal is allowed in the above terms.

(Dictated & Pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
(Member (Technical)

Prachi