

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

**Appeal No. E/10771/2018-SM**

[Arising out of OIA-VAD-EXCUS-002-APP-444--2017-18 dated 28/09/2017 passed by Commissioner  
(Appeals ) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s. Gujarat Organics Ltd

Appellant

Vs

C.C.E & S.T –Vadodara-ii

Respondent

**Represented by:**

For Appellant: Mr. Vinay Kansara (Advocate)

For Respondent: Mr. A. Mishra (A.R.)

**CORAM:**

**HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**

Date of Hearing/Decision:13/12/2018

**Final Order No. A/ 12942 /2018**

***Per: Ramesh Nair***

The brief facts of the case are that the appellant have availed the Cenvat Credit in respect of CVD and SAD paid on the imported inputs. Later on the said input was removed on payment of only CVD. The case of the department is that the appellant is required to pay SAD in addition to CVD already paid. Accordingly the demand of SAD amount was confirmed along with equal amount of penalty was imposed, the order was confirmed by the Ld. Commissioner appeal in the impugned order. Therefore, the present appeal.

2. Shri. Vinay Kansara, Ld. Counsel appearing on behalf of the appellant submits that he fairly concede that the appellant is not contesting the duty and interest as the same was already paid by them. The contest is only on penalty imposed under Section 11AC of the Central Excise Act, 1944. He submits that the non reversal of SAD at the time of removal of inputs is only

due to inadvertence by the staff. On pointing out the lapses, the appellant paid the amount of SAD and later on paid the interest also, hence, there is no malafide intention, therefore, the penalty should not have been imposed.

3. Shri. Amit Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of records, I find that though the appellant had not paid SAD at the time of removal of input, but it is undisputed fact that the input was cleared by issuing invoice and payment of CVD, Therefore, there was no suppression of facts on the part of the appellant. More over on pointing out the state by the discrepancy the appellant paid SAD along with interest. In this circumstance, I do not see any malafide intention to evade the payment of duty on the part of appellant.

5. Accordingly, the penalty imposed under section 11AC is set aside. Since, the appellant has not contested the duty I uphold the demand of and interest paid by the appellant. The appeal is partly allowed in the above terms.

*(Dictated and pronounced in the open court)*

**(Ramesh Nair)**  
**Member (Judicial)**

Prachi