CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.71089 of 2018

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-2015-17-18 dated 28/03/2018 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Samsung India Electronics Pvt. Ltd., ...Appellant
(B-1, Sector-81, Phase-II, Noida-201305)

VERSUS

Commissioner of Central Excise ....Respondent

(C-56/42, Renu Tower, Sector-62, Noida-201309)

APPEARANCE:

Shri Atul Gupta, Advocate &
Shri Prakhar Shukla, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70163/2023

DATE OF HEARING : 27 September, 2023
DATE OF PRONOUNCEMENT : 30 October, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOIDA-EXCUS-001-APP-2015-17-18 dated 28/03/2018 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida. By the impugned order Commissioner (Appeals) has held as under:-

> "4.1 I find that that the appellant are engaged in the manufacture of 'Heat Exchangers' which were sold to their Original Equipment Manufacturer (OEM) for further use in manufacture of Samsung brand Air Conditioners. The Air Conditioners so manufactured by OEM were purchased back by M/s Samsung India Electronics Pvt Ltd., themselves. The department has alleged that the appellant and the OEM were

related persons and the sale was not on Principle to Principle basis therefore the valuation of 'Heat Exchangers' was required to be determined under CAS-4 in terms of the provisions of Section 4(1)(a) of the Central Excise Act, 1944 read with Central Excise Valuation Rules.2000. In other words, the 'Transaction value' under Section 4(1)(a) is not applicable in their case."

2.1 Appellant was engaged in clearing Heat Exchanges to Original Equipment Manufacturers (OEMs) vendors who used these exchangers in manufacture of Samsung Brand Air Conditioners. These Air Conditioners were subsequently purchased by the appellant. Appellant claimed that OEMs were dependent manufacturer and therefore duty on the Heat exchanges cleared to OEMs was paid on mutually agreed transaction value, the duty was paid by the appellant on this transaction value which was based on standard cost of production plus 10% profit. Subsequently, on insistence of the revenue, appellant paid differential duty when actual cost of production became available.

2.2 Revenue issued a show cause notice dated 26.06.2008 alleging that the appellant an OEM were related person. Accordingly, the value of the Heat Exchangers cleared to the appellant was to be determines in terms of Rule 9 read with Rule 8. Accordingly, appellants were called to show cause as to why-

(i) Demand of Central Excise Duty of Rs.1,21,11,757/- (Rupees One Crore twenty One Lakhs eleven Thousand seven Hundred and fifty seven only) short paid in respect of clearances of 'Heat-exchanger', as mentioned hereinabove, should not be confirmed against them under proviso to Section-11A(1) of the Central Excise Act, 1944 and amount of Rs.1,21,11,757/- (Rupees One Crore twenty Lakhs eleven Thousand seven Hundred and fifty seven only), already deposited by them should not be appropriated and adjusted against the proposed demand.

(ii) Interest of Rs.9,95,669/- (Rupees Nine Lakhs ninety five thousands six hundred and sixty nine Only) as leviable on the above duty amount of Rs. 1,21,11,757/- should not be charged under Section 11-AB of the Central Excise Act, 1944 and why amount of Rs. 9,95,669/- (Rupees Nine Lakhs Ninety Five Thousands Six Hundred And Sixty Nine Only), already deposited by them towards aforesaid interest liability, should not be appropriated and adjusted against the proposed demand for interest.

(iii) Penalty under Rule-25 of the Central Excise Rules, 2002, read with Section-11AC of the Central Excise Act, 1944 should not be imposed upon them for alleged short payment of aforesaid duty, as mentioned hereinabove, in contravention of the provisions of erstwhile Rules 6,8 of the Central Excise Rules, 2002 and Section-4(1)(a) of Central Excise Act, 1944.

(iv) Service tax credit amounting to Rs.29,53,443/- (Rupees Twenty nine lakhs fifty three thousand four hundred and forty three only),relatable to the clearance of inputs effected during the period form September 2004 to March 2008, not paid by them, as per details indicated in Annexure-A to this notice, should not be demanded and recovered from them under Rule- 14 of the Cenvat Credit Rules, 2004 read with proviso to Section-11A(1) of the Central Excise Act, 1944.

(v) Interest as leviable on the aforesaid amount of Rs.29,53,443/- should not be charged and recovered from them in terms of Rule-14 of Cenvat Credit Rules, 2004 read with Section-11AB ibid

(vi) Penalty should not imposed upon them in terms of Rule-15 of Cenvat Credit Rules, 2004 read with Section-11AC ibid for abovesaid alleged short payment of Service tax credit."

2.3 This show cause notice was adjudicated by the Additional Commissioner Central Excise Noida, holding as follows:-

ORDER

(i) The Demand of duty of Rs.1,21,11,757/- (Rupees One Crore Twenty One lacs Eleven Thousand Seven Hundred Fifty Seven only) in respect of clearences of Heat Exchangers is hereby confirmed under Section 11 A (1) of the Central Excise Act, 1944. Since the amount is already deposited, the same stands appropriated.

(ii) I Interest of Rs.9,95,669/- (Rupees Nine Lacs Ninety Five Thousand Six Hundred Sixty Nine only) leviable under Section 11 AB of the Central Excise Act, 1944 is also confirmed. Since it has already been deposited; the same stands appropriated.

(iii) I hereby Impose penalty of Rs. 1,21,11,757/- (Rupees One Crore Twenty One lacs Eleven Thousand Seven Hundred Fifty Seven only) on M/s Samsung India Electronics Pvt. Ltd. Noida under Rule 25 read with Section 11 AC of the Act.

(iv) The demands for recovery of Service Tax credit adding up to Rs 2,31,91,807/- (Rupees Two Crores Thirty One Lacs Ninety One Thousand Eight Hundreds Seven only) related to as such clearance of inputs/Capital Goods, for the period of Sept'04 to Oct 15 are hereby dropped. As demand do not sustain so there is no question of any interest and penalty in this regard.

(v) No penalty is imposed on Shri Vimal Kumar Bajpai, DGM Excise of M/s Samsung India Electronics Pvt. Ltd."

2.4 Aggrieved appellant filed appeal before Commissioner (Appeals) who upheld the order of Additional Commissioner vide impugned order referred in para-1 above.

3.1 We have heard Shri Atul Gupta, learned Counsel for the appellant and Shri Manish Raj learned Authorised Representative appearing for the respondent.

3.2 Arguing for the appellant learned Counsel submits that-

- Central Excise duty has been correctly discharged on transaction value in terms of Section 4 of Central Excise Act. In similar situation, in case of CCE, Mumbai-I Vs Colgate Palmolive India Ltd. 2011 (271) ELT 293 (Tri.-Mumbai) it was held that supplier of raw material to the contractor manufacturers cannot be held as related person merely because whole of the goods manufactured by contract manufacturers was bought by the supplier of raw material. In the case of UOI Vs Atic Industries Ltd. 1948 (17) ELT 323 (SC) Hon'ble Supreme Court has held that while interpreted the related person in terms of provisions of Central Excise Act as they existed then held that to attract applicability of this concern. It is essential that assessee and the person alleged to be related must have direct or indirect in the business ewes each other this judgment has been followed by the Supreme Court in numbers of decisions as follows:-
    - Calcutta Chromotype Ltd v. CCE, Calcutta, 1998 (99) ELT 202 (SC),
    - Alembic Glass Industries Ltd. v. CCE, 2002 (143) ELT 244 (SC),
    - Union of India v. Kaira Distt Co-op Milk Producers Union Ltd., 2002 (146) ELT 502 (SC) &
    - CCE, Surat v. Besta Cosmetic Ltd. 2005 (183) ELT 132 (SC)
- Reliance is also placed on the decisions in case of Chetan B. Thandani Vs UOI 1987 (30) ELT 287 (Bom.) & TTK Healthcare Ltd. Vs CCE Guntur 2007 (207) ELT 453 (Tri.). Accordingly, appellant as OEM vendors do not qualify to be related parties in terms of Clause (iv) of Section 4 (3) (b) for valuation. It is also not the case of the revenue that appellant is constantly selling its heat exchanger at loss to

the OEMs. Appellant had not soled goods intentionally for a long period at a price which was lower than cost of production plus 10%. Therefore, decision of Hon'ble Supreme Court in the case of Fiat would not be applicable in the present case what could be applicable in the present case is a decision of Kolkata Bench in the case of T & T Metals Pvt. Ltd. Vs Commissioner 2021 (376) ELT 545 (Tri.-Kolkata).

- Extended period of limitation is not invocable and the entire demand is barred by limitation. As the appellant from beginning has informed the revenue about the nature of transaction so no suppression of fact can be alleged the view adopted by the appellant was in accordance with the various judicial pronouncements and there cannot be any malafide intention to evade duty. All the facts were in the knowledge of revenue and merely that appellant was not depositing duty as per interpretation of the Department, as alleged in the show cause notice, extended period could not have been invoked. Reliance can be also placed from the following decisions-
    - Anand Nishikawa Co. Ltd. v. CCE, 2005 (188) ELT 149 (SC)
    - Pushpam Pharmaceuticals v. CCE, 1995 (78) ELT 401 (SC);
    - Jaiprakash Industries v. CCE, 2002 (146) ELT 481 (SC);
    - Pahwa Chemicals Ltd. v. CCE, 2005 (189) ELT 257 (SC);
    - Continental Foundation v. CCE, 2007 (216) ELT 177 (SC);
- Learned Commissioner (Appeals) has relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Mumbai Vs Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC) for upholding the order of Assistant Commissioner. However, in view of Board's Circular No.979/3/2014 dated 15/01/2014, such investigation is not called for. Infact

Board has categorically clarified that in such cases extended period could not been invoked. As the provisions for which extended period could have been invoked, is not applicable in the present case, there is no reason for imposition of penalties under Section 11AC. Further, as appellant has deposited the entire duty the show cause notice should not have been issued.

3.3 Arguing for Revenue Learned Authorised Representative placed reliance upon the decision of Fiat India Pvt. Ltd. and reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument:

4.2 For holding against the appellant Commissioner has in his order observed as follows:-

"4.2 The appellant have contended that as per Section 4(1)(a) the following conditions should be satisfied:

(a) There should be sale of excisable goods.

(b) The assessee and buyer are not related.

(c) Price is the sole consideration

If all the conditions are satisfied then value of the excisable goods shall be the transaction value, otherwise the value has to be determined under Section 4(1)(b) of the Act. They contended that undisputedly the 'Heat Exchangers' were sold to OEM vendors on which Sales Tax was paid. The sale was for delivery at the time and place of removal and the vendors were not related. The price agreed upon was on the basis of standard costing plus notional profit. As such all the conditions of 'transaction value' were satisfied. There was no additional consideration so the assessable value in the present case will be the transaction value as envisaged in Section 4(1)(a). As such Section 4(1)(b) and Rule 8 & 9 of Valuation Rules will not come into play in the present case. It was also submitted that Rule 2(b) of Valuation Rules defines normal transaction value as the value at which greatest quantity of goods were sold. Rule 8 was applicable when goods were not sold but used captively. Since the goods are sold, hence Rule 8 would not apply. It has also been submitted that OEM vendors were not related.

4.3 I find that the contentions put forth by the appellant above are not sustainable. I observe that the OEM vendors are so associated with the business of M/s Samsung India Electronics that it is hard to conclude that they were not having interest in the business of each other. The plea that the goods are sold on the basis of purchase orders on which Sales Tax is paid and they are not related will not suffice. The final product ie Samsung Brand Air Conditioners' manufactured by the OEM vendors by using such Heat Exchangers, are purchased back by the appellant only. Such sale cannot be treated as sale in normal course of trade. I observe that during the investigation, the appellant submitted Costing data in respect of such Heat Exchangers duly certified by Chartered Accountant which proved that the "cost of production' was more than the value on which duty of excise was discharged. It is also observed that that the appellant accepted the same and voluntarily deposited the whole of the differential duty alongwith the interest thereon. This clearly shows that initially the appellant agreed with the view of the department that the assessment of the 'Heat Exchangers' should be done under the Valuation Rules, 2000.

*4.4 I observe that in the present case, the goods were sold to OEM vendors at lower prices as compared to cost of manufacture. The buying of the final product back from the vendors would tantamount to extra consideration. Therefore, the findings of the adjudicating authority that the transactions were not on 'Principle to Principle' basis is sustainable. I find that unless there is mutuality of interest in the business of each other, no one will sell the good at lower cost even lesser than the manufacturing cost. This simply goes to establish that the appellant and the OEM vendors are related. Thus Section 4(1)(a) of the Act will not apply in facts of the case. In this regard. I find force from the Hon'ble Apex Court judgment in the case of **CCE, Mumbai v Fiat India Pvt Ltd [2012 (283) ELT 161(SC)]** which laid down the law on valuation in the cases where goods are sold below the manufacturing costs as under:*

"43. What can be construed from the plain reading of Section 4 of the Act and the interpretation that is given by this Court on the expression 'normal value' is, where excise duty is

chargeable on any excisable goods with reference to value, such value shall be deemed to be the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal and where the assessee and the buyer have no interest directly or indirectly in the business of each other and the price is the sole consideration for the sale.----------------------- In fact, in Metal Box's case (supra) this Court has stated that under sub-Section (1)(a) of Section 4 of the Act, the 'normal price' would be the price which must be the sole consideration for the sale of goods and there cannot be any other consideration except the price for the sale of goods and it is only under such situation Sub- Section (1)(a) of Section 4 would come into play. In the show cause notices issued the Revenue doubts the normal price of the wholesale trade of the assessees. They specifically allege, which is not disputed by the assessees, that the 'loss making price' continuously for a period of more than five years while selling more than 29000 cars, cannot be the normal price. It is true that in notices issued the Revenue does not allege that the buyer is a related person, nor do they allege element of flow back directly from the buyer to the seller, hut certainly, they allege that the price was not the sole consideration and the circumstance that no prudent businessman would continuously suffer huge loss only to penetrate the market and compete with other manufacturer of more or less similar cars. A prudent businessman or woman and in the present case, a company is expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. This court in the case of Union of India v. Hindalco Industries-2003 (153) ELT 481, has observed that, if there is anything to suggest to doubt the normal price of the wholesale trade, then recourse to clause (b) of sub-section (1) of Section 4 of the Act could be made------.

50. ----------------- In other words, in the transaction under consideration, the goods are sold below the manufacturing cost and manufacturing profit. Therefore, in our view, such sales may be disregarded as not being done in the ordinary course of sale or trade. In our view. for the purpose of Section 4(1)(a) all that has to be seen is does the sale price at the factory gate *represent the wholesale cash price. If the price charged to the purchaser at the factory gate is fair and reasonable and has been arrived at only on purely commercial basis, then that should represent the wholesale cash price under Section 4(1)(a) of the Act. This is the price which has been charged by the manufacturer from the wholesale purchaser or sole distributor. What has to be seen is that the sale made at arms length and in the usual course of business, if it is not made at arms length or in the usual course of business, then that will not be real value of the goods. The value to be adopted for the purpose of assessment to duty is not the price at which the manufacturer actually sells the goods at his sale depots or the price at which goods are sold by the dealers to the customers, but a fictional price contemplated by the section--------------.*

4.5 In view of the above, it is, clear that for determination of the assessable value of 'Heat Exchangers for the purpose of assessment of duty. Section 4(1)(b) is the proper Section. I find that in case of sale to related person. Rule 9 of Central Excise valuation (Determination of price of excisable goods) Rules, 2000 will apply. The proviso to Rule 9 stipulates that in cases where related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in Rule 8. The facts of the case are squarely covered under the proviso of Rule 9 and accordingly Rule 8 shall apply for the purpose of valuation. The same practice is adopted for arriving at the differential duty short paid by the appellant. I thus find that the confirmation of the demand of differential duty of Rs.1.21.11.757/- short paid on clearances of Heat Exchanger is fully justified on merit. As regards the payment of interest. I observe that it is settled law that once it is decided that demand of duty is sustainable. the interest under Section 11 AB of the Central Excise Act, 1944 automatically comes into the play and is therefore chargeable on that part of the demand which is confirmed. Moreover the entire set of operations smacks of a design which is to keep the successive value of the products in check. First M/s Samsung clear the 'Heat Exchangers' to their OEMs which has to be priced in such a way that the manufactured Air-Conditioners would cost within reasonable *limits. Then OEMs have to price the Air-Conditioners in a way so as to enable the Principal, who are purchasing such manufactured Air-Conditioners, to price them keeping in mind the market sensitivities. This therefore cannot be a simple operation and there is no way a comparison can be made because there is no third party sale of the "Heat Exchangers."*

4.6 As regard the charge of suppression of facts. I find that during the course of visit by the officers of Anti-Evasion wing. Noida on 09/10.11.06. Shri Vimal Kumar Bajpai, DGIV (Excise) in his statement 10.11.06 informed that for discharging Central Excise duty, transaction value was taken more than 110% of the cost of production. During the course of enquiry it was noticed that sale to OEM vendors cannot be regarded as sale on principle to principle basis and as such assessable value was to be determined on the basis of CAS-4. The appellant submitted the costing data vide letter dated 03.05.07 in response to Range office letters for the period January 2006 was much higher. Accordingly the appellant themselves deposited the amount alongwith the interest. Further, vide letter dated 31.05.07 the appellant submitted the costing data duly certified by Chartered Accountant for the period of January, 07 to March. 07 as per which the cost was also found on the higher side and the party themselves paid the differential duty alongwith the interest. All the exercise simply points towards the fact that the transaction value on which the goods were originally cleared to their OEM vendors was undervalued which they accepted by depositing the differential duty alongwith the interest. The intention suppression exists since in the whole exercise they were ultimate gainers as the final product manufactured by using the Heat Exchangers namely Samsung Brand Air Conditioners are purchased back by the party only."

4.3 In the present case the relevant chronology of events during the issuance of show cause notice is as follows:-

Date	Particular
10.12.2005 January, 06	After setting up of a new manufacturing facility, commenced production on 10.12.2005 and made first clearance of Heat Exchanger [used in manufacture of Air-conditioner] to the manufacturers, who manufacture Samsung brand air-conditioners for the Appellant only.

	As the actual cost of production was not known, so standard cost of production plus 10% was agreed for valuation of the goods with the OEM’s
10.03.2006	The Appellant intimated to the department above fact alongwith the fact that that such Heat Exchanger are sold on principal-to-principal basis and transaction value will be more than the cost of production plus 10%. Enclosed the cost sheet and sample invoices.
27.04.2006	A letter from Department received to provide costing data for such transaction—no information readily available about any reply by the Appellant
10.11.2006	A visit by the team of Central Excise Officers to the premises of the Appellant. The team recorded statement of Mr. Vimal Kumar Bajpai, DGM-Excise. It was informed that OEMs are independent buyers and the duty is paid on transaction value which is more than 110% of the cost of such goods and a calculation sheet was also provided.
12.12.2006	Department sent letter requiring cost data certified by the cost accountant
28.03.2007	The Appellant based on computation of actual costing deposited the differential duty amounting to Rs. 78,68,944/-. The difference in cost was about 11%. Intimation was sent vide letter dated 03.05.2007
09.04.2007	Again the costing data certified by cost accountant sought
30.04.2007	The Appellant obtained the costing from the Chartered Accountant
15.05.2007	Intimated about the deposit of interest of Rs. 8,77,621/-
31.05.2007	Intimated about the deposit of differential duty of Rs. 42,42,813/- alongwith interest Rs. 1,18,048/- for Jan, 2007 to March, 2007. Intimated that for future, actual cost of previous period plus 10% will be adopted.
06.08.2007	Statement of Mr. Surendra Kumar Sharam, Vice-President was recorded
26.06.2008	Show cause notice was issued
31.01.2017	Impugned Order-in-Original passed

4.4 On perusal of the above table it is observed that appellant had paid differential duty of Rs.78,68,944/- + Rs.42,42,813/- along with interest of Rs.1,18,048/- for the entire period from 2005 to 2007 which is not disputed by the revenue and these amounts stands appropriated against the duty amount confirmed against the appellant.

4.5 All these amounts were paid much before the issuance of show cause notice i.e. on 28.03.2007 and 31.05.2007 whereas show cause notice was issued on 26.06.2008. In terms of Section 11A(2B) of Central Excise Act, 1944 reproduced below this notice should not have been issued at all, as the appellant had already deposited the duty along with interest to the exchequer.

> ***""Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded —***
>
> *(1) ......*
>
> *(2) ....*
>
> *(2A) ....*
>
> *(2B) Where any duty or excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person, chargeable with the duty, may pay the amount of duty before service of notice on him under subsection (1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid:"*

The only purpose of this show cause notice, it seems, was for invoking the provisions of Section 11AC of the Central Excise Act to impose equivalent penalty on the appellant. We do not hold that the ingredients for invoking Section 11AC in the present case are available. The entire issue is based on the appellant, entire confirmation and penalty imposed are on the basis of the subsequent decision of the Hon'ble Apex Court in the case of Fiat India Ltd. (supra). It is settled position in law and also as has been clarified by the CBEC vide its Circular No.979/3/2014 dated 15.01.2014, as follows:-

> *"4.* ***The third issue is whether the judgment can be applied for periods prior to the date of the judgment i.e. 29-8-2012, invoking the extended period of limitation****. Under the provisions of valuation law, in a case where price is not the sole consideration for the sale, money value of any additional consideration flowing directly or indirectly from the buyer to the assessee is added to the transaction value in terms of rule 6 of the Central Excise Valuation Rules, 2000. However, in the FIAT judgment, sale of cars at an abnormally lower price to penetrate the market has been considered by the Hon'ble Supreme Court as constituting extra-commercial consideration, even when there was no additional consideration of money value flowing directly or indirectly from the buyer to the seller.* ***For the period prior to the date of the judgment, in cases where a show cause notice has been issued on the grounds of the FIAT judgment alone, there may not be a case for invoking the extended period of limitation. In such cases, only the normal period of limitation will apply.***
>
> *4.1 For the period after the date of the judgment, i.e. from 29-8-2012 onwards, if there is a sale in the circumstances similar to the case of M/s. FIAT and yet transaction value of goods is declared as the correct assessable value, then such declaration would amount to wilful mis-statement of the assessable value."*

4.6 In the present case the period involved is prior to 29.08.2012 the date of judgment of the Hon'ble Apex Court and in accordance with the Board's circular, extended period of limitation could not have been invoked in the present case. If that is so the penalties under Section 11 AC could not have been imposed on the appellant. In view of the decision of Hon'ble Supreme Court in the case of M/s Rajasthan Spinning and Waiving Mills 2009 (238) ELT 3 (SC). Accordingly, the penalty is imposed under Section 11AC are set aside.

4.7 We also observe that the appellant have themselves on the basis of their own assessment, paid the duty, which might have been available as credit to the OEM manufacturers. Accordingly, we do not go into merits of the duty already paid and confirmed by the impugned order. In our view show cause notice was not to be issued in the present case. In case of Steel Authority of India Limited [2019 (366) E.L.T. 769 (S.C.)] a three judges bench of Hon'ble Supreme Court observed as follows:

> ***"53.*** *As we have already noted, SAIL has paid the differential duty of Rs. 142.78 crores even without waiting for any notice under Section 11A(1).* ***The assessee volunteered and made payment in October 2006. We find merit in the finding by the authority that this is a case where therefore the payment made by the assessee is to be treated as one falling under Section 11A(2)(b). This meant also that there was no need for determination of the duty within the meaning of Section 11A(2)(a) or issuance of notice under Section 11A."***

Following the above decision in our view no penalty proceedings in terms of Section 11AC could have been initiated against the appellant and the same needs to be set aside.

5.1 Accordingly, appeal is partially allowed to that extent by setting aside the penalties imposed under Section 11AC.

(Pronounced in open court on- 30/10/2023)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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