IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70342/2016-EX[DB]

(Arising out of Order-in-Original No. LKO/EXCUS/000/COM/CX/073/2015-16 dated 28/12/2015 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Rastogi Brothers Papers Convertor Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Request for Adjournment for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/11/2018
Date of Decision : 26/11/2018

FINAL ORDER NO. - **72693/2018**

Per: Archana Wadhwa

After rejecting the request for adjournment, we proceed to decide the appeal itself inasmuch as a short issue is involved. Accordingly, we have heard learned A.R. for Revenue and have gone through the impugned order.

2. As per facts on record, appellant is engaged in the manufacture of exercise books and note books which attracted duty of Excise. Based upon the scrutiny of the appellant's records and the investigations made, demand of duty of Excise to the tune of Rs.60,34,839/- was raised for the period 01/03/2011 to 07/03/2014, which the appellant paid alongwith interest of Rs.13,83,240/- even prior to the issuance of the show cause notice.

3. In the above scenario, proceedings were initiated against them for imposition of penalty under Section 11AC. The appellant took a categorical stands before the Adjudicating Authority that they were under *bona fide* belief that the exercise books and note books attracted VAT, which were paid by them on sale of the same. It was an unintentional mistake on their part not to pay the duty of Excise, which is clear from the fact that their entire sales were recorded in their statutory records including the balance sheets etc. While dealing with the said plea of the assessee, the Adjudicating Authority observed as under:-

> *"19. The only issue that merits my attention now is with regard to imposition of penalty upon the party under Section 11AC of the Act as proposed in the show cause notice. I find that all the transaction pertaining to the sale of excisable product by the*

party had been recorded by the party in its records and the demand of the department has been calculated on the basis of those records only. The demand has been made under Section 11 A(5) and the penalty has been proposed in Section 11AC. The party has contended that since there was no mala-fide intention and their nonpayment of duty as per Central Excise Act was due to a bona-fide unintentional mistake on their part, so there was no intent on their part to evade payment of duty. I find that the above averment of the party although appears to be correct which is indicated from the fact that they readily cleared their Central Excise duty dues alongwith interest before show cause notice and also started paying duty on their further clearances of excisable goods after promptly taking the Central Excise registration. But, I also notice that the party was paying service tax on GTA and Renting of Immovable Property, therefore, it cannot be concluded with certainty that the party did not discharge its Central Excise duty liability due to a bona fide mistake. Therefore, I find that the case laws cited by the party for waiver of penalty in their case cannot be given any cognizance."

4. Reading of the above Para shows that Adjudicating Authority has agreed with the appellant that there was no *mala fide* on their part, when he observes that the appellant's averment appears to be correct. However, he holds to the contrary by observing that since the appellant paid service tax on GTA and 'Renting of Immovable Property'. It cannot be held that the appellant did not discharge its Central Excise duty liability due to *bona fide* mistake.

We really fail to understand the above self-contradictory observations and findings of the Adjudicating Authority. On one hand, he has concluded that the party's averment as regards nonpayment of duty of Excise on account of unintentional mistake appears to be correct and on the other hand, he proceeds ahead to observe to the contrary on the ground that the appellant was paying service tax on GTA and 'Renting of Immovable Property'. Payment of service tax has got nothing to do with the issue of nonpayment of Excise duty. Inasmuch as the entire demand was raised on the basis of records maintained by the assessee, the Adjudicating Authority has rightly concurred with the assessee on the ground of absence of any *mala fide*, in which case he should not have imposed any penalty upon them.

5. In view of foregoing while upholding the Excise duty payment alongwith interest, we set aside the imposition of penalty upon them and allow the appeal to that extent.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks