CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

E-Hearing
REGIONAL BENCH - COURT NO.I

Excise Appeal No.70408 of 2022

(Arising out of Order-in-Appeal No.MRT-EXCUS-000-APPL-MRT/10-22-23 dated 28.04.2022 passed by Commissioner (Appeals) CGST, Meerut)

M/s Standered Auto General Engineers, ...Appellant
(Muzaffarnagar Road, Near Tehsil,
Shamli U.P.)

VERSUS

Commissioner of Central Excise, Meerut ....Respondent
(Commissionerate, Meerut)

<u>APPEARANCE:</u>

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO<u>.- 70500/2025</u>

DATE OF HEARING : 03.04.2025
DATE OF PRONOUNCEMENT : 18.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.MRT-EXCUS-000-APPL-MRT/10-22-23 dated 28.04.2022 passed by the learned Commissioner (Appeals), CGST, Meerut.

2. Briefly stated, the facts of the case are that the Appellant is engaged in the manufacture of "Sugar Mills Machinery Parts" classifiable under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant is availing Cenvat credit of inputs and capital goods under the provisions of the Cenvat Credit Rules, 2004. It is the case of the Department that the Appellant have evaded the payment of Central Excise duty amounting to Rs.45,361/- on account of selling of iron & steel scrap as generated during the course of manufacture of their

final products weighing 18 MT. Show cause notice[1] dated 08.01.2015 and vide the Order-in-Original the demand of Central Excise duty as proposed in the SCN was confirmed and as the entire amount was deposited much before the issuance of the SCN, the same was appropriated against the demand confirmed. Penalty of equal amount was imposed in terms of Rule 25(1) of the Central Excise Rules, 2002 read with Section 11AC(1)(c) of the Central Excise Act, 1944. Hence, the present appeal before the Tribunal.

3. Learned Advocate appearing on behalf of the Appellant submits that the demand of Rs.45,361/- under Section 11A of the Act is on the assumption that Iron & Steel scrap essentially emerged during the last five years. It is assumed that approximately 18 MT, the value of such MS Scrap estimated Rs.3,67,000/- having the involvement of Rs.45,361/- & it is also assumed that the said scrap was clandestinely removed by the firm. Thus, impugned demand is within the grip of assumption and not supported even by a single direct or indirect evidence. In such a circumstance, impugned demand is without sanction of law and not maintainable and he prays accordingly. That this is not the case of the Department that departmental officers had made the enquiry during the period from 17.12.2013 (date of visit) to 27.01.2015 (date of issuance of SCN) and managed any evidence supporting even a single kg clandestine removal of impugned scrap. Therefore, impugned demand is against the settled law that big charge of clandestine removal must be supported with sufficient evidence. Thus, impugned demand is without any legal base and not maintainable. That in the Order-in-Original, this is root finding that the proprietor of the firm has admitted vide statement dated 17.12.2013, the clandestine clearance of Iron & steel scrap. Thus, the impugned demand is confirmed based on such statement. This statement is in no way corroborated with evidence. He submitted that based on statement alone, clandestine removal cannot be concluded. There are so many reasons to admit any thing at spot but for the

[1] SCN

demand of duties some evidential support is required which is not relied upon in the present case by the Department. Hence the impugned demand is bad in law and not sustainable. That under impugned Order-in-Original dated 30.07.2021, the lower authority has imposed equal penalty on the finding that if the provisions of Section 11A (4) are imposed on the party than it attracts mandatory penalty under Section 11AC of the Central Excise Act, 1944. In the impugned case, the provision of Section 11AC applies squarely but fact is this that they had not removed any scrap, department's allegation is without any evidence even the relied upon document, i.e. copy of the challan has not been provided.

4. The learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

5. Heard both the sides and perused the appeal records.

6. I find that the allegation of clandestine removal of scrap is on the basis of assumption and presumption and surmises. There is no evidence, documents etc., on the basis of which the demand has been calculated. The Appellant has all along denied having removed any scrap in a clandestine manner.

7. I also observe that when the Appellant assessee, to purchase peace of mind and the harassment on account of alleged clandestine removal of scrap, accepted the demand and paid on 17.12.2013, i.e. much before the issuance of the SCN (deposited in Government account vide GAR-7 Challan No.00002 dated 27.12.2013 of State Bank of India, Muzaffarnagar) and the SCN has been subsequently issued on 08.01.2015. It has been time and again held by the Tribunal and the superior Courts that when the demand has been paid much before issuance of the SCN, there is no plausible reason to issue the SCN. But these judicial decisions are not being followed and there is a judicial indiscipline on the part of the Department in doing so, resulting in these petty matters travelling up to the Tribunal and the litigation never ends.

8. It is the consistent view of the Tribunal and the superior Courts that when the demand made by the Department was paid by the Assessee, much before the issuance of the SCN, to purchase peace, no penalty should have been imposed on the Appellant on this count.

9. In view of the above discussion, the demand of Rs.45,361/- is set aside. The penalty of Rs.45,361/- imposed in terms of Rule 25(1) of the Central Excise Rules, 2002 read with Section 11AC(1)(c) of the Central Excise Act, 1944 is set aside. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on - **18.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS