

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 57958 of 2013

[Arising out of Order-in-Appeal No. 30/CE/DII/2013 dated 05.03.2013 passed by the Commissioner (Appeals), New Delhi]

M/s M R Beltings

35th Km G T Road, Rasoi, Sonapat, Haryana 131029

.....Appellant

VERSUS

Commissioner of Central Excise Rohtak

SCO No. 6 To 8 10, Sector-1 Huda Market, Rohtak,
Haryana 124001

.....Respondent

APPEARANCE:

Present for the Appellant: Shri S.K. Singhal, CEO

Present for the Respondent: Shri Ravinder Jangu, Authorized
Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.

60294/2023

DATE OF HEARING: 25.08.2023

DATE OF DECISION: 25.08.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 05.03.2013 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant is registered as SSI unit and engaged in the manufacture of conveyor

and transmission belting, classified under T.I. 40103999/40103992 of the 1st schedule to the Central Excise Tariff Act, 1985. The appellant manufactured the goods in terms of the orders received from various public sector customers including M.P. Power Generating Co. Ltd. for supply of 8000 meters conveyor Belts at Barkakana during 2007-08 as per the terms of purchase orders.

3. Audit was conducted on 21 & 22.01.2009 and it was found by the audit party that the appellant has charged the packaging and forwarding charges separately on invoices @ Rs. 22/- and Rs. 67.05/- per meter in case of F.O.R Supply of 8000 and 1400 meters conveyor belt to M/s Satpura Thermal Power Station during 2007-08 but the same had not been included in the assessable value for payment of central excise duty. Accordingly, the appellant has short paid duty amounting to Rs. 44,473/-. The appellant contested the audit objection by writing letters stating that they have not short paid duty and has charged the duty as per the terms in the purchase orders. Further, on the insistence of range officer they have debited total amount of Rs. 44,473/- under protest vide letter dated 21.10.2010 along with Form-R for refund thereof. Thereafter, show cause notice dated 09.11.2010 was received on 16.11.2010 from AC, C.E. Kundli, demanding duty of Rs. 1,88,597/- under Section 11A(2) by invoking the extended period of limitation. The appellant filed detailed reply to the show cause notice.

4. After following the due process, original authority confirming the demand of Rs. 1,88,597/- and appropriated the amount of Rs.

44,473/- deposited under protest and also demanded interest under Section 11AB and imposing equal penalty of Rs. 1,88,597/- under Section 11AC. Aggrieved by the said order, the appellant filed an appeal before the Ld. Commissioner (Appeals) who rejected their appeal. Hence, the present appeal.

5. Heard both the parties and perused the record.

6. Appellant appeared in person and argued that the impugned order is not sustainable in law as the same has been passed without application of mind and without considering the reply of the appellant. He further submitted that appellant is an SSI unit and has been supplying the impugned goods to only public sector units as per the purchase order furnished by the public sector units. He further submitted that as per the audit, the appellant had short paid Rs. 44,473/- which was paid under protest at the insistence of range officer. He further submitted that surprisingly show cause notice was issued invoking the extended period of limitation whereas he has been regularly filing the ER-I returns and it was scrutinized by range officer and no objection was raised by the range officer regarding under valuation of the impugned goods. He also submitted that in the show cause notice, there is no whisper about violation of Section 11AC but in the Order-in-Original, the original authority has imposed equal penalty under Section 11AC without affording any opportunity to the appellant which is in violation of principle of natural justice. He further submitted that both the authorities below have not dealt with the grounds raised by him before them and has ignored their

submissions and mechanically confirmed the duty demand without application of mind.

7. On the other hand, Ld. AR reiterated the findings of the impugned order and submitted that the appellant has under valued the impugned goods and has not included transportation and packaging and forwarding charges in the assessable value. He further submitted that the appellant has not forwarded the purchase orders to the department and therefore concealed the material facts from the department and the department has rightly invoked the extended period.

8. After considering the submission made by both the parties and perusal of the material on record, we find that the appellant who is an SSI unit was supplying the impugned goods to various public sector customers as per their purchase orders. During audit on 22.01.2009, the objection was raised that during the year 2007-08 the appellant has not included the packaging and forwarding charges separately shown in the invoice, in the assessable value and therefore they have paid the short duty to the extent of Rs. 44,473/- which was paid under protest by the appellant.

9. Further, we find that when the show cause notice was issued, the Revenue demanded the duty of Rs. 1,88,597/- along with interest and penalty. We also find that in the show cause notice, there was no proposal for imposition of penalty under Section 11AC but when the Order-in-Original was passed even the equal penalty under Section 11AC was imposed which is beyond the show cause notice, hence,

not sustainable in law. Further, we find that the show cause notice was issued on 09.11.2010 which was received by the appellant on 16.11.2010 for the period pertaining to 2007-08 by invoking the extended period of limitation without the ingredients present as required under Section 11A(4). Further, we find that the appellant has regularly been filing the ER-1 returns which was scrutinized by the department and the department never raised the objection regarding the irregularity committed by the appellant. Further, department has not been able to bring on record anything to show that the appellant has suppressed the material fact in order to evade the payment of duty.

"5.6 Further, it is a well settled position established by the Hon'ble Supreme Court in the case of Anand Nishikawa Co. Ltd. v. CCE 12005 (188) ELT 0149 (S.C)] that to invoke the provisions of extended period, mere misstatement or suppression could not be enough. The requirement in law is that such mis-statement or suppression of facts must be willful. To enunciate this, relevant extract of the judgment reads as under:

"We find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression." (emphasis supplied)".

10. In view of this, we are of the considered opinion that the entire demand is barred by limitation and we set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any as per law.

(Dictated and pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash