CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. E/2227/2011-EX-[DB]

[Arising out of Order-in-Original No. JNK-CEX-000-COM-12-2011 dated 16.05.2011 passed by the Commissioner of Central Excise, Jammu]

Date of hearing/decision: 02.08.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Sun Pharmaceutical Industries	:	**Appellant(s)**
VS		
C.C.E., Jammu	:	**Respondent(s)**

Appearance:
Present for the Appellant(s): Sh. Kiran Sawale, Advocate
Present for the Respondent(s): Sh. Vijay Gupta, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62600/2018

Per : Ashok Jindal

The appellant is in appeal against the impugned order and disputing the penalty imposed on them under Section 11AC of the Central Excise Act, 1944.

2. Brief facts of the case are that the appellant is located in Jammu & Kashmir and availing the benefit of exemption under Notification No. 56/2002-CE dt. 14.11.2002. As per the said

Notification, whatever duty paid through PLA, the appellant is entitled to take the self credit of the same and the buyer of the goods is entitled to take Cenvat credit on the duty paid by the appellant on the said goods. In this case, the appellant imported certain goods and sent the goods directly to their unit located in the state of Gujarat, from where goods were sent to another unit located in Chennai for further processing and thereafter the goods were exported, but the appellant raised the invoices from Jammu and paid the duty on the said goods and took the self credit on the duty paid and Chennai unit also availed Cenvat credit of the duty paid at Jammu. An investigation was conducted, it was revealed that the goods never travelled to the State of Jammu & Kashmir and no manufacturing activity has taken place in Jammu. In these circumstances, it was alleged that the appellant has engaged only in paper transactions and no goods have been moved to their unit. Therefore, the proceedings were initiated and the show cause notice was issued to the appellant demanding duty along with interest for the erroneous refund sanctioned to them and to impose penalty under Section 11AC of the Act. Before the adjudication, the appellant paid the entire amount of erroneous refund along with interest but after adjudication, the adjudicating authority gave an option to the appellant to pay the penalty under Section 11AC of the Act within 30 days of the receipt of the adjudication order. If the same is paid, the penalty is reduced to 25%, otherwise the appellant is required to pay 100% penalty. As the appellant did not pay any penalty and contesting the same before us, therefore this appeal has been filed.

3. Ld. Counsel for the appellant submits that the appellant has no malafide intent to take erroneous refund, therefore penalty is not imposable on them. It is the contention of the Ld. Counsel that the transportation papers are not available with them although goods came to Jammu and have been sold at Jammu only, therefore penalty is not imposable on them.

4. Heard the Ld. Counsel and considered his submission.

5. We find that from the available records, nowhere it is coming out that the impugned goods on which erroneous refund has been sanctioned to the appellant have ever reached Jammu & Kashmir state with documentary evidence and there is any manufacturing activity took place in the state of Jammu & Kashmir. In these circumstances, onus lies on the appellant to prove that the goods came to Jammu and they did some manufacturing activity on the said goods in Jammu. Admittedly, the appellant has failed to do so and has not paid the penalty as directed by the adjudicating authority in the impugned order. In these circumstances, the appellant is liable to pay the penalty to the tune of 100% of the duty under Section 11AC of the Act. In these terms, we do not find any infirmity in the impugned order and the same is upheld.

6. In the result, the appeal is dismissed.

(Dictated and pronounced in the court)

(Devender Singh)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

RAS'