

Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/2150/2009

[Arising out of OIA- 24/CE/APPL/DLH-IV/2009 dated 16.03.2009 passed by the Commissioner (Appeals) of Central Excise-Delhi-IV]

Chera Enterprises : Appellant (s)

Vs

CCE-Delhi-IV : Respondent (s)

**Represented by:**

For Appellant (s) : Shri Shurjeet Bhadu, Shri Veer Singh, Advocates

For Respondent (s): Shri Bhasha Ram, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

**Mr. Bijay Kumar,, Hon'ble Member (Technical)**

Date of Hearing/Decision: 04.12.2018

**ORDER No.A/63547 / 2018**

***Per : Mr. Ashok Jindal***

The appellant is in appeal against the impugned order and praying for dropping of penalty.

2. The facts of the case are that the appellant was manufacturing of excisable goods, bearing brand name 'LUK' belonging to M/s Luk India Pvt. Ltd., but was not paying duty thereon. Therefore, an investigation was conducted against the appellant and it was found that the appellant is manufacturing and supplying clutch assembly and parts to the O.E. manufacturers under the brand name 'LUK' which is owned by M/s Luk India Pvt Ltd. Therefore, on the basis of investigation, a show cause notice was issued to the appellant for payment of central excise duty amounting to Rs. 83,487/- alongwith interest and to impose penalty under Section

11AC of the Act. The matter was adjudicated, the demand of duty along with interest was confirmed and penalty under Section 11AC of the Act was also imposed. Against the said order, the appellant is before us praying for waiver of penalty.

3. Ld. Counsel for the appellant submits that the appellant was under bonafide belief and a small manufacturer who was not knowing the complicity of Central Excise Act could not pay duty in time. On pointing out during the course of investigation by the investing team, he immediately paid Rs. 80,000/- and later on also he paid the balance amount of Rs. 3,487/-, therefore, the show cause notice was issued to them as barred by limitation. Hence, no penalty is imposable on the appellant.

4. On the other hand, the Ld. AR for the Revenue reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. In this case, the appellant is not contesting the payment of duty and only seeking relief from this Tribunal with regard to penalty imposed on them. We have gone through the statement of the appellant recorded during the course of investigation and as per the statement it was mentioned by the appellant that they were not aware of the fact that they were suppose to pay central excise duty on the clearance of goods made to different depots of M/s Luk India Pvt. Ltd with their brand name. Further, we find that the appellant voluntarily paid the amount of duty and being a bonafide assessee, as the show cause notice has been issued by invoking

extended period of limitation, therefore, we hold that in terms of 11AC of the Act, the extended period is not invocable to impose penalty on the appellant. We take a note of the fact that the Ld. Counsel for the appellant have undertaken not to contest the amount of duty already paid, in that circumstances, penalty imposed on the appellant is dropped.

With these terms, the appeal is disposed of.

*(Dictated & pronounced in the Court)*

**(Bijay Kumar)**  
Member (Technical)

**(Ashok Jindal)**  
Member (Judicial)

G.Y.