CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60122 of 2020

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-50-2020 dated 19.02.2020 passed by the Commissioner of CE & ST (Appeals), Ludhiana]

Avon Cycle Ltd **......Appellant**
(G T Road, Dhandari Kalan,
Ludhiana, Punjab)

VERSUS

Commissioner of CE & ST, Ludhiana **......Respondent**
(F Block, Rishi Nagar,
Ludhiana, Punjab)

<u>APPEARANCE:</u>

Present for the Appellant: Mr. Sudhir Malhotra, Advocate

Present for the Respondent: Ms. Geetika, Authorized Representative

<u>CORAM:</u> **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60541/2021

DATE OF HEARING: 10.03.2021

DATE OF DECISION: 18.03.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein various penalties under the various provisions have been imposed on the appellant.

2. The facts of the case are that the appellant is a manufacturer of bicycles, electrically operated vehicles and parts and accessories thereof. During the course of audit for the period August 2014 to

March 2016, it was observed that the appellant has not filed statuary returns, therefore, a show cause notice was issued on 23.05.2018 proposing the demand of late fees recoverable from the appellant under the provisions of the Central Excise Law as under:

S.No.	Return	Prescribed rule	Period of non filing of return	Due date for submission	Penal Provisions for non submission	Penalty Imposed
1	ER-4	12(2)(a) of CER, 2002	2013-14	30th November of the succeeding year	Rule 27 of CER, 2002	Rs.5000/-
2	ER-4	12(2)(a) of CER, 2002	2014-15	30th November of the succeeding year	Rule 12(6) of CER, 2002	Rs.20000/-
3	ER-5	9A(3) of Cenvat Credit Rules 2004	2014-15	30th April of the succeeding financial year	Rule 15A of Cenvat Credit Rules 2004	Rs.5000/-
4	ER-6	9A(3) of Cenvat Credit Rules 2004	Aug 2014 to march 2016	Within 10 days from the close of month to which it relates	Rule 15A of Cenvat Credit Rules 2004	Rs.95000/-
5	ER-7	12(2A)(a) of CER, 2002	2014-15	30th April of the succeeding financial year	12(6) of CER, 2002	Rs.20000/-
Total						Rs.145000/-

The adjudicating authority confirmed the proposals made in the show cause notice and the same have also been confirmed by the Commissioner (Appeals). Against the said order, the appellant is before me.

3.1 The ld. Counsel for the appellant submits that the show cause notice has been issued after lapse of more than two years without alleging any suppression, concealment of facts, mis-declaration; therefore, penalties are not imposable.

3.2 Further, it is the submission that there was no Rule 9A(3) at the time of issuance of the show cause notice. Therefore, penalty on the appellant of Rs. 95,000/- cannot be imposed.

3.3 It is his submission that Rule 9A(3) was deleted vide Notification No. 13/2016-CE (NT) w.e.f. 01.04.2016 without any saving clause. Therefore, the issuance of the show cause notice is not sustainable for the same as issued on 23.05.2018.

3.4 He further submits that the filing of returns through electronic was mandated in November 2011 and the Department never informed nor objected for non filing of returns under reference during the material period. There was regular audit was being conducted and no such discrepancies were pointed out and the details of cenvat credit taken goods manufactured clear by paying duty and statuary ER-1 were periodically filed by the appellant. There is no allegation of wilful suppression, concealment of facts, mis-declaration with intent to draw unlawful benefit, therefore, penalty on the appellant is not imposable.

4. On the other hand, the ld. A.R. submits that during the impugned period, the provisions of Rule 9A(3) were in existence, therefore, penalties on the appellant are rightly imposed.

5. Heard the parties and considered the submissions.

6. The sole ground taken by the appellant that as in the show cause notice, there is no allegation of wilful suppression, concealment of facts, mis-declaration therefore, penalties on the appellant are not imposable.

7.1 I find that during the course of audit itself, the audit team raised the objection, but the appellant did not accept the view of the audit team and did not file the returns. In these circumstances, the extended period of limitation is rightly invoked.

7.2 Further, I find that penalty imposed under Rule 27 of the Central Excise Rules, 2002 is on higher side and the same is reduced to Rs. 2000 for non filing ER-4 (Yearly) return for the period 2013-14.

7.3 For ER-4 (Yearly) return for the period 2014-15 and for ER-7 (Yearly) return for the period 2014-15, penalties in terms of Rule 12(6) of the Central Excise Rules, 2002 have been rightly imposed for non filing the returns of Rs. 20,000/- each, the same are confirmed.

7.4 For ER-5 (Yearly) return for the period 2014-15 and ER-6 (Monthly) for the period August 2014 to March 2016, penalties imposed in terms of Rule 15A of the Central Excise Rules, 2002 for non filing the returns under Rule 9A(3) of the Cenvat Credit Rules, 2004, I hold that at the time of issuance of the show cause notice, the provisions of Rule 9A(3) were omitted without saving clause. In these circumstances, penalties of Rs. 5000/- and Rs. 95,000/- respectively imposed on the appellant are set aside.

8. With the above terms, the appeal is disposed of.

(Order pronounced in the court on 18.03.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi