IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/317/2011

(Arising out of Order-in-Appeal No. 12/2011 dated 23.2.2011 passed by the Commissioner of Central Excise (Appeals), LTU, Chennai)

Commissioner of Central Excise, LTU, Chennai   Appellant

Vs.

M/s. Areva T&D India Ltd.   Respondent

Appearance

Shri R. Subramaniam, AC (AR) for the Appellant
Shri Joseph Prabhakar, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.05.2018**

Final Order No. **41550 / 2018**

Per Bench

Department has filed this appeal against the order passed by Commissioner (Appeals) who set aside the penalty imposed under section 11AC of the Central Excise Act, 1944.

2. The respondents are engaged in manufacture of switch gear and were issued a show cause notice demand duty of Rs.20,94,314/- on the goods cleared by them to their sister

units alleging undervaluation by not adopting 115% / 110% of the cost of production for the period from 1.4.2003 to 31.12.2005. After due process of law, the original authority confirmed the demand along with interest and imposed equal penalty. In appeal, Commissioner (Appeals) set aside the equal penalty imposed observing that the clearances having been made to the sister units, the situation is revenue neutral one.

3. The ld. AR Shri R. Subramaniam reiterated the grounds of appeal.

4. The ld. counsel Shri Joseph Prabhakar appearing for the respondents submitted that the Commissioner (Appeals) had relied upon the decision of the Larger Bench of the Tribunal in the case of Jay Yuhshin Ltd. Vs. Commissioner of Central Excise, New Delhi – 2000 (119) ELT 718 (Tri. LB). That the department has relied upon the case of M/s.Nirlon Ltd. Vs. Commissioner of Central Excise, Mumbai – 2004 (177) ELT 836 (Tribunal). The case of M/s. Nirlon Ltd. was appealed before the Hon'ble Supreme Court and vide judgment reported in 2015 (32) ELT 22 (SC), the Hon'ble Apex Court had observed that the entire exercise being revenue neutral, there was no malafide or intention to evade payment of duty and held that the extended period cannot be invoked. That the very basis of the grounds of appeal is on the decision in the case of M/s.

Nirlon Ltd., which has been held in favour of the assessee, the appeal filed by the department may be dismissed.

5. Heard both sides.

6. The department has filed appeal aggrieved by the order of setting aside the penalty imposed under Section 11AC of the Central Excise Act. Undisputedly, the clearances are made to the sister unit and the appellant would be eligible to avail the credit of the duty, if any, by paying them. Viewed in this angle, the situation is revenue neutral one and as discussed in the cases of Jay Yuhshin Ltd. (supra) and M/s. Nirlon Ltd. (supra), we are of the view that there being no malafide intention to evade payment of duty, the Commissioner (Appeals) has rightly set aside the penalties imposed. We find no ground to interfere with the order passed by the Commissioner (Appeals). The impugned order is upheld and the appeal filed by Revenue is dismissed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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