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

E/507 to 510/2008

(Arising out of Order-in-Original No. 12/2008 dated 26.8.2008 passed by the Commissioner of Central Excise, Trichy)

M/s. GEECO ENERCON Pvt. Ltd.
Shri C. Gunasekaran
Shri R. Rajarajan
Shri Albert Jeychandar — Appellants

Vs.

Commissioner of Central Excise, Trichy — Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri R. Subramaiyam, AC (AR) 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: **16.08.2017**

Final Order Nos. 41677-41680/2017

Per Bench

The appellants are engaged in the manufacture of boiler components falling under Chapter 84.02. The officers of Anti-Evasion of Central Excise Commissionerate, Trichy conducted search on 23.8.2006 in the factory and branch office of the appellant. A show cause notice dated 26.3.2007 was issued for the period from 2001 – 02 to 2006 – 07 demanding Rs.52,94,478/- alleging the following issues:-

(a) Clandestine removal of excisable goods involving duty of Rs.35,14,998/-

(b) Irregular availment of credit to the extent of Rs.15,55,686/-

(c) Clearance of scrap without payment of duty of Rs.2,23,884/-

The appellants approached the Settlement Commission on the second and third issues, admitting the liability. However, the Settlement Commission chose not to settle the case and directed the appellant to face adjudication proceedings. After adjudication, the Commissioner vide impugned order dropped the demand of Rs.35,14,998/- relating to clandestine removal. However, confirmed the demand of irregularly availed credit and clearance of scrap without payment of duty to the tune of Rs.17,79,570/-. Hence this appeal.

2. At the time of hearing, learned counsel Shri M.Kannan submitted that the appellant is confining the challenge only in regard to the equal penalty imposed. He submitted that the appellant was not given the benefit of paying reduced penalty of 25%. The appellant had made payment of about Rs.40 lakhs during the time of investigation and this would be sufficient compliance for payment of duty demand and the interest

thereof. That, therefore, the appellant ought to have been given the benefit of reduced penalty. He also pleaded to set aside the personal penalty imposed on the other appellants.

3. Against this, the learned AR Shri R. Subramaniyam reiterated the findings in the impugned order.

4. Heard both sides.

5. The only plea put forward by the learned counsel for the appellants is for benefit of reduced penalty of 25% as they have paid the entire duty demand and interest confirmed in the impugned order. The Hon'ble Supreme Court in the case of CCE Vs. R.A. Shaikh Paper Mills Pvt. Ltd. – 2016 (335) ELT 203 (SC) has observed that the adjudication order must mention about the availability of benefit of first and second proviso of reduced penalty. Admittedly, the appellant has not been given the benefit of reduced penalty. In such circumstance, we are of the considered opinion that equal penalty imposed has to be reduced to 25% of the duty demand and is ordered accordingly.

6. The other appeals are filed against the personal penalty imposed on the Director, Manager (Commercial), Manager (Purchase) etc. We find no reasons to interfere with the nominal penalty imposed against such persons. Therefore, the appeals filed by them are dismissed. The impugned order is modified to the extent of reducing the penalty to 25% of the

duty demand and the appeals filed by C. Gunasekaran, R. Rajarajan and Albert Jeychandar is dismissed. The appeal filed by the main appellant M/s. GEECO ENERCON Pvt. Ltd. is partly allowed in the above terms with consequential benefit, if any.

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

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S.)**
Member (Technical)	Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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