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

E/225/2009

(Arising out of Order-in-Original No. 24/2008 dated 19.01.2009 passed by the Commissioner of Central Excise, Pondicherry).

M/s. Brite Automotive & Plastics Ltd. Appellant

Vs.

CCE, Pondichery Respondent

Appearance

Shri T.R. Ramesh, Advocate
for the appellant

Shri S. Govindarajan, AC (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **30.10.2017**

FINAL ORDER No. 42490 **/2017**

Per: Archana Wadhwa

The challenge in the present appeal is only to imposition of penalty of Rs. 1,00,000/- under Rule 173Q of Central Excise Rules 1944, in the remand order passed by the Commissioner.

2. After hearing the Ld. Advocate, Shri T.R Ramesh, and Ld. DR we note that the issue pertains to inclusion of the amortization cost

Wadhwa

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of moulds, tools in the assessable value of the assessee's final product.

3. The matter had earlier travelled up to the Tribunal vide Final Order No. 706, 707/2006 dated 03.08.2006, vide which it was held that the amortization cost is required to be added in the assessable value. However, by taking note of the assessee's grievance that certain figures have not been taken correctly in the case of the supplied moulds by M/s. Whirlpool Ltd., the matter was remanded for quantification of the said demand.

4. As the Commissioner had not imposed penalty under Section 11 AC Revenue also had filed appeal, which was disposed of along with the assessee's appeal vide the order referred supra. It was observed that for the period prior to 28.8.96, when provisions of Section 11 AC were introduced in the statute book, no penalty was imposable. As such, the matter was remanded to the Commissioner for reconsideration of the issue of imposition of penalties in terms of Section 11 AC for the period subsequent to 28.8.96. As regards assessee's challenge to imposition of penalty under Rule 173 Q, the matter was left to the Commissioner for taking a fresh decision, depending upon the quantification of the differential duty.

5. In the remand proceedings, the Commissioner has confirmed the demand again in terms of the earlier order of the Tribunal, to which the appellant has no grievance. However, in addition he has imposed a penalty of Rs. 44,339/- under Section 11 AC of the Act

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and a penalty of Rs. 1,00,000/- imposed under Rule 173Q of the Rules. The appellant is only challenging the penalty under Rule 173Q.

6. As contested by the Ld. Advocate, such penalty imposed under Rule 173Q is not justifiable in as much as the issue during the relevant period ie., from January 93 to August 97 was not free from doubt and there were many conflicting decisions from various Benches, requiring the matter to be referred to the LB in the year 2000. It is only after the LB decision, the issue attained finality. In such a scenario, the appellant cannot be held guilty of any malafide so as to invoke the provisions of Rule 173Q. He also submits that the penalty under Section 11 AC having already been imposed, a separate penalty under Rule 173 Q is not justified.

7. After hearing the Ld. DR, we find ourselves in agreement with the LD. Advocate. Admittedly, during the relevant period, the issue was not free from doubt and there were decisions of the Tribunal holding in favour of the assessees. The law came to be declared against the assessee only with the LB decision. In such a scenario, the appellant cannot be held guilt of any wrong doing by not including amortization cost of the moulds/tools in the assessable value of their final product. The appellants have also paid the majority of the demands confirmed against them and have already been met with penalty under Section 11 AC, in which case a separate penalty under Rule 173 Q is not warranted. We accordingly set aside the penalty under Rule 173Q. The demands

confirmed, along with confirmation of interest and imposition of penalty under Section 11AC is not being interfered with and stands upheld as not contested by the appellants.

(Order dictated and pronounced in the open Court)

31/10/17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

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