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

E/115/2009

(Arising out of Order-in-Appeal No. 134/2008 (P) dated 2811.2008 passed by the Commissioner of Central Excise, (Appeals), Chennai).

M/s. Wipro Limited	Appellant
Vs.	
CCE, Chennai	Respondent

Appearance

Shri Sinduja Christian, Advocate
for the appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

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

Date of Hearing/Decision: **04.07.2017**

FINAL ORDER No. 41144 **/2017**

Per: Sulekha Beevi C.S.

The above case was taken up for hearing as per the published list. On behalf of the appellant Ld. Counsel Ms. Sinduja Christian submitted that the appellant is confining the argument only on the ground that the appellant was not given the benefit of reduced penalty in terms of proviso to Section 11 AC of the Central Excise Act, 1944. The Ld. Counsel pointed out that either in the order-in-original or in the impugned order, the authorities below have not given the appellant the chance to pay reduced penalty of 25 % of the duty. She submitted that the appellant had paid the duty demand within 30 days of the date of order-in-original and the interest and 25% of penalty was paid thereafter within 10 days. She relied upon the decision in the case of *CCE & Customs Vs. R.A. Shaikh Paper Mills P. Ltd.* – 2016 (335) ELT 203 (S.C.) as well as the judgment in the case of *K.P. Pouches (P) Ltd. Vs. UOI* – 2008 (228) ELT 31 (Del.) and argued that the authorities below ought to have explicitly stated in the orders passed by them that such option of reduced penalty is available to the appellants. That only if such an option is informed to the assessee, the assessee would be able to pay the reduced penalty and take advantage of the first proviso to Section 11 AC of the Central Excise Act, 1944.

2. Against this, Ld. AR, Shri K. Veerabhadra Reddy, JC, reiterated the findings in the impugned order. He submitted that the proviso to Section 11 AC is very much clear that the appellant can avail the benefit of reduced penalty if the duty along with interest and reduced penalty is paid within 30 days of the communication of the adjudication order. This being so, the appellant cannot urge the request for reduced penalty at the appellate stage.

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3. We have heard the submissions made by both sides.

4. The appellant does not contest the duty demand or the interest. The only plea put forward is that they have not been given the opportunity to pay the reduced penalty of 25% of duty demand either by the adjudicating authority or the Commissioner (Appeals). On perusal of the orders passed by the authorities below, & it is seen & that the authorities below have not given the option of reduced penalty. In the judgment relied upon by the Ld. Counsel it is laid that the adjudicating authority has to mention in the order that such an option is available to the appellant to pay reduced penalty of 25% if the duty demand, interest and reduced penalty is paid within 30 days of communication of the adjudication order. Therefore relying upon the above judgments as well as the Board's Circular dated 22.05.2008, we have to see that such benefit has to be extended to the appellant. The Ld. Counsel submitted that the appellant has paid the duty demand, interest as well as 25% of the penalty. In view thereof, we find that the impugned order can be modified to the extent of reducing the penalty to 25% without disturbing the demand of duty or interest.

5. Appeal is partly allowed in the above terms with consequential relief, if any, as per law.

(Operative part of the Order pronounced in the Open Court on 04.07.2017)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

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