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

E/67/2009

(Arising out of Order-in-Appeal No. 125/2008-CE (SLM) dated 28.10.208 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Sona Valliappa Textile Mills Pvt. Ltd. Appellant

Vs.

Commissioner of Central Excise, Salem Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri K.P. Muralidharan, 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: **19.09.2017**

Final Order No. 42144/2017

Per Bench

The facts of the case are that the appellants are engaged in manufacture of cotton yarn / polyester / polyester cotton blended yarn etc. It appeared that the appellants had cleared excisable goods without payment of duty and without cover of proper invoice during the period September 2001 to August 2002. Hence show cause notice dated 7.7.2006 was issued to

Customs, Excise & Service Tax Appellate Tribunal the appellants, inter alia, proposing to impose penalty under Rule 25 of Central Excise Rules, 2001/2002, Rule 173Q of erstwhile Central Excise Rules, 1944 r/w section 11AC and 38A of Central Excise Act, 1944. In adjudication, the original authority inter alia imposed penalty of Rs.7,38,715/- on the appellant on the ground that the said amount equivalent to the total duty not paid in respect of goods cleared under 15 invoices. In appeal, Commissioner (Appeals) vide impugned order dated 28.10.2008 upheld the imposition of such penalty. Aggrieved, the appellants are before this forum.

2. Today, when the matter came up for hearing, the ld. counsel Ms. Minchu Mariam Punnose submits that the issue of duty liability in respect of 15 invoices was also part of the proceedings involved in show cause notice issued to the appellant in August 2002 which had culminated in Order-in-Original dated 8.5.2005 confirming the payment of duty through PLA. However, on appeal Commissioner (Appeals) vide impugned order dated 31.8.2005 while confirming the demand of duty reduced the penalty to Rs.1,00,000/-. On further appeal, the Tribunal vide Final Order No. 41795 & 41796/2015 dated 22.9.2015 held that the demand of duty is unsustainable and set aside the demand of duty and penalty imposed. She submits that, in view of the above position, imposition of penalty in the instant case is unjustified.

3. On the other hand, ld. AR Shri K.P. Muralidharan supports the impugned order.

4. Heard both sides and gone through the case records.

5. We find that the very same issue was part of the proceedings which culminated in the Final Order of this Bench dated 22.9.2015, relied upon by the ld. counsel. In the circumstances, we find that the imposition of penalty in the present appeal is unwarranted. In consequence, that part of the impugned order upholding the imposition of penalty of Rs.7,38,715/- will require to be set aside, which we hereby do.

6. In the result, appeal is allowed in the above terms.

(Dictated and pronounced in open court)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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