CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH - COURT No. III

Excise Appeal No.41419 of 2015

(Arising out of Order-in-Appeal No.40/2015-CE dated 21.05.2015 passed by Commissioner of Central Excise (Appeals-I),, No.1, Foulks Compound, Anai Road, Salem 636 001)

M/s.Teemage Builders P Limited **.... Appellant**
No.3/156, Pachapalayam
Kovai Trichy Road,
Olapalayam (PO)
Kangeyam – 638 701.

VERSUS

The Commissioner of CGST & Central Excise **... Respondent**
Salem Commissionerate
No1, Foulks Compound, Anai Road,
Salem 636 001.

<u>APPEARANCE :</u>

Shri S. Sathyanarayanan, Advocate, for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

<u>CORAM</u> :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

<u>FINAL ORDER No.41209/2024</u>

DATE OF HEARING : 12.09.2024
DATE OF DECISION :12.09.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that appellant is engaged in the manufacture of excisable goods and is registered with the Central Excise Department. On verification of accounts of the appellant, it was noticed that the appellant failed to issue invoice for captively used final products and to pay excise duty on such captively consumed final product. On being pointed by the department officers, the appellant reversed cenvat credit of Rs.3,58,002/- being appropriate Central Excise duty payable on such products. They also paid interest to the tune of Rs.11,746/- vide challan dt. 13.06.2014 and requested for waiver of penalty. However, show cause notice dt. 28.05.2015 was issued demanding Central Excise duty of Rs.3,58,002/- with interest and proposing to impose penalties. After due process of law, the original authority confirmed the demand, interest and imposed equal penalty. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

2. The Ld. Counsel Shri S. Sathyanarayanan appeared and argued for the appellant. It is submitted that the appellant is not contesting the confirmation of duty or the interest paid by them. Even though appellant had paid the Central Excise duty along with interest on being pointed out by the officials of the Department, show cause notice has been issued proposing to impose penalty and also for appropriation of amounts paid by the appellant. The appellant is contesting only the penalty imposed. There is no evidence adduced by department to establish that the appellant has suppressed facts with intent to evade payment of duty. On being pointed out the omission to pay duty on certain invoices, the appellant has paid up the same at the earliest. It is prayed that a lenient view may be taken and the penalty may be set aside.

3. Ld. A.R Ms. O.M. Reena appeared and argued for the Department. The findings in the impugned order were reiterated.

4. Heard both sides.

5. On perusal of records, it is seen that the appellant has paid up the duty along with interest immediately on being pointed the omission to pay the duty. Show cause notice has been issued invoking the extended period alleging suppression of facts on the part of appellant with intent to evade payment of duty. There has been no evidence adduced by the Department to establish that the appellant has indulged in positive act of suppression in order to evade payment of duty. For this reason, we find the invocation of extended period cannot sustain. However, it is submitted by the Ld. Counsel that appellant is not contesting the duty demand and the interest and is confining the contest only on the penalty imposed. Under these circumstances, we hold that penalty imposed requires to be set aside.

6. In the result, the impugned order is modified to the extent of setting aside the penalty only. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Order dictated and pronounced in the open court)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

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