

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41377 of 2015

(Arising out of Order-in-Original No. LTUC/82/2015-C dated 30.03.2015 passed by
Commissioner of Central Excise, Large Taxpayer Unit, Chennai)

M/s. Brakes India Private Limited
MTH Road, Padi, Chennai – 600 050.

...Appellant

Versus

Commissioner of Central Excise
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

...Respondent

And

Excise Appeal No. 42404 of 2015

(Arising out of Order-in-Original No. 18/2015 dated 31.08.2015 passed by Commissioner of
Central Excise, Chennai II, Chennai)

M/s. Transenergy Pvt Ltd.
Formerly M/s. Wichitra Auto Ltd.,
Survey No. 71, Door No. 85,
Maduravoyal Bye Pass,
Ayanambakkam,
Chennai – 600 095.

...Appellant

Versus

Commissioner of Central Excise
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

...Respondent

APPEARANCE:

For the Appellants : Mr. P.R. Renganath, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos.40605-40606/2025

DATE OF HEARING : 28.03.2025
DATE OF DECISION : 11.06.2025

Per Mr. AJAYAN T.V.

These two appeals *viz.*, E/41377/2015 and E/42404/2015
being interconnected, with the issues in the latter arising as a

consequence to the issues in the former, are hence taken up for disposal together by this common order.

2. M/s. Brakes India Pvt. Ltd. (BIPL), the Appellant in appeal No. E/41377/2015 is a manufacturer of automobile parts falling under Chapter 87 of the Central Excise Tariff Act, 1985 and are availing CENVAT credit of Central Excise duty paid on inputs, capital goods and service tax paid on input services under CENVAT Credit Rules, 2004.

2.1 M/s. Wichitra Auto Ltd. (WAL), presently known as M/s. Transenergy Pvt. Ltd., Chennai the Appellant in appeal No. E/42404/2015 is a dedicated supporting manufacturer of BIPL and is engaged in the manufacture of Hose Assembly falling under Chapter subheading 40093200 of the Central Excise Tariff Act, 1985. M/s. WAL while manufacturing Hose Assembly are sending some of the intermediate products such as Hose End Assembly, Sleeves, etc. for plating at BIPL and after the said process, receives them back and use them in the further manufacture of Hose Assembly. These intermediate goods were being transmitted to and fro without payment of duty, under the cover of job-work challans. From July 2012 onwards, WAL opted to send the components to BIPL on payment of Central Excise duty. BIPL availed the CENVAT credit of the duty so paid and after completion of necessary process, BIPL again returned the job worked components on payment of duty. On verification of the records of BIPL, it appeared that BIPL instead of taking landed cost of material received and adding the applicable job work charges to arrive at the cost of the job worked material, was

instead clearing the outgoing job worked goods at a much lesser price. It appeared to the Department that such a commercial unviable transaction pointed to undervaluation of the job worked goods by BIPL.

2.2 Consequently, a letter dated 26.02.2014 was sent to BIPL calling for details of the short payment of duty due to adoption of incorrect assessable value. BIPL *vide* their e-mail dated 27.02.2014, admitted the short payment and agreed to pay the differential duty along with appropriate interest. Further, *vide* letter dated 09.04.2014, BIPL explained that while calculating the assessable value for the job worked goods, they arrived at the cost of the material based on the Bill of Material of BIPL instead of WAL and that lead to the undervaluation and that BIPL had worked out and paid an amount of Rs.1,11,94,846/- along with interest of Rs.13,10,440/- *vide* Challan No. 00120 dated 21.03.2014, towards clearance of job worked goods during the period from July 2012 to 08.03.2014.

2.3 Department being of the view that though under self-assessment system, BIPL had failed to correctly assess the value of the goods cleared by them to WAL and consequently did not pay the correct duty thereon, and further that but for the verification of records by the Departmental officers, the issue would not have seen the light of the day and the differential duty along with interest would have remained unrealized; was of the opinion that BIPL have deliberately suppressed material facts and contravened the provisions of the Central Excise Act and Rules made there under with intent to evade payment of duty.

2.4 Accordingly, the Department issued a Show Cause Notice dated 09.07.2014 proposing to demand Rs.1,11,94,846/- along with interest thereon and proposing appropriation of the said amounts that already stood paid by BIPL, along with proposal to impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Pursuant to the reply filed by BIPL and after due process of law, the Adjudicating Authority *vide* Order-in-Original No. LTUC/82/2015-C dated 30.03.2015 confirmed the demands and appropriations as proposed in the Show Cause Notice and also imposed equivalent penalty.

2.5 In as much as pursuant to the remittance of short-paid duty by BIPL, BIPL had issued an invoice dated 21.03.2014 for the said amount of Rs.1,11,94,846/- to WAL, on the basis of which WAL thereafter availed CENVAT credit, a Show Cause Notice No.5/2015 dated 16.02.2015 was issued to WAL proposing to disallow the said CENVAT credit along with interest thereon and proposing to impose of penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the Central Excise Rules, 2002. After due process of law, proposals in the Show Cause Notice stood confirmed *vide* Order-in-Original No. 18/2015 dated 31.08.2015 along with imposition of equivalent penalty.

2.6 Aggrieved by the respective impugned Orders-in-Original, the appellant BIPL has preferred the appeal No. E/41377/2015 taking exception to the impugned Order-in-Original No. LTUC/82/2015-C dated 30.03.2015 and the appellant WAL has

preferred the appeal No. E/42404/2015 against the impugned Order-in-Original No. 18/2015 dated 31.08.2015, and are before this Tribunal.

3. The Ld. Counsel Mr. P.R. Renganath appeared on behalf of both the Appellants and argued the matter. He submitted that BIPL manufactures a number of automobile parts. About 6,000 items move on payment of duty to various other locations of the Appellant. In as much as, the Appellant's system contains details regarding material cost and the stage of removal of the material from the Appellant's Factory, the value is determined based on cost details available in the system and such provisional value is adopted by the system for payment of duty. Since it is provisional, at regular intervals of 3-4 months, the system generates cost data for the given period, after taking into account the actual cost of materials and the conversion cost. This cost data is audited, and the cost of production certificate is generated by the system applying CAS-4 norms. Based on this Certificate, differential duty, if any, is paid together with interest. This value then becomes the provisional value for clearance until the next cost validation takes place based on actual cost. These facts stood attested to *vide* affidavit of Shri T.N. Ananthakrishnan, VP-Finance of the Appellant *vide* affidavit at page 42 of the Appellant's Paper Book.

3.1 The Ld. Counsel submits that the process flow pertaining to Hose End Assemblies involved in the present appeal, as has

been also averred to in the aforementioned affidavit, are as under: -

- a) BIPL asks its vendors to send the raw materials directly to WAL. For the excise duty paid on the raw materials, WAL avails credit. (This is unlike the other 6,000 items where the raw material is received in BIPL's factory and undergoes process there before being sent to other locations of the BIPL).
- b) WAL then converts the same into hose ends, sleeves, etc., and pays duty on the same and sends them [64 part numbers] to BIPL for plating and return thereafter to WAL.
- c) On receipt of these hose ends/sleeves, BIPL avails credit, does plating, pays duty and returns the same to WAL,
- d) WAL takes credit of the duty paid, uses the plated items in the manufacture of hose assembly, and clears the hose assembly on payment of duty to customers of the BIPL.
- e) The transaction is completed when BIPL raises commercial invoice on their customers for supply of hose assembly by WAL.
- f) The movement of goods is under cover of duty paid excise Invoices. WAL raises commercial invoice on BIPL for the job charges and excise duty (remitted in cash by WAL net of credit).

3.2 It is further submitted that until July 2012, BIPL and WAL were following the job work procedure, and goods were moved without payment of duty. From July 2012, it was decided that goods would move on duty payment and the determination of

value though was made on manual basis. Thus, BIPL took into consideration the value declared by WAL in their duty payment challans, added the conversion cost for plating at the BIPL's premises plus margin to arrive at the value on which duty was paid accordingly. However, as the movement of all materials from BIPL had always been through system generated documents to ensure proper material accounting, the movement for these goods for which value was computed as stated above, also were through system generated challans for control purposes and the value arrived at above manually was entered in the system for calculating the amount of duty. This method was followed until October, 2012.

3.3 The Ld. Counsel further submitted that however from October 2012, the system generated cost data for the items moved by BIPL to WAL. The system recognized only the bare purchase cost of the material and the cost of conversion at the BIPL's end (plus profit), as was the case with respect to the other 6,000 items that BIPL was clearing to various other locations. The system did not recognize that the items moved by BIPL to WAL after conversion process at BIPL were items already processed at WAL and were not bare raw material, which is the case with the other 6000 items. The Ld. Counsel submits that since the materials thus got undervalued to the extent of the initial conversion cost incurred by WAL, consequently the goods outgoing from BIPL got valued at a price less than the incoming raw materials. In this regard, he draws attention in para 6(v) of the reply to Show Cause Notice at page 38 of the paper book. He

submits, since the entire process was now system driven, inadvertently this escaped attention till the Department pointed out the discrepancy in February 2014.

3.4 The Ld. Counsel further points out that the appellant had in its reply explained elaborately as to how the mistake had occurred inadvertently along with an affidavit dated 10.10.2014 of the Vice President-Finance (Corporate) laying out comprehensively as to how adoption of the incorrect value had been occasioned. He submits that despite this, the detailed affidavit was not even adverted to, much less controverted.

3.5 The Ld. Counsel submits that the affidavit explains every aspect of the transaction details of how the inadvertent error occurred, and how it was not intentional at all. The Ld. Counsel further submits that differential duty demand in the proceedings is equivalent to the conversion cost on WAL which itself will indicate this was an inadvertent error. That even otherwise there is no gain for BIPL from such alleged undervaluation for the reason that the duty that BIPL pays is available as CENVAT credit to WAL and the complete Hose Assemblies suffered duty in the hands of WAL at the appellant's selling price for the same. It is not in dispute even in the impugned Order-in-Original as it is evidenced from para 12.2 at page No. 27 of the Paper Book that completed product in the hand of WAL has suffered the appropriate tax and further whatever amount WAL pays as in cash as duty is recovered from BIPL since it is the appellant BIPL who raises the commercial invoice on the customer for the Hose Assemblies supplied by WAL. This fact too is recognized in the

aforementioned para 12.2 of the OIO. Thus, there no reason, or gain for BIPL to pay less duty and invite a notice, when whatever is paid as duty at the intermediate stage is available as credit to it ultimately.

3.6 The Id. Counsel would further submit that inasmuch as the completed final product suffered full duty, there is no loss to the Revenue. He submits that when the entire exercise is neutral, the appellant could not be said to have evaded payment of duty as held by the Supreme Court in the case of *Nirlon Ltd. Vs. Commissioner of Central Excise, Mumbai* [2015 (320) ELT 22 (SC)] and also *CCE, Chennai IV v. Tenneco RC India Pvt Ltd*, 2015 (323) ELT 299 (Mad). It is further submitted that the reason to hold that the appellant has deliberately suppressed material facts in the Order-in-Original is that the appellant has not opted to pay penalty of 1% per month as prescribed under Section 11A(6) of the Central Excise Act, 1944. It is his argument that non-payment of penalty cannot establish suppression rather the question of payment of any such payment of penalty would arise only if there is a suppression.

3.7 The Id. Counsel argues that mistakes can be either deliberate / intentional or unknowing / unintentional. Thus, the mere fact that the mistake of a party came to light only upon another party's question cannot establish that the mistake was necessarily deliberate / intentional. Whether the mistake was deliberate or not is required to be ascertained from the attendant facts and circumstances and in the instant case, the Department has been unable to place anything on record to point to fact /

circumstances to show that the mistake was intentional. On the contrary, the appellant had filed a detailed affidavit setting out the circumstances in which the error was occasioned. It is his submission that when there is nothing on record to disprove that the appellant's mistake was *Bonafide* mistake, there cannot be imposition of penalty under Section 11AC of the Central Excise Act, 1944 as held by the Supreme Court in the case of *Commissioner of Central Excise, Calcutta-II Vs. India Aluminium Co. Ltd.* [2010 (259) ELT 12 (SC)].

4. As regards the appeal of WAL, it is the submission of the Ld. Counsel that as above, the short payment of duty by BIPL being not on account of any intention to evade duty and there being no loss to the exchequer, the CENVAT credit availed was legal. He further submitted *arguendo* even assuming, but not admitting, that there has been suppression, the appellant would still be entitled to CENVAT credit. He has placed his reliance in the cases cited below: -

- i. *Commissioner of Central Excise, Hyderabad-IV vs. Jairaj Ispat Ltd.* [2009 (245) ELT 118 (AP)]
- ii. *Karnataka Soaps & Detergents Ltd. Vs. Commissioner of Central Excise, Mysore* [2010 (258) ELT 62 (KAR.)]

5. Shri. M. Selvakumar, Ld. Authorised Representative, appeared and argued for the Respondent. Ld. A.R. reiterates the findings of the adjudicating authorities in the impugned orders.

6. We have heard both sides, perused the appeal records and also the case laws submitted as relied upon.

7. The issues that arises for determination are whether the undervaluation of the goods cleared by BIPL occurred due to inadvertence or whether it was deliberate and whether the finding in the impugned Order-in-Original No. LTUC/82/2015-C dated 30.03.2015 that BIPL has deliberately suppressed material facts and contravened the provisions of the Central Excise Act, 1944 so as to be visited with penalty under Section 11AC of the Central Excise Act, 1944 is tenable. It also has to be determined whether the finding that cenvat credit availed by WAL on the supplementary invoice of BIPL is ineligible availment of cenvat credit and the subsequent demand of the entire cenvat credit availed and levy of equivalent penalty, as imposed in the impugned Order-in-Original No. 18/2015 dated 31.08.2015, is tenable.

8. We note that in the impugned Order-in-Original No. LTUC/82/2015-C dated 30.03.2015, the Ld. Adjudicating Authority, despite recording the contention of the appellant BIPL that their actions were Bonafide and the short payment of duty occurred due to system error, has neither adverted to, nor controverted, the detailed affidavit filed by the Vice President Finance (Corporate) of BIPL, elaborately detailing the fact circumstances that has resulted in the short payment of duty which is contended to be an inadvertent error. The contentions of

the appellant that the entire transactions as has occurred, is even otherwise revenue neutral, too remains undisputed by the Ld. Adjudicating authority.

9. While it is conceded that the appellant has discharged the entire duty demanded along with interest, even before the issue of show cause notice; that they did not opt to pay the penalty of 1% per month prescribed under Section 11A(6) of the CEA 1944 along with the reason that, had it not been for the verification of the records of the appellant by the officers of the department the issue would not have seen the light of the day; are the factors that weighed with the adjudicating authority to hold that the appellant has deliberately suppressed material facts and contravened the provisions of the CEA 1944 and the rules made thereunder with intend to evade payment of duty, and to impose equivalent penalty on the appellant.

10. We have perused the affidavit available as part of the Appeal records. The entire sequence of transactions have been elaborated in detail and we are satisfied that the appellant's adoption of the system generated cost of production for the items cleared to WAL as the provisional value, without recognizing the fact that the system while generating the cost of production for the said items did not take into consideration the anterior conversion charges at WAL which were hitherto being fed in consequent to their change from job work procedure to duty paid clearance procedure, was an entirely plausible inadvertent error.

The appellant has also categorically averred in its reply that they have shown their bonafides by suo motu working out the differential duty liability and paying the same along with applicable interest before the issuance of the notice. It is also pertinent that when WAL was paying duty and clearing the goods to BIPL they were availing credit and subsequently when BIPL paid duty and returned the job worked items to WAL, they availed credit. Thus, while there has been a short payment of duty in the intermediate stage, equally it has only resulted in the respective party availing less credit and paying more duty in cash while clearing the hose assembly. Had the duty been paid on the correct value by BIPL, the same would have been availed as credit by WAL and used for payment of duty on the Hose Assembly cleared from their end. In any event, these items were converted as Hose Assembly in the hands of WAL and the duty paid on the ultimate Hose Assembly cleared was at BIPL's selling price, irrespective of what had transpired at the intermediate stage. Thus, there was no revenue loss to the Exchequer. In such situations, there cannot be a malafide intent attributable to the appellant. In this regard, the reliance placed by the appellant on the decisions in *Nirlon Ltd. Vs. Commissioner of Central Excise, Mumbai [2015 (320) ELT 22 (SC)]* is appropriate, where the Hon'ble Apex Court has held as under:

"9. We have ourselves indicated that the two types of goods were different in nature. The question is about the intention, namely, whether it was done with *bona fide* belief or there was some *mala fide* intentions in doing so. It is here we agree with the

contention of the learned Senior Counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty.

10. Therefore, it was not permissible for the respondent to invoke the proviso to Section 11A(1) of the Act and apply the extended period of limitation. In view thereof, we confirm the demand insofar as it pertains to show cause notice dated 25-2-2000. However, as far as show cause notice dated 3-3-2001 is concerned, the demand from February, 1996 till February, 2000 would be beyond limitation and that part of the demand is hereby set aside. Once we have found that there was no *mala fide* intention on the part of the appellant, we set aside the penalty as well."

The aforesaid decision of the Apex Court has been followed in ***CCE, Chennai IV v. Tenneco RC India Pvt Ltd, 2015 (323) ELT 299 (Mad)***.

11. We are therefore, satisfied that the mistake that has resulted in understating the value is a Bonafide mistake without any intention to evade payment of duty. We also note that neither the SCN nor has the adjudicating authority too in the impugned Order in Original, attributed any positive or deliberate act of wilful misstatement or suppression of facts with intent to evade payment of duty on the part of the appellant. That is to say there is no evidence adduced by the Department that the mistake of

BIPL which is claimed to be inadvertent, was in fact intentional. We also note that in ***Uniworth Textiles Ltd v CCE, Raipur, 2013 (288) ELT 161 (SC)***, the Apex Court has held that it is a cardinal postulate of law that the burden of proving any form of *mala fide* lies on the shoulders of the one alleging it. The Apex Court went on to cite its observation in *Union of India v. Ashok Kumar & Ors.* - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility." We are therefore of the considered view that the Revenue has not discharged its burden of proving that the appellant had made these transactions with any malafide intent or with an intent to evade payment of duty. We also note that the appellant is not contesting its liability to pay the said duty amount with interest due thereon and has readily paid the same without demur before issuance of the show cause notice.

12. The finding of the adjudicating authority that since the appellant has not chosen to pay the 1% penalty prescribed under Section 11(6) of the CEA, 1944 it goes to prove wilful suppression and misstatement of facts with intent to evade payment of duty is literally turning the provision on its head. It is evident from a plain reading of the said Section 11(6) that it applies only to a person chargeable with duty under Section 11(5), which in turn is attracted only where during the course of any audit, investigation

or verification, it is found that any duty has not been levied or paid or has been short levied or short paid for the reasons mentioned in clauses (a) to (e) of sub-section (4), namely the ingredients that are necessary to attract the invoking of extended period of limitation. Therefore, when the appellant is contending that it is entirely due to inadvertence that the said mistake has occurred, justifiably there arose no occasion for the appellant to pay the said penalty prescribed under Section 11(6). We are of the considered view that in the absence of any of the aforesaid ingredients of sub-section (4) there was no necessity for the appellant to have paid the penalty stipulated under Section 11(6) and the finding of the adjudicating authority in this regard is unsustainable.

13. All these factors when viewed cumulatively and objectively, persuade us to accept the appellant BIPL's contention that it was an inadvertent error and that there was no mala fide intention on their part to evade or avoid tax. If at all, it was a bona fide error actuated by the facts and circumstances as detailed in the affidavit of the concerned personnel. In this regard, the reliance placed by the appellant BIPL on the decision in ***CCE, Calcutta-II v Indian Aluminum Co. Ltd, 2010 (259) ELT 12 (SC)*** to contend that in a case of Bonafide mistake penalty under Section 11AC cannot be imposed, is apposite. We note that a similar view has also been taken in ***CCE Vapi v Kisan Mouldings Ltd, 2010 (260) ELT (SC)***. Therefore, we are of the considered view that the reasons on which the adjudicating authority has grounded its

decision to hold that the appellant BIPL has deliberately suppressed material facts and contravened the provisions of the CEA 1944 and the rules made thereunder with intent to evade payment of duty, and to impose equivalent penalty on the appellant, are wholly untenable. The adjudicating authority has erred in imposing equivalent penalty on the appellant in these facts and circumstances and it cannot sustain.

14. In view of our discussions, we modify the impugned Order-in-Original No. LTUC/82/2015-C dated 30.03.2015 and set aside the penalty imposed, as prayed for. In light of our aforesaid findings, in as much as there is no taint attached to the duty paid by BIPL, we hold that WAL cannot be faulted for the cenvat credit availed on the supplementary invoice No.31714 dated 21.03.2014 issued by BIPL. In as much as the said invoice does not bear any taint, the cenvat credit taken by WAL is licit and on a document that we find valid in terms of rule 9(1)(b) of the Cenvat Credit Rules, 2004. Therefore, we set aside the impugned Order-in-Original No. 18/2015 dated 31.08.2015 in its entirety.

The appeals are allowed in the above terms.

(Order pronounced in open court on 11.06.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)