CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 51567 OF 2019

[Arising out of the Order-in-Appeal No. 349 (CRM) CE/JDR/2019 dated 10/04/2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur.]

M/s Bhansali Engineering Polymers Ltd. ......Appellant
SP-138-143, Ambaji Industrial Area, Abu Road,
Rajasthan.

Versus

The Commissioner (Appeals), ...Respondent
Central Excise & Central Goods
and Service Tax, Jodhpur,
G-105, New Industrial Area, Opp. Diesel Shed, Basni,
Jodhpur (Rajasthan).

APPEARANCE:

Shri Pradeep Jain, Chartered Accountant for the appellant.
Shri Bhagwat Dayal, Authorized Representative for the Department

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59379/2024

DATE OF HEARING : 24.10.2024
DATE OF DECISION: 28.10.2024

P.V. SUBBA RAO

Bhansali Engineering[1] filed this appeal to assail the order-in-appeal dated 10.4.2019[2] passed by the Commissioner (Appeals) whereby he set aside the order-in-original dated 29.6.2018[3] passed by the Assistant Commissioner sanctioning

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1. **appellant**
2. **impugned order**
3. **OIO**

refund of Rs.66,34,414/- to the appellant. The facts that led to the issue of the impugned order are as follows.

2. The appellant is a manufacturer registered with the Central Excise department. A show cause notice dated 10.01.2013 was issued to the appellant which was adjudicated by the Commissioner by order dated 27.2.2014 confirming the following demands :

a) Disallowance of CENVAT credit of Rs. 1,22,98,442/- and order of its recovery under Rule 14 of the CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act along with interest.

b) Penalty of an amount equal to the above under Rule 15(2) of the CENVAT Credit Rules, 2004 read with section 11AC. **However, if the duty, interest and penalty were paid within 30 days of the communication order, the penalty under section 11AC shall be only 25% of the above amount.**

c) Demand of Rs. 2,98,20,913/- under section 11A with interest and equal amount of penalty.

3. On appeal, this Tribunal, by Final Order No. 56417-56418/2017 dated 4.9.2017 passed in Appeal no. E/53051-53052 of 2014, set aside the demand of Rs. 2,98,20,913/- [see (c) in paragraph 2 above] but upheld the confirmation of demand of Rs. 1,22,98,442/- [see(a) and (b) in paragraph 2 above] along with equal amount as penalty under section

11AC. There was no specification regarding the penalty being only 25% if the appellant had paid it within 30 days of the passing of the order in original by the Commissioner.

4. The Commissioner had indicated in his order that if the appellant pays the duty confirmed along with the penalty within 30 days of his order, the penalty under section 11AC (which is usually equal to the amount of duty) shall be reduced to 25%. According to the appellant it paid the duty confirmed along with 25% penalty within 30 days. According to the appellant it had, paid the duty interest and penalty within 30 days.

5. After calculating the demands confirmed and dropped and the penalties, the appellant filed an application for the consequential refund which was sanctioned by the Assistant Commissioner. The Commissioner (Appeals) held in the impugned order that the Assistant Commissioner committed an error in sanctioning the refund because this Tribunal had in its Final Order dated 4.9.2017 confirmed demand of Rs.1,22,98,442/- along with equal amount of penalty and had not mentioned anything about reduction of penalty to 25% if the demand and penalty were paid within 30 days of the order in original. Therefore, the Commissioner (Appeals) held that penalty of equal amount under section 11AC is confirmed by this Tribunal and it should be reckoned and not the reduced

penalty of 25% and therefore, refund was wrongly sanctioned by the Assistant Commissioner.

6. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records. Relevant portions of section 11AC of the Central Excise Act, under which the mandatory penalty of an amount equal to duty was imposed reads as follows:

> **"Section 11AC. Penalty for short-levy or non-levy of duty in certain cases.** -
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> (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-
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> > (a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher :

Provided that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;

(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

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7. A perusal of the above shows that the section itself provides for penalty equal to 100% and further provides that if the demand is paid along with penalty within 30 days of the order, the penalty shall be only 25%. Thus, both the penalty of 100% and its reduction to 25% on fulfilment of some conditions are mandatory. Even if penalty of 100% is imposed

and it is not mentioned in the order in original that the penalty shall stand reduced to 25% if the duty, interest and penalty were paid within 30 days, if the assessee pays within 30 days and thereby fulfils the requirements for reduction of penalty, it will be entitled to that reduction. In this case, the Commissioner did indicate in his order about reduction of penalty but the Tribunal did not mention it in its order. However, that does not mean that the Tribunal has enhanced the penalty to 100% even though the appellant had fulfilled the conditions for reduced penalty. The Commissioner (Appeals) clearly mis-read the Tribunal's order and on that ground set aside the refund sanctioned by the Assistant Commissioner.

8. In view of the above, we allow the appeal and set aside the impugned order and restore the order of the Assistant Commissioner dated 29.6.2018.

(Order pronounced in open court on 28/10/2024.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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