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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/2999/2009 – SM[BR] E / CO / 18 / 2010-SM[BR]** Date **09/06/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI II Appellant
Vs
M/S ALLIED INDUSTRIAL AREA, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 297 / 2011 –SM[BR]** dated 5.5.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S ALLIED INDUSTRIAL AREA,
A-96/1, MAYAPURI INDUSTRIAL
AREA, PHASE-II, NEW
DELHI-110064.

2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ, NEW DELHI 110070

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Excise Appeal No. 2999 of 2009 (SM) along with Cross Objections No.E/CO/18/10 (SM)

[Arising out of the Order-in-Appeal No. 214/CE/APPL/DEL-II/2008 dated 14/09/2008 passed by The Commissioner (Appeals), Central Excise & Service Tax, Delhi.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Delhi-II — Appellant

Versus

M/s Allied Industries — Respondent

Appearance

Shri R.S.Sharma, Advocate– for the respondent.

Shri Anil Khanna, SDR – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 05/05/2011.

Final Order No. 297/2011 SM (Br) Dated : ___________

Per. Rakesh Kumar :-

The respondent are manufacturer of electrical contacts chargeable to Central Excise duty. A show cause notice dated 29.08.07 was issued to them for confirming duty demand of Rs.1,23,736/- along with interest in respect of clearance of electrical contacts, appropriation of an amount of Rs.1,23,736/- payment of duty already deposited by them and the imposition of penalty on them under Rule 25 of Central Excise Rules. Besides this, show cause notice also proposed imposition of penalty on Dinesh Saini, Partner of the respondent firm, under Rule 26 of Central Excise Rule 2002. The show cause notice nowhere proposed imposition of penalty on the respondent under section 11AC of Central Excise Rules. Assistant Commissioner adjudicated the show cause notice vide Order-In-Original dated 17.10.08 which-(a) the duty demand of Rs.1,23,736/- was confirmed along with interest and amount deposited was appropriated, (b) the penalty of Rs.1,23,736/- was imposed on respondent under Rule 25 of Central Excise Rules, 2002 and (c) penalty of Rs.50,000/- was imposed on Shri Dinesh Saini under Rule 26 of Central Excise Rules, 2002. On appeal being filed to Commissioner(Appeals), the Commissioner (Appeals) vide Order-In-Appeal dated 14.09.09, while upholding the duty demand, reduced the penalty on the respondent - M/s Allied Industries to 25% of the duty amount under proviso to section 11AC read with Rule 25, on the ground that the respondent had paid the duty amount before the issue of show cause notice. Penalty on Shri Dinesh Saini was also reduced to Rs.25,000/-. Revenue is in appeal against the Commissioner (Appeals)'s order reducing the penalty to 25% of the duty amount under section 11AC read with Rule 25, on the ground that since the interest on duty had not been paid within the period stipulated in proviso to section 11AC, the reduction of penalty is not correct. The respondent in respect of appeal by the department has filed the Cross Objection.

2. Heard both the sides.

3. Shri Anil Khanna, Ld. SDR, assailed the impugned order reducing the penalty on the respondent by reiterating the grounds of appeal. He also relied upon the Board's Circular dated 15.09.09 according to which the benefit of reduced penalty in

terms of proviso to Section 11AC can be given only on fulfillment of following three conditions :

(i) The duty demand confirmed along with interest has been paid within 30 days from the date of communication of adjudication of order and the reduced penalty of 25% duty has also paid within same period.

(ii) The said period of 30 days is calculated from the date of communication of the order passed by a Central Excise Officer determining the duty.

(iii) The reduced 25% penalty is also paid within 30 days of the date of communication of the order passed by the Central Excise Officer.

He pleaded in this case since neither interest nor 25% penalty had been paid within 30 days from the date of communication of order, reduction of penalty by Commissioner(Appeals) is not correct.

4. Shri R.S.Sharma, Advocate, the Ld. counsel for respondent pleaded that the section 11AC had not been invoked in the show cause notice which proposed imposition of penalty of under Rule 25(1) of Central Excise Rules, 2002 only, that the adjudication order passed by the Assistant Commissioner, imposed penalty under Rule 25 of Central Excise Rules and not under section 11AC, that while in section 11AC, there is no provision for

reduced penalty except in the circumstances mentioned in 1st and 2nd proviso to section 11AC, under the Rule 25 of Central Excise Rules 2002, the quantum of penalty is discretionary, that since in the original adjudication order, the penalty has been imposed under Ruie 25 only, the same has been rightly reduced by the Commissioner(Appeals) and that in view of this, there is no infirmity in the impugned order.

5. I have carefully considered the submissions from both the sides and have perused the records.

6. On going through the show cause notice, it is seen that the Assistant Commissioner proposed imposition of penalty only under Rule 25 and there is no mention at all of imposition of penalty under section 11AC. The Assistant Commissioner in the adjudication order has imposed penalty under Rule 25 only, not under section 11AC and under Rule 25, the quantum of penalty is discretionary. The Commissioner (Appeals) in his order cannot go beyond the scope of the show cause notice and imposed penalty under section 11AC. Just because the Commissioner (Appeals) refers to section 11AC also, the penalty imposed by the original adjudication authority does not become penalty under section 11AC. Moreover, it is also settled law, that show cause notice is the foundation of a case and the original adjudicating authority or the Appellate authority cannot travel beyond the show

cause. In view of this, the department cannot plead that the penalty imposed was under section 11AC and its reduction is only subject to the condition prescribed in 1st and 2nd proviso of section 11AC. Since the penalty had been imposed under Rule 25 of Central Excise Rules where the quantum is discretionary, there is no informity in the impugned order reducing the penalty and as such the conditions for reduced penalty in 1st and 2nd proviso to section 11AC are not applicable to this case. The revenue's appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I