IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/224/2011-Ex[SM]

[Arising out of Order-in-Appeal No. 385(CB)CE/JPR-II/2010- Addl Commr dated 22.12.2010, passed by the Commissioner of Central Excise, Jaipur]

M/s. Shiv Shakti Minerals & Chemicals ....Appellant

Vs.

Central Excise Commissionerate, Jaipur-II ....Respondent

Appearance:

Ms. Priyanka Goel, Advocate for the Appellant
Sh. R.K. Mishra, AR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 05.01.2017

FINAL ORDER NO. 50237 /2017-Ex[SM]

Per V. Padmanabhan

The appeal is filed against the Order-in-Appeal dated 22.12.2010. The appellant is engaged in the manufacture of Clinker and Grey Portland Cement falling under Chapter 25 of the Central Excise Tariff. The appellant was availing the small scale exemption during the financial years 2006-2007 and 2007-2008. On the basis of allegation that the appellant crossed the exemption limit and still not paid the Excise duty on the goods manufactured by them, Revenue mounted on investigation against the appellant and issued Show Cause Notice dated 25.9.2008 for demand of Excise duty to the extent of 12,37,435/- . The demand was confirmed by the Original Authority vide his Order dated 17.2.2010. When the Order was challenged before the Commissioner (Appeals), the demand was reduced to Rs 7,77,816/-. Appellant is in appeal against the above impugned order.

2. With the above background, I heard Ms. Priyanka Goel, Ld. Advocate appearing for the appellant as well as Shri R.K. Mishra, Ld. AR for the respondent.

3. The submission of the ld. Counsel for the appellant is that they are not challenging the demand amounting to Rs 7,77,816/- confirmed by the Commissioner (Appeals). They have already paid the dues along with interest and 25% penalty. However, she submitted that on account of a calculation mistake, the correct demand works out to Rs. 7,76,100/- which has been paid with interest and 25% penalty. She accordingly prayed that the penalty amount imposed under Section 11AC equal to the demand of Duty confirmed may be reduced to 25%.

4. Ld. DR reiterates the Impugned order.

5. I find that the appellant has actually accepted the Impugned order and already complied by making payment of the Excise Duty confirmed in the Impugned order along with interest and 25% penalty. The Ld. Counsel submitted that they should be extended the benefit of payment of penalty under Section 11AC reduced to 25% since such an option of payment of reduced penalty has not

been made available by the Commissioner (Appeals) in the Impugned Order. Accordingly, she requested that this option may be extended to them.

6. Section 11AC(c) provides that the duty determined under Section 11A and the interest payable thereon paid within 30 days from the date of communication of the order of the Central Excise Officers, the amount of penalty liable to be paid shall be 25% of the duty so determined. The benefit of 25% penalty will be available to the appellant provided that this penalty amount is also paid. From the records of appeal, I find that out of total amount confirmed in the Impugned order to the extent of Rs 7,77,816/- and the amount of Rs. 7,76,100/- has already been paid along with interest and 25% penalty. The minor difference is on account of calculation mistake, which I accept.

7. In view of above, I extent the benefit of reduction in penalty to 25%.

[Dictated and Pronounced in the Open Court]

V. Padmanabhan
(Member Technical)

RS