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

Appeal No. E/549,550/2011-EX(SM)
[Arising out of Order-in-Appeal No. 748 & 749/CE/D-II/10 dated 06.12.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Welspring Universal
Shri Pradeep Sekhri, Partner **....Applicants**

Vs.

C.C.E. New Delhi **....Respondent**

Appearance:

Shri S. Dabas, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

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

Date of Hearing: 10.01.2017

FINAL ORDER NO. 50424-50425/2017-EX(SM)

Per V. Padmanabhan:

The present appeals are filed by the appellant as well as their partner Shri Pradeep Sekhri against the impugned order in appeal dated 06.12.2010 passed by the Commissioner (A) New Delhi.

2. The appellant is working as a 100% EOU and engaged in the manufacture of welding accessories. The dispute is with reference to Cenvat Credit availed by the appellant. Revenue was of the view that the invoice based on which Cenvat Credit had been availed did not indicate that the inputs were in the nature of brass and copper scrap as held by them. Accordingly show cause notice was issued for reversal of the Cenvat Credit to the extent of Rs. 24,26,336/-.

3. The same was confirmed by the Original Authority vide his order dated 14.05.2010 along with claim of interest and penalty of

equal amount under section 11AC. Further, the penalty of Rs.20 lakhs was imposed on Shri Pradeep Sekhri under Rule 26 Cenvat Credit Rules 2002. Appeals challenging order in original were filed before the Commissioner (A) who passed the impugned order in which the penalty imposed on the partner was reduced from Rs.20 lakhs to Rs.5 lakhs. The Commissioner (A) also extended the benefit of penalty amount at the reduced level of 25% since the appellant had already discharged the entire liability along with interest of 25% penalty.

4. With the above background, I have heard Shri S. Dabas, Advocate for the Appellants and Shri M.R. Sharma, DR for the Respondent.

5. The only plea made by the Ld. Counsel is that the penalty imposed on the partner may also be set aside. He submitted that since the duty involved, interest payable as well as 25% penalty has been paid within one month from the date of issue of show cause notice, it is to be deemed that the entire proceedings initiated are concluded. Accordingly, penalty originally imposed on the partner also would stand waived. He took support from the CBEC Circluar no. 11/16-Cus dated 15.03.20016.

6. Heard the Ld. DR.

7. I have perused the relevant CBEC circular which has clarified regarding co-noticee in the context of section 28 of the Customs Act 1962. The circular clarified that when the notice pays up the entire duty, interest and penalty, under such circumstances the proceedings shall be considered as closed not only against the

noticee but also against the other persons to whom any demand of duty is envisaged but on whom penalty might have been imposed. Since section 11A under which the present notice has been issued is *pari materia* to section 28 of the Customs Act, I am of the view that similar benefit would be extendable to the appellant and partner.

8. In view of the above, the proceedings are to be deemed concluded not only against the appellant but also against the partner of the appellant. In the result, the impugned order stands upheld but with the modification that the penalty imposed on the partner also gets waived. Both the appeals are disposed of in the above manner.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu