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

Appeal No. E/60013/2013-EX(SM)

[Arising out of Order-in-Appeal No.DLI/EXCUS/002/APP/152-154/13-14 dated 27.08.2013, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Delhi-II].

M/s. Ajay Poly Pvt. Ltd. **....Applicants**

Vs.

C.C.E. Delhi-II **....Respondent**

Appearance:

Shri V. Swaminathan, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)

Date of Hearing: 27.12.2016

FINAL ORDER NO.56417/2016-EX(SM)

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 27.08.2013 passed by the Commissioner (A) Central Excise Delhi. The grievance of the appellant is that since the duty along with interest amount has been paid before issuance of show cause notice, there was no necessity for issuance of any show cause notice in terms of section 11A (2B) of the Central Excise act, 1944 for imposition of penalty.

2. Heard both sides and examined the records.

3. The Central Excise officers visited the factory of the appellant in the month of March 2011 and observed that the appellant had

short paid Central Excise duty on removal of excisable goods and to its sister unit. Upon detection of such mistake by the Central Excise officers, the appellant had deposited the duty amount along with interest on 25.05.2011. Thereafter, the show cause notice was issued by the Department on 02.08.2011, seeking recovery of short paid duty along with interest alleging suppression of fact.

4. Submission of the appellant before the Commissioner (A) was that since the case relates to transfer of goods to the sister unit, where the duty paid is eligible for Cenvat Credit, the case is Revenue neutral and allegation of suppression, misstatement, etc cannot be leveled against the appellant.

5. The law is well settled that in the case of removal of excisable goods to sister unit, the duty paid thereon is eligible for Cenvat Credit to the other unit. Hence the situation is revenue neutral and the allegation of suppression will not hold good. The admitted position in this case is that the amount of duty along with interest was paid prior to issuance of show cause notice. Thus, the benefit contained in Section 11A(2B) ibid should be available to the appellant for non-imposition of penalty.

6. In view of the above, the impugned order is set aside and the appeal is allowed in favour of the appellant.

[Dictated and Pronounced in the open Court]

(S.K. Mohanty)
Member (Judicial)

Bhanu