CUSTOMS, EXCISE & SERVICE TAX APPELLATTRIBUNAL
R.K. PURAM, WEST BLOCK NO. 2,
NEW DELHI-110066
COURT NO. II

Date of hearing: 25/10/2016

Date of decision:01/02/2017

Appeal No. E/2314-2315/2009-EX(SM)

[Arising out of Order-in-Appeal No. 230-231/CE/DLH/2008 dated 31.12.2008 passed by the Commissioner of Central Excise (Appeals) Delhi-I]

M/s Vishal Metal Industries
M/s Krishna Metal Industries **Appellant**

Vs.

CCE-Delhi-I **Respondent**

Appearance:
Shri Akshars Garg, Ld. Advocate for the Appellant.
Shri S. Nunthuk, Ld. AR for the Respondent

Coram:
Hon’ble Shri Ashok K. Arya, Member (Technical)

FINAL ORDER NO. 50557-50558/2017-EX(SM)

Per:Ashok K. Arya

1. The appellants Viz. M/s Vishal Metal Industries and M/s Krishna Metal Industries are in appeal against the Order-In-Appeal no. 230-231 dated 31.12.2008 passed by Commissioner (Appeals), Delhi-I, whereunder the liability of duty, interest and penalty against the appellants have been sustained.

2. The Chartered Accountant, Shri Akshaes Garg represented the Appellants and Ld. A.R. Shri S. Nunthuk represented the Revenue.

3. Shri Akshaes Garg, C.A. *inter alia* argues that there was no certainty on duty liability and they had no intention not to pay duty of Central Excise; therefore, they are not liable to pay penalty and interest.

3.1 The appellants *inter alia* submit that the earlier the issue of payment of duty was in doubt; therefore, they did not pay duty on time. In this regard they relied on the decision of CESTAT Delhi in the case of *Perfect Strips Vs. Commissioner of Central Excise, Delhi*-III – 2001 (129) E.L.T. 672 (Tri.-Del.)

4. The ld. A.R. reiterates the findings of the lower/revenue authorities.

5. It clear from the facts that the liability of duty on the subject goods during the relevant period was in doubt and when there are no malafides on the part of the appellants, no penalty is liable to be imposed on the appellants. The Hon'ble Supreme Court in the case of *Devans Modern Breweries Ltd. Vs. Commissioner of Central Excise, Chandigarh* 2006 (202) E.L.T. 744(S.C.) holds that penalty under section 11AC of Central Excise Act, 1944 is imposable if non-payment of duty involves fraud, collusion, willful misstatement or suppression of facts with 'intent to evade'.

5.1 The appellants' plea that they are not liable to pay interest as there are no malafides in not paying duty cannot get the appellants desired relief of nonpayment of interest, when provisions of Section 11AB of Central Excise Act makes them liable to pay interest on the delayed payment of duty of Central Excise. The basic premise is that when the duty has not been paid on time, the interest is payable for the period till the duty is paid. Consequently there cannot be any relief admissible to both the appellants for nonpayment of interest.

5.2 However, in respect of penalty imposed on the appellants, when there are no malafides involved and the issue of liability of duty on the subject goods during the relevant period was not free form doubt, considering the Hon'ble Gujarat High Court's decision in case of *Commissioner of Central Excise & Customs, Service Tax vs. V.V.F. Ltd.* 2011 (268) ELT 463 (Gujarat), the penalty imposed on both the appellants is hereby set aside and the impugned Order-in-Appeal is modified to the said effect.

6. In the result, both the appeals are partly allowed in above terms.

[**Pronounced in Open Court on______01/02/2017_______]**

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

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