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. IV

DATE OF HEARING : 12/05/2017.
DATE OF DECISION : 12/05/2017.

Excise Appeals No. 1203-1204 of 2011 with C.O. No. 231-232 of 2011 and Appeal No. 1205 of 2011 (SM)

[Arising out of the Order-in-Appeal No. 10 to 12-CE/DLH/2011 dated 28/02/2011 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

CCE, Delhi – I Appellant

Versus

Shri Arvind Sachdeva, Partner of]
M/s Sachdeva Auto Centre]
M/s LML Limited] Respondents
Shri M.G. Dixit, Divisional Manager of]
M/s LML Limited]

Appearance

Shri K. Poddar, Authorized Representative (DR) – for the appellant.

Shri R. Santhanam, Advocate – for the Respondents.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 53304-53306/2017 Dated : 12/05/2017

Per. B. Ravichandran :-

These 3 appeals are by Revenue against order dated 28/02/2011 of Commissioner (Appeals), Delhi-I. The brief facts of the case are that the main respondent M/s Sachdeva Auto

Centre, Karol Bagh, New Delhi was engaged in the business of trading in automobile parts. They were purchasing two wheelers auto parts from M/s LML Limited (second respondent) and packed/repacked the same before further sale. With effect from 01/06/2006 in respect of automobile parts and components repacking/re-labeling will amount to process of manufacture liable to Central Excise duty in terms of Notification 11/2006-CE (NT) dated 29/05/2006.

2. Certain enquiries were conducted by the officers of Central Excise with the main respondent. It was noticed that in respect of auto components purchased by main respondent during April-May, 2006 from M/s LML Limited, the main respondent did not discharge due Central Excise duty when the same were cleared after repacking/re-labeling, after 01/06/2006. Accordingly, proceedings were initiated against the main respondent as well as the other two respondents to demand Central Excise duty from main respondent and to impose penalties on all three respondents. The case was adjudicated by the Original Authority, who vide order dated 26/11/2009 held that the main respondent fulfilled the requirements in terms of sub-Section (1A) of Section 11A of Central Excise Act, 1944 and accordingly, he concluded the proceedings in the said case against all the respondents. The Commissioner (Appeals) vide the impugned order dated 28/02/2011 upheld Original Order. The Revenue has again preferred appeal against this order.

3. The Learned AR elaborated the grounds of appeal by Revenue. He submitted that the closure of proceedings approved by the lower Authorities cannot extend to penal proceedings under Rule 26 of the Central Excise Rules, 2002. The closure under Section 11A cannot conclude the proposal for penalty under Rule 26 of the Central Excise Rules, 2002.

4. The Learned Counsel appearing for the respondent submitted that they have filed two cross submissions against the appeals of the revenue in the case of main respondent as well as M/s LML Limited. He submitted that even if the main respondent is held liable to Central Excise duty in view of the changed legal position with effect to 01/06/2006 they are entitled for Cenvat credit of Central Excise duty already paid by M/s LML Limited on the same goods which were used for repacking and re-labeling by the main respondent. Regarding closure of proceedings, he submitted that the case against all the respondents arose only due to alleged non-payment of Central Excise duty by the main respondent. On payment of such duty alongwith applicable penalty of 25% of duty the case was duly closed by the Original Authority. There is no cause of action further to proceed against the respondent in this case.

5. I have heard both the sides and perused the appeal records. The Revenue is aggrieved that in spite of the main respondent fulfilling the condition by paying full duty liability with interest alongwith 25% penalty, the penal proceedings under

Rule 26 cannot be closed. I find that such proposition is not supported by law. The whole proceedings against the respondents were on the basis of non-payment on Central Excise duty on auto components. The said duty with interest alongwith 25% of penalty has been paid by the main respondent and as such the proceedings were ordered to be closed by the Original Authority. Such closure was upheld by the first Appellate Authority. I find that legal position regarding closure of case has been examined, in detail by the Commissioner (Appeals). The relevant portions of his findings are as below :-

> "The consequence and effect of such deposit has been mentioned in the first proviso of Sub-Section (2) of the Section 11A *ibid*. Which stipulates that the **proceedings in respect of such person and other persons to whom notice is served shall be deemed to be conclusive as to the matters stated in the notice.** I find that the word "**proceedings**" mentioned therein includes all proposals and contemplations initiated under the said notice against such person who had complied with the above conditions and also the persons whom said notice had been issued under Sub-Section (1) of Section 11 A of the Act *ibid*. In other words, said provisions do not specify any section or rule for conclusion of the proceedings but stipulates that proceedings in respect of such person and other persons be deemed to be conclusive as to the matters stated therein. I find that the words '***as to the matters stated therein'*** mentioned in the first proviso of Sub-Section (2) of Section 11 A *ibid*. indicated towards inclusion of all contemplations and proposals stated in the notice against all the persons to whom notice has been issued under Sub-Section (1A) of

Section 11 A of the Act *ibid*. In other words, it cannot be construed that impugned notice had not been issued to the respondent under Sub-Section (1) of Section 11 A of the Act ibid. Accordingly, the proposal for penalty under Rule 26 ibid. initiated in the impugned notice against the respondents has correctly been concluded by the adjudicating authority consequent to deposit of entire duty, interest and penalty of 25% of the duty involved by **M/s Sachdeva Auto Centre** in terms of first proviso to Sub-Section (2) of the Section 11 A ibid. I find that when the proceedings in respect of matters stated in the show cause notice became conclusive in terms of proviso of Sub-Section (2) of the Section 11 A *ibid*. consequent upon deposit of entire duty, interest and penalty of 25% of the duty involved by **M/s Sachdeva** Auto Centre within thirty days of the communication of the impugned show cause notice, the adjudicating authority has correctly not imposed penalty on the respondents. Therefore, I hold that the impugned order is proper and legal and there is no legal infirmity in the impugned order".

6. Considering the above analysis, I find that there is nothing in the present appeals by the revenue to controvert the above findings. I find no merit in these appeals and accordingly, the same are dismissed.

7. Regarding the plea of the respondent regarding entitlement of credit of duty already paid, I find that the cross appeal can agitate only matters which were decided in the impugned order. While cross appeal can be considered as an appeal for all purposes, even such appeal can only raise points which were subject matter of decision of impugned order. Further, even

before the Original Authority, these issues were not contested or examined. There was no appeal by the respondents against the original order also. In such situation, no finding can be recorded on a fresh plea now made by the respondents in these cross appeals. Accordingly, I find the cross appeals are liable to be rejected. Ordered accordingly.

8. The appeals and Cross Objections are disposed of accordingly.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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