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 : 18/05/2017.
DATE OF DECISION : 18/05/2017.

Excise Appeal No. 3254 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 158-159/CE/DLH/2009 dated 01/09/2009 passed by The Commissioner Central Excise (Appeals), Delhi – I.]

CCE, Delhi – I Appellant

Versus

M/s A.D. Tobacco Products Pvt. Ltd. Respondent

Appearance

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

Shri Kumar Vikram, Advocate – for the Respondent.

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

Final Order No. 53369/2017 Dated : 18/05/2017

Per. B. Ravichandran :-

The Revenue is aggrieved by the order dated 01/09/2009 of Commissioner (Appeals), Delhi – I. A case of improper accounting and non-payment of Central Excise duty on Gutka manufactured and cleared by the respondent was registered against the respondent. On completion of the enquiry, a show cause notice dated 09/05/2008 was issued to the respondent and also to the Director of the respondent. The said notice proposed a demand of Central Excise duty of Rs. 23,92,726/-; confiscation of Gutka valued at Rs. 3,31,500/-; confiscation of packing material; penalty under Rule 25 readwith Section 11AC on the respondent and penalty under Rule 26 on the Director of the respondent. The respondents have paid an amount of Rs. 31,31,000/- during the course of investigation itself, before the issue of show cause notice. The case was adjudicated by the Original Authority who confirmed the duty demand; confiscated the goods as proposed in the notice with option to redeem on payment of fine. He appropriated the duty amount from already paid amount. He also appropriated 25% of the said duty amount towards penalty. He further imposed penalty of Rs. 15,00,000/- on the Director of the respondent under Rule 26 of the Central Excise Rules, 2002. On appeal, vide the impugned order the Commissioner (Appeals) upheld the demand of Central Excise duty and recovery of 25% penalty ordered by the Original Authority. However, he set aside the confiscation of goods and also penalty on the Director. He held that the provisions of Section 11A (2) of the Act is rightly applicable to the present case and, as such, the proceedings in respect of respondent manufacturer as well as its Director should have been concluded. Aggrieved by this order, the Revenue is in appeal.

2. The learned AR elaborated the grounds of appeal and the learned Counsel for the respondent supported the impugned order and submitted certain case laws in this regard.

3. I have heard both the sides and perused the appeal records. The Revenue contested the impugned order on the ground that the facility of closure of proceedings as contemplated in Section 11A (2) is not applicable for the proceedings for confiscation of finished goods/raw material under Rule 25 and also for imposition of penalty under Rule 26. To that extent, it is the contention of the Revenue that Commissioner (Appeals) is wrong in dropping the said proceedings also. I note that the grounds now raised by the Revenue is not supported by legal provisions. Section 11A (2) states as below :-

> "The [Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-Section (1), determine the amount of duty of excise due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.
>
> [**Provided** that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), **the proceedings in respect of such person and other persons to whom notice are served under sub-Section (1) shall, without prejudice to the provisions of Section 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein**."

4. It is relevant to note that the said provision talks about <u>proceedings in respect of such person and other persons to whom notice are served under sub-Section (1) shall be deemed to be conclusive to the matters stated therein,</u> (emphasis supplied).

Admittedly, the case against the respondent is with reference to the duty demand and improper accounting. There is a single notice for both the parties (manufacturing unit and the Director). The proceedings are common and the matter is same. The interpretation of Revenue that the proceedings under Rule 25 and Rule 26 will continue to hold good, even after payment of full duty liability alongwith interest and 25% of penalty, is against the provisions of Section 11A (2).

5. The Tribunal in various earlier occasions had examined similar set of issues and held that the proceedings initiated in the same show cause notice shall stand concluded and no separate proceedings for penalty under Rule 26 or Rule 25 is tenable. In **Sonam Clock Pvt. Ltd. vs. CCE, Rajkot** reported in **2012 (278) E.L.T. 263 (Tri. – Ahmd.)**, the Tribunal observed as below :-

> "12. Thus, as per the scheme of these provisions, legislative intent seems to be that, if a person pays within 30 days of the receipt of show cause notice in full duty as demanded in the notice with interest and 25% of differential duty as penalty, the entire penal and confiscatory civil proceedings related to the notice issued under sub Section (1) of Section 11A, comes to an end. By such payment in stipulated time by the person and other persons to whom the notice is served under provisos to sub-section (1) of Section 11A of Central Excise Act, 1944 or Section 28 of Customs Act, 1962, is saved from the rigours of adjudication procedure for determination of duty, interest and imposition of any penalty and fine in lieu of confiscation under any statutory provisions in the matters

involved in the said notice, but the criminal prosecution proceedings against them for the same matters stated in the said notice, may continue.

14. It is also noticed that on 26-7-2006 the C.B.E. & C. had issued a Circular No. 831/8/2006-CX, clarifying the intention of dispensing with the rigours of adjudication procedure, behind enacting this optional scheme is to settle the dispute at an early stage to reduce the litigation and also to speed up the collection of dues more expeditiously. It is observed that the legislative intent behind such optional scheme would be defeated by not explicitly stating this option to the assessee in the notice issued under the provisos to sub-section (1A) of Section 11A of the Central Excise Act, 1944/Section 28 of the Customs Act, 1962".

6. In **Raman Gandhi vs. CCE, Delhi** reported in **2015 (323) E.LT. 579 (Tri. – Del.)**, the Tribunal concluded that if against a show cause notice the main party paid duty, interest and 25% duty as penalty, then the proceedings initiated through the show cause notice comes to an end. The said ratio has been adopted in various other decisions of the Tribunal also.

7. In view of the above discussion and analysis, I find no merit in the present appeal by Revenue. Accordingly, the same is dismissed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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