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

Excise Appeal No. E/52154/2014-Ex[SM]

[Arising out of Order-In-Appeal No. LUD-EXCUS-000-APP-76-13-14 dated: 19.03.2014 passed by Commissioner (Appeals) Chandigarh]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s Simran Engineering Works ...Appellant

Vs.

Commissioner of Customs, Chandigarh-I …Respondent

Appearance:
Mr. Rishi Chanan, Advocate for the Appellants
Mr. M S Negi, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.01.07.2015

FINAL ORDER NO. 54412 /2015

Per S. K. Mohanty:

The brief facts of the case are that the Central Excise Department alleged clandestine removal of excisable goods manufactured by the appellant. The appellant accepted the clandestine removal of goods, and accordingly deposited the duty along with 25% penalty, and intimated the same to the Department. The SCN dated 7.4.2011 was issued by the Department calling upon the appellant to pay the Central

Excise duty amounting to Rs. 3,95,577/-. Besides, the appellant was also called upon to show cause as to why penalty shall not be imposed under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the Cenvat Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944. The matter was adjudicated vide order dated 21.10.2011, wherein the proposals made in the SCN were confirmed. In appeal, the Ld. Commissioner (Appeals) has also upheld the order of the Adjudicating Authority. Hence, this present appeal by the appellant.

2. The short question involved in this appeal for consideration by this Tribunal, is whether, after payment of duty along with 25% of penalty, further proceedings can be initiated by the Central Excise Department for imposition of 100% penalty under Section 11AC of the Central Excise Act, 1944.

3. Sub Section 1(A) of Section 11A of the Central Excise Act, 1944 mandates that in case of fraud, collusion, willful mis-statement or suppression of facts or contravention of any of the provisions of the Act, or the Rules made there under, with intent to evade payment of duty, if the person pays the duty along with interest and 25% of duty as penalty, no proceedings shall be initiated. Further, the first proviso to Section 11AC of the Act provides that if the duty amount as determined under sub-section (2) of Section 11A and the interest payable thereon under Section 11AB, is paid within 30 days from the date of communication of the order of Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section, shall be 25% of duty so determined.

4. A conjoint reading of Section 11A and 11AC of the Act, its reveals that upon deposit of the duty with interest and 25% of penalty, no further proceedings can be initiated by the Central Excise Department. In the present case, the appellant besides paying the duty with interest, has also paid the penalty @ 25% of the duty, in compliance with the legal provisions, as stated above. Therefore, the appellant is not liable for any further penalty. As such, the impugned order conforming 100% penalty under Section 11 AC of the Act is not sustainable and accordingly, the same is set aside. The appeal is allowed in context with imposition of penalty alone.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member(Judicial)

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