CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 29.05.2017

Appeal No. E/52914/2016-EX[SM],E/52915/2016-EX[SM]
[Arising out of the Order-in-Appeal No.151-161-CE-DEL-2016 dated 11/08/2016, passed by the Commissioner of Central Excise (Appeals) New Delhi]

Vinayak Industries &
Pawan Kumar Jain … Appellant

Vs.

CCE, Delhi-II … Respondent

Appearance:

Present Shri Ram Prasad, Advocate for the appellant
Present Shri G.R. Singh, AR Advocate for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 54376/2017

Per Ashok K. Arya :

1. *M/s Vinayak Industries* and Pawan Kumar Jain are in appeal against Order in Appeal no. 151-161/2016 dated 11/08/2016 whereunder inter alia penalty of Rs. 13,43,330 under Section 11 AC of Central Excise Act, 1944 has been imposed on the appellant assessee, *M/s Vinayak Industries* and a penalty of Rs. one lac has been imposed on other appellant, Shri. Pawan Kumar Jain under Rule 26 of Central Excise Rules, 2002.

2. Both the appellants represented by Ld. Advocate, Shri Ram Prasad and the Revenue represented by Ld. G.R. Singh have been heard.

3. The Ld. Advocate for the appellant pleads that in case of the appellant *M/s Vinayak Industries* the benefit of reduced penalty of 25%, which is admissible as per Section 11 AC (1) (b) of Central Excise Act, 1944 has not been given. For the appellant Shri Pawan Kumar Jain, the Ld. Advocate pleads that a penalty of Rs. 1 lac has been imposed which needs further reduction.

   3.1 The Ld. DR reiterates the findings of the impugned order.

4. After having carefully gone through the facts of the case and the submissions of all the parties involved it appears that appellant *M/s Vinayak Industries* is entitled to the benefit of reduced penalty of 25%, when as per the provisions of Section 11 AC (1) (b) of Central Excise Act, 1944 the said appellant made the payment of duty of Central Excise along with the interest and 25% penalty before issue of show cause notice.

   4.1 The Ld. Advocate mentions that an amount of Rs.15 lac was deposited in this regard and same is sufficient to recover duty interest and 25% penalty. When it is so, the appellant assessee namely, *M/s Vinayak* Industries is entitled to the benefit of reduced penalty of 25% and the said benefit is hereby allowed to the assesee appellant.

5. The other appellant Shri Pawan Kumar Jain has pleaded that he issued only three *Katcha parchis* and two fictitious invoices totally involving duty of Central Excise of Rs 35,325/- only ;therefore, a penalty of Rs. One lac imposed on him is not commensurate with this offence. However, from the facts on record and submissions of all the parties there is no justification to further reduce penalty of Rs. One lac imposed on the said appellant under Rule 26 of Central Excise Rules, 2002. Consequently, the impugned order in case of the appellant Shri Pawan Kumar Jain is sustained.

6. Consequently, the impugned order is modified to above effect and the appeal filed by *M/s Vinayak Industries* is allowed in above terms and the appeal filed by Shri Pawan Kumar Jain is dismissed as without merits.

[Order Pronounced in the open court on_29/06/2017_]

(Ashok K. Arya)

Member (Technical)

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