IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/1019, 1020 & 1021/2010 SM]

[Arising out of Order-in-Appeal No.248-250/CE/DLH/2009 dated 16.12.2009 passed by the Commissioner (Appeals), Central Excise, New Delhi]

M/s.Orien Industries Ltd.
Shri.Varun Gupta, Director of
M/s.Orien Industries Ltd.
Shri Vipul Gupta, Director of
M/s. Swauto Motors (P) Ltd. …Appellants

Vs.

C.C.E., Delhi-I … Respondent

Present for the Appellant : Mr. V.R. Sathi, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision:23/06/2017

FINAL ORDER NO. 54632-54634/2017

PER: S.K. MOHANTY

These 3 appeals have been filed by M/s. Orien Industries Ltd. (Appellant No.1) manufacturer of motor vehicles parts, Shri Varun Gupta, Director of the appellant No.1 (Appellant No.2) and Shri Vipul Gupta, Director of M/s. Swauto Motors (P) Ltd. (Appellant No.3), a trader of the goods manufactured by appellant No.1.

2. Brief facts of the case are that the Central Excise Department investigated into the matter of availment of SSI exemption claimed by the appellant No.1. On the basis of investigation, show cause notices were issued to the appellants, proposing confirmation of duty demand and for imposition of penalties. The matter was adjudicated vide order dated 16.12.2008, wherein Central Excise Duty demand of Rs.42,58,131/- was confirmed alongwith interest. Besides, equal amount of penalty was also imposed on the appellant No.1. In addition, penalties of Rs.15,00,000/- each were imposed on the appellant No.2 and the appellant No.3. Feeling aggrieved with the adjudication order dated 17.12.2009, the appellants preferred appeal before the ld. Commissioner (Appeals). Before filing the appeal, the entire amount of duty, interest and 25 % of penalty were deposited by the appellant No.1. The ld. Commissioner (Appeals) has upheld the adjudged demand confirmed in the adjudication order.

3. The ld. Advocate appearing for the appellant submits that the adjudication order has not given the option to deposit 25% of penalty within 30 days from the date of such order. Since 25% of penalty was deposited by the appellant before filing the first appeal, such deposit of penalty amount should be considered as sufficient compliance for the purpose of Section 11AC of the Central Excise Act, 1944 and thus, no further penalty is required to be paid by the appellant No.1. To support such stand, ld. Advocate has relied on various

judgments delivered by the Hon'ble Delhi and Gujarat High Courts and also the judgments dated 25.11.2014 of the Hon'ble Supreme Court reported in 2017 (349) E.L.T. A 87. With regard to imposition of penalty on the appellant No.2 & 3, the submissions of the ld. Advocate are that the benefit of reduced amount of penalty on the main appellant should also be available to the said appellants.

4. On the other hand, the ld. D.R. appearing for the Revenue submits that since the reduced amount of penalty of 25% was not deposited within 30 days from the date of receipt of the adjudication order, the benefit of quantum of reduced penalty provided under Section 11AC ibid should not be available to the appellant and the appellant is required to pay the entire amount of penalty confirmed in the adjudication order. Ld. D.R. has relied on the judgment of Hon'ble Delhi High Court in the case of Principal Commissioner of Service Tax Delhi-II vs. Tops Security Ltd. – 2016 (41) S.T.R. 612 (Del.) and also the judgments of Hon'ble Gujarat High Court in the case of Commissioner, Central Excise and Customs, Surat vs. Rajeshree Dyg. & Ptg. Mills (P) Ltd. – 2014 (305) E.L.T. 442 (Guj.).

5. Heard both sides and examined the case records. Section 11AC ibid provides for imposition of equal amount of penalty, in case of short levy or non-levy of duty attributable to the reason of fraud, collusion, or any willful mis-statement

or suppression of fact, or contravention of any of the provisions of the Act or the Rules made there-under, with intent to evade payment of duty. The first proviso appended to Section 11AC provides that if the duty determined under sub-section (2) of Section 11A and the interest payable thereon is paid within 30 days from the date of communication of the adjudication order, the amount of penalty liable to be paid by such person shall be 25 % of the duty so determined. On perusal of such statutory provisions, it reveals that option for depositing the reduced quantum of penalty by the adjudicating authority has not been provided in the adjudication order. However, there were various judicial pronouncements by this Tribunal as well as the Hon'ble High Courts, ruling that the deposit of the reduced amount of penalty of 25% should be given by the adjudicating authority in the order of adjudication. Such views expressed by the judicial forums have also been endorsed by the C.B.E.C. vide its Circular dated 22.05.2008. However, there were conflicting views by the judicial forums holding that there was no requirement for giving any option by the adjudicating authority to deposit the reduced amount of penalty and if the reduced amount of penalty has not been paid within 30 days from the date of receipt of the adjudication order, such benefit should not be available as per the mandates of Section 11AC ibid. The controversy arising out of interpretation of the statutory provisions was finally resolved by the Hon'ble Supreme Court vide judgment dated 25.11.2014 in respect of the Civil appeals filed in various cases. The issue involved in the SLPs filed before the Hon'ble Supreme Court was that if the adjudicating authority has not given the option to pay the reduced penalty of 25%, the said benefit can be extended by the Tribunal at appellate stage. Since vide judgment dated 25.11.2014, the SLPs filed against the judgments of different High Courts were dismissed by the Hon'ble Apex Court, the law is well settled that in absence of the option given by the adjudicating authority to pay reduced amount of penalty of 25%, the same can be extended by the Tribunal at appellate stage.

6. In the circumstances of the present case, since the adjudicating authority had not given the option to the appellant No.1 to deposit the entire duty alongwith interest and 25% of penalty in the order dated 17.12.2008 and the appellant had *suo moto* deposited such amount at the time of filing the appeal before the Commissioner (Appeals), the benefit of the reduced amount of penalty as per the judgment dated 25.11.2014 of Hon'ble Apex Court can be extended at the appellate state. Accordingly, the impugned order to the extent of imposition of 100% penalty under Section 11AC is set aside and the amount of 25% deposited by the appellant is considered appropriate for the purpose of Section 11AC ibid.

7. With regard to imposition of penalties on appellant No.2 & 3, I find that considering the circumstances of the case and the quantum of reduced penalty deposited by the appellant No.1 the main manufacturer of the excisable goods, I am of

the view that the personal penalties can be reduced in the interest of justice. Accordingly, the quantum of penalty on appellant No.2 & 3 are reduced to Rs.5,00,000/- each. The appeals are disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita