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/1708/2011 SM]

[Arising out of Order-in-Appeal No. 244-CE/MRT-II/2010 dated 29.07.2010 dated 29/07/2010 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut]

M/s.Cheema Papers Ltd. …Appellant

Vs.

C.C.E. Meerut-II … Respondent

Present for the Appellant : Mr. Kumar Vikram, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

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

Date of Hearing/Decision: 14/06/2017

FINAL ORDER NO. 55287/2017

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in manufacture of scrap paper and duplex board falling under Chapter 48 of the Central Excise Tariff Act, 1985. The appellant avails Central Excise Duty exemption in terms of Notification No.49/2003 dated 10.06.2003 on the ground that its unit is located in the state of Uttaranchal. However, the goods manufactured by the appellant are not exempted from payment of Cess. Thus, on detection of mistake regarding non-payment of Cess, the said amount was deposited by the appellant. Thereafter, the Department issued show cause notice seeking recovery of the amount of Cess alongwith interest and for imposition of penalty under Section 11AC of the Central Excise Act, 1944. Further, penalties were sought to be imposed under Rule 26 and 27 of the Central Excise Rules, 2002. The SCN issued by the Department was adjudicated vide order dated 14.01.2010, wherein the demand of Rs.1,51,383/- and Rs.2,49,059/-, proposed in the show cause notices, were dropped and penalties were imposed under Section 27 of the Central Excise Rules, 2002.

2. Feeling aggrieved with the adjudication order, the Revenue has filed appeal before the Commissioner (Appeals), which was disposed of vide order dated 29.07.2010 holding that the ingredients of Section 11AC ibid have been fulfilled and thus, the adjudicating authority has committed mistake in not imposing the equal penalty. Feeling aggrieved with the said order (impugned order), the appellant has preferred the present appeal before the Tribunal.

3. Heard both sides and perused the case records.

4. On perusal of the adjudication order, I find that the proposals made in the show cause notices for imposition of penalty under Section 11AC ibid were dropped, holding that the amount of Cess and interest was deposited before adjudication of the matter. Though the ld. Commissioner (Appeals) vide the impugned order has confirmed the equal amount of penalty under Section 11 AC ibid, but no specific findings were recorded with regard to involvement of the appellant in the activities concerning fraud, collusion, suppression etc., with intent to defraud the Government revenue. In the present case, since the ingredients contained in Section 11AC ibid are absent, I am of the view that penalty

cannot be imposed on the appellant under the said statutory provision.

5. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

[Operative part pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita