CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 59982 of 2013

(Arising out of Order-in-Appeal No. 94(VC)CE/JPR-I/2013 dated 21.08.2013 passed by the Commissioner of Central Excise (Appeals-I), Jaipur)

DATE OF HEARING : 24.07.2017
DATE OF DECISION : 24.07.2017

M/s National Engineering Indus. Ltd. …. Appellants
(Rep by Sh. Kr. Vikram, Adv.)

VERSUS

CCE&ST, Jaipur-I …. Respondent
(Rep. by Sh. M.R. Sharma, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 55568/2107

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 94(VC)CE/JPR-I/2013 dated 21.08.2013 passed by the Commissioner of Central Excise (Appeals-I), Jaipur. The period in dispute is October 2006 to August 2009.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the

manufacture of Ball Bearing and paying the duty after assessment on MRP basis declared by M/s Maruti Suzuki India Ltd. (MSIL). They affixed the labels on the cartons containing the goods manufactured by them which were being supplied to MSIL. The MRP of the goods was revised upward by the MSIL and the labels indicating the revised upward by MSIL was supplied to the assessee-Appellants. On receipt of the revised labels, they started affixing the new labels on the cartons supplied to MSIL w.e.f the date of labels was supplied to them. Sometimes, the supply of labels indicating revised upward MRP was delayed to the assessee-Appellants and in the meanwhile they continued to make payment on the MRP declared by MSIL and as indicated in the labels supplied earlier. After issuing the show cause notice for making the short payment, duty was demanded and penalty was levied. The duty along with interest was already deposited by the assessee-Appellants. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Kumar Vikram, learned counsel for the assessee-Appellants and Shri M.R. Sharma, learned DR for the Revenue.

4. After hearing both sides and on perusal of material available on record, it appears that an identical issue has come up before the Hon'ble High Court of Rajasthan in the case of **Arora Products vs Addl. Commissioner of Central Excise,** 2009 (235) ELT 818 (Raj.), wherein it was observed that on combined

reading of provisions of Sections 11A(2B) and (2C) of Central Excise Act, 1944 and in view of fact that duty leviable has already been deposited prior to the show cause notice, no penalty could be imposed under Section 11AC.

5. In the instant case, the duty was, undoubtedly, deposited before the issuance of the show cause notice along with interest. When it is so, then the penalty is not desirable as per the ratio laid down by the Hon'ble High Court (supra). Hence, we find no reason to sustain with the impugned order levying penalty of Rs. 1,05,564/- and set aside the same.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

\

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

Golay