IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 17.10.2017

Appeal No. E/3495/2010-SM

(Arising out of Order-in-Appeal No. 218/RPR-I/2010 dated 28.07.2010 passed by the Commissioner (Appeal-I) Customs & Central Excise, Raipur)

CCE, Raipur — Appellant

Vs.

Euro Pratik Ispat Pvt. Ltd. — Respondent

Appearance

Shri G.R. Singh, AR -for the appellant

Shri Somesh Arora & Mehak Gupta, Advocate -for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**

Final Order No. 58108 /2017

Per Anil Choudhary :

The issue in this appeal by the revenue is whether the Commissioner (Appeals) is justified indeleting the penalty imposed under rule 15 of CCR 2004.

2. The brief facts are that:-

(a) During the scrutiny of Appellants ER-1 returns it was observed that the payment of excise duty was not in the terms of Rule 8 of Central Excise Rules, 2002 and the payments were made after due date along with interest. The Appellant during the month of Feb.2008, June 2008, August 2008, October 2008 and November 2008 had made the payment through Personal Leger Account as well as Cenvat Account from the credit which was not available to them on the last day of that month. The Appellant has utilized the amount availed by them in next month for paying duty of previous month.

(b) The Appellant had thus wrongly utilized the credit of Rs. 20,42,692/- towards payment of duty which had resulted in clearance of goods without payment of duty during the aforesaid months, in violation of Central Excise Rules, 2002 and Cenvat Credit Rules, 2004.

(c) Therefore a Show Cause Notice dated 04.03.2009 was issued to the Appellant asking them as to why (i) the amount of Rs. 20,42,692/- should not be recovered from them along with interest in terms of Rule 14 of the Act (ii) Mandatory penalty under Section 11AC of Act read with Rule 15 (2) of Cenvat Credit Rules, 2002 should not be imposed upon them and also a penalty under Rule 25 of Central Excise Rules, 2002 should not be imposed.

(d) The said Show Cause Notice was decided vide the order in original holding that since the amount of Rs. 20,42,692/- has been paid through Cenvat Account, the Appellant is not required to pay the duty again and the amount so paid stands appropriated. Order of recovery of interest was made from the due date of payment till the date of actual payments. A penalty of Rs. 20,42,692/- was imposed on the appellant under Rule 15 of the Cenvat Credit Rules, 2004.

3. Being aggrieved the appellant preferred appeal before Ld. Commissioner (Appeals) who have been pleased to allow the appeal setting aside the penalty imposed by observing as follows:

Now coming to the question of "Mandatory Penalty" equal to the amount of Central Excise Duty involved it is a settled law that same can be imposed only when there is suppression of facts with intention to evade payment of duty. However in the instant case when the show cause Notice itself says that the wrong doings of the appellants were noticed from the scrutiny of ER-1 returns submitted by the Appellant it leaves no ground for the department to made the charge of suppression of fact with intention to evade payment of duty on the part of Appellant, because if it was so, the figures would have not reflected in monthly ER-1 returns which no doubt would also be available in their books of accounts simultaneously reflecting in ER-1 returns.

Now in the light of the above when the charges of suppression of facts with an intention to evade payment of duty are not sustainable there is no reason to penalize the Appellant with a penalty equal to that of duty involved as made vide the impugned Order-In-Original specifically when the amount paid of Rs. 20,42,692/- paid by Appellant through Cenvat Credit Account has been treated as correct mode of payment vide the impugned order holding that " Since, the amount of Rs. 20,42,692/- (Twenty Lakhs forty thousand six hundred ninety two only) has been paid through Cenvat account, the Noticee is not required to pay the duty and the amount so paid stands appropriated". Accordingly on question of penalty I do not agree with the Adjudicating Authority and hence the same is waived off.

4. Being aggrieved the Revenue is in appeal on the ground that the Ld. Commissioner (Appeals) have not appreciated the decision of this Tribunal in the case of Plasweave Pvt. Ltd. v. CCE, Triunelveli CCE, 2007 (211) E L T 27 (Tri. Chennai), wherein it was held that – having considered the fact that the assessee had removed the goods without payment of duty to the extent of Rs. 3,20,538/- in the case of RPL and Rs. 2,32,424/- in the case of PPL. During the period which had been adjusted against Cenvat credit accrued later. Accordingly,

the demand were held to be sustainable. Further, observing that the assessee will be eligible for Cenvat credit on the amount of duty paid through PLA. However, the penalty imposed was reduced to Rs. 35,000/ and 25,000/- on the company. Accordingly, it is prayed by revenue that the penalty will be restored.

5. Having considered rival contentions I find that penalty is normally imposed to correct a delinquent assessee. It is not compensatory in nature, like interest. It is settled law that penalty is imposed only in case of deliberate defiance of law, like suppression of facts with intention to evade payment of duty. In the present case, it is admitted fact that the appellant had filed ER-1 returns with the Department regularly and had disclosed their affairs, including the tax payable/paid. I further find that the adjudicating authority in the Order in Original have found that the tax have been properly paid and accordingly, no additional demand for tax is raised. Under the facts and circumstances I hold that the Ld. Commissioner (Appeals) is correct indeleting the penalty imposed and call for no interference by this Tribunal. Accordingly, I dismiss this appeal filed by the revenue.

(Dictated & pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Rekha