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

Date of Hearing: 27.12.2017

Appeal No. E/2871/2012-SM
(Arising out of Order-in-Appeal No. 58 to 59/CE/D-II/2012 dated 20.07.2012 passed by the Commissioner (Appeals) Central Excise, New Delhi)

Luminous Power Technologies — Appellant

Vs.

CCE Delhi-ii — Respondent

Appearance
Shri Hemant Bajaj, Advocate - for the appellant
Shri K. Poddar, DR - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 58604/2017

Per Ashok Jindal :

1. The appellant is in appeal against the impugned order contesting the penalties imposed on them under Section 11AC read with Rule 15 (2) of the Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant imported certain goods and paid CVD and SAD thereon, The goods were cleared at Baddi, Himachal Pradesh. On these goods, the appellant paid CVD availed by them but inadvertently did not pay the Cenvat Credit of SAD availed. During the course of investigation, when it came to the knowledge of the Department, the appellant paid the amount attributable to SAD along with interest. Thereafter, the proceedings were initiated by issuance of show cause notice to the appellant to demand duty to the extent of Cenvat Credit availed on SAD along with interest and to impose penalties under Rule 15 (2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the

Central Excise Act, 1944. The matter was adjudicated the demand on account of SAD not paid at the time of clearance was confirmed along with interest and penalty was also imposed. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the provisions of reversal of SAD came w.e.f. 1st March, 2005 and in their software, the said provisions of reversal of SAD was not updated, therefore, it was a bonafide mistake of the appellant, that they could not paid the amount of Cenvat Credit availed on SAD at the time of clearance of imported goods. It is his contention that they have paid the amount of CVD availed by them, therefore, it cannot be alleged that the appellant was having malafide intentions to avail Cenvat Credit on SAD and not to pay the same at the time of clearance. Therefore, the penalty on the appellant is not imposable. It is further contented by the Ld. Counsel for the appellant that the excess payment of CVD is to be adjusted against the payment of SAD along with interest. Therefore, there is a calculation error that has to be required to be considered.

4. On the other hand, Ld. DR for the Revenue reiterated the findings in the impugned order.

5. Heard the parties and considered the submissions.

6. On careful considerations of submissions of both the sides, I find that short issue remains before me whether in the facts and circumstances of the case, the penalty under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Act can be imposed on the appellant or not ?

7. I find that it is a fact on record at the time of clearance of goods the appellant paid excess CVD thereon. If an assessee is paying excess duty, and could not pay the duty due to the failure in their

system cannot attribute that assesee was having malafide intentions not to pay duty. In that circumstances, the content of malafides are missing. In that circumstances, the penalty under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Rules, 1944 cannot be imposed on the appellant. Therefore, penalty imposed on the appellant is set aside.

8. Further, I find that the appellant paid excess CVD at the time of clearance of goods, the same is required to be adjusted against the short payment of SAD made by the appellant along with interest. Therefore, for the calculation purpose the only, the matter is consigned to the adjudicating authority to find out how much amount on account of SAD was payable by the appellant and how much excess of CVD has been paid by the appellant at the time of clearance of the goods. After reconciliation of the same, (if any) demand is payable by the appellant, the appellant shall pay along with interest, if no demand is payable by the appellant, the matter shall stands closed thereof.

9. In view of the above, the appeal is disposed of by way of remand.

(Order dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha