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

Date of Hearing/Order: 23.2.2018

Appeal No. E/51932/2017-SM & E/50211/2018-SM

(Arising out of Order-in-Appeal No. 205-207/CE/DLH/2017 dated 22.9.2017 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Chanderpal Singh — Appellant
M/s Chandra Rolling Mills Pvt. Ltd.

Vs.

CCE & GST, Delhi — Respondent

Appearance

Shri B. Bhushan, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 50740-50741/2018

Per Ms. Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of the same impugned order of lower authorities.

2. As per the facts on record, the officers intercepted one truck loaded with copper wire rods on 6.3.2011 which were cleared from the appellant's factory, without payment of duty. The proceedings were initiated against the appellant for confirmation of demand, interest and penalty as also for confiscation of the seized goods and

the vehicle. Within a period of 30 days from the communication of the show cause notice, the appellant accepted their liability and paid duty along with interest and 15% of duty as penalty and prayed for closure of the proceedings. The lower authorities however, were of the opinion that the said provision does not relate to the confiscation of the goods and vehicle and provides for closure of the proceedings only in respect of duty, interest and penalty. Accordingly, they confiscated the goods with an option to the appellant to redeem the same on payment of redemption fine of Rs. 50,000/-. Further, the truck belonging to the owner Shri Chatarpal Singh who was also confiscated with an option to redeem the same on payment of redemption fine of Rs.40,000/-

3. The contention of the ld. Advocate is that the said provision of law i.e. Section 11AC (1)(d) provides for conclusion of the entire proceedings subject to the payment of duty, interest and 15% of penalty. The said provision nowhere further applies to adjudicate the matter relatable to confiscations etc.

4. After hearing the ld. AR appearing for the Revenue, I reproduce the relevant Section 11AC(1) (c) & (d) of the Central Excise Act, 1944.

> "The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:

> (c) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A, shall also be liable to pay a penalty equal to the duty so determined: Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with 8th April 2011 up to the date of which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the duty so determined.
>
> (d) where any duty demanded in a show cause notice and the interest payable thereon under Section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded."

5. As is seen from above, the provisions of sub-section (d) are invocable in respect of transactions mentioned in sub-section (c). The said sub section provides for conclusion of the proceedings in case an assessee deposits the dues as mentioned in the sub section within a period 30 days of the issue of the show cause notice. The said provision is with a purpose to reduce the litigation.

However, the lower authorities have observed that as much as in the present case there was suppression with an intent to evade payment of duty, the confiscation of the goods as also the vehicle can be adjudicated upon. I find no merit in the above stand of the Revenue. On a careful reading of both the sub sections, an inevitable conclusion is drawn that the conclusion of proceedings in terms of sub section (d) is provided in respect of cases mentioned in sub-section (c). Sub-section (c) relates to the evasion of duty by reason of fraud or collusion. As such it has to be held that in cases of fraud conclusion etc., the entire proceedings would get finally concluded on an assessee depositing the dues as mentioned in sub-section (d), thus not permitted further adjudication relatable to the confiscation of the goods on the vehicle etc.

6. As such, I find no justifiable reason to uphold the impugned order. Accordingly, the same are set and both appeals are allowed with consequential relief to the appellant.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM