

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II**

Date of Hearing: 21.12.2018

E/COD/51222/2018

Appeal No. E/53629/2018-EX [DB]

[Arising out of Order-in-Original No. OIA-256-264-SM-CE-JPR-2018 dated 05/06/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-Alwar]

OILES INDIA PVT LTD

Appellants

Vs.

C.G.ST C & C.E-ALWAR

Respondent

Appearance:

Shri B.L. Yadav, Advocate for the Appellants
Shri H.C. Saini, AR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Hon'ble Shri Bijay kumar, Member (Technical)

FINAL ORDER No. 53502/2018

Per Anil Choudhary:

1. The present appeal has been filed by the appellant-assessee challenging the order of Commissioner (Appeals) whereby the penalty under Section 11AC has been enhanced.
2. There is a delay of 26 days in filing the appeal, due to inevitable reasons, as the dealing person who received the impugned order-in-appeal left the job without intimating the person incharge. Thereafter the impugned order was subsequently was traced and appeal was filed, resulting in delay of 28 days.
3. As we find the reason being plausible, we condone the delay and admit the appeal for hearing. As the issue is covered by a precedent judgment of this tribunal, we take up the appeal for hearing. The issue

herein is whether the subsidy granted by the State Government, by way of Form 37B enabling the appellant to adjust the amount of sales tax payable by such Form 37B Challan, whether the said amount can be aggregated to the value of clearance for the purpose of levy of duty.

4. Heard the parties.
5. We have find that the said issue has been decided in favour of assessee by this Tribunal in Shree Cements Ltd V/s CCE, Alwar 2018-TIOL-748-CESTAT-DEL where it has been held that such amount received by way of subsidy, in the form of 'Form 37B' vouchers, which the appellant have used for the payment of sales tax, cannot be aggregated with the value of the clearances as additional receipts, for calculation of Central Excise duty. Accordingly we allow the appeal and set aside the penalty imposed under Section 11AC of the Act.
6. Penalty is set aside, being held to be unreasonable and without any basis. Appellant is entitled to consequential benefits. Both COD and Appeal allowed.

(Order dictated & pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha