

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. III

EXCISE APPEAL No. 54155 OF 2018

(Arising out of Order-in-Appeal No. 416-SM-CE-JPR-2018 dated 01.10.2018
passed by COMMISSIONER OF CENTRAL EXCISE-Alwar)

M/s. National General Industries

Kaharani, Bhiwadi,
Alwar, Rajasthan

...Appellant

Versus

**Commissioner of Customs,
Central Excise, Alwar**

A Block Surya Nagar,
Alwar, Rajasthan

....Respondent

APPEARANCE:

None for the Appellant

Mr. P. Gupta, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **31.07.2019**

FINAL ORDER No.: 51060/2019

ASHOK JINDAL

The appellant is in appeal against the impugned order wherein penalty under section 11 AC of the Act has been imposed.

The facts of the case are that the appellant is clearing old and used capital goods by reversing Cenvat Credit on the said goods. In fact, at the time of clearance of the old and used capital goods, the rate of duty was higher and on pointing out by the Revenue, the appellant paid the differential amount of duty along with interest.

2. Later on, the show cause notice was issued to the appellant to impose penalty under section 11AC. The penalty was confirmed against the appellant. Hence this appeal.
3. None appeared on behalf of the appellant. In the interest of justice, appeal is taken up for final disposal.
4. Considering the fact that the appellant has paid the amount of differential duty along with interest before issuance of the show cause notice, therefore, proceedings against the appellant was required to be closed as there was no malafide on the part of appellant to not pay the duty. In terms of Rule 3(5) of the Cenvat Credit Rules wherein, it was required that the Cenvat Credit availed on the capital goods are required to be reversed. Therefore, the appellant was able to prove its bonafides.
5. In these circumstances, penalty under section 11 AC of the Act is not warranted, therefore, the penalty imposed on the appellant is set aside.
6. In result, the appeal is allowed with consequential relief.

(order dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)