CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

Appeal No. E/215/2009

(Arising out of Order-in-Appeal No.04/2009 (V-I) CE dated 22.01.2009 passed by CCCE & ST (Appeals), Visakhapatnam)

Coromandel Paint Ltd ….. Appellant(s)

Vs.

CCCE & ST, Visakhapatnam - I ….. Respondent(s)

Appearance

Shri D. Viswanathan, Advocate for the Appellant.

Shri P.S. Reddy, Asst. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 27.09.2018
Date of Decision: 27.09.2018

FINAL ORDER No. A/31255/2018

[Order per: P.V. Subba Rao.]

1. This appeal has been filed against the Order-in-Appeal No. 04/2009 (V-I) CE dated 22.01.2009.

2. The appellant herein is a manufacturer of paints and he offers trade discounts to their buyers. As per the rules during the relevant period, they had filed price declarations under Rule 173C of Central Excise Rules explaining that they offer trade discounts of 6% to sale depots outside Andhra Pradesh and 5% to those within the state. It appeared to the authorities that the assessee discharged the duty availing certain discounts which were not declared in the price declarations and that they were also availing certain other discounts which were declared but not passed on to the customers in case of stock transfers. A show cause notice was therefore issued alleging that the appellant had wilfully misdeclared and suppressed facts with an intention to evade payment of duty and a demand was raised

invoking proviso to Sec.11A along with interest under Sec.11AB. Mandatory penalty equal to the duty under Sec.11AC and penalty under Rule 173Q were also proposed in the show cause notice. After following due process, the original authority has allowed all the discounts except the discount of 3% which was availed but not passed on to the customers. Accordingly, she confirmed the demand to this extent under Sec.11A along with interest under Sec.11AB and penalty under Sec.11AC. She also imposed a penalty of Rs.10,000/- under Rule 173Q of Central Excise Rules, 1944. Aggrieved, the appellant filed an appeal before the first appellate authority who upheld the order of the lower authority and rejected the appeal. Hence this appeal.

3. The learned counsel for the appellant took us through the facts of the case and argued that they are eligible for deduction of trade discounts passed on to the customers and they paid duty to the extent they have not passed on the discounts. They filed RT-12 returns periodically. Despite their detailed explanation, the Commissioner (Appeals) has upheld the duty demanded invoking extended period along with interest and penalties under Sec.11AC and Rule 173Q. He further draws our attention to Rule 173Q which states that "this provision is subject to the provision of Sec.11AC of the Act". Thus he argued that where Sec.11AC is invokable, Rule 173Q cannot be simultaneously invoked. He therefore prayed that the penalties under Rule 173Q and Sec.11AC may be set aside.

4. Learned departmental representative reiterates the Order-in-Original and Order-in-Appeal and explains that every discount which can be allowed has already been allowed by the lower authority and there is no scope for further relief. He further argues that since the appellant has claimed discounts and thereby short paid duty and has not passed on those discounts to the customers and therefore the penalties are rightly invoked.

5. We have considered the arguments on both sides. Trade discount is an allowable discount during the relevant period. We find from the order of the original authority that all discounts were allowed including those which were not declared in their price declaration but which were passed on to the customers. The only discounts which were not allowed are those which the appellant has not passed on to the customers but has claimed in their invoices. We find no reason to interfere with such an extremely fair and balanced order. As assessee claimed the discounts and has not passed on the same to their customers, we find that proviso to Sec.11A has been rightly invoked and the penalty under Sec.11AC and interest under Sec.11AB have also been correctly imposed. As far as the penalty under Rule 173Q is concerned, the learned counsel has correctly drawn our attention to the fact that this provision is subject to Sec.11AC. In other words, where a penalty under Sec.11AC is imposed, the penalty under Rule 173Q cannot be imposed. We therefore find that the penalty imposed under Rule 173Q is liable to be set aside and we do so.

6. The appeal is rejected except to the extent that the penalty imposed under Rule 173Q in the impugned order is set aside.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda