IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO.I

EXCISE APPEAL NO. 72023 of 2013

(Arising out of Order-in-Original 19/Commr./CE/Kol-v/Adjn/2012 dated 08.10.2012 passed by Commissioner of Central Excise Kolkata V Commissionerate; Adjudication Branch 180, Shantipally, Rajdanga Main Road, Kolkata-700 107)

M/s. BESCO Ltd., **: Appellant**
8, Anil Moitra Road, Kolkata-700019

VERSUS

The Commissioner of Central Excise, **: Respondent**
Kolkata V Commissionerate, Adjudication Branch,
180, Shantipally, Rajdanga Main Road,
Kolkata-700 107

APPEARANCE:

For the Appellant : Shri Rajeev Agrwal, CA
Shri D. S. Agrwal, CA

For the Respondent : Shri S. S. Chattopadhyay, Authorized Representative

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75456/ 2024

DATE OF HEARING/ DECISION: 08.03.2024

Order : [Per Mr. Ashok Jindal]

The appellant is in appeal against the impugned order wherein penalty under Section 11AC of the Central Excise Act came to be imposed on them.

2. The facts of the case are that the appellant is a manufacturer of railway wagon which was initially exempt from payment of excise duty. With effect from 01.03.2011, levy of excise duty was introduced on the manufacture of railway wagons.

3. On the condition that the assessee is not taking CENVAT Credit, then they are required to pay one per cent duty on whole of the contractual price and if they are availing CENVAT Credit on inputs, then they have to pay five per cent excise duty. The appellant paid one per cent excise duty as they opted not to avail CENVAT Credit on inputs, but the appellant was not including free supply of materials supplied by the Railways in the dutiable value of goods cleared by them. The appellant wrote to the Revenue regarding whether the value of free supply is to be included in the taxable value or not; it was answered in affirmation. Thereafter, appellant paid whole of the differential duty along with interest. Thereafter, proceedings were initiated against the appellant to impose penalty under Section 11AC of the Act; penalty under Section 11AC of the Act came to be confirmed vide the impugned order. Against the said order, appellant is before us.

4. Heard the parties.

5. Considering the fact that there was no mala fide intent on the part of the appellant not to pay the differential duty on the goods cleared by them and as soon as the Revenue clarified the fact that they were required to pay differential duty, the appellant paid the differential duty, along with interest. In these circumstances, the conditions of the provisions of Section 11AC of the Act are missing and therefore,

penalty under Section 11AC of the Act is not imposable.

6. In view of the above, we set aside the impugned order qua imposing penalty on the appellant.

7. In these terms, the appeal is allowed.

(pronounced in open court)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RKP