IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/85122/17

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-198-16-17 dated 25.10.2016 passed by Commissioner of Central Excise (Appeals), Pune-I)

Sharp Engineer **Appellant**

Vs.

Commissioner of Central Excise, Pune-II **Respondent**

Appearance:

None for appellant
Shri H.M. Dixit, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 15.2.2018
Date of Decision: 15.2.2018

ORDER No. A/85289/2018

The facts of the case are that during the audit of the appellant's excise unit, objection was raised on availment of credit in respect of certain input services on the ground that service of renting of immovable property, insurance service, outward octroi, Customs House Agent charges, Xerox machine and printing machine are not admissible input services. On the audit objection, the appellant admittedly paid the entire amount of cenvat credit availed on such services and also paid interest and penalty. They have intimated regarding this payment to the department vide their letter dated 3.3.2014 and also mentioned for waiver of show cause notice. On this, the audit para was closed and no show cause notice was issued. Later on, the appellant filed a refund claim on the ground that they are eligible for cenvat credit in respect of the aforesaid services. Both the authorities below have rejected their claim on the ground that once the appellant admittedly paid the amount and waived the show cause notice, thereafter they cannot change their stand.

2. None appeared on behalf of the appellant. Shri H.M. Dixit, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order. He submits that whether the issue raised by the department is correct and legal or otherwise, but once the appellant paid the duty admittedly along with interest and penalty and waived the show cause notice, the department is not in a position to issue any show cause notice. Hence the issue attained finality with the stand taken by the appellant. Therefore, the refund rejected by the lower authorities is correct and legal.

3. On careful consideration of the submissions made by learned AR and on perusal of the records, I find that there is no dispute with regard to the audit objection. The appellant accepted the liability and paid the entire amount of cenvat credit availed on various services as mentioned above. They

have also paid the interest and penalty and requested for waiver of show cause notice. This act of the appellant closed the entire proceedings. Thereafter, neither the department can issue any show cause notice nor the assessee can change their stand for the reason that the department has no opportunity to issue any further show cause notice. In this regard, I refer to Section 11A(6) & (7) of the Central Excise Act, which reads as under:-

> "11A(6).- Any person chargeable with duty under sub-section (5) may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon section 11AA and penalty equal to one percent of such duty per month to be calculated from the month following the month in which such duty was payable but not exceeding a maximum of twenty five percent of the duty and inform the Central Excise Officer of such payments in writing".
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> "11A(7).- The Central Excise Officer, on receipt of information under sub-section (6) shall – (i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid."

3.1 From the above statutory provision, it is clear that since the appellant has before issue of show cause notice, paid the duty along with interest and penalty and informed the central excise officer of such payment in writing in terms of Section 11A(6), the central excise officer shall not issue any notice and the proceedings in respect of the said duty shall be deemed to be concluded. In the present case, the appellant has opted for the provision of Section 11A(6) & (7). Therefore the proceedings stand concluded and no grievance can be raised on behalf of either side. I, therefore, do not find any infirmity in the impugned order.

4. Accordingly, the impugned order is upheld and the appeal is dismissed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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