IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. E/349/2010

(Arising out of Order-in-Appeal No. P.III/VM/240/09 dated 16.11.2009 passed by Commissioner of Central Excise (Appeals), Pune III)

M/s. Shogini Technoarts Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Pune III **Respondent**

Appearance:

Shri Makrand Joshi, Advocate for appellant
Shri Sanjay Hasija, Supdt. (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble P. Anjani Kumar, Member (Technical)

Date of Hearing & Decision : 15.06.2018

FINAL ORDER NO. **A/88142/2018**

Per: S.K. Mohanty

The authorities below, in this case, have confirmed the Central Excise duty liability and also imposed penalty on the appellant, on the ground that the appellant did not include the value of drawing and design supplied by the customers for determination of the assessable value.

2. Learned Advocate appearing for the appellant fairly concedes that value of drawing and design should be included in

the assessable value of PCB supplied by the appellant and that the appellant is liable to pay Central Excise duty on such PCB manufactured by it. However, he contested the amount of penalty imposed in the adjudication order on the ground that there is no element of suppression, fraud, mis-statement, with intent to evade payment of central excise duty. Thus, he submits that Section 11AC of the Central Excise Act, 1944 cannot be invoked for imposition of penalty on the appellant. In this context, he has relied on the order No. A/85731-85733/2018 dated 22.03.2018 passed by this Tribunal, wherein on identical set of facts, for the earlier period, penalty imposed under Section 11AC ibid was set aside.

3. On the other hand, learned D.R. appearing for Revenue reiterates the finding recorded in the impugned order. He further submits that since there is no ambiguity in the statute for inclusion of value of free supply design/drawing in the assessable value of PCB, non-payment of duty thereon, exposed the appellant for the penal consequences provided in the statute. Thus, he submits that imposition of penalty by the authorities below is proper and justified.

4. Heard both sides and perused the records.

5. Section 11AC ibid mandates imposition of penalty, in the eventuality, where there are elements of suppression, mis-statement, fraud on the part of the assessee, in defrauding the government revenue. We find that on identical set of facts for the earlier period, this Tribunal vide order dated 22.03.2018 has held that charges of suppression cannot be sustained. Since this Tribunal has taken such a view on similar set of facts involved in the present appeal, we cannot take a contrary stand to decide the appeal differently.

6. Therefore, we set aside the impugned order and allow the appeal, to the extent it imposed penalty under Section 11AC of the Central Excise Act, 1944 on the appellant.

(Order dictated in Court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty
Member (Judicial)

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