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

Appeal No. E/711/2011

(Arising out of Order-in-Appeal No. 31/M-I/2008/264 dated 28.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai).

Shri Chetan R Patel	Appellant

Vs.

Commissioner of Central Excise, Mumbai-I	Respondent

Appearance:

None	for Appellant
Shri Anil Choudhary, DC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 13.02.2019

Date of Decision: 13.02.2019

ORDER NO. **A/85303 / 2019**

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. 31/M-I/2008/264 dated 28.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai.

3. Briefly stated the facts of the case are that the appellant had been manufacturing Air Conditioners and during the relevant period i.e. 1984-85 and 1985-86 manufactured and cleared ACs without payment of duty. Consequently, a show-cause notice was issued to them for recovery of the duty amounting to Rs.1.92,249.75 and proposal for penalty. Also three ACs valued at Rs.35,000/- seized on 23.11.1995 was proposed to be confiscated under Rule 173Q of erstwhile Central Excise Rules, 1944. On adjudication, the duty demand was confirmed and penalty of Rs.50,000/- was imposed; confiscation of the seized goods was directed and fine of Rs.10,000/- was imposed. The said order travelled upto this Tribunal and it was remanded for *de novo* adjudication. The adjudicating authority by order dated 08.05.2008, reduced the duty from Rs.1,92,249.75 to Rs.63,994/- and confirmed penalty of Rs.50,000/-. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, reduced the penalty from Rs.50,000/- to Rs.25,000/-. Hence, the present appeal.

4. In their grounds of appeal, the appellant had pleaded that since there was no intention to evade payment of duty, therefore, imposition of penalty on them under erstwhile Rule 173Q of the Central Excise Rules, 1944 is not warranted.

5. Learned AR for the Revenue has submitted that this is third round of litigation before this Tribunal. In the earlier round, this Tribunal vide Order No. A/1457/WZB/2005/C-II/ES dated 24.10.2005 remanded the matter to reconsider the issue in the light of the earlier order dated 14.05.1997, wherein while computing the duty on clearance of goods without payment of

duty, the assessable value was incorrectly determined. Therefore, it was remanded to re-determine the assessable value and accordingly compute the duty liability afresh. Pursuant to the order dated 24.10.2005 of this Tribunal, the adjudicating authority re-calculated the assessable value and reduced the liability of duty to Rs.63,994/- on 31 units of AC manufactured and cleared clandestinely without payment of duty, confirmed the confiscation of seized goods and penalty at the same level. He further submits that the learned Commissioner (Appeals), after taking into consideration the reduction in liability of duty, reduced the penalty to Rs.25,000/-, therefore, the learned Commissioner (Appeals) order is not bad in law.

6. We find that in the second round of *de novo* proceeding, the adjudicating authority after analyzing the evidence on record re-determined the assessable value and correspondingly recomputed the duty by reducing it from Rs.1,92,249.75 to Rs.63,994/-. The computation of duty has not been challenged by the appellant in the present case but imposition of penalty id disputed. We find that the learned Commissioner (Appeals) has reduced penalty in proportionate to reduction of duty liability from Rs.50,000/- to Rs.25,000/-. The argument of the appellant that no penalty is imposable on them, in our view, is devoid of merit inasmuch as they have cleared the ACs in respective financial years after exceeding the prescribed limit and failed to discharge duty. This fact came to the knowledge of the department after visit to their unit.

7. In the result, we do not find any valid reason to interfere with the impugned order. Accordingly, the same is upheld and the appeal is dismissed.

(Operative portion of the order pronounced in Court)

(P. Anjani Kumar)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha