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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 86991 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/286 & 287/17-18 dated 05.03.2018 passed by Commissioner of Central Excise & GST (Appeals), Nashik)

ALF Engineering Pvt. Ltd. **.....Appellant**
Plot No. E-60, 61 & 62, MIDC, Ambad,
Nashik-422010

VERSUS

Commissioner of Central Excise & GST- Nashik **.....Respondent**
Plot No. 155, Sector P-34, NH, Jaishta and
Vaishaka CIDCO, Nashik-422008

Appearance:

Shri T.C. Nair, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER NO. A/85921 / 2019

Date of Hearing: 18.01.2019
Date of Decision:17.05.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 05.03.2018 passed by the Learned Commissioner of Central Excise (Appeals), Nashik. Imposition of penalty under Section 11AC of the Central Excise Act, 1944 is the subject matter of present dispute.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Motor Vehicle Parts (Chassis & Sheet Metal Parts), falling under Chapter Heading No. 87.08 of the Central Excise Tariff Act, 1985. On removal of the said final products

from the factory, the appellant discharges central excise duty liability on transaction value. The appellant also stock transfer certain semi finished goods to their other units for manufacture of the final products and pays duty thereon on the value determined as per CAS-4 costing basis. During the disputed period, the Central Excise officers while conducting audit of the records in the factory of the appellant, observed that for removal of semi finished goods to the sister units, the appellant did not follow the procedures/guidelines laid down under Section 4(1)(b) of the Act read with Rule 8 of the Valuation Rules, 2000 and CBEC Circular No. 692/08/2003-CX., dated 13.02.2003. Accordingly, show cause proceedings were initiated against the appellant, seeking for recovery of the short paid duty. The matter was adjudicated vide order dated 13.01.2017, wherein central excise duty demand of Rs.3,929/- and Rs.17,98,511/- along with interest was confirmed on the appellant. The said amount already deposited before adjudication of the matter was appropriated in the original order against the respective confirmed demands. Besides, the adjudication order also imposed equal amount of penalty on the appellant. On appeal, the Learned Commissioner (Appeals) has rejected the appeal filed by the appellant against imposition of penalty under Section 11AC of the Act. Hence, the appellant has filed the present appeal before the Tribunal.

3. Heard both sides and perused the records.

4. The appellant submitted that CAS-4 certificates were prepared by them based on previous year's cost data and on finalization of the accounts for the current year (in September/October), revised CAS-4 certificates, based on actual cost data, were prepared (normally in November/December) and differential duty, if any, was being paid along with interest. It is further submitted that during the Financial Years 2011-12 and

2012-13 (till December' 2012) the appellant did not revise the CAS-4 costing duty oversight and continued to pay duty based on earlier CAS-4 costing. The appellant also submitted that the certificates for the said period were prepared on 18.12.2012 and the appellant had paid the differential duty of Rs.17,10,356/- on 31.12.2012 and interest amount on 05.01.2013. It is also contended by the appellant that there was no intention to undervalue the goods stocked transferred to the sister units and since the differential duty along with interest was paid by the appellant upon finalization of the CAS-4 certificate, the provisions of Section 11AC of the Act cannot be invoked for imposition of penalty.

4. On perusal of records, I find that during the Financial Years 2008-09 to 2010-11, the appellant had paid duty on higher side initially as compared to CAS-4 certificates prepared after finalization of the accounts. Thus, it is not the case of revenue that the appellant is a wilful defaulter and non-payment of duty within the stipulated time for the disputed period can be owing to the reason of fraud, collusion, wilful mis-statement etc., with intent to evade the Government Revenue. I find that the differential amount was deposited by the appellant much prior to the date of issue of the show cause notice. In context with finalization of CAS-4, the CBEC issued instructions from file F.No. 206/10/2017-CX.6 dated 16.12.2017, clarifying that the certificate of cost data can be prepared based on actual data by 31st of December next year. In this case, since the CAS-4 certificate was prepared based on actual cost data for the period 2011-12 and 2012-13 on 18.12.2012, the said clarification of the CBEC covers the case of the appellant. I find that the Tribunal in the case of Crompton Greaves Ltd., vide Final Order No. A/86605/2018 dated 05.06.2018 has set aside the penalty on identical situation.

5. In view of above, I do not find any merits in the impugned order, so far as imposition of penalty is concerned. Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Order pronounced in the open court on 17/05/2019)

(S.K.Mohanty)
Member (Judicial)

HK