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

Appeal No. E/1727/2010

(Arising out of Order-in-Appeal No. PKS/158/BEL/2010 dated 02.07.2010 passed by Commissioner of Central Excise (Appeals), Mumbai)

LSR Speciality Oils Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Belapur **Respondent**

<u>Appearance:</u>

Shri Prasad Paranjape, Advocate for appellant
Shri Anil Chaudhary, Asst. Commr (AR) for respondent

<u>CORAM:</u>

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

Date of Hearing / Decision: 31.10.2018

FINAL ORDER NO. **A/88422 / 2018**

Per: S.K. Mohanty

The appellant has filed this appeal against the impugned order dated 02.07.2010, in so far as it upheld imposition of penalty of Rs.28,00,000/- under Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Rule 25 of the erstwhile Central Excise Rules, 2001.

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture of lubricating oil, classifiable under sub-heading No.2710.90 of CETA,1985 in different size for M/s EPIPL. During the period from 01.07.2000 to 31.12.2000, the appellant was paying duty on cost construction basis under Rule 11 of the Central Excise Valuation Rules, 2000. The Range Superintendent pointed out that the appellant had not added the element of 15% of the notional profit under Rule 8 of the Valuation Rules, in the assessable value at the time of clearance of the goods. On being pointed out, the appellant paid the differential duty of Rs.28,44,298/- with interest of Rs.3,86,084/- without protest during the period from 28.04.2001 to 24.10.2001. A show-cause notice dated 06.03.2002 was issued, proposing imposition of penalty under Section 11AC of the erstwhile Central Excise Act, 1944 and also under Rule 173Q / 209 of the Rules, 1944 read with Rule 25 and 27 of Rules, 2001. The adjudicating authority had imposed penalty of Rs.28,00,000/- under Rule 173Q of the Rules, 1944 read with Rule 25 of Rules, 2001. By the impugned order, the Commissioner (Appeals) dismissed the appeal. Hence, the appellant has filed this appeal.

3. Heard both sides and perused the records.

4. The learned Advocate on behalf of the appellant submitted that there is no suppression of fact, with intent to evade payment of Central Excise duty. It is also submitted that it is a case of interpretation of the provisions of the rules. He further submitted that the appellant had deposited the entire amount of duty with interest as ascertained by the Range Superintend before issuance of show-cause notice. Thus, it was pleaded on behalf of the appellant that imposition of penalty is not warranted in this case. The Learned Advocate has relied upon the following judgments in support of non-imposition of penalty:-

(a) Prince Multiplast Pvt. Ltd. v. Union of India – 2012 (276) ELT 48 (Guj.)

(b) Uniworth Textiles Ltd. v. Commissioner – 2013 (288) ELT 161 (S.C.)

6. The learned A.R appearing for the Revenue has reiterated the findings of the lower authorities. He has also referred to various case laws.

7. We find from the show-cause notice that it has been alleged that the appellant could not have paid the differential duty, if it is not detected by the Range Superintendent. Rule 173Q of the erstwhile Rules, 1944 provides for imposition of

penalty in respect of contravention of any of the provisions of these rules with intent to evade payment of duty. On perusal of the records, we find that the appellant had cleared the goods on payment of duty under the cover of proper Central Excise invoices. There is no material available on record to show that non-inclusion of notional profit in the assessable value under the provisions of Valuation Rules, 2000 was with intent to evade payment of duty. In other words, the appellant had immediately paid the duty with interest on pointing out the discrepancy by the Range Superintendent. Thus, in our view, the imposition of penalty under Rule 173Q of the rules, 1944 is not warranted. Though the learned A.R. has referred to various case laws, but the same are not applicable to the facts and circumstances of the case before us.

8. In view of the above discussion, the penalty imposed on the appellant is set aside and the appeal is allowed in favour of the appellant to such extent.

(Operative part pronounced in Court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

NSK