CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 1445 of 2011

(Arising out of Order-in-Appeal No. PI/RKS/102/2011 dated 07.07.2011 passed by the Commissioner of Central Excise (Appeals), Pune I)

M/s. Finolex India Ltd. **.....Appellant**
D1/10, MIDC Chinchwad,
Pune

Vs.

Commissioner of Central Excise, Pune I **.....Respondent**
ICE House, 41-A, Sasson Road,
Opposite Wadia College,
Pune

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant
Ms. A. Parab, AC (AR) for the respondent

CORAM:
Hon'ble Dr. D.M. Mishra, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/86159/2019

DATE OF HEARING : 18.06.2019
DATE OF DECISION : 18.06.2019

PER: Dr. D.M. Mishra

This is an appeal filed against Order-in-Appeal No. PI/RKS/102/2011 dated 07.07.2011 passed by the Commissioner of Central Excise (Appeals), Pune I.

2. Briefly stated the facts of the case are that appellants are engaged in the manufacture of PVC Pipes fittings etc. falling under Chapter 39 of Central Excise Tariff Act, 1985. During the relevant period, i.e. 2008-09 they cleared the goods to their another unit for captive consumption by discharging duty @110% of the cost of production as per Rule 8 of Central Excise Valuation Rules, 2000. In determining, the cost of production, they have applied CAS-4 method on monthly basis which later found to be incorrect, accordingly, Show Cause Notice was issued for recovery of differential duty of ₹3,16,512/- for the clearance made during the period August 2008 and March 2009. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals) disputing the imposition of penalty which was rejected by Commissioner (Appeals). Hence, the present appeal.

3. At the outset, Learned Advocate for the appellant has submitted that the differential duty was payable due to determination of the cost of production, applying CAS-4 method on the data available on monthly basis. He submits that the appellant before the Commissioner (Appeals) has not disputed the liability of differential duty but vehemently argued that penalty cannot be imposed on them under section 11AC of Central Excise Act, 1944. He has submitted that the entire

demand is for the normal period of limitation, hence, penalty be set aside.

4. Learned Authorised Representative for the Revenue reiterated the finding that the appellant has paid only the amount of ₹2,35,565/- and interest of ₹71,079/- against the total differential duty of ₹3,16,512/-. Learned AR has further submitted that since they have not paid the entire amount, Learned Commissioner (Appeals) has correctly confirmed the penalty under section 11AC of Central Excise Act, 1944.

5. Heard both sides and perused the records.

6. We find that the short issue for determination is whether penalty under section 11AC of Central Excise Act equivalent to the differential duty is imposable on the appellant. There is no dispute of the fact that by applying CAS-4 method with appropriate data, the differential duty of ₹3,16,512/- became payable by the appellant. The appellant has not disputed the amount on merit and a part of it was paid by them along with interest. The contention of the appellant is that penalty equivalent to differential duty under section 11AC is unwarranted. We find force in the contention of Learned Advocate for the appellant. During the relevant period, by applying CAS-4 method on monthly basis, they have paid duty on the stock transferred goods to their sister unit where they availed MODVAT credit. The department applying the CAS-4

method correctly redetermined the value and accordingly, differential duty of ₹3,16,512/- became payable. In these circumstances, we do not find suppression of fact or malafide intention on the part of the appellant in discharging lesser duty involving normal period. Therefore, imposition of penalty under section 11AC of Central Excise Act, 1944 is not warranted and the same is set aside. Appeal is partly allowed to the extent of setting aside the penalty imposed under section 11AC of Central Excise Act, 1944.

(Operative part pronounced in Court)

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

(P. Anjani Kumar)
Member (Technical)

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