CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Excise Appeal No: 248 of 2010

[Arising out of Order-in-Appeal No: P-I/VSK/241/2009 dated 13th November 2009 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Vishay Components (I) Pvt Ltd … ***Appellant***
Loni – Kalbhor, Near Central Railway, Pune – 412 201

versus

Commissioner of Central Excise ***…Respondent***
Pune – III
'F' Wing, 3rd Floor, 41A ICE House, Sasoon Road,
Pune – 411 001

APPEARANCE:

Shri AB Nawal, Consultant for the appellant

Shri SJ Sahu, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/88577 / 2018

DATE OF HEARING: 03/05/2018
DATE OF DECISION: 03/05/2018

PER: C J MATHEW

This appeal lies within the narrow compass of liability to penalties that were upheld in order-in-appeal no. P-I/VSK/241/2009 dated 13th November 2009 of Commissioner of Central Excise (Appeals), Pune – I.

2. The appellant herein, M/s Vishay Components (I) Pvt Ltd, is a 100% export-oriented unit clearing goods to their group concern situated in the domestic tariff area and, on which had, admittedly, not discharged 'special additional duty' while assessing the goods under notification no. 23/2003-Central Excise dated 31st March 2003. Accordingly, duty liability of ₹ 9,20,534/- was confirmed under section 11A of Central Excise Act, 1944 along with attendant penalty of like amount under section 11AC of Central Excise Act, 1944. According to Learned Counsel for the appellant, it has been held in *Hanil Era Textiles Ltd v. Commissioner of Central Excise, Belapur [2007 (210) ELT 414 (Tri.Mumbai)], Commissioner of Central Excise, Delhi – III, Gurgaon v. Machino Montell (I) Ltd [2004 (168) ELT 466 (Tri.-LB)]* and *VVF Ltd v. Commissioner of Central Excise, Belapur [2014-TIOL-04-CESTAT-MUM]* and in *Sun Pharmaceuticals Industries Ltd v. Commissioner of Central Excise, Puducherry [final order no. A41542-41545/2015 dated 25th September 2015]* that 'special additional duty' is not liable on stock transfer.

3. It is seen from the record that the appellant had discharged differential tax liability on 15th October, 2007 along with applicable interest.

4. We have heard the Learned Authorised Representative.

5. The appellant is a '100% export oriented unit' and claims that the goods being cleared as 'stock transfer' was not liable to special additional duties. The said duties are liable to be paid in view of clearance into the domestic tariff area in view of the exemption accorded at the time of import by the appellant. In the present case, the goods were, admittedly, transferred to their sister unit which in turn would, upon further clearance, be liable to duties of central excise as well as appropriate tax under the sales tax/VAT laws. Moreover, it is seen that the appellant had discharged the tax liability in full before the issue of show cause notice. We take note of the decision of the Larger Bench of the Tribunal in *Machino Montell (I) Ltd* holding that

> *'6. In the light of the decision of the Karnataka High Court as referred above which considered the very same issue placed before us, it may not be possible for us to take a different view as contended by the ld. Departmental representative. It is to be noted that the Karnataka High Court has referred to the fact that the Hon'ble Supreme Court has dismissed the appeal filed by the Revenue [2004 (163) ELT A53 (S.C.)] from the decision of this Tribunal in Rashtriya Ispat Nigam Ltd. v. CCE, Visakhapatnam [2003 (161) ELT 285 (Tribunal-Bang.)] where identical issue was considered. In these circumstances, we follow the ratio of the decision of the Karnataka High Court and hold that when the duty amount is paid by the assessee before issuance of show cause notice, no penalty can be imposed under Section 11A and interest demanded under Section 11AC. Since no other issue is raised in the appeal, at*

the instance of the Revenue, we dismiss the appeal.'

6. In view of the above, and as the appellant has discharged the liability of 'special additional duty' with interest thereof, the appeal is allowed to the extent of setting aside the penalty.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

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