CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 86972 of 2024
(On behalf of the Respondent)
In
Excise Appeal No. 86668 of 2016

[Arising out of Order-in-Original No. PUN-EXCUS-001-PR.COM-111-15-16 dated 31.03.2016 passed by the Principal Commissioner of Central Excise & Service Tax, Pune-I]

Thermax Limited **.... Appellant**
D-1 Block, MIDC Industrial Area,
Chinchwad, Pune 411 019.

Versus

Principal Commissioner of Central GST & Central Excise, **.... Respondent**
2nd Floor, GST Bhavan, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Excise Appeal No. 86687 of 2016

[Arising out of Order-in-Original No. PUN-EXCUS-001-PR.COM-111-15-16 dated 31.03.2016 passed by the Principal Commissioner of Central Excise & Service Tax, Pune-I]

M.S. Unnikrishnan **.... Appellant**
D-1 Block, MIDC Industrial Area,
Chinchwad, Pune 411 019.

Versus

Commissioner of Central Excise, Pune-I **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri A.K. Srivastava, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 85362-85363/2026

Date of Hearing: 25.02.2026

Date of Decision: 25.02.2026

PER: S.K. MOHANTY

Revenue has filed the miscellaneous application, seeking change of name of the respondent in the cause title to the appeal filed before the Tribunal. The application is considered and accordingly the respondent's name in the cause title is amended to read as "*Principal Commissioner of Central GST & Central Excise, Pune-I*", having address at 2nd Floor, GST Bhavan, 41-A, Sassoon Road, Opp. Wadia College, Pune 411 001. Accordingly, the miscellaneous application is allowed.

2. Heard both sides and examined the case records.

3. Brief facts of the case are that the appellants had availed and utilized CENVAT credit irregularly during the period December 2013 and reversed the same from their CENVAT account and also paid interest amount attributable to such reversal of CENVAT credit. Further, the appellants had also deposited 25% of the penalty amount and intimated the details of such payment to the department vide their letter dated 21.02.2014. However, the department had initiated show cause proceedings against the appellants, seeking for confirmation of the CENVAT amount along with interest and for imposition of penalty. The Show Cause Notice (SCN) dated 18.12.2015 had also proposed for imposition of penalty on the Managing Director of the appellant company, Shri M.S. Unnikrishnan. The SCN dated 18.12.2015 issued by the department was adjudicated by the learned Principal Commissioner of Central Excise & Service Tax, vide the impugned order dated 31.03.2016, wherein the proposals made in the SCN dated 18.12.2015 were confirmed. Feeling aggrieved with the said impugned order dated 31.03.2016, the appellants have preferred these appeals before the Tribunal.

4. In support of confirmation of the adjudged demands, the learned adjudicating authority at paragraph 24.02 in the impugned order has recorded the following findings:-

> *"24.02 As regards legal sustainability of the present SCN, the Noticee is of the opinion that in view of the fact that they have discharged the entire duty liability along with interest pavable thereon as well as penalty @ 25% of duty so evaded even before the issuance of SCN, under the provisions of Section 11A(6) / (7) of the erstwhile CEA, 1944 no notice should have been served on them and all proceedings in respect of said duty should have been deemed to have been concluded. The Noticee's this view is incorrect and not acceptable in as much as the Noticees admitted to have availed and utilized fraudulent Cenvat credit of input services for almost 8 long years i.e. from 2006 -07 to 2013-14. The provisions of Section 11A of CEA, was amended with effect only from 08-*

04-2011. Even though the present SCN has considered the period from 2010-11 to 2013-14 as yet during the period prior to 08.04.2011 covered therein had no luxury of availing the amended Section11 A and therefore the entire period covered in the present Notice could not have the immunity under the provisions of Section 11A (6) /(7) of the CEA, 1944. More over the offence committed by the Noticee in the present case being of very serious nature involving collusion with vendors and falsifying thereby the documents so as to avail non existing Cenvat credits and defraud thereof the legitimate Revenue due to the Govt. the offenders therefore need to be penalized/punished under the provisions of existing Act and Rules framed there under. In view of these facts and circumstances of the present case, the present SCN covering the entire period of 2010-11 to 2013-14 is no doubt valid under the provisions of Section 14 of the CCR, 2004 read with proviso to Section 11A(1) of the CEA, 1944."

5. On reading of the above findings recorded in the impugned order, we find that the learned adjudicating authority has proceeded against the appellants, considering the fact that Section 11A of the Central Excise Act, 1944 got amended with effect from 08.04.2011 and since the period of dispute involved in the present appeal is from 2010-11 to 2013-14, the amended provision of Section 11A *ibid* shall not be available for payment of the reduced amount of penalty of 25%.

6.1 Section 11A of the Act of 1944 was substituted by Section 63 of the Finance Act, 2011 with effect from 08.04.2011. In the present case, the SCN was issued by the department on 18.12.2015, i.e. after the date of substitution of Section 11A *ibid*. Since the SCN was issued after the substitution of Section 11A *ibid*, the substituted provision alone would be applicable for consideration of the present dispute as to whether, the benefit of reduced amount of penalty should be available or not. Sub-section (6) read with sub-section (7) of Section 11A *ibid* provides that on payment of the duty, interest and 25% of penalty by the assessee, no proceedings shall be initiated by the Central Excise officers. This means that on compliance of such conditions of payment, there was no requirement for issuance of any SCN in respect of the amount so paid and all proceedings in respect of such amount shall be deemed to be conclusive as per the said statutory provisions. However, ignoring the amended provisions of Section 11A *ibid*, the department had initiated show cause proceedings, which, in our considered view, are not proper and justified inasmuch as such action on the part of the department is contrary to the clear mandates provided under the said statute.

6.2 Even assuming that the learned adjudicating authority is correct in saying that the part of the demand pertains to the period before amendment of Section 11A *ibid*, but the statutory provisions existed at the material time (i.e., prior to the date of substitution on 08.04.2011) through sub-section (1A) has also provided the option to an assessee for payment of the duty along with the interest and penalty equivalent to 25% of the duty. In the eventuality of making payment of such amount, sub-section (2) of Section 11A *ibid* has empowered the Central Excise Officer to determine the differential amount of duty, if any, payable by the assessee. In the proviso clause appended to sub-section (2), it has been mandated that where the assessee had paid the duty in full together with interest and reduced amount of penalty of 25%, the proceedings initiated through issuance of SCN be deemed to be conclusive. In other words, under the unamended provisions of Section 11A ibid (effective up to 08.04.2011), there was no requirement of proceeding further, upon deposit of the requisite amount by the assessee. It is not the Revenue's case that over and above the amount paid by the appellants, any other amount representing duty of excise was determined by the Central Excise Officer. Thus, under such circumstances, there was no need for adjudication of the matter in respect of the amount, so paid by the appellants, under sub-section (1A) of Section 11A *ibid*.

7. Therefore, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands, more specifically, imposed equal amount of penalty on the appellants by taking recourse to Section 11AC of the Act of 1944. Accordingly, the impugned order is set aside in its entirety and the appeal is allowed in favour of the appellants M/s. Thermax Limited. Since there was no requirement of issuance of any SCN in terms of sub-section (6) and (7) of Section 11A of the Act of 1944, the personal penalty imposed on the Managing Director of the appellant-company should also be liable for set aside and thus, we are setting aside the penalty imposed on him in the impugned order. Thus, the appeal filed by Shri M.S. Unnikrishnan is also allowed.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

tvu