FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO. 10/2013
(THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, NAGPUR **VERSUS** M/S MECHANICAL HOIST MANUFACTURING DIVISION, BABUPETH, CHANDRAPUR & ANOTHER)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri F.T. Mirza with Shri Anand Deshpande, counsel for the appellant.
Mrs. S.S. Wandile, counsel for the respondent.

CORAM : SMT. VASANTI A. NAIK AND PRASANNA B. VARALE, JJ.

DATE : JULY 16, 2015.

By this central excise appeal, the appellant-Department challenges the order of the Commissioner of Central Excise & Customs, Nagpur determining the excise duty of Rs.29,17,879/- and directing the respondent-Assessee to pay the mandatory penalty of Rs.18,90,536/- in terms of the provisions of Section 11AC of the Central Excise Act, 1944, as they then existed.

A show cause notice was issued to the respondent by the Excise Authorities asking the respondent why action should not be initiated against the respondent for evasion of excise duty to the tune of Rs.29,17,879/-. The Tribunal found that the respondent suppressed the material and failed to pay the duty in absence of registration. On the receipt of the show cause notice, the respondent deposited an amount of Rs.13,69,790/-. The respondent made a grievance in regard to the determination of duty at Rs.29,17,879/-, as according to the respondent, evasion of the duty was to a lesser extent. The matter was decided by the Authorities and by the impugned orders, it was held that the duty of Rs.29,17,879/-, as demanded by the show cause notice, was recoverable from the respondent-Assessee. Since the respondent-Assessee had already paid a sum of Rs.13,69,790/-, the Commissioner found that the balance amount of Rs.15,48,089/- was due under the provisions of Section 11A of the Act of 1944. The Commissioner, therefore, imposed a penalty of Rs.18,90,536/-, i.e. an amount of Rs.15,48,089/- for the amount that was due and payable in terms of the order and 25% of the amount of Rs.13,69,790/- that was already paid, i.e. Rs.3,42,447/-. The order of the Commissioner was upheld by the Tribunal. The appellant-Department has challenged the order of the Commissioner and the Tribunal in the instant appeal.

It is submitted on behalf of the appellant that the authorities were not justified in directing the respondent-Assessee to pay 25% penalty on the amount of Rs.13,69,790/-, deposited by he respondent-Assesseee after the receipt of the notice. It is submitted that since the entire amount of Rs.29,17,879/- was not deposited by the respondent-Assessee within a period of one month from the determination of the amount, the respondent-Assessee was liable to pay 100% penalty, i.e. a penalty of Rs.29,17,879/-. It is submitted that the deposit of Rs.13,69,790/- by the respondent-Assessee within a period of one month cannot be considered while imposing the penalty under Section 11AC of the Act of 1944. It is submitted that the proviso to Section 11AC of the Act of 1944 would not absolve the respondent-Assessee of the liability to pay 100% penalty on Rs.13,69,790/- also.

On hearing the learned counsel for the parties and on a perusal of the provisions of Section 11AC of the Act of 1944 (as they then existed), it appears that there is no reason to interfere with the order of the Authorities in this appeal. In our view, no substantial question of law arises for determination in this appeal. On a reading of the provisions of Section 11AC of the Act of 1944, it appears that the respondent-Assessee could not have been directed to pay 100% penalty on the amount that was deposited on the receipt of the notice. If the argument made on behalf of the Department is accepted, in a given case, if 99% of the amount determined is deposited and if by mistake or for any other reason including a dispute in regard to the amount determined 1% remains to be deposited, the assessee would be liable to pay 100% penalty on the entire amount, so determined. We do not find anything in the provisions of Section 11AC of the Act of 1944 to uphold the submissions made on behalf of the Department.

In the result, the central excise appeal is dismissed with no order as to costs.

JUDGE **JUDGE**

APTE