IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Central Excise Appeal No. 37/2007

(The Commissioner of Central Excise, Nagpur vs M/s Hariyana Metal Ltd. & ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Shri S.N. Bhattad, Advocate with Shri K.K. Nalamwar, Advocate for appellant. None for respondent.

CORAM : M.S. SANKLECHA &
MANISH PITALE, JJ.

DATE : 22.6.2017.

At the very outset, Mr. Bhattad learned counsel for the Revenue states that common appeal has been filed in respect of respondents – Assessees. This was so as common order was passed by the Customs Excise Service Tax Appellate Tribunal (Tribunal) dispossing of the three grounds. Mr. S.N. Bhattad, learned counsel for the appellant – Revenue had filed a pursis indicating payment of Court fees evidencing payment of Court Fees in respect of respondent Nos. 2 to 4. Office to verify the same.

2. This appeal under Section 35G(1) of the Central Excise Act, 1944 challenges the order dated 8th February, 2007 passed by the Customs Excise Service Tax Appellate Tribunal. This appeal was admitted on 28th March, 2007 on the following substantial question of law:-

"Whether the Tribunal was right in reducing the mandatory penalty imposed under Section 11AC and erstwhile Rule 57-I(4) of Central Excise Rules 1944 in spite of existence of mense-rea and upholding the confirmation of demands to that effects. Section 11A of the Act and Rules 57-I(4) of said Rules clearly stipulate imposition of mandatory penalty equal to the duty demanded under Section 11AC of the Act read with Rule 57(4) as also upheld by the Hon'ble Apex Court/High Courts."

3. The appeal filed in respect of the respondent Nos. 3, 4 and 5 are not pressed by the Revenue. Mr. Bhattad, learned counsel for the appellant states that the same is not being pressed as in these cases duty demand, itself has been deleted. Consequently, no fault can be found with the order of the Tribunal in deleting the equal penalty imposed upon respondent No.2. So also, the deletion/reduction of penalty upon the directors of respondent Nos.1 and 2 is also not being being agitated.

4. In appeal, the impugned order of the Tribunal has confirmed of the order of the Commissioner of Central Excise to the extent of short inputs of Rs. Rs. 7.84 lakhs under Rule 57.I(ii) of the Rules. Nevertheless it reduced mandatory penalty imposed under Rule 57-I(4) of the Act from Rs. 7.84 laksh to Rs. 1 lakhs. Similarly, in respect of

shortage of finished goods, the impugned order of the Tribunal had upheld demand of Rs. 1,27,801/- under Section 11A of the Act nevertheless it reduced the penalty to Rs. 50,000/- under Section 11AC of the Act. The Tribunal rendered the impugned decision prior to the decision of the Hon'ble Apex Court in case of ***Union of India vs. Rajasthan Spinning & Weaving Mills, 2009(238) E.L.T.3 (S.C.)*** wherein, it has held that once the demand has been made/confirmed under Section 11A of the Act and conditions necessary for invocation of 11AC of the Act are present, then the Tribunal has no discretion to reduce the penalty equal to the duty determined under sub-section (2) of Section 11A of the Act.

5. In view of the decision of the Hon'ble Apex Court in *Union of India vs. Rajasthan Spinning & Weaving Mills,* (supra) and ***Commissioner of C.EX & CUS., Surat-I vs Vandana Art Prints Pvt. Ltd. reported in 2016(340) E.L.T.4 (S.C.)*** the substantial question as raised would have to be answered in the negative i.e. in favour of the Revenue and against the assessee.

6. Appeal is disposed of in above term. No order as to costs.

(MANISH PITALE, J.) **(M.S.SANKLECHA, J.)**

Gohane