207 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-26-2016 (O&M)
Date of Decision:07.11.2024

M/S. INDIA YAMAHA MOTOR PVT LTD ……..*Appellant*

V/s.

COMMISSIONER OF CENTRAL EXCISE ……..*Respondent*

CEA-27-2016 (O&M)

INDIA YAMAHA MOTOR PVT LTD ……..*Appellant*

V/s.

COMMISSIONER OF CENTRAL EXCISE ……..*Respondent*

CORAM: ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
HON'BLE MR. JUSTICE SANJAY VASHISTH

(Through Video Conferencing/Hybrid Mode)

Present Mr. Tarun Deep S. Khaira, Advocate for the appellant(s).

Mr. Suman Jain, Senior Standing Counsel CBIC,
with Mr. Rahul Bansal, and
Ms. Swati Bansal, Advocate for the respondent(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of these two connected Appeals as the issue involved in these appeals is common.

2. The appellant(s) has preferred these appeals against order dated 13.04.2016 passed by the Custom, Excise & Service Tax Appellate Tribunal, Chandigarh (hereinafter referred to as "the CESTAT") in Appeal No.E/3455/2010-(SM) and Appeal No.E/220/2016-(SM), whereby the CESTAT has reduced the penalty to 25% of the duty involved from the original penalty of 100% of duty imposed on the appellant.

3. Learned counsel for the appellant submits that once the appellant(s) has reversed the cenvat credit, inadmissibly availed by the before issuance of the show cause notice and that there has been no demand of interest, there was no occasion to impose penalty under Section 11AC of the Central Excise Act, 1944 (for short "the Act").

4. *Per contra,* learned counsel for the respondents submits that it is only when the audit was conducted then it was revealed that the appellant(s) has been availing the cenvat credit inadmissibly since August, 2006/September, 2007. The appellant did not admit its mistake when it was pointed out by the Audit Party, but later on vide letter dated 16.12.2008, the appellant(s) informed that they have debited the amount on 16.12.2008. The petitioner has, therefore, wrongfully given information regarding the cenvat credit availed by them and the penalty as imposed under Section 11AC of the Act is in accordance with law.

5. Learned counsel for the respondents further submits that the CESTAT has already reduced the same to 25% of the duty involved instead of 100% as required under Section 11AC of the Act. Keeping in view thereto, learned counsel for the petitioner submits that no further indulgence should be granted to the appellant(s).

6. We have considered the submissions of the learned counsel for both the parties.

7. While learned counsel for the appellant(s) has cited law relating to such cases where this Court and other Courts have waived the penalty upon the concerned persons have reversed the cenvat credit, taking into consideration the facts of this case, and the finding arrived at by the CESTAT that malafide on the part of the appellant(s) is proved, we do not intend to make any further interference with the order passed by the CESTAT as the amount being too negligible. Accordingly, both the Appeals are ***dismissed***.

8. All pending applications filed in these Appeals shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

November 7, 2024
Ess Kay

Whether speaking / reasoned	:	*Yes*	/	*No*
Whether Reportable	:	*Yes*	/	*No*