Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10551 of 2020

(Arising out of OIA-AHM-EXCUS-003-COM-006-20-21 dated- 22/06/2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)

SHRI RAMESHCHANDRA SHAH **.....Appellant**
Md Of Mesers Ashik Woolen Mill Ltd
Gandhinagar, Gujarat

VERSUS

C.C.E. & S.T.-AHMEDABAD-III **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura, Ahmedabad, Gujarat - 380009

WITH

Excise Appeal No. 10552 of 2020

(Arising out of OIA-AHM-EXCUS-003-COM-006-20-21 dated- 22/06/2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)

MESSRS ASHIK WOOLLEN MILLS LTD **.....Appellant**
Gidc Industrial Estate, Gandhinagar, Gujarat

VERSUS

C.C.E. & S.T.-AHMEDABAD-III **.....Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura, Ahmedabad, Gujarat - 380009

Appearance:
Shri Amal Dave, Advocate appeared for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A / 10041 - 10042 /2023

DATE OF HEARING: 15.09.2022
DATE OF DECISION: 12.01.2023

RAJU

These appeals has been filed by M/s Ashik Woollen Mills Ltd and Rameshchandra Shah against the demand of central excise duty & imposition of penalty.

2. Learned counsel pointed out that the appellants are engaged in manufacture of various varieties of yarn like Woollen Yarn, Woollen Viscose, Polyester Viscose Yarn etc. Learned counsel pointed out that on 21.12.1996 the Central Excise Officers visited appellant's factory and made a Panchnama seizing various books of accounts records etc. The officer also seized 44497.250 kgs of yarn which were lying in the factory premises on the ground that it was not entered in RG -1 which was last updated on 19.08.1996. Consequently, the SCN was issued to the appellant proposing to

confiscate the seized yarn and to recover excise duty. Notice also included a demand of Rs 3,18,290/- of excise duty on shortage of yarn amounting to 15781.25 Kgs . The SCN also sought to impose penalties on appellant company and Rameshchandra Shah. The said SCN was confirming demand of central excise duty of RS . 24,78,032/- and Rs. 3,18,290 on the appellant company and personal penalties of Rs 5 Lacs each on Ashik R Shah and Shri R. B Shah. The appellant challenged the order before the Tribunal and Tribunal decided the issue vide final order No. A/598 -601/ WZB/2005/CI dated 12.05.2005 whereby this Tribunal remanded the matter for fresh adjudication as the Adjudicating Authority had failed to consider certain submissions made by the appellant. The matter was re-adjudicated by the adjudicating authority and demand of RS. 27,96,322/- was confirmed along with penalties of Rs. 16,95,365/- and Rs. 8,30,957/- on the appellant company and also imposing a personal penalty of Rs. 10,00,000/- on Shri Rameshchandra Shah. The matter was again challenged by the appellant before this Tribunal. The Tribunal vide order dated 23.04.2018 held that the appellant was liable to pay Rs. 14,32,222 on the goods cleared as hank yarn and the appellant was required to pay 5,47,536 on the goods which were cleared without payment of duty . The appellant was also directed to pay an amount of Rs.2,14,853/- on the goods which were cleared on the job work without payment of duty. The Tribunal however dropped the demand of Rs. 2,83,421 on the goods which were removed on challan to the job worker and the demand of Rs. 3,18,290 on the shortage of goods was also dropped. Therefore, out of the total demand of Rs. 27,96,322/- the demand of 06,01,711/- was dropped and demand of Rs. 21,94,611/- was confirmed. As regard the penalties, the matter was remanded back to the Adjudicating Authority for re-quantification in view of the Tribunal's order. The matter was again decided by the Adjudicating Authority and the Adjudicating Authority has imposed penalty of Rs 21, 94,611/- under Section 11AC of the Central Excise Act, 1944 read with 173Q of the Central Excise Rules, 1944. The Adjudicating Authority has imposed penalty of Rs. 2 Lacs on the Managing Director of the Appellant Company under Rule 209A of the central Excise Rules, 1944. The present appeals are against the said imposition of penalties.

2.1 Learned Counsel for the appellant argued that the penalties has been imposed under Section 11 AC of the Central Excise Act, 1944 read with 173 Q of the Central Excise Rules, 1944. He pointed out that the penalties under the provisions of Section 11 AC and Rule 173 Q cannot be imposed jointly. He relied on the decision of Tribunal in the case of Punjab

Recorder Ltd vs. CCE, Chandigarh- 2011 (132) ELT 41 (Tri. Del). Wherein n the following has been observed:

> ***"17.*** *In regard to payment of interest, we note that charging of interest came to the statute book w.e.f. 28-9-1996. The demand in the present case pertains to the period 20-3-1992 to 13-7-1995, therefore, interest is not payable.*
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> ***18.****In so far as imposition of penalty is concerned, we note that a penalty of Rs. one lakh has been imposed under Rule 173Q read with Section 11AC. We note that Section 11AC came to the statute book only w.e.f. 28-9-1996 whereas in the instant case the demand pertains to the period 20-3-1992 to 13-7-1995. Hence penalty under Section 11AC on this demand, period is not sustainable in law. Further, we find that though Rule 173Q has been mentioned but in the absence of apportionment of penalty under Section 11AC and Rule 173Q, we hold that imposition of penalty, is not sustainable in law. Ordered accordingly."*

2.3 He relied on the aforesaid decision to assert that interest under section 11 AB of the Act can only be demanded for the period after the said section was introduced in the statute book with effect from 28.09.1996. He also relied on the decision of Tribunal in the case of Agarwal Pharmaceuticals Vs. CCE Delhi- I – 2002 (146) ELT 190 (Tri.Del)

3. Learned AR relies on the impugned order.

4. I have considered the rival submission. I find that the issue regarding the demand of duty has been decided by the earlier order of the Tribunal dated 04.2018. On the issue that was decided by the impugned order was regarding quantification of penalties. Learned counsel has relied on the decision of Punjab Recorder Ltd (Supra) wherein the following has been observed:

> ***"17.*** *In regard to payment of interest, we note that charging of interest came to the statute book w.e.f. 28-9-1996. The demand in the present case pertains to the period 20-3-1992 to 13-7-1995, therefore, interest is not payable.*
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> ***18.****In so far as imposition of penalty is concerned, we note that a penalty of Rs. one lakh has been imposed under Rule 173Q read with Section 11AC. We note that Section 11AC came to the statute book only w.e.f. 28-9-1996 whereas in the instant case the demand pertains to the period 20-3-1992 to 13-7-1995. Hence penalty under Section*

11AC on this demand, period is not sustainable in law. Further, we find that though Rule 173Q has been mentioned but in the absence of apportionment of penalty under Section 11AC and Rule 173Q, we hold that imposition of penalty, is not sustainable in law. Ordered accordingly."

4.1 It is noticed that when the matter was remanded by the Tribunal, it was done solely for the purpose of quantification of penalties. The Tribunal in its order has observed as follows:

"15. The penalties will be decided accordingly by the Adjudicating Authority in light of above confirmation of the duty. The concerned jurisdictional officer will decide the issue of penalty de novo in the light of above confirmation but by providing reasonable opportunity to the assessee."

4.2 I find that Hon'ble Apex court in the case of Television & Components Ltd 2000 (116) ELT 412 (SC) has observed as follows:-

39. *This brings us to the question of penalty. It is to be remembered that the Collector had imposed a penalty of Rs. 40 lakhs on the respondent No.1 as being equivalent to the redemption value of the TDMs which were not available for confiscation and Rs. 5 lakh each on the respondent No. 1's Directors. The penalty was a composite one in the sense that it was imposed both on account of violation of the Import Control Order and because of mis-declaration of value and evasion of customs duty. The majority set aside the penalty on the respondent No.1 because they negatived the finding under valuation and evasion and also in view of the order of remand. It is not possible to apportion the quantum of penalty between the contraventions found. Therefore, although we have upheld the Collector's finding on the issue of mis-declaration and evasion, the question of quantum of penalty will have to be re-determined by the Collector after determining the issue on the licensing aspect.*

40. *We make it clear that there was no finding by the Tribunal that the penalty imposed was unreasonable. On the other hand, the dissenting Member who had opined against the remand, had held, in our opinion correctly, that in the circumstances of the case the quantum of the penalty was justified.*

41. *The appeal is accordingly partly allowed. The decision of the Tribunal is set aside in so far as it relates to the finding on mis-declaration and evasion. The order of the Collector directing payment*

of differential duty is affirmed. On the question of the violation of the Import Control Order, the adjudicating authority will decide the matter in the light of the questions earlier framed. Depending on his decision the quantum of penalty will thereafter be determined by the Collector in the light of the findings in this judgment. The respondents will pay the costs of the appeals to the appellant assessed at Rs. 5,000/-.

4.3 It is noticed that facts in the of Punjab Recorders are significantly different. In the said case the period in dispute was 20.03.1992 to 13.07.1995. Section 11 AC came into statute book with effect from 28.09.1996 i.e. after the disputed period. In this circumstance it was held that no penalty could have been imposed under section 11 AC. In this back ground it was held that since joint penalty under section 11 AC and Rule 173 Q has been imposed and penalty under section 11 AC could not have been imposed therefore, joint imposition of penalties under section 11 AC read with Rule 173 Q could not be sustain. In the instant case the period involved is both before the introduction of section 11 AC after introduction of section 11 AC in the statute book. Therefore, the facts in the present case are different from the facts in the case relied upon by the appellant.

4.4 In the case of Television & Components Ltd (Supra) also the matter was remanded to the lower authorities because the joint penalty for 2 offences was imposed and in the final order only one offence was upheld. Thus the facts in the case of Television & Components Ltd are also different.

5. In view of the I do not find any error in imposition of composite penalty under Rule 173 Q read with Section 11 AC as in the instant case all the charges have been confirmed and the charges pertains to both the period prior to introduction of Section 11 AC and thereafter. Therefore, penalty under both the provision could have been rightly imposed. In view of the above, I do not find any merit in the appeals filed by the Appellant.

6. The appeals are therefore dismissed.

(Pronounced in the open court on 12.01.2023)

RAJU
MEMBER (TECHNICAL)

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