

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

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.102 of 2012**

(Arising out of OIA-CS/302/SURAT-II/2011 dated 30/11/2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

**Meghmani Organics Ltd**

Agro Dn-Ii, Plot No. 5001/1b, 5030, 31, 32, Gidc, Ankleshwar,  
BHARUCH, GUJARAT

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Surat-ii**

New C.Ex Building...Opp. Gandhi Baug,  
Chowk Bazar,  
Surat, Gujarat-395001

**.....Respondent**

**APPEARANCE:**

Shri Amal Dave, Advocate for the Appellant  
Shri. Vijay G. Iyengar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**

**Final Order No. A/ 11264 /2022**

DATE OF HEARING: 14.10.2022  
DATE OF DECISION: 20.10.2022

**RAMESH NAIR**

The brief facts of the case are that the appellant's unit was initially an EOU unit which later on underwent debonding on 28.01.2008. During the course of audit, it was pointed out that there was a short payment of duty amounting to Rs.21,38,277/- being central excise duty payable on stock of goods. The audit was undertaken in the month of September and October, 2008. The appellant on being pointed out by the audit, deposited the amount of duty along with interest. A show cause notice was issued on 16.01.2009, the show cause notice was adjudicated wherein, demand of short payment of duty was confirmed and the same along with payment of interest has been appropriated. Apart from duty and interest, a demand of equal penalty under Section 11AC was imposed. The appellant before the adjudicating authority as well as the Commissioner (Appeals) agitated only in respect of imposition of penalty under Section 11AC. Both the authorities have held that appellant are liable for penalty of equal amount under Section 11AC and therefore, the present appeal filed by the appellant.

02. Shri Amal Dave, learned counsel appearing on behalf of the appellant submits that the appellant on pointing out by the audit immediately paid the short payment of duty along with interest. There was no mala fide on the part of the appellant therefore, the penalty under Section 11AC was not imposable. He further submits that the demand was raised within the normal period of one year, for this reason also the penalty should not be imposed. He submits that though the penalty was proposed under Section 11AC in the show cause notice but no reasoning was given in the show cause notice regarding the suppression of fact or any mala fide intention on the part of the appellant therefore, without giving any reason invoking Section 11AC in the show cause notice itself is illegal therefore, the adjudicating authority was not supposed to impose penalty under Section 11AC. He placed reliance on the following judgments:-

- STANADYNE AMALGAMATIONS PVT. LTD.- 2019 (29) G.S.T.L. 605 (Mad.)
- JAIN IRRIGATION SYSTEMS LTD.- 2015 (40) S.T.R. 752 (Tri.-Mumbai)
- M/s. MARCK BIOSCIENCE LIMITED vide Final Order No.A/11070/2019 dated 04.07.2019.
- Messers John Energy Limited vide Final Order No.A/12620/2018 dated 26.11.2018.
- Messers Murugappa Morgan Thermal Ceramics Limited vide Final Order No. A/11638/2019 dated 21.08.2019

03. Shri Vijay G. Iyengar, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that the appellant calculated the duty while debonding from EOU on the stock as on 03.01.2008. There was subsequent receipt of the goods and the same was neither informed to the department nor paid the duty thereon suo moto. It is only on pointing out by the audit party they have paid the duty. The appellant were very well aware that the short payment was supposed to be paid at the time of debonding of the unit but they suppressed this fact till the audit has pointed out therefore, the penalty under Section 11AC was rightly invoked and imposed by both the lower authorities.

04. I have carefully considered the submissions made by both the sides and perused the records. I find that there is no dispute about the duty and interest which were already paid by the appellant on pointing out by the

audit. The only limited issue to be decided by me in the given facts and circumstances is that whether the appellant is liable to pay penalty under Section 11AC. I find that the show cause notice has proposed the penalty under Section 11AC, the adjudicating authority in Order-In-Original given the following finding for the imposition of penalty under Section 11AC.

*"15.4 In so far as invoking of proviso clause under Section 11 AC of Central Excise, Act, 1944, has come 'out 'clearly in the foregoing discussion that assessee unit were under obligation to pay duty in, terms of rule 4 read with rule 6 & rule 8 & 11 of the Central Excise Rules, cast an onerous responsibility on the assessee to pay the duty and carry out assessment of duty himself. It emerges in the present circumstances that the assessee unit had failed to carry out such assessment and duty payment as and when it was due. It is not their case that the assessment done by them was provisional or otherwise such non discharge of duty' was without reason of' contravention of the provisions of the Central Excise Acts and Rules made thereunder. What they have argued is that the duties were paid by them as was computed and asked for by the Customs & Central Excise authorities incharge/of the EOUnion:19/1/08. While also admitting that atleast technically they, were bonded under EOU status till 28/1/08, it is not even their case that the goods on which duty has been demanded are the ones which were already available before the Customs authorities at the time of computation of duty amount. The duty which is the subject matter of this show cause notice is in respect of finished goods which came into existence and attained liability to duty of Central Excise after the date of computation by the jurisdictional Customs and Central Excise authorities. The assessee having already undergone the process of assessment of duty, in respect of finished goods lying on the date of such computation by the relevant authorities, they ought to have realised that this is the finished goods that came into being after such date would be similarly leviable, to duty on the same criterion. As against this, however, the assessee seems to have conveniently ignored to assess and pay duty thereon. I find that but for the detailed audit and other enquiry having been done such short payment of duty had gone undetected.*

*The lapse of willful misstatement and suppression of facts as also the contravention of the Act and Rules made thereunder with intent to evade payment of duty is thus apparent. The assessee's argument that such lapse was only on account of minor technicality is not strong and sufficient to allay the charges. They are thus liable to penal action under Section 11AC of act *ibid.*"*

In the above paragraph, the adjudicating authority has given the elaborated reasoning for imposition of penalty under Section 11AC. Right from the beginning the appellant's defense is that since the duty was paid and show cause notice was issued within a normal period of one year, the penalty under Section 11AC should not be imposed. Whether under this circumstance, the penalty under Section 11AC should be imposed or

otherwise can be ascertained on the interpretation of Section 11AC which reads as under:-

*SECTION 11AC. Penalty for short-levy or non-levy of duty in certain cases.-*

*Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or nay willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined:*

*Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under Section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the duty so determined:*

*Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

*Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then for the purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account:*

*Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect.*

*Explanation. - For the removal of doubts, it is hereby declared that -*

*(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President:*

*(2) any amount paid to the credit of the Cenfral Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

From the bare reading of the above Section 11AC prevalent at the relevant time, it is found that in the section an exception is provided if any duty is

paid within one year from the due date or the show cause notice issued covers normal period of one year, the ingredients for imposing penalty under Section 11AC is only that if the duty was not paid by reason of fraud or collusion or willful mis-statement or suppression of fact or in contravention of any of the provision of this act or rules made therein with intent to evade payment of duty. Now, in the present case whether any of these ingredients exists in the facts of the present case needs to be examined. I find that the appellant was very conscious while debonding of the unit and duty so payable on the stock of the goods as on 03.01.2008 was calculated and paid the duty on that basis. The departmental officers have issue NOC enabling the appellant to exit from EOU status however, there are some transaction of the goods from 03.01.2008 till 28.01.2008 on which also the duty by EOU was supposed to be paid. The appellant was well aware that the duty due on the stock was required to be paid for debonding of the EOU. Though, the appellant have paid the duty on the stock as on 03.01.2008 but knowing that some goods were lying from 03.01.2008 to 28.01.2008 but have not paid the duty. This clearly shows that once the appellant have obtained the NOC and unit was debonded, they intentionally avoided the payment of short duty. It is only on pointing out by the audit they have paid the duty, this fact clearly shows that the appellant knowing that before debonding, on all the goods lying in the factory they are required to pay the duty but they consciously not paid the duty which amounts to suppression of fact on their part. Therefore, even though they paid on pointing out by the audit and despite the show cause notice covers period of one year, they clearly fall under four corners of Section 11AC accordingly, the penalty was rightly imposed under Section 11AC of the Central Excise Act, 1944 on the appellant.

05. I have carefully considered the judgments cited by the learned counsel and on going through the same, I find that the facts of those cases are different from the facts in the present case therefore, the judgments are not applicable in the present case. Accordingly, I do not find any infirmity in the impugned order upholding the penalty under Section 11AC therefore, the same is upheld. The Appeal is dismissed.

(Pronounced in the open court on 20.10.2022)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**