



CMA(MD)No.592 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 24.04.2026
Pronounced on 28.04.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

AND

THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN

**CMA. (MD)No.592 of 2022
and CMP(MD) No.5101 of 2022**

Balamurugan Chemicals Pvt. Ltd.,
51/6 Thattaparai Road, South Silukkanpatti
Pudukottai Tuticorin 628 103

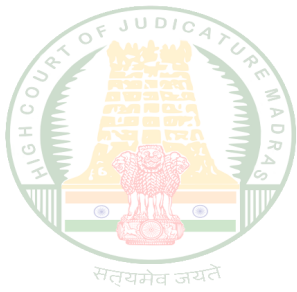
.. Appellant

Vs.

The Commissioner of CCST & Central Excise
Tractor Road, NGO-A Colony
Perumalpuram
Tirunelveli

..Respondent

Appeal filed under Section 35G of the Central Excise Act 1944 and under Section 130(1) of the Customs Act, 1944 against the impugned final order No.41626/2021 dated 01.07.2021 passed by the Customs Excise Service Tax Appellate Tribunal, Chennai in Appeal No.41413/2019 as far as penalty is concerned and set aside the same.



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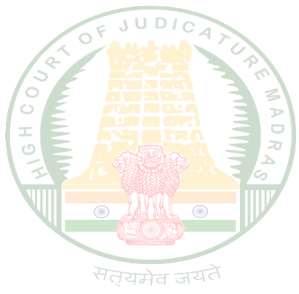
For Appellant : Mr.S.Ramakrishnan
For Respondent : Mr.N.Dilipkumar
Senior standing counsel

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

The appellant company has assailed the order passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai, (CESTAT) made in final order No.41626/2021 dated 01.07.2021.

2. The appellant, who is the assessee was subjected to central excise audit conducted during the months of February 2017 and April 2017. During the course of audit, it was noticed that the assessee has availed CENVAT credit on excise duty paid on capital goods purchased during the year 2013-14. The assessee had availed CENVAT credit on 50% of the excise duty paid on the capital goods during the year 2013-14 and the remaining CENVAT credit available was taken during the subsequent year 2014-15. On scrutiny of the fixed asset schedule attached to the financial

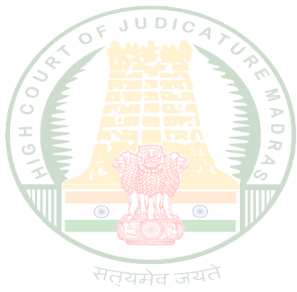


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statements and plant and machinery ledger account furnished for the year 2013-14, it was found that no capital goods were added to the fixed assets pertaining to the plant and machinery and the capital goods on which the CENVAT credit was availed during every month of the year 2013-14 had been cleared to M/s.Beach Minerals company at the end of the same month by making a credit entry in the plant and machinery account every month in the name of M/s.Beach Minerals Company. In view of the above, a show cause notice dated 08.12.2017 came to be issued by the Joint Commissioner calling upon the appellant to show cause as to why demand of excise duty, interest and penalty should not be imposed under Section 11A of the Central Excise Act 1944 (hereinafter referred to as 'the Act') read with Rule 14(1)(II) of CENVAT Credit Rules 2004 (for brevity hereinafter referred to CCR) and Section 11AA of the Act read with Rule 14(1)(II) of CCR and Section 11(AC) of the Act read with Rule 15(2) of the CCR.

3. Adjudication proceedings were initiated by the office of the Joint Commissioner and after affording an opportunity to the appellant, an order came to be passed by the assessing authority on 26.02.2018 demanding



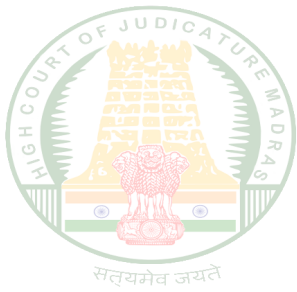
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4. Pursuant to the order passed by the assessing authority, the appellant made payment towards interest component. In the meantime, the assessee had already paid the duty component as early as during the month of April 2017 even before the issuance of the show cause notice.

5. The appeal came to be filed before the Commissioner (Appeals) by the appellant challenging the imposition of penalty. The appellate authority through proceedings dated 08.03.2019, upheld the imposition of penalty by the assessing authority and accordingly the appeal was dismissed and the order passed by the assessing authority was confirmed.

6. Aggrieved by the order passed by the appellate authority, the appellant filed an appeal before the CESTAT, Chennai. The CESTAT also confirmed the order passed by the assessing authority. Aggrieved by the same, the present appeal has been filed under Section 35(G) of the Act.



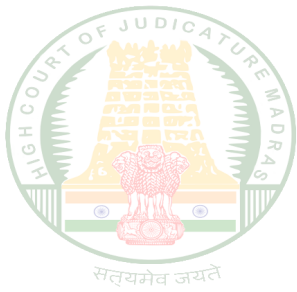
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WEB COPY 7. When the appeal came up for final hearing on 24.04.2026, the following order came to be passed by this Court by formulating the substantial questions of law:

“When this appeal was admitted and notice was ordered, this Court did not formulate any substantial question of law. Ultimately, after service of notice, the matter was listed for final hearing today. This Court, after hearing both sides, now formulates the following substantial questions of law:

“(i) Whether the penalty imposed against the appellant by the Assessing Officer, which was confirmed up to the Tribunal, can be considered to be bad on the ground that the show cause notice dated 08.12.2017 issued to the appellant did not specify under which limb of Section 11AC of the Central Excise Act, 1944, the penalty was being imposed?

(ii) Whether the Tribunal, having held that the penalty has to be invoked against the assessee under Section 11AC(1)(a), failed to take note of the proviso to sub-Section (1)(a), which provides that where the duty and interest payable under Section 11AA are paid either before the issue of show cause notice or within



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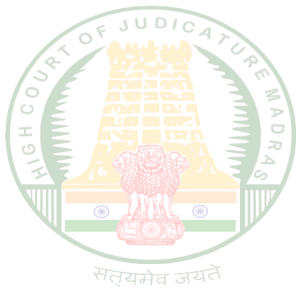
30 days of the issue of show cause notice, no penalty is payable by the assessee and whether, in such a scenario, the Tribunal should have taken note of the fact that the assessee had paid the duty well before the show cause notice was issued and paid the interest after it was assessed by the Assessing Authority and consequently, no penalty can be imposed against the assessee?”

2.Heard.

3.Judgment reserved.”

8. This Court heard the learned counsel on either side and carefully went through the order passed by the CESTAT, which confirmed the order passed by the appellate authority, who, in turn, confirmed the order passed by the assessing authority.

9. The main ground that was urged by the learned counsel for the appellant is that the show cause notice that was issued by the assessing authority did not even specify under which limb of Section 11(AC) of the Act, the penalty was sought to be imposed. Therefore, in the light of the

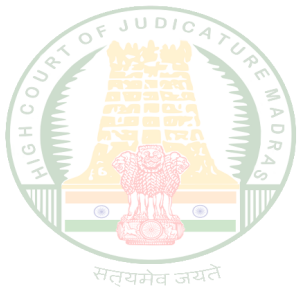


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payment of the duty and interest, at the best, this case can be brought only within the scope of Section 11(AC) (1)(a) and the proviso to the said sub section will apply and consequently no penalty shall be payable by the appellant. It is further submitted that even the CESTAT while passing the order had taken note of the fact that the case falls within the scope of Section 11AC (1)(a) and therefore, confirming the imposition of penalty against the appellant is illegal and unsustainable.

10. To substantiate the above submission, the learned counsel relied upon the judgment of the Karnataka High Court in ***ITA No.380 of 2015*** in the case of ***Commissioner of Income Tax v. M/s.SSA Emerald Meadows dated 23.11.2015*** and the relevant portion relied upon is extracted hereunder:

“3.The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated ie., whether for



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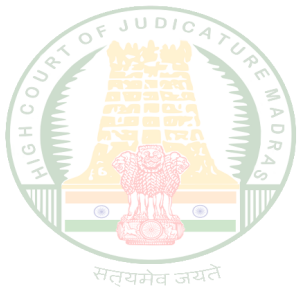
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*concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of **Commissioner of Income Tax v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.**”*

11. It is further submitted that the above order passed by the Karnataka High Court has been confirmed by the Apex Court by dismissing the SLP filed by the department at the admission stage.

12. The learned senior panel counsel submitted that the present case squarely falls under Section 11 AC(1)(c) of the Act since there was suppression of facts by the appellant and had automatically resulted in imposition of penalty. The learned counsel submitted that the penalty was invoked under Section 11AC of the Act read with Rule 15(2) of CCR.

13. It is not in dispute that the appellant assessee had availed CENVAT credit on excise duty paid on capital goods purchased during the

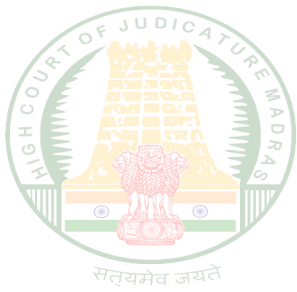


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year 2013-14. However, on scrutiny by the audit team, it came to light that no capital goods were added to the fixed assets pertaining to the plant and machinery and the capital goods on which the CENVAT credit was availed during every month of the year 2013-14 had been cleared to M/s.Beach Minerals company at the end of the same month by making a credit entry in the plant and machinery account every month in the name of M/s.Beach Minerals Company.

14. Rule 3(5) of CCR stipulates that capital goods on which CENVAT credit has been taken or removed as such from the factory, the manufacturer shall pay the amount equal to the credit availed in respect of such capital goods and such removal shall be made under the cover of invoice prescribed under the Central Excise Rules. Explanation 1 and Explanation II to Rule 3(5) of CCR prescribes further procedure to be followed. If the manufacturer of goods fails to pay the amount payable under Rule 3(5) of CCR, it is liable to be recovered in the manner as provided in Rule 14 of CCR for recovery of CENVAT credit wrongly taken and utilised.

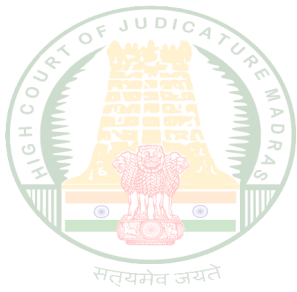


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15. Rule 14(1) (II) of CCR provides that for CENVAT credit wrongly taken and utilised, it shall be recovered along with interest from the manufacturer and the provisions of Section 11A and 11AA of the Act shall apply. Apart from that where there is a wilful suppression of facts regarding clearance of capital goods for which CENVAT credit has been availed with the intent to evade the payment of excise duty, the assessee is liable to pay penalty under Rule 15(2) of CCR read with Section 11AC of the Act.

16. It is also not in dispute that the appellant assessee on being pointed out about the above violation, paid Rs.67,79,610/- by debiting the CENVAT credit account during the month of April 2017. Thus, the duty component was paid much before the show cause notice dated 08.12.2017 came to be issued. As on the date of issuance of show cause notice, what remained to be paid was only the interest and the penalty component.



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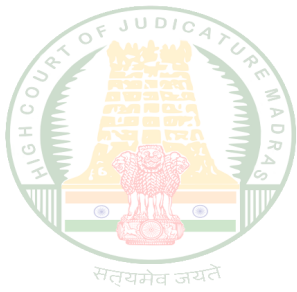
18. What was agitated before the appellate authority and the Tribunal was only with respect to the imposition of penalty by the adjudicating authority.

19. At this juncture, this Court has to bestow its attention to Section 11 AC of the Act and for proper appreciation, sub section (1)(a), (b), (c) and (d) are extracted hereunder:

Section 11AC, Penalty for short-levy or non-levy of duty in certain cases:

(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act



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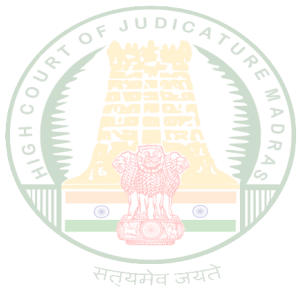
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or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher:

Provided that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;

(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful 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



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to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined:

"Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined:

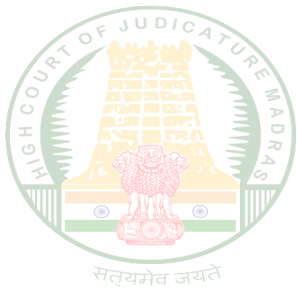
(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA. issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded."...

20. It will also be relevant to extract Rule 15 of CCR hereunder:

"CENVAT Credit Rule 15 of 2004

Rule 15. Confiscation and penalty..

(1) if any person, takes or utilises CENVAT credit in respect of input or capital goods or Input services, wrongly or in contravention of any of the provisions of these rules, then. all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or



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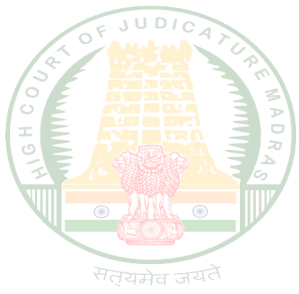
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(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.”

21. At the outset, this Court rejects the contention raised on the side of the appellant to the effect that the appellant was never informed under



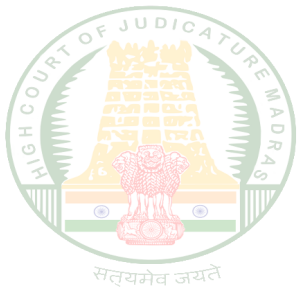
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which limb of Section 11AC of the Act, the penalty is imposed. A careful reading of the show cause notice, order of adjudicating authority, order of the appellate authority and order of the CESTAT shows that it is a case of suppression of facts.

22. The same is evident from the fact that the appellant had availed CENVAT credit on the excise duty paid on capital goods in two trenches during the years 2013-14 and 2014-15. But, however, had not followed the relevant rule while removing the capital goods and clearing it in the name of M/s.Beach Minerals Company. In the show cause notice, there is a clear reference to Rule 15(2) of CCR r/w Section 11AC and it only indicates that penalty was sought to be imposed on the ground of suppression of facts. Consequently the facts of the present case will not fall under Section 11AC(1)(a) and it will only fall under Section 11AC(1)(c) of the Act.

23. The very fact that the appellant on being informed about the violation, proceeded to pay the duty component during April 2017 shows that the appellant had also tacitly admitted suppression of facts.

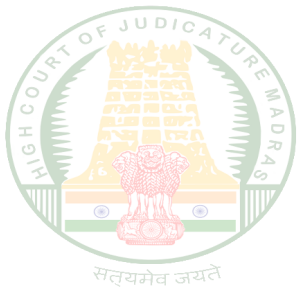


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24. The proviso to sub section (1)(a) of Section 11AC will come into play only in a case where the duty and interest payable under Section 11AA is paid either before the issue of show cause notice or within 30 days of the issue of show cause notice. In such a scenario, no penalty shall be payable by the person liable to pay the duty. Admittedly, in this case, only the duty component was paid before the show cause notice was issued and the interest component was paid only after the order passed by the adjudicating authority.

25. Sub section (1)(b) will come into play only where the interest payable under Section 11AA in respect of the transaction referred in clause (a) is paid within 30 days of the date of communication of the order of the Central Excise officer, who has determined such duty. In such a scenario, only 25% of the penalty imposed is payable subject to the condition that such reduced penalty is also paid within the period specified.

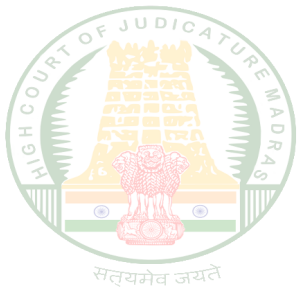


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WEB COPY 26. In order for clause (b) to come into operation, the case must fall within the scope of clause (a) of sub section (1) of Section 11AC of the Act.

27. In the case in hand, it is not a case of excise duty not been levied or paid or has been short-levied or short paid or erroneously refunded and it is clearly a case falling within the scope of suppression of facts. Therefore, only clause (c) of sub section (1) of Section 11AC of the Act will apply when it comes to levy of penalty. It is not a case where the appellant realised the non payment of duty and thereafter voluntarily came forward to pay the duty. It is a clear case where the audit team while scrutinising the accounts found out the evasion of duty by the appellant. Such a case will only fall within the scope of “suppression of facts”.

28. Clause (d) of sub section (1) of Section 11AC of the Act will come into play where the duty demanded in the show cause notice and the interest payable thereon in respect of transactions referred to in clause (c) is paid within 30 days from the communication of the show cause notice and in which case, the amount of penalty is liable to be paid shall be 15% of the



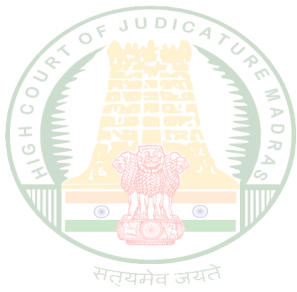
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duty demanded subject to the condition that such reduced penalty is also to be paid within the period so specified.

29. On a careful analysis of the above provision, it can be seen that a case can fall either under clause (a) in which event, clause (b) will apply provided that the requirements are satisfied or under clause (c), in which event, clause (d) will come into play subject to the fulfilment of the requirements provided therein.

30. The appellate authority has discussed in detail as to why the case in hand will fall within the scope of “suppression of facts/misrepresentation of facts” since it was the duty of the appellant to declare in the self assessment memorandum that the information given in the ER-1 return is true, correct and complete in every aspect and having failed to do so, the declaration given by the appellant will tantamount to suppression of facts with an intention to evade payment of duty.



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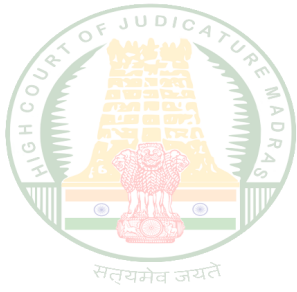
32. The judgment that was relied upon by the learned counsel for the appellant will not apply to the facts of the present case since the appellant was very well aware that he is facing proceedings for suppression of facts and therefore, their case will come within the ambit of Section 11AC(1)(c) of the Act.

33. The substantial questions of law framed by this Court are answered accordingly in favour of the department and against the assessee and consequently the appeal stands dismissed. No costs. consequently connected Miscellaneous Petition is closed.

[N.A.V, J.] & [K.K.R.K, J.]
28.04.2026

NCC : Yes
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**N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.**

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**Pre Delivery Judgment made in
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