CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70204 of 2019

(Arising out of Order-in-Appeal No.598-599-CE/APPL/LKO/2018 dated 18.12.2018 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

M/s Mahavir Polyplast Pvt. Ltd., ...Appellant
(Khasra No.704/3, Mauza Runkata,
Kirwali Road, Tehsil Kirwali, Agra)

VERSUS

Commissioner of Central Excise, Agra ....Respondent
(CGST, Division-II, Agra)

WITH

Excise Appeal No.70162 of 2019

(Arising out of Order-in-Appeal No.598-599-CE/APPL/LKO/2018 dated 18.12.2018 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Ram Niwas Gupta, Director .....Appellant
(Khasra No.704/3, Mauza Runkata,
Kirwali Road, Tehsil Kirwali, Agra)

VERSUS

Commissioner of Central Excise, Agra ....Respondent
(CGST, Division-II, Agra)

APPEARANCE:

Shri Nishant Mishra, Advocate & Ms. Parinita Gupta, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.-70491-70492/2024

DATE OF HEARING : 10 April, 2024
DATE OF DECISION : 01 August, 2024

P. K. CHOUDHARY:

The present appeals have been filed by M/s Mahavir Polyplast Pvt. Ltd., Appellant No.1 and its Director Shri Ram

Niwas Gupta Appellant No.2 by assailing the Order-in-Appeal No.598-599-CE/APPL/LKO/2018 dated 18.12.2018 passed by learned Commissioner (Appeals) Customs, GST & Central Excise, Lucknow.

2. The facts of the case in brief are that the Appellant No.1 was engaged in the manufacture of PVC Pipes and their fittings classifiable under Chapter Heading Nos.39172390 and 39174000 of Central Excise Tariff Act, 1985. On 22.06.2016 Officers of DGCEI, Kanpur conducted search at the business premises of the Appellant's company, residential premises of Director and at some other places. The search continued till 23.06.2016, on which date, an amount of Rs.50 lakhs was deposited by the Appellant vide TR-6 Challans. During the course of search, some loose slips were recovered from the residence of the Director which could not be explained by him in his statement dated 23.06.2016. Show Cause Notice dated 05.06.2017 was issued by DGCEI, Kanpur Regional Unit, Kanpur proposing as under:-

i. *The Cenvat duty amounting to Rs.22,91,574/- (Rupees Twenty Two Lakhs Ninety One Thousand Five Hundred Seventy Four Only) (Central Excise duty: Rs.22,49,703/ + Education Cess : Rs.27,915/- + Secondary & Higher Education Cess: Rs.13,956/-) involved on different issues as tabulated in Para No.33 above for the period from May' 2012 to Sep' 2016 should not be demanded and recovered from them under proviso to Sub-section (4) of Section 11A of Central Excise Act, 1944 and the Cenvat duty amounting to Rs.50,706/ deposited from PLA vide entry No.05 dated 23.06.2016 may not be appropriated towards their liability on short found finished goods and rest of the duty may not be appropriated from the amount of Rs.50 Lakhs already deposited on 23.06.2016.*

ii. *the wrongly availed and utilized Cenvat credit amounting to Rs.11,313/- [Rupees Eleven Thousands Three Hundred Thirteen Only] (Central Excise duty: Rs.11,123/- + Education Cess: Rs.127/- + Secondary & Higher Education*

Cess: Rs.63/-) should not be demanded and recovered from them under proviso to Sub- section (4) of Section 11A of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 and the Cenvat credit amounting to Rs.11,313/- already debited vide RG23-A Pt-II Entry No.491 & 492 both dated 31.03.2017 may not be adjusted towards their liability.

iii. *interest at the appropriate rate on delayed payment of duty should not be charged and recovered from them in respect of Central Excise duty amounting to Rs.22,91,574/- under Section 11AA, till the actual date of payment of such duty;*

iv. *interest at the appropriate rate on wrongly availed Cenvat credit amounting to Rs.11,313/- should not be charged and recovered from them under Section 11AA of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004. The interest amounting to Rs.6,510/- deposited by the party towards their liability of interest may not be appropriated.*

v. *penalty should not be imposed upon them under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 in respect of Cenvat duty mentioned at (i) above, for their willful suppression of facts with intent to evade payment of Cenvat duty.*

vi. *penalty should not be imposed upon them under Section 11AC of Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004 in respect of wrongly availed and utilized Cenvat credit mentioned at (ii) above for their willful suppression of facts with intent to evade payment of Cenvat duty.*

vii. *penalty should not be imposed upon them under Rule 27 of Central Excise Rules, 2002 for contravention of the provisions of Rule 4, 5, 6, 8, 10 and 11 of the said rules and*

viii. *penalty should not be imposed upon them under Rule 15A of Cenvat Credit Rules, 2004 for the contravention of the Rule 3, 4, 6 and 9 of Cenvat Credit Rules, 2004 and*

After service of SCN, the Appellant on 29.06.2017, within a period of one month from the issuance of SCN deposited an amount of Rs.43,026/- vide Challan No.000012 dated 29.06.2017. The Appellant also deposited interest amounting to Rs.7,300/- vide Challan No.02204112906201700043 dated 29.06.2017 and 15% penalty of Rs.6,454/- vide Challan No.02204112906201700012 dated 29.06.2017. Order-in-Original dated 11.10.2017 was passed by the Assistant Commissioner of CGST & Central Excise Division-II Agra as under : -

"49. Accordingly, I pass the following order:-

i. *I confirm the demand of Cenvat duty amounting to Rs.22,91,574/- (Rupees Twenty Two Lakhs Ninety One Thousand Five Hundred Seventy Four Only] (Central Excise duty: Rs.22,49,703/- + Education Cess: Rs.27,915/- Secondary & Higher Education Cess: Rs.13,956/-) involved on different issues as discussed supra for the period from May' 2012 to Sep' 2016 under proviso to Sub-section (4) of Section 11A of Central Excise Act, 1944 read with Section 142 and Section 174 of the CGST Act, 2017. I also order to appropriate the Cenvat duty amounting to Rs.50,706/- deposited from PLA vide entry No.05 dated 23.06.2016. I further order to appropriate the Cenvat duty Rs.43,026/- deposited by the party vide challan No.00012 dated 22.06.2017. Since the party has also already deposited Rs.50 Lakhs on 23.06.2016, I therefore order to appropriate the remaining duty from the amount of Rs.50 Lakh already deposited by the party on 23.06.2016.*

ii. *I hold that they wrongly availed and utilized Cenvat credit amounting to Rs.11,313/- [Rupees Eleven Thousand Three Hundred Thirteen Only] (Central Excise duty: Rs.11,123/- + Education Cess Rs.127/- + Secondary & Higher Education Cess: Rs.63/-), and hence order to recover from them under proviso to Sub-section (4) of Section 11A of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 read with Section 14: and Section 174 of the GGST Act, 2017. Since they had already deposited the entire Cenvat credit amounting to Rs.11,313/-*

already debited vide RG23-A Pt-II Entry No.491 & 492 both dated 31.03.2017 hence order to adjust towards their liability.

iii. *I order to recover the interest at the appropriate rate on delayed payment of Central Excise duty amounting to Rs.22,91,574/- under Section 11AA of the Act read with Section 142 and Section 174 of the CGST Act, 2017 till the actual date of payment of such duty. I also order to appropriate the interest Rs.7300/- already deposited vide challan No.00043 dt. 29.06.2017.*

iv. *I order to recover the interest at the appropriate rate on wrongly availed Cenvat credit amounting to Rs.1,313under Section 11AA of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 read with Section 142 and Section 174 of the GGST Act, 2017. I also order to appropriate interest amounting to Rs.6,510 already deposited by the party towards their liability of interest.*

v. *I propose the penalty Rs.22,91,574/- upon them under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002, read with Section 142 and Section 174 of the CGST Act, 2017 in respect of cenvat duty mentioned at (i) above, for their willful suppression of facts with intent to evade payment of Cenvat duty also order to appropriate penalty Rs.6,454/- already deposited by the party vide challan No.00012 dl 29.06.2017.*

vi. *I also impose the penalty Rs.11,313/- upon them under Section 11AC of Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004 read with Section 142 and Section 174 of the CGST Act 2017 in respect of wrongly availed and utilized cenvat credit mentioned at (ii) above for their willful suppression of facts with intent to evade payment of Cenvat duty.*

vii. *I impose penalty Rs.10,000/- (Rs Ten Thousand Only) upon them under Rule 27 of Central Excise Rules 2002, for contravention of the provisions of Rule 4, 5, 6, 8, 10 and 11 of the said rules read with Section 142 and Section 174 of the CGST Act, 2017.*

viii. *I impose penalty Rs.10,000/-(Rs Ten Thousand Only) upon them under Rule 15A of Cenvat Credit Rules, 2004 for the contravention of the Rule 3, 4, 6 and 9 of Cenvat Credit Rules, 2004 read with Section 142 and Section 174 of the CGST Act, 2017.*

ix. *I impose penalty Rs.50,000/-(Rs Fifty Thousand Only) upon Shri Ram Niwas Gupta, Director of the party under Rule 26 of Central Excise Rules, 2002 read with Section 142 and Section 174 of the GGST Act, 2017 in the light of the facts as discussed supra."*

Being aggrieved the Appellants filed appeals before the First Appellate Authority which was partly allowed and modified as under:-

> ***"DISCUSSION & FINDINGS:***
>
> *6. I have gone through the case record. Several issues are involved in this appeal and the same are taken up separately as under:-*
>
> ***(i) Cost of Transportation:***
>
> *The freight amount has been shown separately in the invoice and collected from the buyer. The appellant argues that the place of removal is factory gate and the transportation has been arranged at the request of the buyer, therefore, as per rule 5 of Central Excise Valuation Rules 2000, freight is not includible in the assessable value. This argument has merits. The said rule clearly provides for exclusion of cost of transportation from the place of removal upto the place of delivery Thus, demand of duty on the freight is not sustainable.*
>
> ***(ii) Third Party Inspection Charges:***
>
> *As recorded in Para 12.2 of the SCN, the buyer had put the condition that the goods shall be dispatched only after inspection, test certification and marking by Third Party Inspection Agency. Thus, sale is subject to such inspection. The inspection charges are, therefore, includible in the transaction value by virtue of definition of "Transaction Value" under section 4 of CEA 1944.*
>
> ***(iii) Supply of Sockets:***
>
> *The sockets are supplied with PVC pipes at no extra price Pipe cannot be joined without sockets. It implies that sockets are integral part of PVC pipes without which pipe is not functional. The impugned sockets are manufactured by the appellant. Nothing is on record to show that the manufacturing cost of socket is not included in the cost of pipes. Cost of socket is not recovered additionally from the buyer. The appellant argues that the cost of sockets is already included in the price of the pipes. As no additional consideration is received on account of supply of sockets, demand on cost of free supplied socket is not sustainable.*
>
> ***(iv) Price Variation/Escalation:***
>
> *There is no supplementary invoice/bill on record, which would be issued consequent to price escalation. The appellant argues that price escalation clause was there*

only in respect of transactions with the government agencies and that no government agency will pay a single penny without regular documentation. I find force in this argument. There is no evidence to show that the appellant received additional consideration from buyers on account of price escalation. The demand on this count is, therefore, not sustainable.

(v) Loose slips/papers:

Some loose slips apparently containing details of clandestine removals were recovered in the search operation. As recorded in Para 28 of SCN, the Director of the appellant company in his statement owned the loose papers and agreed to pay the duty involved therein The appellant argues that there is no evidence to prove clandestine production and removal However, as the appellant owned the said loose papers and agreed to pay duty involved therein, there was no occasion to investigate the matter further It is not the case of the appellant that the said statement was retracted. Hence, there is no ground to contest the matter at this stage Hon'ble Supreme Court in the case of SYSTEMS & COMPONENTS PVT LTD, reported at 2004 (165) E.L.T. (136 (SC), has held that what is admitted need not be proved.

(vi) Supply of Solvent Cement:

The appellant have supplied Solvent Cement free of cost with PVC pipes to M/s UP Jal Nigam Ltd. and M/s UP State Agro Corporation Ltd under the contract rate. The same is purchased from the market and supplied to the buyer as such. No additional amount is recovered from the buyer. The appellant has argued that value of such bought out items is not includible in the assessable value as held by Hon'ble Tribunal in the case of ITI LIMITED, reported at 2017 (349) ELT 149 (Tri-All) The ratio of this decision is applicable to the instant case. Therefore, demand on this count is not sustainable.

Thus, only demand of duty mentioned at S. No. 1,3,4 & 8 of the Table in Para2 above (Total amounting to Rs.499078/-) along with interest is upheld and the rest of demand is set aside.

7. Penalty: As mentioned in Para 49 of the impugned order, the appellant has already deposited rupees fifty lakhs on 23.6.2016. Also, Rs.50706/- was deposited on 23.6.2016 and Rs.43026/- was deposited on 29.6.2017. As entire duty along with interest stands paid before issuance of SCN dated 05.6.2017, penalty of only 15% of the duty confirmed is imposed on the appellant under section 11AC(1)(d) of the said Act.

8. Regarding penalty on availment of undue Cenvat credit, it is apparent from record that the said undue credit amounting to Rs.11,313/- was reversed along with interest on 31.3.2017 i.e. before issuance of the SCN. Therefore, penalty of only 15% of the said undue Cenvat credit is imposed on the appellant under rule 15 of CCR, 2004 read with section 11AC(1)(d) of the said Act. Further, as penalties under section 11AC of the said Act, and under rule 15 of CCR 2004 have already been imposed, penalties imposed under rule 27 of CER and rule 15A of CCR are not warranted and the same are set aside.

9. In the facts and circumstances of the case, imposition of penalty on Appellant-2 under Rule 26 of CER 2002 is justified. However, as the duty liability has come down, the penalty is also reduced from fifty thousand to fifteen thousand rupees.

In view of the above, I pass the following order:-

ORDER

The Appeals are partly allowed and the O-I-O is modified in above manner."

After the impugned order passed by the Commissioner (Appeals), the following demands survive against the Appellant and its Director as under:-

SI. No.	**Para No. of SCN**	**Particular**	**Value**	**Duty**
1.	B/25	Third party inspection charges	6,78,812/-	84,140/-
2.	E/27	Stock transfer to depot of Appellant No.1	3,44,208/-	43,026/-
3.	G/28	Loose papers recovered on the day of search/clandestine removal of goods	25,69,643/-	3,21,206/-
4.	3.1	Short found finished goods on the day of search	4,05,650/-	50,706/-
		TOTAL:-		**4,99,078/-**

3. The Appellants have filed the present appeals before the Tribunal.

4. Learned Advocate appearing on behalf of the Appellants submits that in addition to quality tests conducted at its unit, the Appellant also got the third party inspection conducted at the instruction of the buyers from third parties, cost of which was initially paid by the Appellant but ultimately borne by the buyers. It is the case of the Revenue that the inspection charges were

included in the rates quoted/awarded to the Appellants. The Appellants were required to pay inspection charges directly to the third parties inspection agency and recovered the same from the buyer, but the inspection charges were not separately mentioned in the invoices, thus it can be concluded that sale was subject to such inspection and therefore includible in the definition of "transaction value". The learned Advocate further submitted that in the present case no duty can be demanded on third party inspection charges, inasmuch as:-

(i) The Appellant has already paid duty on the price actually paid by the buyer, which is not inclusive of third party inspection charges;

(ii) Further, the third party inspection charges would also not fall under the inclusive part of definition, as the inclusive part would cover only such amounts, which the buyer is liable to pay, or on behalf of assessee, whereas in the present case, third party inspection charges has not been paid by the buyer on behalf of the Appellant but on its own behalf;

(iii) Furthermore, merely because sale is subject to inspection, the same would not include the third party inspection charges in the 'transaction value' as the same were paid to inspection agency not on behalf of the Appellant but because of the condition put by the buyer himself.

Reliance in this regard is also placed on the judgement of Hon'ble Supreme Court in the case of CCE, Pondicherry vs. Acer India Ltd. 2004 (172) E.L.T. 289 (S.C.) wherein it has been held that only because the expression 'by reason of, or in connection with the sale' has been used in the definition of 'transaction value', the same by itself would not take away the rigors of charging section.

5. He further relied upon the judgement of Hon'ble Supreme Court in the case of Purolator India Ltd. vs. CCE, Delhi 2015 (323) E.L.T. 227 (S.C.). Learned Advocate further submits that

as regards Sr. No.3 regarding loose slips, the demand has been confirmed in the impugned order on the ground that the Director owned the loose papers and agreed to pay duty. The aforesaid finding is perverse, inasmuch as in his statement dated 23.06.2016, the Director merely showed his inability to explain the loose papers on the spot. Merely because some loose slips were recovered which could not be explained, the same by itself is not sufficient to sustain demand, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, as clandestine removal is a serious charge and demand cannot be confirmed solely on the basis of presumptions and assumptions, as held by the jurisdictional Allahabad High Court in the case of Continental Cement Company vs. UOI 2014 (309) E.L.T. 411 (All.). At any rate, demand of duty cannot be confirmed merely on the basis of statement, unless the Court corroborates such statement with some independent corroborative material as held in Vinod Solanki vs. UOI 2009 (233) E.L.T. 157. As regards Sr.No. 2 & 4 of the table above, the same relates to amounts of Rs.50,706/- (deposited prior to the issuance of SCN) and Rs.43,026/- (deposited within one month of the issuance of SCN alongwith interest and 15% penalty). Both the aforesaid deposits have been considered in the Order-in-Original wherein both the aforesaid amounts have been appropriated, but no finding has been recorded on the same in the Order-in-Appeal. The Appellant's contention in this regard is that since the Commissioner (Appeals) has quantified the total demand at Rs.4,99,078/-, which includes these two amounts and these two amounts have already been appropriated, hence these two amounts needs to be reduced from the total demand. Further, the penalty quantified by the Commissioner (Appeals) i.e. 15% of Rs.4,99,078/-, is also liable to be reduced accordingly, since on Rs.43,026/- 15% penalty has already been deposited and

Rs.50,706/- stands appropriated, requiring appropriate reduction in quantum of duty and consequential penalty.

6. He further submits that penalty imposed on the Director is unwarranted and prayed that the same should be set aside.

7. Learned Departmental Authorized Representative justified the impugned orders and prayed that the appeals being devoid of any merits may be dismissed.

8. Heard both sides and perused the appeal records.

9. We find that the submissions of the learned Advocate as regards the "transaction value" definition, it is settled principle that basic feature of Section 4 has never changed even after the two amendments. Thus, the definition of "transaction value" after amendment, means the price actually paid or payable for the goods, when sold, and include in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling, organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. We further find that the Hon'ble Supreme Court in the case of Purolator India Ltd. (supra) has held as under:-

> ***"14.*** *It can be seen that the common thread running through Section 4, whether it is prior to 1973, after the amendment in 1973, or after the amendment of 2000, is that excisable goods have to have a determination of "price" only "at the time of removal". This basic feature of Section 4 has never changed even after two amendments. The "place of removal" has been amended from time to time so that it could be expanded from a factory or any other premises of manufacture or production, to warehouses or depots wherein the excisable goods have been permitted to be deposited either with payment of duty, or from which such excisable goods are to be sold after clearance from a factory. In fact, Section 4(2) pre-*

2000 made it clear that where the price of excisable goods for delivery at the place of removal is not known, and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery is to be excluded from such price. This is because the value of excisable goods under the Section is to be determined only at the time and place of removal. Even after the amendment of Section 4 in 2000, the same scheme continues. Only, Section 4(2) is in terms replaced by Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000."

10. We further find that the Hon'ble Supreme Court in the case of CCE, Pondicherry vs. Acer India Ltd. reported as 2004 (172) E.L.T. 289 (S.C.) wherein it has been held that only because the expression, "by reason of sale, or in connection with the sale" has been used in the definition of "transaction value", the same by itself would not take away the rigors of charging section. The relevant paragraphs are reproduced as under:-

54. *It may be true that the definition of "Transaction Value" which is incorporated in Clause (d) of Sub-section (3) of Section 4 for the purpose of said Section states that the price actually paid or payable for the goods, when sold, would include in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale. Only because the expressions "by reason of, or in connection with the sale" have been used in the definition of "Transaction Value", the same by itself would not take away the rigours of Sub-section (1) of Section 4 as also the requirement of charging section as contained in Section 3.*

55. *It must be borne in mind that central excise duty cannot be equated with sales tax. They have different connotations and apply in different situations. Central excise duty is chargeable on the excisable goods and not on the goods which are not excisable. Thus, a 'goods' which is not excisable if transplanted into a goods which is excisable would not together make the same excisable goods so as to make the assessee liable to pay excise duty on the combined value of both. Excise duty, in other*

> *words, would be leviable only on the goods which answer the definition of "excisable goods" and satisfy the requirement of Section 3. A machinery provision contained in Section 4 and that too the explanation contained therein by way of definition of 'transaction value' can neither override the charging provision nor by reason thereof a 'goods' which is not excisable would become an excisable one only because one is fitted into the other, unless the context otherwise requires."*

11. By respectfully following the ratio as laid down by the Hon'ble Supreme Court, the demand of duty in respect of third party inspection charges cannot be sustained and is accordingly set aside.

12. Further as regards the issue No.3 we find that the demand in the present case has been confirmed merely on the basis of statement of Director without any corroborative /cogent material brought on records. Thus issue has been examined by the Hon'ble Allahabad High Court in the case of Continental Cement Company vs. Union of India 2014 (309) E.L.T. 411 relevant paragraphs are reproduced as under:-

> ***"12.*** *Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :*
>
> *(i) To find out the excess production details.*
>
> *(ii) To find out whether the excess raw materials have been purchased.*
>
> *(iii) To find out the dispatch particulars from the regular transporters.*
>
> *(iv) To find out the realization of sale proceeds.*

> *(v) To find out finished product receipt details from regular dealers/buyers.*
>
> *(vi) To find out the excess power consumptions.*
>
> ***13.*** *Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department."*

13. Accordingly, the demand on this count is also not sustainable and is set aside. As regards Sr.No.2 & 4 the same relates to the amount of Rs.50,706/- and Rs.43,026/-. It is the contention of the learned Advocate that since the Commissioner (Appeals) has quantified the total demand of Rs.4,99,078/-, which includes these two amounts and these two amounts have already been appropriated, hence these two amounts needs to be reduced from the total demand.

14. We further observe that there is no justification in maintaining the penalty imposed upon the Director and accordingly the same is set aside.

15. In view of the above discussions, the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in open court on 01 August, 2014)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS