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**Commissioner of Central Excise Vs. M/S Flextronics Technologies (India) Private**

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**SooperKanoon Citation : [sooperkanoon.com/1195762](http://sooperkanoon.com/1195762)**

**Court : Karnataka**

**Decided On : Mar-04-2015**

**Judge : Vineet Saran and S.Sujatha**

**Appeal No. : CEA 8/2011**

**Appellant : Commissioner of Central Excise**

**Respondent : M/S Flextronics Technologies (India) Private**

**Judgement :**

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF MARCH 2015 PRESENT THE HONBLE MR.JUSTICE VINEET SARAN AND THE HONBLE MRS.JUSTICE S SUJATHA CEA NO.8 OF 2011 BETWEEN COMMISSIONER OF CENTRAL EXCISE BANGALORE560001 COMMISSIONERATE BANGALORE560001. ... APPELLANT (BY SRI M V CHANDRA SHEKARA, ADV.) AND M/S FLEXTRONICS TECHNOLOGIES (INDIA) PRIVATE LIMITED NO.88 A, ELECTRONICS CITY HOSUR ROAD, BANGALORE REPRESENTED BY ITS MANAGING DIRECTOR. ... RESPONDENT THIS CEA IS FILED UNDER SECTION35 OF THE CENTRAL EXCISE ACT, 1944 ARISING OUT OF

ORDER

DATED 13/08/2010 PASSED IN FINAL

ORDER

NO.1119/2010, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:  
I. THE DEMAND OF INTEREST UNDER RULE 12 OF CCR, 2002 READ WITH SECTION 11AB OF THE CEA, 1944 AND ETC. THIS APPEAL COMING ON FOR ADMISSION THIS DAY, S SUJATHA J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the Department challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 13.08.2010, vacating the levy of penalty of `6,00,000/- imposed by the Commissioner of Central Excise.

2. The brief facts of the case are that: The assessee is engaged in manufacture and clearance of excisable goods viz., PCB Assemblies, TV tuners, Set-top boxes under Chapter 85 of the Schedule to Central Excise Tariff Act, 1985, and are also availing benefit of Cenvat Credit facility under Cenvat Credit Rules. It was noticed by the Department that there was irregular availment of Cenvat credit by the assessee and after passing adjudication proceedings, the Commissioner of Central Excise imposed penalty of `6,00,000/- under Rule 13 of Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

3. The assessee carried the matter in appeal before the Customs, Excise and Service Tax Appellate Tribunal and the Tribunal after examining the issue at length, has held that there was no intention on the part of the assessee to evade payment of duty and as such, the penalty of `6,00,000/- imposed by the Commissioner was not sustainable and accordingly, vacated the penalty, against which, this appeal is filed by the Department.

4. We have heard the learned Counsel appearing for the appellant and perused the records.

5. Section 11AC of the Central Excise Act, 1944, contemplates, penalty for shortlevy or non-levy of duty in certain cases i.e., where any duty of excise has not been levied or paid or has been shortlevied or short-paid or erroneously refunded,

by the reason of fraud, collusion, any wilful mis-statement; or 4 suppression of facts or contravention of any of the provisions of the Act or of the rules made thereunder with intent to evade payment of duty.

6. From the records, it is observed that the assessee had availed the wrong credit in their account but has not utilized the same and after it was pointed out by the audit party the same was reversed by the assessee. In such circumstances, the Tribunal has rightly held that there was no intention on the part of the assessee to evade payment of tax and the assessee had not utilized the amount credited.

7. To attract levy of penalty as per the provisions of Section 11AC of the Central Excise Act, 1944, the revenue has to prove that the assessee has availed the Cenvat credit wrongly by reason of fraud or collusion or any wilful misstatement or suppression of facts, which is not forthcoming in the present case. 5 8. In view of the same, the issue involved in this appeal is mainly related to the facts of the case and the Revenue having failed to establish the case of imposing penalty under Section 11AC, we are not inclined to interfere with the order passed by the Tribunal and in the circumstances, we do not find any substantial question of law arising for consideration.

9. Accordingly, the appeal is dismissed. JUDGE Sd/- Sd/- JUDGE JT/-

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