IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/669, 670, 712, 713/2012-EX[DB]

(Arising out of Order-in-Original No. 13-14/Commissioner/Noida/2011-12 dated 30/12/2011 passed by Commissioner of Central Excise & Customs, Noida)

M/s Surya Herbal Ltd., Shri Inder Setia,

Tve Skyshop Ltd. &

Shri Vinod jagdish Agarwal, Chairman **Appellants**

Vs.

Commissioner of Central Excise, Noida **Respondent**

<u>Appearance:</u>

Shri B.L. Narasimhan & Shri Hrishikesh, Advocates
(in Appeal No.369 &370/2012) for Appellants
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/07/2018
Date of Decision : 26/07/2018

FINAL ORDER NO. -**71812-71815/2018**

Per: Ashok Jindal

These appeals have been filed by the appellants against the order of classification whereas the Revenue sought to classify the said goods namely Roop Amruta as cosmetic items under Sub-heading 33049910 and Daant Pari as Daant powder 3306 1010 of Central Excise Tariff Act.

2. The facts of the case are that the appellants namely M/s Surya Herbal Ltd. (in short Surya) is a job work manufacturer and manufacturing various products namely ayurvedic medicines, cosmetic items, toiletries etc., on behalf of M/s TVC Sky Shop Ltd. (in short M/s TVS), a global marketing and retailing company of various consumer goods. M/s Surya entered an agreement with M/s TVS whereby M/s Surya agreed to manufacture the products namely Roop Amruta and Daant Pari during the period of August, 2005 to March, 2006. M/s Surya cleared the impugned goods to M/s TVC as "Ayurvedic Medicine" by discharging Central Excise duty in terms of valuation arrived as per Section 4 of the Central Excise Act, 1944. A search was conducted in the factory of M/s Surya on 28/03/2006 wherein it was found that the M/s Surya clearing impugned goods as ayurvedic medicine classifying under Chapter 30 of Central Excise Tariff Act and discharged duty under Section 4 of the Act. The case of Revenue is that the said goods are classifiable under cosmetic and it was classified under Chapter 33 of the Central Excise Tariff Act. Therefore, the goods found in stock were seized vide the seizure memo dated 18/07/2006. For the seizure, a show cause notice was issued to M/s Surya on

16/03/2007, later on, a show cause notice dated 22/07/2010 were issued to the appellants, invoking extended period of limitation to demand duty of Rs.82,10,103/- by classifying the goods under Chapter 33 of Central Excise Tariff Act as per Section 4A of the Central Excise Act. As the goods which qualifying Chapter 33 are to be valued in terms of Section 4A of the Act. Accordingly, the matter was adjudicated and the differential demand of duty was confirmed against the appellants and penalties were imposed and it was held that the goods seized are liable for confiscation. Consequently, redemption fine was also imposed. Against the said order appellants are before us.

3. The learned counsel for the appellants have disputed the classification by Revenue for the sake of arguments. He also submits that entire demand is barred by limitation as for the period August, 2005 to March, 2006, the show cause notice has been issued on 22/07/2010 by invoking the extended period of limitation. The classification of the impugned goods were known to the department as the appellants were filing their ER-1 Returns regularly, classifying the said goods under Chapter No.30 of the Central Excise Tariff Act. Therefore, the entire demand is barred by limitation.

4. On the other hand learned A.R. reiterated the finding of the impugned order.

5. Heard the parties and considered the submissions.

6. At this stage, without going into the merits classification of goods in question, we note that the rate of duty under Chapter 30 as well as Chapter 35 is same. Further, we take a note that the fact that the appellants are filing their ER-1 returns at the time of clearance of goods showing the classification under Chapter 30 of Central Excise Tariff Act and the same has been accepted by the Department at the time of assessing the returns. As the search was conducted in the factory premises of the appellant on 28/03/2006 and goods were also seized on 28/03/2006 that the show cause notice was only issued on 16/03/2007. Thereafter, the show cause notice is highly barred by limitation as no malafide is attributable to the appellants. In that circumstances, we hold that all the demands are barred by limitation. Consequently, the demand of duty is not sustainable. In result, the penalties are set aside.

7. We, further take note of the fact that goods in question which have been seized, have not cleared from

the factory and there is no malafide attributable against the appellants, therefore, the goods are not liable for confiscation, consequently, no redemption fine is imposable on account of seizure of the goods

7. In these terms, the appeals are allowed.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Lks