Proprietor Shri P. Prabhakaran, who were engaged in the manufacture of 'Talcum Powder', alleging that they were wrongly availing exemption limit beyond Rs. 100 lakhs by using a dummy unit viz, M/s. Shanthi Enterprises. The original authority, interalia confirmed duty liability of Rs. 15,32,672/- on ABC, imposed equal penalty on them under Section 11 AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and imposed penalty of Rs. 15,00,000/- on Shri P.Prabhakaran under Rule 26 of the Central Excise Rules, 2002. The original authority interalia also imposed penalty of Rs.15,00,000/- on M/s. Dorcas Market Makers Ltd. (DMML in short), who had allegedly placed separate purchase orders on ABC and Shanthi Enterprises on the grounds that DMML had facilitated said removals/clearances beyond SSI limit. Penalty of Rs. 10,00,000/- under Rule 26 ibid was also imposed on one Shri A.R. Hegde, Manager Operations (Cuticura) of DMML. (appellant in appeal E/329/2008) on the finding of the original authority that he was privy to the commission of the offence committed by the other appellant. Penalty of Rs.15,00,000/- under Rule 26 ibid was imposed on Smt. P. Pushpam, (appellant in appeal E/239/2008), who was the sister of the Proprietor of ABC and in whose name sales tax registration and drug license etc., had been obtained. On appeal, the Commissioner (Appeals), vide the impugned order dated 07.02.2008, set aside the penalty on DMML, reduced the penalties imposed on Shri A.R. Hegde to Rs.2,00,000/- and on Smt. P. Pushpam to Rs. 5,00,000/-, however without making any interference in the remaining part of the order of the

Customs, Excise & Service Tax Appellate Tribunal

original authority. Aggrieved, these three appellants are before this forum.

3. Today when the matter came up for hearing, ld. Advocate, Shri Raghavan Ramabhadran, points out that Shri P. Prabakaran, Proprietor of the main appellant ABC has passed away on 15.10.2004 and hence proceedings in respect of ABC would therefore abate. In respect of Smt. P. Pushpam, ld. Advocate takes us to para 7.5 of the impugned order, the Commissioner (Appeals) has reproduced para 122 of the order of the original authority, where the role of Smt. P. Pushpam had been brought out:-

"7.5 As regards penalty imposed on appellants No.2, the lower appellate authority in para 122 of the impugned order held as under:-

"122. As regards the culpability of Smt. Pushpam, I have to observe that she is a retired elementary school teacher. It is seen that after her retirement from service in the year 1990, Shri Prabhakaran used her name to be a proprietrix in M/s. Shanthi Enterprises, in 2005, which is a non-existing unit. She herself admitted that she has no knowledge about the manufacturing activities and the valuation, MRP, etc. She enormously helped her brother to obtain sales tax registration, Drug licence etc. Therefore, she is fully liable for the acts committed by her to evade Central Excise duty. Smt. Pushpam knew or had reason to believe that such an arrangement is violation of provisions of Rule 26 of Central Excise Rules, 2002. Therefore, she is liable for penal action."

Customs, Excise & Service Tax Appellate Tribunal

Ld. Advocate submits that evidently Smt P. Pushpam had no direct role what so ever in the entire controversy, her name was only used by her brother late Shri P. Prabakaran, to be a propritriex of M/s. Shanthi Enterprises, that she had no knowledge about manufacturing activities and valuation etc., and only her name was used to obtain drug licence and sales tax registration etc. For these reasons only, although penalty was imposed by the original authority it was reduced considerably by the ld. Commissioner (Appeals). However, ld. Counsel also pointed out that Smt. P. Pushpam, who is now 84 years old and suffers from dementia, which may also be taken as a compassionate ground in the appeal. In respect of the third appellant Shri A.R. Hegde, ld. Counsel Ms. D. Naveena, submits that the role of this appellant was limited only to procure orders as per the directions of DMML and that he had no knowledge or role in the goings on in ABC or DMML. She also submits that penalty in respect of the employer DMML also has been fully set aside by the Commissioner (Appeals). In the circumstances, penalty on Shri A.R. Hegde cannot survive.

4. On the other hand ld. AR Shri S. Nagalingam supports the adjudication and particularly states that Shri A.R. Hegde would have been in the know of all the issues, since he was holding the position of Manager (Operations) of DMML.

5. Heard both sides and have gone through the records.

6.1 In respect of the appeal filed by ABC, as per the intimation given by the ld. Advocate and as per the provisions of Rule 22 of

Customs, Excise & Service Tax Appellate Tribunal
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the CESTAT Procedural Rules, 1982, the appeal filed by the ABC, Proprietor Shri P. Prabhakaran shall abate. Ordered accordingly.

6.2 In respect of Smt. P. Pushpam, it is fully evident from the impugned order that her name was used as a camouflage to obtain the drug licence and sales tax registration etc. There is no allegation that she was in thick of things or that she was actively involved in the running of DMML or Shanthi Enterprises. The role ascribed to her is limited, namely that she allowed her name to be used by her brother for his modus operandi. The lower appellate authority has taken note of this factuality and has already reduced the penalty considerably to Rs. 5,00,000/-. However, considering the fact that the appeal against the main appellant has been abated and that also taking note of her present age and dementia, penalty is further reduced to Rs.50,000/-. Ordered accordingly.

6.3 Coming to the third appellant, Shri A.R. Hegde, ld. Advocate has a valid point that since the penalty has been dropped in the impugned order on his employer DMML, the penalty on Shri A.R. Hegde cannot survive. From para 7.8 of the impugned order, what is found by the lower appellate authority is that the appellant was privy to the commission of the offence committed by the main appellant. However, there is no discussion or elucidation of his active role in the whole alleged modus. In any case, since the penalty on the employer DMML has been scrapped by the lower appellate authority, there is no justification for penalty on the

Customs, Excise & Service Tax Appellate Tribunal

employee. For these reasons, penalty imposed on Shri A.R. Hegde, is set aside and the appeal in respect of this appellant is allowed.

6. All the three appeals are disposed of as above, with consequential benefits, if any, as per law.

(Order dictated and pronounced in the open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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Customs, Excise & Service Tax Appellate Tribunal

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