CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No. 55537 of 2023

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-42-2023-2024 dated 17.05.2023 passed by the Commissioner (Appeals), Customs, CGST and Central Excise, Indore (M.P.).]

M/s. VSN Products **Appellant**
LG-13, BCM Heights, PU-4,
Scheme No.54,
Indore -453 010.

VERSUS

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
Manik Bagh Palace,Indore (M.P.)

APPEARANCE:

Shri N.K. Tiwari, Consultant for the appellant.
Shri M.K.Chawda, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50330/2025

DATE OF HEARING/DECISION:14.02.2025

BINU TAMTA:

1. The appellant is engaged in the manufacture of Jarda Scented Tobacco and is registered with the Central Excise Department. The appellant vide letter dated 15.05.2019 intimated the Department regarding dis-continuation of payment of National Calamity Contingent Duty (NCCD) on Jarda Scented Tobacco with effect from 1.05.2019 in view of the decision of the Supreme Court in the case of **Bajaj Auto versus Union of India** [1]

2. The Range Officer had communicated the appellant that the decision of the Supreme Court is not applicable in their case and therefore, requested to

[1] **2019 (366) ELT 577 (S C.).**

pay NCCD regularly. Meanwhile, Notification No.03/2019–CE dated 6.07.2019 was issued by CBIC removing the ambiguity regarding payment of NCCD by imposing 0.5% of basic excise duty on products falling under Chapter 2403 9930.

3. The appellant vide letter dated 20.01.2020 informed the Department that due to budgetary changes, they have started paying NCCD on Jarda Scented Tobacco manufactured by them and have paid Rs.42,44,528/- for the period from 1.05.2019 to 5.07.2019.

4. Show cause notice dated 26.05.2020 was issued to the appellant for appropriating the amount deposited by them towards NCCD, for interest under Section 11 AA and penalty under Section 11AC of the Central Excise Act, 1944. On adjudication vide order dated 24.02.2022, the demand was confirmed and the appeal filed by the appellant was rejected by the impugned order dated 17.05.2023. Hence, the present appeal has been filed.

5. Heard both sides and perused the records.

6. During the course of arguments, the learned Counsel submitted that the grievance raised by the appellant is only regarding the imposition of penalty under Section 11AC of the Act on the ground that there is no allegation in the show cause notice to any of the ingredients which are necessary for imposing penalty under the said Section. I find that there is force in the submissions made by the learned counsel for the appellant. There is not a whisper in the show cause notice that the appellant had not deposited the NCCD by reason of any fraud, collusion, wilful misstatement or

suppression of facts or contravention of any of the provisions of law with intent to evade payment of duty. Even the Adjudicating Authority, merely observes that the appellant had not paid the NCCD during the material time. That mere non-payment of the duty is not sufficient to impose penalty under Section 11AC. Even the Apex Court in **U.O.I. Vs. Rajasthan Spinning and Weaving Mills** [2] while laying down that the mandatory penalty equal to duty cannot be reduced even though the duty is paid before the issuance of the show cause notice, observed that it is only when the conditions spelt-out under Section 11AC of the Act are fulfilled that there is no discretion to reduce the mandatory penalty. The impugned order upholding the penalty in the absence of the conditions specified for invocation of the provisions of Section 11 AC is bad and unsustainable. Moreover, I am of the view that in the facts and circumstances of the present case where there was ambiguity due to the decision of the Apex Court that the appellant was under a bona fide belief that they are not liable to pay NCCD and hence the imposition of penalty does not survive.

7. The impugned order is, accordingly set aside, and the appeal is allowed.

[Operative portion of the order pronounced in open court]

(Binu Tamta)
Member (Judicial)

Ckp.

[2] **2009 (238) ELT 3 (SC)**