IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/3637,3638/2010-EX[SM]

[Arising out of Order-in-Appeal No. 300&301/CE/D-II/10 dated 12.07.2010, passed by the Commissioner of Central Excise, Delhi]

Tanu Enterprises
Sh. Kapil Khanna, Director **...Appellants**

Vs.

C.C.E.- Delhi **....Respondent**

Appearance:
Sh. Kamaljit Singh, Advocate for the Appellant
Sh. Dharam Singh, DR for the Respondent

CORAM: **t**
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.01.2017

FINAL ORDER NO. 50402-50403 /**2017-CU(SM)**

Per V. Padmanabhan

The present appeals are directed against the Order-in-Appeal dated 12.07.2010 passed by the Commissioner (Appeals), New Delhi. The Central Excise Officers during visit to the factory of the appellant noticed that they were engaged in the manufacture of 'Lagan' brand Gukta of 50 paise per pouch. The department issued a Show Cause Notice dated 21.01.2009 demanding payment of Central Excise duty to the extent of Rs 12.5 lakhs under the compounded levy scheme notified under Section 3A of the Central Excise Act. This demand was raised for a period of 1 month. The Original Authority confirmed the demand along with an order for payment of interest and penalty of Rs 12.5 lakhs. Further, penalty was also imposed on Shri Kapil Khanna director of M/s. Ask Mouth Freshners under Rule 26 to the extent of Rs 3 lakhs. When the appellant challenged the Order before the Commissioner (Appeals), vide the impugned order, he reduced the duty payable proportionately for a period of 8 days and confirmed an amount of Rs 3,33,333/-. He also reduced the penalty leviable on Shri Kapil Khanna to an amount of Rs 5,000/-.

2. With the above background, I heard Shri Kamaljit Singh, Ld. Advocate appearing for the appellant as well as Shri Dharam Singh, Ld. DR for the respondent.

3. The submission of the ld. Advocate is that the appellant is not challenging the duty demand. Their request is only that the benefit of payment of reduced penalty at the rate of 25% of the duty ultimately confirmed, may be extended to the appellant. He further submits that the Original demand of Rs 12.5 lakhs already stands paid along with interest as well as penalty of Rs 3 lakhs, even before the issue of Show Cause Notice.

4. I find that Section 11AC provides that the benefit of penalty at the reduced rate of 25% of that originally payable at the rate equal to the duty confirmed will be available provided, the duty demanded, interests payable thereon as well as 25% of the penalty are paid within a period of 1 month from the date of the order. In the present case, the demand stands reduced and confirmed in the

impugned order. The demand as well as interest already stands paid along with penalty to the extent of Rs 3 lakhs. Since, the 25% of the reduced demand works out far less than Rs 3 lakhs. I am of the view that the penalty leviable under Section 11AC will be only to the extent of 25% of the demand ultimately confirmed i.e. 25% of Rs 3,33,333/-.

5. The penalty imposed on Shri Kapil Khanna has already been reduced to Rs 75,000/- in the impugned order. I find no reason to interfere with the same.

6. Appeals are disposed off in above terms.

[Dictated and Pronounced in the Open Court]

(V. Padmanabhan)
Member (Technical)

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