IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 23.11.2017
Date of Pronouncement: 15.02.2017

Appeal No. E/54/2009-EX.(DB)

(Arising out of Order-in-Original No. 39/2008 dated 13.10.2008 passed by the Commissioner, Central Excise, Jaipur-I)

CCE, Jaipur — Appellant

Vs.

M/s Samtel Color Ltd. — Respondent

Appearance

Shri G.R. Singh, D.R. - for the appellant

None - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50927/2017

Per Ashok K. Arya :

Revenue is in appeal against the Order-in-Original No. 39/208 dated 13.10.2008, whereunder the demand of differential duty of Rs.19,70,26,848/- along with interest has been confirmed and a penalty of Rs. 10 lakhs has also been imposed on the respondent viz. M/s Samtel Color Ltd. The Revenue is in appeal mainly arguing that the adjudicating authority in the impugned order has not imposed penalty equal to the amount of duty evaded, or an amount which is in commensurate to gravity of the offence of the respondent under Section 11AC of Central Excise Act, 1944.

2. The Revenue has been represented by ld. AR, Shri G.R. Singh. Neither anybody appeared on behalf of the respondent-assessee nor any adjournment application is available on record.

3. The ld. AR for Revenue based on the appeal memorandum mainly submits that:

(i) The Commissioner by the impugned order has not imposed the penalty equal to the amount of duty evaded or an amount which is in commensurate to the gravity of the offence under Section 11AC of Central Excise Act, 1944.

(ii) The CESTAT has dismissed the respondent's appeal against the present impugned order (No. 39/2008 dated 13.10.2008) vide Final Order No. A/53767/2016-EX(DB) dated 26.9.2016 in assessee's Appeal No. 1299/2009.

(iii) Hon'ble Supreme Court in the case of *Union of India Vs. Rajasthan Spinning & Weaving Mills* – 2009 (238) ELT 3 (SC) has held that wherever conditions exist for imposing penalty under Section 11AC of Central Excise Act, 1944 authorities have no discretion and quantum of penalty equal to duty is to be imposed.

4. But in the instant case, the adjudicating authority has imposed less penalty in violation of Section 11Ac of Central Excise Act, 1944 without assigning any reason.

5. When it is so, then we deem it fit to modify the impugned order pertaining to penalty only and remand the issue for quantum of penalty to the adjudicating authority, who shall examine de novo and adjudicate the same afresh within four months of receipt of this order after providing necessary opportunity of personal hearing and submission of evidence as per law to the respondent viz. M/s Samtel Colour Ltd.

6. In the result, for the limited issue i.e. quantum of penalty, the appeal is allowed by way of remand in above terms.

(Pronounced in Court on....15.02.2017..)

(Justice Dr. Satish Chandra) (Ashok K. Arya)
President Member (Technical)

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