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

Date of Hearing/Order: 21.4.2017

Appeal No. E/136/2012-SM

(Arising out of Order-in-Appeal No. 227-229(DKV) CE/JPR-I/2011 dated 19.8.2011 passed by the Commissioner (Appeals),Central Excise, Jaipur)

M/s Vaan Laboratories   Appellant

Vs.

CCE, Jaipur   Respondent

Appearance

Shri Kumar Vikram, Advocate - for the appellant

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

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53104/2017

Per Ashok K. Arya :

The appellant M/s Vaan Laboratories is in appeal against the Order-in-Appeal No. 227-229/2011 dated 19.8.2011 whereunder penalty of Rs.20,85,915/- under Section 11AC of Central Excise Act, 1944 has been sustained.

2. The brief facts are that the appellant is a manufacturer of printing press washing chemicals falling under Chapter Heading 34022020 of Central Excise Tariff. The appellant wrongly claimed SSI benefit under Notification No. 8/2003-CE dated 1.3.2003 though they were using the brand name and monogram "Boettcher" which is

a brand name of a multi-national company, M/s Felix Boettcher GmbH & Co. The department started investigation in the matter on 11.11.2008; thereafter the appellant paid duty along with interest on 3.12.2008.

2.1 The appellant's submission is that since they had paid duty along with interest before issue of Show Cause Notice no penalty be imposed on them. On the other hand, Revenue vehemently argues that the appellant mis-represented and suppressed the facts and intentionally used brand name of other company, and did not pay the duty of Central Excise during the relevant period, which was liable to be paid by them. Revenue says that it is so the appellant cannot be given the benefit of 'non issue of show cause notice and non charging the penalty' as provided under sub clause 2(B) of the then Section 11A of Central Excise Act, 1944.

3. With above background, heard both the sides, represented by ld. Counsels, Shri Kumar Vikram for the appellant and Shri G.R. Singh for Revenue.

4. The ld. Counsel for the appellant inter alia submits that penalty is not liable to be paid as they were under the impression that duty is not payable in their case, though they were using the brand name of other company. He also cites Circular No. 71/71/94-CX dated

27.10.94 saying that as in the case of 'castings', use of brand name is to be allowed along with the benefit of SSI exemption. In support he cites following case laws :

(i) *CCE Vs. York Refrigeration India Ltd*. - 2016 (339) ELT 86 (Tri.-Mumbai);

(ii) *CCE Vs. Machino Montell (I) Ltd.* – 2004 (168) ELT 466 (Tri.-LB).

5. Ld. Counsel for the Revenue vehemently pleads that the facts on record speak otherwise; there is a clear cut suppression of facts, which has been pointed out by the Commissioner (Appeals) when he observes that there has been intention to evade duty be reasons of wilful mis-statement and suppression of facts. The Commissioner (Appeals) has held that there is an intent to evade by reasons of suppression of facts and wilful misstatement.

6. After perusal of the facts on record and submissions of both the sides, it appears that this is a clear case where appellant did not bother to pay duty of Central Excise all along though the same was payable, when they were knowingly using brand name of other manufacturer. The appellant's argument that CBEC Circular No. 71/71/94-CX. allows use of brand name on the 'castings' as a trade practice and also allows benefit of SSI exemption is of no consequence. This circular is not at all applicable to the subject

goods and present facts. It is on record that the Order-in-Original No. 46/2011 dated 18.3.2011 passed in this case gave the option to the appellant of reduced penalty of 25% as per the proviso to Section 11AC of Central Excise Act, 1944. However, the appellant did not make use of the said option which was statutorily available as per the provisions of Section 11AC ibid.

6.1 In this regard, Hon'ble Supreme Court in the case of *Union of India Vs. Rajasthan Spinning & Weaving Mills* – 2009 (238) ELT 3 (SC) has referred to Hon'ble Apex Court decision in the case of *Union of India Vs. Dharmendra Textile Processors* - 2008 (231) ELT 3 (SC) holding that if the provisions of Section 11AC are applicable the equivalent penalty is imposable. In the case of *CCE, Visakhapatnam Vs. Mehta & Co.*- 2011 (264) ELT 481 (SC), the Hon'ble Apex Court has observed that there could be some facts and circumstances where extended period for charging Central Excise duty is applicable. Further, the Hon'ble Apex Court in this case observed that :

> "**23.** Although, the respondent has pleaded that it was done out of ignorance, but in our considered opinion there appears to be an intention to evade excise duty and contravention of the provisions of the Act. Therefore, proviso of Section 11A(i) of the Act would get attracted to the facts and circumstances of the present case.

Similarly, for the present facts, the appellant though pleads that there was no intention on their part to evade facts on record indicate that there has been mis-statement and suppression of facts with intent to evade duty on the part of the appellant.

6.2 The case laws referred by the appellant are not applicable to the present facts, they are completely distinguishable on the facts and circumstances. Therefore, following the Hon'ble Apex Court's decisions referred above, we do not find any merit in the appeal filed by the appellant.

7. In the result, the impugned order is sustained and appeal dismissed as without merits.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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