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

Date of Hearing/Decision: 30.8.2017

Appeal No. E/2055/2010-SM

(Arising out of Order-in-Appeal No. 288/CE/MRT-I/2010 dated 29.3.2010 passed by the Commissioner (Appeals), Central Excise, Meerut)

M/s Rohit Surfactants Pvt. Ltd. Appellant

Vs.

CCE, Meerut Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

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

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56382/2017

Per Ashok Jindal :

The appellant is in appeal against the impugned order praying for waiver of penalty.

2. The facts of the case are that the appellant located in the state of Uttarkhand and availing the benefit of exemption Notification No. 50/2003. During the course of manufacturing of their final product distilled glycerine has been manufactured at intermediate stage. The same is classified under CTH 29054500 whereas the appellant opted to classify the same under 15200000. As dispute of classification was going, a Show Cause Notice was issued for earlier period and in

the adjudication order dated 27.2.2009, it was held that the correct classification of distilled glycerine is under Chapter 29054500 and the penalty imposed on the appellant under Section 11AC was dropped on the ground that the issue is of classification. Therefore, malafides cannot be alleged. In this case, period involved is March 2008 to October, 2008 and issue of classification only.

3. Heard the parties.

4. Considering the fact the appellant is not disputing the classification of the goods in question i.e. distilled glycerine. The appellant is only praying for dropping the penalty on the appellant. As the adjudication order for the earlier period was passed on 27.2.2009 which is much later to the impugned period in dispute, therefore, the appellant is entitled for benefit of Section 11AC of the Act as no malafides can be imputed against the appellant. In that circumstances, penalty imposed on the appellant is set aside. Consequently, the appeal is allowed qua imposition of penalty on the appellant.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

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