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

COURT NO. I

DATE OF HEARING : 16/03/2018.
DATE OF DECISION : 16/03/2018.

Excise Appeal No. 2898 of 2011 with ROA Application No. 50118 of 2018

[Arising out of the Order-in-Appeal No. 161-163/CE/DLH/2010 dated 27/09/2010 passed by The Commissioner of Central Excise (Appeals), Delhi – I, New Delhi.]

M/s North East Traders Appellant

Versus

CCE, Delhi – I Respondent

Appearance

Shri Jatin Mahajan, Advocate - for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 51077/2018 Dated : 16/03/2018

Per. B. Ravichandran :-

The miscellaneous application is for restoration of appeal which was dismissed for non-prosecution vide final order No. 57560/2017 dated 01/11/2017.

2. After hearing both the sides, we recall our final order and restore the appeal to its original number. With the consent of both the sides, the appeal is taken up for disposal.

3. The learned Counsel for the appellant submits the only prayer in the present appeal is with reference to penalty imposed on the appellant for non-payment of duty on manufactured goods which are manufactured and cleared by the appellant by wrongly claiming SSI exemption. He submits that the appellant started the new business and leased out certain machinery alongwith brand name of owner of the machine. They started manufacturing soda and packaged drinking water. When the officers pointed out the ineligibility of SSI exemption, the appellant immediately discharged the duty liability even before the issue of show cause notice. The period involved is July 2005 to March 2006. However, the Revenue still proceeded with show cause notice on 24/04/2006 to confirm the already paid duty and to impose penalty. The learned Counsel submitted that there is no demand for extended period neither there is a case for suppression, fraud etc., since, the duty liability is for a period of 9 months.

4. We have heard both the sides and perused the appeal record. The duty liability is for a period of 9 months and the appellant paid the duty prior to the proceedings were initiated. The learned Counsel though could not confirm the liability to

interest or payment of such interest, assured that if any interest is to be calculated, the same will be discharged.

5. Considering the facts and circumstances of the case mentioned above, we note that the demand is for normal period and the appellant did pay the duty immediately after being pointed out by the Department. As the appellant is new entrant to the business, we note that penal proceedings are not justified. Accordingly, while confirming the duty liability with interest, we set aside the penalty upon the appellant. The appeal is allowed partly.

(Order dictated and pronounced in open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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