CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

EXCISE APPEAL No. 52829 OF 2018

(Arising out of Order–in-Original No. 85-RK-CE-JPR-2017-18 dated 28.03.2018 passed by COMMISSIONER OF CENTRAL EXCISE-Jaipur)

M/s. Surksha Flexo Pack Pvt. Ltd. **... Appellant**
B-81 Ajaymeru Industrial Area,
Para, Ajmer, Rajasthan

Versus

Commissioner of Customs, **.... Respondent**
Central Excise, Jaipur
NCR Building, Statue Circle,
C-Scheme, Jaipur

APPEARANCE:

None for the Appellant
Mr. P. Gupta, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **02.08.2019**

FINAL ORDER No.: 51211/2019

ASHOK JINDAL

The appellant is in appeal against the impugned order wherein initial penalty imposed to the tune of 50% under section 11AC of the Act was increased to 100%.

2. The facts of the case are that the appellant is a manufacturer of corrugated boxes and was availing the exemption in VAT given to them. The appellant was not paying duty on the subsidy given by the VAT to the appellant for early payment of VAT and the said amount was returned by the

appellant with that. Later on show cause notice was issued to the appellant alleging that appellant was required to pay duty on the amount of concession given by the VAT Department. The issue was finalized against the appellant and penalty to the tune of 50% of the duty imposed was confirmed against the appellant by the adjudicating authority. But revenue did not accept the imposition of 50% penalty on the appellant and filed the appeal before the learned Commissioner (A) alleging that the appellant is required to be penalized to the tune of 100% of the duty confirmed.

3. The said appeal was allowed by the learned Commissioner (A) and penalty to the tune of 100% of the duty was imposed on the appellant.

4. Against the said order appellant is before me.

5. Heard the respondent and considered the submissions.

6. The issue whether on concession given by the VAT department, the assessee was liable to pay duty so issued or not has been settled by the Hon'ble Apex Court in the case of **CCE Vs. Maruti Suzuki reported in 2013 (207) ELT 625 (SC).**

7. In that circumstances, I hold that there was no malafide on the part of the appellant not to pay duty on the subsidy given by the VAT department. In that circumstances, no penalty was warranted against the appellant.

8. Therefore, I do not find any merit in the impugned order. The same is set aside. In the result, the appeal filed by the appellant is allowed.

(order dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Bhanu