IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>EAST REGIONAL BENCH : KOLKATA</u>

<u>Ex.Appeal No.643/09</u>

(Arising out of Order-in-Appeal No.36/HAL/2009 dt.27.08.2009 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Saj Industries Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx., Haldia

Respondent (s)

<u>Appearance:</u>

Shri B. N. Chattopadhyay, Consultant for the Appellant (s)
Shri A. K. Biswas, Supdt. (AR) for the Revenue (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

<u>Date of Hearing : 09.07.2018</u>
<u>Date of Decision : 09.07.2018</u>

ORDER NO.FO/77244/2018

<u>Per Shri P. K. Choudhary :</u>

The present appeal is filed by appellant against Order-in-Appeal No.36/HAL/2009 dt.27.08.2009.

2. The facts of the case in brief are that the appellant is engaged in the manufacture of, inter-alia, biscuits. Show-cause notice dated 27.11.2007 was issued alleging that the appellant assessee has cleared biscuits valuing upto Rs.100/- per kg., without payment of Central Excise duty for the month of April, 2007. The Adjudicating Authority confirmed the demand of Rs.32,03,988/- along with interest and appropriated the entire amount as paid by the assessee. He also imposed penalty of equal amount in terms of Section 11AC of the

Central Excise Act, 1944. The assessee was in appeal before the lower appellate authority for contesting the penalty imposed. The ld.Commissioner (Appeals) dismissed the appeal. Hence the present appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. It is the case of the appellant that they were under the bonafide belief that biscuits in packages valued upto Rs.100/- per kg. were exempted from payment of Central Excise duty. With this bonafide belief, they did not pay the duty in respect of the biscuits valued exceeding Rs.50/- per kg., but not exceeding Rs.100/- per kg. cleared from the factory in the month of April, 2007. It is also the case of the appellant assessee that after receipt of the show-cause notice, they deposited an amount of Rs.14,06,714/-. The assessee has continued to reiterate that they were under bonafide belief that the biscuits valued upto Rs.100/- per kg. had been exempted from payment of duty. Accordingly, they prayed for waiver of penalty.

5. We observe that the payment of duty in the present case cropped up as a result of issue of various Notifications relating to the exemption of duty on the basis of various slabs. During the period from 01.04.2007 to 30.04.2007, the appellant had paid the duty on the value of the goods up to Rs.100/- per kg.. But the fact remains that during that period, the exemption was up to the slab of Rs.50/- per kg.. This resulted in lesser payment of duty. However, they paid the entire amount of differential duty along with interest. Since the goods were cleared under Central Excise Invoices,there was no question of suppression of facts or willful mis-statement with an intent to

evade the payment of duty. On facts as stated above and under the circumstances of the case, it is our considered view that the penalty imposed under Section 11AC is not sustainable and we set aside the same.

6. In the result, the appeal is allowed.

(Operative part of the order was pronounced in the open Court)

Sd/	Sd/
(BIJAY KUMAR) **MEMBER (TECHNICAL)**	**(P. K. CHOUDHARY)** **MEMBER (JUDICIAL)**

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