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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7763/2016 & CM No. 32044/2016 (stay)**

APSANA GLOBAL SUGANDHI
PVT. LTD. & ORS. ..... Petitioners

Through : Mr. Balbir Singh, Sr. Counsel with Mr. Vijay Kumar, Mr. K. Gurumurthy and Ms. Rubal Maini, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through : Mr. Abhay Prakash Sahay, CGSC and Ms. J. Priyadarshini, Adv. for UOI.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 14.07.2017

CM No. 32045/2016 (Exemption)

1. Allowed, subject to all just exceptions.

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2. The question urged in the present petition is regarding the penalty imposed on the Petitioners by the Customs, Central Excise & Service Tax Settlement Commission ('Commission') by its order dated 3rd August, 2016. By way of the said order, the Commission imposed a penalty of Rs. 25,00,000 on Petitioner No. 1, Rs. 10,00,000 each on Petitioner nos. 2 & 3 and Rs, 1,00,000 on Petitioner No. 4 towards the show cause notice (SCN) dated 20th August, 2015.

3. The Petitioners point out that the penalty could not have been more than 15% of the duty so determined in terms of Section 11AC (1) (d) of the Central Excise Act, 1944 ('CE Act') read with Explanation 1 (ii) thereof.

4. In the counter-affidavit filed by the Respondent, it has been stated that the amendment to Section 11 AC (1) (d) of the CE Act was introduced with effect from 14th May, 2015 whereas the first SCN notice was issued to the Petitioners on 9th March, 2015. Secondly, it is submitted that since the prosecution against the Petitioners was dropped in terms of the impugned order of the Commission, the penalty imposed on each of the Petitioners cannot be stated to be unreasonable or harsh.

5. Mr. Balbir Singh, learned Senior counsel for the Petitioner on the other hand points out that penalty amounts were only towards the SCN issued on 20th August, 2015, which was issued after 14th May, 2015. Secondly, he submitted that Explanation 1 (ii) clarified that the benefit of the amended provision would be available even where a SCN was issued prior to 14th May 2015 but no order determining duty was passed pursuant thereto. He points out that in the present case, after the SCNs were issued, the Petitioners straight away approached the Commission and there was no adjudication of the said SCNs.

6. In the considered view of the Court, Explanation 1 (ii) to Section 11AC (1) (d) of the CE Act makes it clear that the Petitioners cannot be denied the benefit of the maximum penalty of 15% of the duty demanded. In other

words the penalties awarded to the Petitioners by the Commission required to be re-worked in terms of the above provision by ensuring that it does not cross 15% in the aggregate of the total duty demanded.

7. While setting aside the penalties awarded by the Commission by the impugned order, the Court directs that application of the Petitioners will once again be listed before the Commission on 10th August, 2017 for the above purpose.

8. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 14, 2017
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