(2013) 08 AHC CK 0001

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 93 of 2013

C.C. and C.E., Ghaziabad APPELLANT

Vs

Kay Pan Masala (P.) Ltd. Gram Udyog Mandal RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2014) 301 ELT 165 : (2014) 27 GSTR 154

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. This Central Excise Appeal u/s 35G of the Central Excise Act, 1944 filed by the Commissioner, Customs and Central Excise, Kamla Nehru Nagar, Ghaziabad, is reported to be delayed by 68 days. We have considered the explanation for delay. In view of the order, which is proposed, the delay is condoned. The appeal will be given regular number. We have heard Shri Ramesh Chandra Shukla, learned counsel appearing for the Central Excise department.

2. This appeal has been preferred against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi dated 29-11-2012 in Excise Appeal Nos. 1365 to 1368 of 2010 on the following questions of law:-

(i) Whether the operating packing machines were plugged off and shifted to a room within the factory, meaning thereby that it was quite feasible to remove the said machines outside the factory as well, then whether the proviso to Rule 6(5) of the Pan Masala Packing Machines- (Capacity Determination and Collection of Duty) Rules, 2008 would apply which says that in case it is not feasible to remove such packing machine out of the factory premises, then it shall be uninstalled and sealed in such a manner that they could not be operated?

(ii) Whether Rule 6(5) of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 says that "The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the

Superintendent of Central Excise and removed from the factory premises under his physical supervision." If a manufacturer does not comply to the above statutory condition then whether it shall be construed that the said machines are to be counted as installed and operating in factory and accordingly liable to pay duty under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, on the basis of the total number of machines available in the factory?

3. We have perused the order passed by the CESTAT, and do not find that any substantial questions of law as framed arise for consideration of the Court. The issue relates to fixation of annual capacity of the production in terms of the Pan Masala Packing Machines (Capacity Determination and Collection) Rules, 2008.

4. In the present case, it is not denied that the machines, on the request of the party, were sealed by the department and they were found to be in sealed condition on physical checking. The Central Excise Authorities, however, imposed liability on the ground that though the machines were sealed and that there is no dispute that the machines were not unsealed without which they could not be operated, since the machines have wheels and could be moved out of the factory and used for manufacturing final product, the same should have been taken into account for consideration while fixing duty liability. The Central Excise Authorities had dropped the proceedings initiated on the show cause notice on the ground that since the machines had wheels, even if they were sealed they could be moved out and used for manufacture.

5. The CESTAT dismissed the appeal for the following reasons:-

4. I find no reason to interfere in the impugned order of both the authorities below. Admittedly, the machines are sealed and Revenue''s submission is in the arena of assumption and presumption. For using the said machines, the seal has to be broke open which can only be done with the consent and permission of the Revenue. As such, I find no merits in the Revenue''s appeal.

5. Accordingly all the appeals filed by the Revenue are rejected.

6. We agree with the reasoning recorded by the CESTAT that once the machines were sealed and there was no evidence that the machines were de-sealed, without which they could not be used for manufacture, the imposition of the excise duty, only on the ground that since the machines had wheels and could be moved out, was based only on assumptions and presumptions. All the Central Excise Authorities had concurrently held that the dues were proposed to be imposed only on assumptions and presumptions.

7. The questions of law as framed do not arise for consideration in this case. The Central Excise Appeal is dismissed.

