(2015) 10 AHC CK 0126

In the Allahabad High Court

Case No : Central Excise Appeal Nos. 251, 252, 253, 254, 255 and 256 of 2015

Commissioner of Central Excise — APPELLANT

Vs

Dharampal Satyapal Ltd. and Others — RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(G), 3-A, 3-A(1), 3-A(2), 3-A(3)

Citation : (2016) 333 ELT 283

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : B.K.S. Raghuvanshi, Sr. S.C., for the Appellant

Judgement

1. M/s. Dharam Pal Satyapal Pvt. Ltd. are engaged in the manufacture of ''Pan Masala'' under the brand name Rajnigandha, Tansen, Tulsi Sada, Rajnigandha Meetha Mazaa falling under Chapter 21 of Central Excise Tariff Act, 1985 which is chargeable to Central Excise Duty. The period of dispute is from November 2008 to July 2010.

2. In November 2008, the assessee purchased a packing machine of Model PK-90 GMP FFS Machine from M/s. Pakona Engineering (I) Pvt. Ltd., GIDC, Vadodara vide invoice dated 26.10.2008.

3. The assessee in terms of Rule 6 of Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred to as PMPM Rules) filed a declaration form under Rule 6 of PMPM Rules indicating the machine to be a Single Track Machine having a capacity of producing 150 pouches per minute. Pursuant to the declaration, the Jurisdictional Commissioner by an order dated 8.12.2009 issued an order under Rule 6(2) of the PMPM Rules approving the declaration filed by the assessee under Rule 6 of PMPM Rules and fixed the rate of duty at Rs. 20.48 lacs for the said machine per month, pursuant to the Notification No. 42/2008 dated 01.07.2008. Thereafter, the assessee started production and since then is paying the rate of duty.

4. On 15.7.2010, the Central Excise Officer visited the factory premises and found that 150 pouches of Pan Masala was being produced from this machine and formed an opinion that this Machine should be treated as a Double Track Machine under the PMPM Rules. Accordingly, a show cause notice was issued. The assessee submitted a reply and thereafter, the Commissioner passed an order in original dated 31.1.2012 assessing the rate of duty treating the machine as a Double Track Machine. The Commissioner also imposed penalty. The assessee, being aggrieved, filed an appeal before the Custom Excise and Service Tax Appellate Tribunal, which was allowed and the order of the Commissioner was set aside.

5. The Department, being aggrieved, has filed the present appeal under section 35(G) of the Central Excise Act, 1944 (hereinafter referred to as the Act) praying that a substantial question of law arises for consideration.

6. Section 3-A(1) of the Act authorizes the Central Government to notify the excisable goods having regard to the nature of the process of manufacture or production of the goods, the extent of evasion of duty in respect of such goods or such other factors as may be relevant, with a view to safeguard the interest of revenue for assessment of duty as per the provision of this section. Sub Section (2) of Section 3-A of the Act authorizes the Central Government to make Rules in respect of goods specified under section 3-A(1) of the Act for determining the annual capacity, which shall be deemed to be the annual production of such goods by the factory or specify the factors relevant to the production of such goods and the quantity that is deemed to be produced by the use of a unit of such factor.

7. We find that ''Gutkha'' and ''Pan Masala'' packed in retail pouches for sale has been notified under Section 3-A(1) of the Act for assessment of duty under section 3-A of the Act. Rules have been framed under Section 3-A (2) and 3-A(3) of the Act, namely, the PMPM Rules, Rule 5 of the PMPM Rules specifies the deemed production of number of pouches per operating packing machine per month. For facility, Rule 5 of the PMPM Rules is extracted herein:

"[RULES 5. Quantity deemed to be produced. The quantity of notified goods, having retail sale price as specified in column(2) of the Table below, deemed to be produced by use of one operating packing machine, having maximum packing speed at which it can be operated for packing of notified goods as specified in column(3) or column (4) or column(5) of the Table below, as the case may be, per month shall be as is equal to the corresponding entry specified in column (3) or column (4) or column(5) of the said Table, as the case may be.

For the purposes of this rule, if there are multiple track or multiple line packing machine which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc. Two such tracks or lines shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month:

Provided that in case of multiple track or multiple line packing machine which are incapable of performing such additional processes, one such track or line shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month.]"

8. The proviso to the Explanation to Rule 5 provides that in case of multiple track or multiple line packing machine, which are incapable of performing such additional processes, one such track or line shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month. It means that if a machine has two tracks or more multiple lines, the said track or lines would be treated as an individual packing machine.

9. On the basis of this Rule, the Commissioner passed the order in original holding that since 150 pouches were being produced per minute, which was double the capacity of an ordinary packing machine, the said machine would be treated as a double track machine and accordingly, excise duty was levied.

10. The Tribunal after considering the matter found that as per technical literature of the machine supplied by the supplier, the machine in question is a duplex machine, but there is only one track in which pouches are formed and are later filled with pan masala. The Tribunal further found that the only innovation in this machine is that on the same line or track, at a time, two pouches are being cut and filled resulting in higher speed of production of pouches. The Tribunal held that since there was only one track or one line, the machine purchased by the assessee would be treated as a single track machine and would not be treated as a multiple track machine.

11. Having heard Shri B.K.S. Raghuvanshi, the learned counsel appearing for the appellant and Shri Kasif Zaidi, the learned counsel for the assessee, we find that Rule 5 of the PMPM Rules only distinguishes between a single track and multiple track machines and the duty is paid accordingly. Duty is not paid on the basis of number of pouches produced per minute per month. As per the notification dated 1.7.2008, the rate of duty has been fixed per packing machine per month and not on the turnover of the pouches manufactured. The Central Excise and Customs Board has also issued a circular dated 24.1.2014 clarifying that the duty payable under the notification dated 1.7.2008 is determined on deemed production with respect to the number of operating packing machines in the factory and not on the basis of the actual production by a unit.

12. In the light of the specific finding given by the Tribunal, being the last fact finding authority, to the effect that the machine purchased by the assessee is a single track machine, the duty payable by the assessee on the basis of a single track machine, should have been levied. The Commissioner fell in error in treating the said machine as a two track machine. The order of the

Commissioner was rightly set aside by the Tribunal.

13. In our view, no substantial question of law arises for consideration.

14. The appeals fail and are dismissed.