(2013) 08 AHC CK 0206

In the Allahabad High Court

Case No : Central Excise Appeal No''s. 16 of 2012 and 12 of 2013

Commissioner of Central Excise APPELLANT

Vs

K.P. Pan Products (P.) Ltd. RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2014) 43 GST 306

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Rajesh Singh Chauhan, for the Appellant; Ratnesh Chandra, for the Respondent

Judgement

1. Both the appeals have been filed by the department u/s 35G of the Central Excise Act, 1944 against the Orders No. 1057/2011; A/1187-1188/2012-Ex (DB) dated 21.12.2011 & 26.09.2012 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short ''CESTAT''). The brief facts of the case are that the respondent M/s. K.P. Pan Products Pvt. Limited is engaged in the manufacturing and sale of ''Gutka''. It has Pouch Machine to seal Pan Masala. The excise duty on each machine is payable on the basis of month to month. The respondent-assessee filed letters with the Assistant Commissioner, Central Excise Division-I, Lucknow requesting to unseal Pouch Packing Machine, which was sealed by the department. The Pouch Packing Machine was unsealed by the Range Superintendent, as per the directions of the Assistant Commissioner, Central Excise, Division-I, Lucknow. The assessee-respondent has deposited the duty on month to month basis for the period, when the machine was not sealed. The assessee claimed for exemption from payment of duty for the period the machine remained sealed i.e. 22-23 days, in terms of Rule 10 of Pan Masala Rules, 2008 but the same was denied. So, the respondent-assessee has filed appeals before the Tribunal, who allowed the claim of the respondent-assessee. Still not being satisfied, the department has filed the present appeals.

2. With this background, Sri Rajesh Singh Chauhan, learned counsel for the

appellant-department has justified the order passed by the department. On the other hand, Sri Ratnesh Chandra, learned counsel for the assessee has justified the impugned order passed by the Tribunal.

3. After hearing both the parties and on perusal of record, it appears that only the dispute is whether the assessee is entitled for the exemption of the duty calculated for a period when the Machine was sealed by the department or not. Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 provides for abatement from duty liability determined, if the factory did not produce the goods during any continuous period of 15 days or more. Rule 10, on reproduction, reads as under:

10. Abatement in case of non-production of goods.-

In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least seven days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period:

Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of goods shall be effected by the manufacturer:

Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise.

4. In the instant case, it is undisputed fact that the Machines were sealed and again it were unsealed and in each case, the sealing period was more than 15 days. There is nothing stated in Rule 10 to the effect that a continuous period falling under different calendar months should be split into period falling under each month and abatement determined separately. So long as the days of closure are continuous, even if the days fall in different calendar months it will constitute one continuous period and the abatement under Rule 10 is to be determined accordingly.

5. When it is so, then we do not find any reason to interfere with the impugned orders passed by the Tribunal. The same are hereby sustained along with the reasons mentioned therein. In the result, both the appeals filed by the

department are dismissed.

