(2015) 08 AHC CK 0186

In the Allahabad High Court

Case No : Central Excise Appeal No. 181 of 2015

Commissioner of Central Excise — APPELLANT

Vs

Rajat Industries Pvt. Ltd. — RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) 325 ELT 579

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : B.K.S. Raghuvanshi, Senior Standing Counsel, for the Appellant

Judgement

1. This appeal has been filed for infraction of Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. For facility the said Rule is extracted hereunder:

"Rule 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 three working 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."

The contention of the appellant is, that intimation had to be given by the assessee at least three working days prior to the commencement of the period which in the instant case had not been done.

2. We find from the perusal of the record that intimation of closure of the factory was given by the assessee on 10-1-2013 intimating the Department that the

production would be closed w.e.f. 15-1-2013. According to the appellant 11-1-2013 and 12-1-2013 were holidays and, therefore, only two working days were provided, namely, 13-1-2013 and 14-1-2013, consequently, there was a clear cut violation of Rule 10.

3. We are not impressed by the argument raised by Sri B.K.S. Raghuvanshi, learned counsel for the appellant inasmuch as the notice was given on 10-1-2013, that date 10-1-2013 which was a working day and which is to be included while counting three working days.

4. Further, we find that pursuant to the intimation the Department reached the premises and sealed the factory on 14-1-2013. Consequently, substantial compliance of Rule 10 had been made. The idea for giving prior intimation of three days is to give the department sufficient time to reach the premises and seal the unit so that clandestine manufacturing and removal of goods does not happen. In the instant case we find that the department after due intimation had reached the premises and had sealed the unit on 14-1-2013.

5. In the light of the aforesaid, we do not find any substantial question of law arises for consideration. Appeal is dismissed.

