(2013) 09 P&H CK 0212

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 52 of 2013

Commissioner of Central Excise, Rohtak — APPELLANT

Vs

Kay Fragrance (P.) Ltd. — RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 305 ELT 109 : (2014) 43 GST 308

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Sukhdev Sharma, for the Appellant;

Judgement

Rajive Bhalla, J.—The revenue lays challenge to order dated 09.08.2012 passed by the Customs Excise and Service Tax Appellate, New Delhi, dismissing its appeal. Counsel for the appellant submits that duty liability is determined for each month separately. The continuous period of non-production of goods, that entitles an assessee to claim refund on account of abatement of duty, is to be reckoned for each month separately. The closure of a factory for less than a month, would not entitle the assessee, to claim abatement of duty for part of a month. It is further submitted that as Rule 7 of the Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred to as the "Rules") clearly prescribes that duty shall be calculated for a particular month and Rule 9 of the Rules, prescribes monthly payment of duty, the interpretation placed by the Tribunal upon Rule 10 of the Rules that duty of abatement can be claimed for part of a month, is contrary to Rules 7 and 9 of the Rules, and should, therefore, be set aside.

2. We have heard counsel for the revenue, perused the impugned order as well as the provisions of Rules 7, 9 and 10 of the Rules and have no hesitation in holding that order passed by the Tribunal does not suffer from any error of law, much less, in terms of the question of law, framed by the revenue, which reads as follows:--

Whether the Tribunal is justified in allowing the abatement of duty of five days, i.e., 01-04-2011 to 05-04-2011 on the consideration of the fact that though the duty liability is determined for each month separately yet the continuous period as stipulated in Rule 10 of Pan Masala Packing Machine (Capacity determination and collection of duty) Rule, 2008 is not required to be restricted for a particular month only?

3. The respondent manufactures excisable items. The respondent made a request that all pouch packing machines be sealed. The department placed its seals on 28.2.2011. It is not denied that no manufacturing activity or clearances took place between 1.3.2011 to 5.4.2011. The department de-sealed 25 pouch packing machines on 6.4.2011. The respondent deposited requisite excise duty for the month of April, 2011 in accordance with Rules 7 and 9 of the Rules by including excise duty payable from 01.4.2011 to 05.4.2011. The respondent thereafter, vide letter dated 23.5.2011, prayed for abatement of excise duty of Rs. 8,33,333/- for the first five days of April from 1.4.2011 to 5.4.2011 during which period, machines remained sealed. The department rejected the application, by holding that 15 days'' continuous period of non-production, in a calendar month alone, entitles an assessee to abatement. The respondent filed an appeal which was allowed by the Commissioner (Appeals). An appeal filed by the revenue, before the Tribunal, has been dismissed by holding as follows:--

We do not find merit in above submission. The plea taken by Ld. DR is misconceived and is based on incorrect reading of Rule 10 quoted above. Bare reading of the above quoted Rule would show that as per the rule, an assessee is entitled to abatement provided there has been no production in the factory for a continuous non-production of excisable goods should be during a given calendar month. Admittedly in this case, there was no production. In the factory of the assessee for a continuous period 36 days and all the 40 Gutkha machines were sealed, therefore, we are of the view that the claim of the respondent for abatement is fully justified under Rule 10 of Pan Masala Packing Machines Rules, 2008 and the order of the Commissioner (Appeals) allowing the abatement cannot be faulted.

In view of the discussion above, we do not find any merit in the appeal. Appeal is, therefore, dismissed in limine.

4. Admittedly, there was no production for a period of 36 days, i.e., from 01.4.2011 to 5.4.2011 including from 1.4.2011 to 5.4.2011. Reference by counsel for the appellant to Rules 7 and 9 of the Rules in support of his contention, that as duty liability is determined for each month, abatement cannot be granted for a fraction of a month, in our considered opinion, is misplaced as no such intent is discernible from a reading of these rules. Rule 7 of the Rules merely provides that duty payable shall be calculated for a particular month and Rule 9 of the Rules merely prescribes that monthly duty payable on notified goods, shall be paid by the 5th day of the same month. We fail to comprehend as to how these rules can be pressed into service by the revenue in support of its

view that abatement cannot be claimed for a fraction of a month. This apart, reference to a continuous period of 15 days or more under rule 10 of the Rules relating to the right of an assessee, pertains to its obligation, to inform the Deputy Commissioner or the Assistant Commissioner of Central Excise, of closure of machines and, therefore, cannot be read in isolation to raise an inference that if closure in a month, is less than 15 days, a party shall not be entitled to abatement of duty. In view of what has been stated hereinabove, we find no merit in the appeal and dismiss the same in limine.