(2013) 08 AHC CK 0017

In the Allahabad High Court

Case No : Central Excise Appeal No. 105 of 2013

Commr. of Cus., C. Ex. and Service Tax APPELLANT

Vs

Dharampal Satyapal Ltd. RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 298 ELT 484 : (2014) 43 GST 81

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

Bench : Division Bench

Advocate : B.K. Singh Raghuvanshi, for the Appellant;

Judgement

1. We have heard Shri B.K.S. Raghuvanshi, learned counsel appearing for the Central Excise department. This Central Excise Appeal u/s 35G of the Central Excise Act, 1944 arises out of claim for abatement filed by the respondent for a period of 11 days in the month of December, 2011 for which it has deposited the excise duty for the entire month under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. The claim was rejected by the Order-in-Original dated 30-3-2012 on the ground that the period of 11 days was less than 15 days in the month of December, 2011. In appeal the Commissioner (Appeals), Customs and Central Excise, NOIDA held on 25-7-2012 that the party had applied for closure for a continuous period beginning from 21-12-2011 to 20-2-2012, which was more than 15 days in accordance with Rule 10 of the Rules of 2008. A part of the period of closure, which fell within the month of December, 2011, would not disentitle the party for abatement as the period of 15 days should be continued even if the period is falling in different calendar months.

2. The Commissioner of Customs, Central Excise & Service Tax, NOIDA filed an appeal in the Customs, Excise and Service Tax Appellate Tribunal, which was rejected on 6-11-2012, with the findings as follows:--

The dispute in the present appeal relates to the abatement claim of Rs.

6,38,710/- claimed by the respondent for the period 21-12-2011 to 31-12-2011.

The said claim was made by the respondent in terms of the provisions of Rule 10 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.

The said abatement claim was rejected by the original adjudicating authority on the ground that inasmuch as the unit was closed for 11 days only in the month of December, the respondents do not fulfil the criteria laid down under Rule 10. However on appeal Commissioner (Appeals), by taking note of the fact that the unit was closed continuously from 21-12-2011 to 20-2-2012 the claim of abatement has to be allowed. On the other hand, it is Revenue''s contention that inasmuch as in the month of December, 2011 the unit was dosed for a period less than 15 days, abatement cannot be allowed.

I find that the Tribunal in the case of 2012 (278) ELT 683 has held that Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 - Rule 10 ibid does state that a continuous period falling under different calendar month should be split into periods falling under each month and abatement determined separately. The Tribunal further observed that so long as days of closure are continuous, even if days fall in different calendar month, it will constitute one continuous period.

Inasmuch as in the present appeal there is no dispute that the factory was closed continuously for a period from 21-12-2011 to 20-2-2012, the Commissioner (Appeals) has rightly considered the closure of/the factory as being more than 15 days and has rightly allowed the abatement claim for the period of 11 days following in month of December. In view of the above, I do not find any infirmity in the impugned order of Commissioner (Appeals). Revenue appeal is accordingly rejected.

3. The Central Excise department has filed this appeal on the following substantial questions of law:--

(A) Whether, the CESTAT is correct in holding that so long as days of closure are continuous, even if falls in different calendar month, it will constitute one continuous period under Rule 10 of the Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008 for allowing abatement of duty?

(B) Whether, the CESTAT is correct in allowing abatement out of the duty calculated and paid for a particular calendar month under Rule 7 of the Rules ibid for the period of closure subsequent to that month for which no duty has been assessed and paid?

(C) Whether, under Rule 10 of said Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008 the abatement of duty can be allowed for the period of closure subsequent to the month for which no duty has been calculated or paid under Rule 7?

(D) Whether, in the instant case when the production remained closed for a period of eleven days only during the month for which duty was assessed, the abatement of duty can be allowed when Rule 10 says for closure of production for minimum 15 days?

4. The respondent applied for closure from 21-12-2011 to 20-2-2012 for a period, which was more than 15 days and was falling within three calendar months beginning from December, 2011 to February, 2012. The respondent applied for abatement and refund for 11 days in the month of December, 2011 of Rs. 6,38,710/- deposited in excess for the month of December, 2011.

5. We do not find that the Tribunal has committed any error in upholding the order of the Commissioner (Appeals), Customs and Central Excise, NOIDA as the requirement of Rule 10 is for continuous period of 15 days. The Rule does not provide that the period should be confined to any calendar month. Rule 10 of the Rules of 2008 is quoted as below:--

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 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 notified goods shall be effected except that notified goods already produced before the commencement of said period may be removed within first two days of the said period:

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.

6. A month may be a convenient method for assessment and deposit of excise duty. The respondent applied for abatement since it had deposited excise duty for the entire month of December, 2011. Since only 11 days were falling in the continuous period of closure beginning from 21-12-2011 to 20-2-2012 the respondent claimed for abatement of 11 days for the month of December, 2011. This would not mean that closure was for less than 15 days. The period of 15 days may fall within a month or more than one month, provided it is continuous

and that the party complies with other conditions set out in Rule 10 of the Rules of 2008.

7. We do not find that any of the questions of law as raised arise for consideration in this appeal. The appellate authority as well as the CESTAT have not committed any error of law in allowing respondent''s claim for abatement. The Central Excise appeal is dismissed.

