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(2023) 09 CESTAT CK 0045

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No: 398 Of 2011

Krystal Chemical Industries APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 28-09-2023

Acts Referred:

Pan Masala Packing Machines (Capacity Determination And Collection Of Duty) Rules, 2008 — Rule 6, 17, 18
Central Excise Rules, 2002 — Rule 26

Citation : (2023) 09 CESTAT CK 0045

Hon'ble Judges : C J Mathew, Member (T), Ajay Sharma, Member (J)

Bench : Division Bench

Advocate : Vinay Sejpal, Amrendra Kumar Jha

Final Decision : Allowed

Judgement

C J Mathew, Member (T)

1. The issue in this appeal is the applicability of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 to the facts as set by the appellant, M/s Krystal Chemical Industries, in the context of resort thereof to section 11A of Central Excise Act, 1944 for recovery of ☐ 13,67,65,000, along with applicable interest under section 11AB of Central Excise Act, 1944, while imposing penalties under rule 17 and rule 18 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 as well as under rule 26 of Central Excise Rules, 2002 on the proprietor, in order [order-in-original No: 78/2010/C dated 4th November 2010] of Commissioner of Central Excise, Nagpur that is impugned here.

2. Strangely, the impugned order has also directed that

‘34. In view of the foregoing I pass the following order

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5) I reject the application or surrender of registration certificate of the Noticee and order the registration be kept alive till the issue is settled and the levy is paid under Central Excise Act, 1944 read with Central Excise Rules, 2002.'

which, in the context of the peculiar circumstances prevailing in Maharashtra insofar as the impugned goods are concerned, does throw up certain fundamental aspects of 'tax obsession' and its purported claim to prevail over 'societal obligation' articulated in legislative will. It is common ground that the appellant had secured registration under Central Excise Rules, 2002 on 20th September 2004 for manufacturing of 'guthka and pan masala' and that the Government of Maharashtra had not issued them licence under the laws of the state to enable production. It is also on record that the appellant was directed by the jurisdictional Superintendent of Central Excise, after taking note of 'nil' ER1 returns till April 2009, to surrender their registration which was done by the appellant on 13th November 2009. Notice for recovery that culminated in the impugned order was served on 10th November 2009.

3. From March 2000, the appellant had been manufacturing 'mutton masala', exempted from duties of central excise, and after temporary ban on 'gutkha' had been lifted the state government, considering the commercial potential of the intended product as well as adaptability of their experience, had applied for licence from the state government; in anticipation of approval from the Municipal Corporation, applied for and obtained central excise registration which, however, was of no purpose to them without licence to commence production. The impugned rules came to be notified on 1st July 2008 and in the survey during the run up thereto in September 2007, the appellant had reported non-functional registration. Nonetheless, upon communication of 16th October 2008 from the jurisdictional central excise authorities, the appellant, on 8th November 2008 and in ER7 return, included capacity of 'guthka' as 'nil' and of one machine for production of 'mutton masala' even in the absence of licence to manufacture the other product as intended.

4. The notice alleged that the failure to file declaration under rule 6 of Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and suppression of installed machinery sufficed to proceed with recovery for the period from 1st July 2008 till 30th November 2008. The adjudicating authority, taking note of the deficiency and, more especially, of the machine purportedly for production of 'mutton masala' packets that could have been used in 'gutkha' packing, confirmed the demand.

5. Learned Counsel for appellant submitted that the case against them is based on presumption of usage of another machine without any evidence in contending so. It was also submitted that failure to obtain statutory approvals from the state government authority and other evidence of non-production of 'gutkha' furnished to the adjudicating authority had been discarded without consideration merely with intend to fasten duty liability even in the absence of manufacture. It was also contended that other equipment essential for 'guthka' manufacture was not

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available just as there was no evidence of power consumption or of material purchase. It was further submitted that no evidence of procurement of raw materials for ‘gutkha’ is on record.

6. Learned Authorised Representative referred to several parts of the impugned order to claim validity of the findings. He contended that the Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 were notified to ensure that there was no evasion of duties of central excise. It was argued by him that the system of levy did not offer any mitigating circumstances.

7. The main issue to be determined in this proceedings is the presumption of having commenced production on the appointed date, there was no scope for any mitigating circumstances to be considered for levy under any other provision of law or to be left out of assessment.

8. It is abundantly clear from

‘23. It is alleged in the show cause notice that the Noticee has not followed the procedure laid down under Notification No. 30/2008-CE (NT) dated 1.7.2008 and Notification No. 42/2008 dated 1.7.2008 and did not pay the duty as per compounded levy scheme.

The Noticee contended that the Notification No. 29/2008, 30/2008 and 42/2008 are not applicable to them in any case because though the date of effect is 1-7-2008, the blank proforma for filling of declaration has been given to them on 10-11-2009 i.e. after 16 months and 10 days late by the Central Excise Office and asked it to be filed by 3 days time by superintendent. The Noticee further submitted that they submitted declaration in form -1 on 13-11-2009 within time period. The Noticee also contended that they have filed monthly returns regularly in form no. ER-1 stating Nil production and Nil clearance with Nil duty paid of notified goods such as Pan Masala (Old Chapter sub-heading No. 2106.00), Pan Masala with tobacco (Old Chapter sub-heading No. 2404.49) to Central Excise Range, Amravati.

24, The contention of the Noticee is not acceptable in as much as it is observed that the Noticee has not followed the procedure laid down under Notification No. 30/2008-CE (NT) dated 1.7.2008 and Notification No. 42/2008 dated 1.7.2008 and did not pay the duty as per compounded levy scheme while carrying out the activity of manufacturing of Pan Masala & Pan Masala with tobacco, the Noticee was required to file the declaration for the manufacture of Pan Masala containing tobacco, commonly known as "Gutka" under Rule 6 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. The Noticee was also required to file declaration in FORM-1 to the Deputy /Assistant Commissioner with a copy to jurisdictional Range Superintendent of Central Excise immediately on coming into force of these Rules, and in any case ,not latter than ten days indicating number of single track Packing Machines installed in his factory, number of Machine intends to operate in his factory for production of notified goods, the name of the manufacturer of each of the packing

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machine ,its identification number, date of purchase and the maximum packing speed at which they can operated for packing of notified goods of various retail sale prices , description of goods to be manufactured including whether pan Masala or Gutka their brand names etc. retail sale prices of the pouches to be manufactured during the financial year, the ground plan and details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machine intended to be used by him in each of such part or section.

However, it is observed that during the entire period i.e. from 01.07.2008 to 30.11.2009 the Noticee have neither filed any intimation to the department nor claimed any abatement for non production of said goods. Thus it is deemed that they have manufactured the Pan masala / Gutka for the entire period i.e. from 1.7.2008 to 30.11.2009. Therefore, I find that the Noticee has violated the provisions of Notification No. 29/2008, 30/2008 and 42/2008 and the Noticee have mis - declared the use of above said machine with malafide intention to evade the Central Excise duty payable under Notification No. 42/2008 dated 1.7.2008.' that, in the absence of any concrete, or even peripheral, evidence of manufacture of gutkha, it is only the prescriptions in the impugned Rules have been cited as authority for recovery of duty.

9. The claim of the appellant that licence for manufacture of 'gutkha' had not been obtained appears to have been overlooked even though it should have been possible to have this aspect verified. Sadly, that did not happen. It was improper on the part of the adjudicating authority to assume to the contrary and to presume that either the administration of the state government was lax or that the appellant had operated outside the law with not a whiff of illegal activity coming to the public eye. No inquiry was taken up to ascertain destination of 'impugned product', if any, had been manufactured from deployment of machine intended for manufacture of licenced product.

10. The purpose of the State is the well-being of its constituents; it is not the monopoly of the Central Government to determine policy of public welfare, indeed, state administrations have a greater responsibility assigned in that direction. There is something grotesque in demanding duty on goods that are illegal; it has the inherent imbalance of an illegal activity being condonable by pandering, forcibly or otherwise, to the revenue instinct of tax administration.

11. There is no evidence of clandestine production. There is no evidence to suggest that appellant had used available machines to manufacture 'gutkha' during the disputed period. The impugned order is silent about the state of affairs that prevailed prior to the Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 coming to force or any valid reason to suspect that appellant was manufacturing the product. The presumption owing to which the Rules were said to be applicable is not acceptable and the collection of tax on such assumptions is unthinkable.

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12. Consequently, the appeal is allowed and impugned order set aside.

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