CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 108 of 2012

[Arising out of Order-in-Appeal No OIA-23/2012/AHD-II/CE/MM/COMMR-A-/AHD dated 27.01.2012 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Unicorn Packers Pvt Limited .... **Appellant**
61, Mahagujarat Ind Estate, Moraiya, Taluka :
Sanand, Ahmedabad, Gujarat

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
Custom House... First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat

WITH

EXCISE Appeal No. 266 of 2012

[Arising out of Order-in-Appeal No OIA-112/2012-AHD-II-CE/MM/COMMR-A-/AHD dated 30.03.2012 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Unicorn Packers Pvt Limited .... **Appellant**
61, Mahagujarat Ind Estate, Moraiya, Taluka :
Sanand, Ahmedabad, Gujarat

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
Custom House... First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat

APPEARANCE :

Shri S.J. Vyas, Advocate for the Appellants
Shri Gobind Jha, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/12248-12249 / 2019

DATE OF HEARING/ DECISION : 28.11.2019

RAMESH NAIR :

The brief facts of the case are that appellant are engaged in the manufacture of Chewing Tobacco and they are paying duty as per Chewing Tobacco & Un-manufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules, 2010. According to the said Rules, the appellant was supposed to pay duty on compounded levy basis i.e. Rs. 12 Lakh per Machine per Month. In the month of April 2010, they have paid as per this rate by 5th April 2010. However, the rate of duty was revised to Rs. 8Lakh per Machine per Month with effect from 13 April 2010. Since the revision was at lower side, the appellant was entitled for refund on pro-rata basis for the period from 13 April 2010 to 30 April 2010, as per 5th proviso to Rule 9 of Chewing Tobacco & Un-manufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules, 2010. Accordingly, the appellant have taken re-credit of the said differential duty on 20 May 2010. The department raised demand on the ground that the appellant is not entitled to take *suo-moto* re-credit. On this issue Appeal No. E/108/2012 was filed by the appellant.

As regards the Appeal No. E/266/2012, the Adjudicating Authority has rejected the refund claim which was filed by the appellant on 13 May 2011, on the ground that the appellant had already taken suo-moto credit. Therefore the present appeals filed by the appellant.

2. Shri S.J. Vyas, Learned Counsel appearing on behalf of the appellant submits that appeal related to refund is consequential to demand raised in Appeal No. E/108/2012. He submits that the demand is not sustainable for the reason that as per 5th proviso to Rule, it is clear that department should have given the refund suo-moto to the appellant even without making any application. Since the department had not given refund, the appellant have taken suo-moto re-credit. Therefore, there is nothing wrong in taking re-credit on or after 20 May 2010, as the appellant became entitled for the refund. Therefore, re-credit was correct and legal hence demand is not sustainable. As regards appeal for the refund of the same amount, he submits that since the dispute was raised by the appellant on taking suo-moto re-credit, they filed protective refund claim, however the same was rejected on the ground that appellant have already taken re-credit.

3. Shri Gobind Jha, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. We have heard both sides and perused the record. We are taking the Appeal No. E/108/2012 which relates to the demand of differential duty against the appellant's action of suo-moto re-credit. In this regard, we find that Chewing Tobacco & Un-manufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules, 2010 has explicitly provided that in case of revision of rate of duty, the department should itself refund the differential duty paid which is in excess of the revised rate. The proviso is reproduced as below:-

> **"Rule 9. Manner of payment of duty and interest. -** The monthly duty payable on notified goods shall be paid by the 5th day of the same month and an intimation in Form - 2 annexed to these rules shall be filed with the Jurisdictional Superintendent of Central Excise before the 10th day of the same month:
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> **Provided** that monthly duty payable for the period from the 8th day of March, 2010 to the 31st day of March, 2010 shall be calculated on the pro-rata basis of the total number of days in the month of March, 2010 and the number of days remaining in the month starting from and including the 8th day of March, 2010 and the same shall be paid on or before the 15th day of March, 2010:
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> **Provided** further that if the manufacturer fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with the interest at the rate specified by the Central Government vide notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after the due date till the date of actual payment of the outstanding amount:
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> **Provided** also that in case of increase in the number of operating packing machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5th day of the following month :
>
> **Provided** also that in case a manufacturer permanently discontinues manufacture of goods of existing retail sale price or commences manufacture of goods of a new retail sale price during the month, the monthly duty payable shall be recalculated on the pro-rata basis of the total number of days in that month and the number of days remaining in that month starting from the date of such discontinuation or commencement and the duty liability for the month shall not be deemed to have been discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month :
>
> **Provided** also that if there is revision in the rate of duty leviable under section 3A of the Act, the monthly duty payable shall be recalculated on the pro-rata basis of the total number of days in that month and the number of days remaining in that month counting from the date of such revision and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month :
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> **Provided** also that in case it is found that a manufacturer has manufactured goods of those retail sale prices, which have not been declared by him in accordance with provisions of these rules or has manufactured goods in contravention of his declaration regarding the plan or 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 machines intended to be used by him in each of such

> part or section, the rate of duty applicable to goods of highest retail sale price so manufactured by him shall be payable in respect of all the packing machines operated by him for the period during which such manufacturing took place :
>
> **Provided** also that in case a manufacturer does not pay the duty payable by the due date, and continues to operate any packing machine, then till the time such non-payment continues, he shall be liable to pay the monthly duty based on the number of operating packing machines declared in the month for which duty was last paid by him or the total number of packing machines found available in his premises at any time thereafter, whichever is higher:
>
> **Provided** also that in case a new manufacturer commences production of notified goods in a particular month, his monthly duty payable for that month shall be calculated on the pro-rata basis of the total number of days in the month and the number of days remaining in that month starting from the date of such commencement and shall be paid within five days of such commencement.**"**

5. As per the above proviso, there is no need of filing any application. Department was duty bound to give refund by 20th day of the following month. Therefore, the appellant's action of taking suo-moto credit on 20 May 2010 is in accordance with the 5th proviso to Rule 9 of Chewing Tobacco & Un-manufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules, 2010. We, therefore, do not find any illegality or incorrect in taking suo-moto re-credit by the appellant. Therefore, the order inasmuch as for demand of differential duty and penalty, is set-aside. The appeal No. E/108/2012 is allowed.

6. As regards the appeal No. E/266/2012, which is on the issue of filing of refund claim. As we have held above that taking suo-moto recredit is correct and legal and the demand is set-aside, the processing of refund is only to regularize the suo-moto credit of refund amount taken by the appellant. Accordingly, the appeal No. E/266/2012 is also allowed in the above terms.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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