Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11346 of 2016- DB

(Arising out of OIA-RAJ-EXCUS-000-APP-077-2015-16 dated 08/04/2016 passed by Commissioner of Central Excise and Service Tax-RAJKOT(Appeal))

Sanjay Products ....**Appellant**

32-33, Shreeji Industrial Estate,
Rajkot Highway,
Morbi, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ......**Respondent**

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:

Shri P P Jadeja, Consulant for the Appellant
Shri P Tripathi, Superintendent (AR) for the Respondent

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

Final Order No 10188/2024

DATE OF HEARING: 30.11.2023
DATE OF DECISION: 22.01.2024

RAMESH NAIR

The issue involved is whether Appellant is eligible for "Abetment" under Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 or otherwise.

1.1 Brief facts are that appellant is a manufacturer engaged in manufacture of "Notified Goods" i.e. Pan Masala containing Tobacco with one Pouch Packing Machine [PPM]. Appellant was operating by "Compounded Levy" u/s 3A of Central Excise Act 1944 and paying duty under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. Appellant deposited duty of Rs. 13,00,000/- for November 2012, in advance for its 1[one] PPM. Appellant Operated PPM only for first 15 days and had filed request earlier for sealing of PPM w.e.f. 16-11-2012, as required under the PMPM Rules. The jurisdictional

Central Excise Superintendent of Range had sealed the said PPM on 16-11-2012. Appellant had not operated PPM w.e.f. 16-11-2012 till 30-11-2012 for November 2012 and not produced any "Notified Goods" during period 16-11-2012 till 30-11-2012. These factual details of machine under seal conditions during 16-11-2012 till 30-11-2012 are not in dispute at any stage of the proceedings. Revenue has taken a view that total duty payable by Appellant for month of November-2012 was Rs. 26,00,000/-, whereas, Appellant has paid Rs.13,00,000/-. Revenue alleges that Appellant have short-paid Central Excise duty of Rs.13,00,000/- and has also contravened the Pan Masala Packing Machines Rules 2008. SCN No.V.24/AR-Morbi/Div-II/ADC/193/2013 dated 01-10-2013 was issued, which has been confirmed by O-I-O NO. 09/ADC(SS)/2014 dated 24-12-2014 by Additional Commissioner of Central Excise, wherein duty demand is confirmed with interest and penalty under Rule 27 of Central Excise Rules 2002. Appeal filed against O-I-O dated 24-12-2014 has been rejected vide O-I-A NO. RAJ-EXCUS-000-APP-077-2015-16 dated 08-04-2016 by Commissioner of Central Excise (Appeals), Rajkot. Hence, Appellant is before this Tribunal against demand of duty, interest and imposition of penalty.

2. Shri P.P Jadeja, Learned Consultant appearing on behalf of Appellant reiterated grounds of Appeal and submits that the levy of central excise duty is only on the manufacture of the notified goods. Therefore, levy of excise duty is attracted only when Notified goods are manufactured. However, in this case differential duty for November 2012 has been demanded, when Notified Goods were not manufactured at all for 16-11-2012 to 30-11-2012.

2.1 He further submits that only one machine remained continuously under seal w.e.f. 16-11-2012 to 30-11-2012 and Appellant did not produce any Notified Goods. Hence, in absence of manufacture of Notified Goods, differential duty demand is not justified and duty demand with interest deserves to be set aside. In case of "Non production of goods", Rule 10 ibid also provides for "abatement" of duty for a period of 15 days or above in a month. The mandatory requirement of Rule 10 is "non-production" of Notified Goods over 15 days. Since Operating machine remained under central excise seal from 16-11-2012 to 30-11-2012, Appellant had not produced Notified Goods for 15 days of November 2012. He submits that issue is finally settled in favour of Assessee by the following decisions including his own case :-

- 2016(332)E.L.T. 785(Guj)- CC vs Thakkar Tobacco Products P. Ltd.
- 2023(384)ELT-713(Tri-Ahd) -P.M. PRODUCTS vs CCE, Ahmedabad-II
- Final Order No. 11908/2023 dated 11.09.2023 in Excise Appeal No. 12112 of 2013- DB, C.C.E.-Ahmedabad-II v/s M/s Zest Packers Pvt Ltd
- Circular No. 1063/2/2018-CX., dated 16-2-2018 (Para 7.1)
- O-I-A NO. RAJ-EXCUS-000-APP-018-2021 dated 25-05-2021 passed by Commissioner of Central Excise(Appeals), Rajkot in Appellant's own case.

3. Shri Prashant Tripathi, Superintendent (AR), appearing on behalf of the Revenue reiterates the finding of impugned order and submits to reject the Appeal.

4. We have carefully considered the submissions made by both sides and perused the relevant records. We find that in the present case appellant claims abatement of duty under Rule 10 of "Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008" which is reproduced below:-

> *"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 seven 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 goods shall be effected by the manufacturer:*
>
> *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."*

From plain reading of the above Rule 10, it is clear that abatement is available to appellant on following condition laid therein. As per conditions appellant has to intimate jurisdictional officer in advance regarding sealing and de-sealing of machines.

4.1 In the present case, there is no dispute that intimation was given well in advance and Jurisdiction Range Superintendent has de-sealed and re-sealed machine, which was operated only during the period 01-11-2012 to 15-11-2012. From the Rule 10 IBID, we do not find any provision for payment of duty for the whole month and then claim refund on account of abatement of duty. There is no dispute even by department that appellant is not liable to pay duty during period, when machine is not operated. The revenue has demanded duty for days for which the machine was not in operation. The lower authorities have taken incorrect view that though Appellant had not manufactured Notified Goods from 16-11-2012 to

30-11-2012, Appellant had cleared Notified Goods already produced earlier vide Invoice Nos. 3571 to 3608 and thus having not fulfilled condition of Rule 10 allowing "Abetment" and accordingly Appellant is ineligible for the duty abetment for non production of goods. Such excise duty levy is only on "manufacture" of goods by Pouch Packing Machines operated during days in a month.

4.2 In the present case, appellant is eligible for abatement and under no circumstances duty can be demanded for the period of abatement from 16-11-2012 to 30-11-2012, when PPM [Machine] was not in operation and not produced any Notified Goods. This issue has been considered in various judgments. Orders in Thakkar Tobacco - 2016(332)ELT-785(Guj) is followed in 2019(370)ELT-257(All HC)-CCE vs Trimurti Fragrances Pvt. Ltd, it was HELD that Assessee having complied with requirement, entitled to benefit claimed. We find that Order in 2016(332)ELT-785(Guj) is accepted by Circular No. 1063/2/2018-CX dated 16-2-2018[Para 7.1]. Matter is not res integra any more now. The Assessee is entitled to abatement of duty, in event of closure of factory for continuous period of 15 days or more, without first depositing duty in terms of Rule 10 ibid. Question of law stand answered in favour of assessee in terms of Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty), Rules, 2008. The mandatory condition to allow "abetment" is "non production of Notified Goods" over 15 days in a month. The Appellant has not produced Notified Goods over 15 days for November 2012. When mandatory requirement of "non production of Notified Goods" is fulfilled, other procedural requirement, if any, cannot come in the way for allowing abatement of duty, which is otherwise available.

4.3 We find from O-I-A NO. RAJ-EXCUS-000-APP-018-2021 dated 25-05-2021 passed by Commissioner of Central Excise(Appeals), Rajkot in Appellant's own case, submitted during PH on 30-11-2023 that Appellant had faced similar situation for August 2013, wherein Appellant had claimed such abetment of Rs. 7,00,00/- out of Rs. 14,00,000/- under Rule 10 ibid, for non production of Notified Goods from 16-08-2013 to 31-08-2013. Appellant had succeeded in Appeal before Commissioner(Appeals) Central Excise, Rajkot who allowed benefit of "Abetment" u/r 10 ibid with penalty of Rs. 5000/- u/r 27 of Central Excise Rules, 2002 vide O-I-A No. RAJ-EXCUS-000-APP-243-14-15 dated 31-12 2014. Amount of Rs. 6,95,000/- was released, after deducting penalty amount of Rs. 5000/-, imposed vide O-I-A dated 31-12-2014. Department had continued litigation even thereafter, which is concluded vide another O-I-A No. RAJ-EXCUS-000-APP-018-2021 dated 25-05-2021 by Commissioner of Central Excise(Appeals).

4.4 Thus, duty demand with interest is not sustainable in such facts of this case, when Appellant has not manufactured any Notified Goods from 16-11-2012 to 30-11-2012. However, we also find that there was a lapse on the part of appellant for removal of goods during closure of PPM from 16-11-2012 to 30-11-2012. Appellant had cleared Notified Goods produced earlier vide Invoice Nos 3571 to 3608, which in our view, is a case for imposing penalty under Rule 27 of Central Excise Rules 2002 on Appellant. Such penalty u/r 27 ibid is imposed on Appellant by Adjudicating authority, which is sufficient in the interest of justice in the facts of this case. Hence, the penalty imposed under the Rule 27 of Central Excise Rules, 2002 in O-I-O by original adjudicating authority in this case is upheld.

5. As a result, the Abatement in terms of Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty), Rules, 2008 for

non-production of notified goods is allowed for November 2012, consequently the duty demand with interest is set aside. However, the penalty imposed under the Rule 27 of Central Excise Rules 2002 is upheld. The impugned orders stand modified as above. This Appeal is partly allowed in above terms, with consequential relief, if any, in accordance with the law.

(Pronounced in the open court on 22.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha