IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/50056/2015-EX[SM]

(Arising out of Order-in-Appeal No. 169-CE/LKO/2015 dated 10/10/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s AMP Pan Products (P) Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Lucknow **Respondent**

(Arising out of Order-in-Appeal No. 53-CE/APPL-LKO/LKO/2015 dated 19/02/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

APPEAL No. E/51872/2015-EX[SM]

M/s Simla Special Flavour **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri S. K. Pandey, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 31/01/2018

FINAL ORDER NO. **71032-71033/2018**

Per: Anil Choudhary

The issue in these appeals is, whether the appellants engaged in manufacture of Pan Masala & Gutkha paying duty Pan Masala Packing Machine (Capacity Determination &

Collection of Duty) Rules, 2008 (hereinafter referred to as 'PMPM Rules, 2008 for short), whether they can take *suo-motu* abatement under Rule 10 of PMPM Rules, 2008 wherein admittedly there was no production for a continuous period of 15 days or more. As the issue involved in both the appeals is common, therefore, they are taken up together for disposal.

2. In the appeal of M/s AMP Pan Products Ltd., the brief facts of the case are that they were engaged in manufacture of branded Pan Masala & Branded Chewing Tobacco. They filed an abatement claim for the month of March on 15/04/2011 before the Assistant Commissioner for abatement of duty amounting to Rs.10,52,419/- for closure of their factory from 01/03/2011 to 15/03/2011. They had paid the duty for the whole month of March being Rs.21,75,000/- and accordingly prayed for sanction of abatement. As the abatement application was not disposed off by the Assistant Commissioner, the appellant adjusted the amount of abetment of Rs.10,52,419/- *suo-motu* while paying duty for the month of June, 2011. Revenue objected the *suo-motu* adjustment and issued Show Cause Notice which was adjudicated vide OIO dated 27/11/2013, and it was held that the appellant could not take *suo-motu* abatement and the same required sanction of the Jurisdictional Authority and the demand of Rs.10,87,500/-, was raised.

3. In the appeal of M/s Simla Special Flavour, the brief facts of the case are that the appellant were engaged in

manufacture and clearance of Gutkha, paying duty under PMPM Rules, 2008. The admitted facts are that they did not produce notified goods for continuous of 15 days in the month of March, 2011 and consequently they paid duty of Rs.38,70,970/- calculated on pro-rata basis for number of days on which the installed pouch packing machines where in operation, on 27/03/2011. As duty for the closure days amounting to Rs.36,29,030/-, was not paid by taking *suo-motu* abatement, the same was objected to by the Revenue vide SCN dated 30th August, 2011, and vide OIO dated 22nd May, 2014 the said amount of Rs.36,29,030/- was demanded along with interest and further penalty of Rs.1,00,000/- was imposed under Rule 17 of PMPM Rules, 2008. Being aggrieved the assessee preferred appeal before ld. Commissioner (Appeals) who vide impugned order dated 19th February, 2015, was pleased to reject the appeal by upholding the order in original.

4. Being aggrieved by the said orders, both the assessees are in appeal before this Tribunal. The learned counsel for the appellant states that the issue of taking *suo-motu* abatement is no more *res-integra* and it has been held by Division Bench of this Tribunal in the batch of appeals – M/s Thakkar Tobacco Products Pvt. Ltd. & Others *Versus* Commissioner of Central Excise, Ahmedabad-II reported at 2015-TIOL-690-CESTAT-AHM– wherein it has been held that if factory remains closed for a period of 15 days or more, after payment

of duty by 5th of April, for the subsequent month, assessee adjusted the amount of abatement under Rule 10 and paid the balance, it was also held that in a series of judicial pronouncements, a consistent approach has been taken to the effect that in case of such adjustment of duty which is mandatorily required to be abated, Revenue cannot insist upon recovery of amount so adjusted. Ld. Counsel also placed reliance on the ruling of Hon'ble Allahabad High Court in the case of Hindustan Industrial Area *Versus* Commissioner of Central Excise, Ghaziabad reported at 2013 (293) E.L.T. 191 (Allahabad). Further, the said ruling in case of M/s Thakkar Tobacco Products Pvt. Ltd. & Others has been confirmed by the Hon'ble Gujarat High Court and also been followed in subsequent ruling in the case of M/s Zest Packers Pvt. Ltd. & Others *Versus* Commissioner of Central Excise, Ahmedabad-II reported at 2015-TIOL-1866-CESTAT-AHM, wherein it has also been held that claim of abatement under Rule 10 had no relation to determination of Annual Capacity of Production under Rule 6(2) of the Chewing Tobacco & Unmanufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules 2010. Accordingly, the learned Counsel prays for allowing the appeal with consequential benefits.

5. The learned A. R. for Revenue relied on the impugned orders.

6. Having considered the rival contentions and on perusal of the facts on record, I find that the issue herein is squarely covered in favour of the assessee by the ruling of Division Bench of this Tribunal in the case of M/s Thakkar Tobacco Products Pvt. Ltd. & Others (supra). Accordingly, these appeals are allowed with consequential benefits. The impugned orders are set aside. It is also held that the appellant shall be entitled to refund of the amount of interest adjusted by giving refund of the abatement amount in the case of M/s AMP Pan Products Ltd.

(Dictated in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ansari