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

APPEAL No. E/723/2012-EX[DB]

(Arising out of Order-in-Appeal No.148/CE/APPL/ALLD/2011 dated 05/09/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s SARLA ENTERPRISES **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Request for Adjournment for Appellant
Shri Rajeev Ranjan (Addl. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/06/2018
Date of Decision : 19/06/2018

FINAL ORDER NO. – 71219/2018

Per: Archana Wadhwa

As per the facts on record, the appellant is engaged in the manufacture of Pan Masala containing tobacco "Gutkha" falling under Chapter 24 of the Central Excise Tariff Act and working under Pan Masala Packing Machine "Capacity Determination and Calculation of Duty" Rules, 2008.

2 The appellant vide their letter dated 31/08/2010 addressed to the Superintendent, Central Excise Range requested to seal their machine on 01/09/2010 as they do not intend to produce notified goods. Accordingly, their machine was sealed on 01/09/2010 and the production activities remained suspended during the whole of month of September, 2010.

3 Subsequently, appellant applied for refund of duty of Rs.12.50 lakhs in terms of provisions of Rules, 10 of the said rules, which deals with abatement in case of non production of goods for a continuous period of 15 days or more. The said refund claim stands denied by the Lower Authorities on the ground that in terms of the said rule, they should have given three days prior intimation for sealing of the machine, which condition was not followed by them. Accordingly, the refund claim was rejected. The order passed by the Original Adjudicating Authority was upheld by Commissioner (Appeals). Hence the present appeal.

4. Nobody appeared for the appellant and made request for adjournment. However, we find that the issue lies in narrow compass and the appeal can be disposed of even in the absence of the assessee. Accordingly, after

hearing the Learned A.R. appearing for the Revenue and after going through the impugned order, we proceed to decide the appeal.

5. There is no dispute about facts. The appellant admittedly approached Revenue on 31/08/2010 for sealing of the machine, which was actually sealed on 01/09/2010. Further, there was admittedly no production during the period of September, 2010, thus making the appellant entitled to refund of duty already deposited by them, by extending the abatement in terms of Rule 10. Merely because the intimation, which is primarily for the purpose of facilitation of sealing process was not given in advance by three days, it cannot be adopted as a ground for rejection of abatement, especially when such request of the assessee was accepted by the Range Authorities and the machine was actually sealed. If the Revenue was having any objection to the short notice, they should not have sealed the machine. The notice of three days as provided in the rule is admittedly for putting the Revenue on notice for the purpose of sealing the machine and once the machine is sealed, the abatement cannot be denied.

6. In view of foregoing, we find no justifiable reasons to deny the abatement of the assessee. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks