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

APPEAL No.E/70078/2015-EX[DB]

(Arising out of Order-in-Appeal No. 83/CE/Alld/2015 dated 24/07/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Customs, C.E. & S.T., Kanpur	**Appellant**
Vs.	
M/s Raj Products,	**Respondent**

Appearance:

Shri Rajeev Ranjan, Additional Commissioner (AR)	for Appellant
Shri Prateek Dawar, Advocate & Ms Pragya Panday, Advocate	for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	24/07/2018
Date of Decision	:	24/07/2018

FINAL ORDER NO-**71636 / 2018**

Per: Anil G. Shakkarwar

The present appeal filed by revenue is arising out of Order-in-Appeal No. 83/CE/Alld/2015 dated 24/07/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad.

2. Heard the parties.

3. The facts leading to the filing of present appeal is that the respondents were manufacturer of Pan Masala containing tobacco and working under Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008. During the month of March, 2011, the respondent operated four machines of MRP Rs.1 for the period from 27.03.2011 to 31.03.2011 and paid Central Excise duty of Rs.8,06,452/- on 29.03.2011. The contention of appellant was that at the beginning of month of March, 2011 before 5th March respondent should have paid Rs.50 lakhs as duty and should have sought rebate of Rs.41,93,548/-. Therefore, revenue contended that the respondent short paid Central Excise duty of Rs.41,93,548/- for the month of March, 2011. The Original Authority confirmed the demand and imposed penalty. Aggrieved by the said order, respondent preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has relied upon the decision by this Tribunal in the case of M/s Thakkar Tobacco Products Pvt. Ltd./ M/s Vishnu Pouch Packaging Pvt. Ltd. Vs CCE, Ahmedabad reported at 2015-TIOL-690-CESTAT-AHM has held, as follows:-

> *"Assessee operating under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and had been paying duty as per Rule 7 under said Rules- In situations where after payment of duty by 5th of for a particular month, if factory remained closed for a period of 15 days or more, for the subsequent month, they adjusted the amount of abatement under*

> *Rule 10 and paid the balance-Revenue views that assessee should have paid the duty for subsequent month in full and have claimed the abatement separately-apart from Circulars dated 30.08.1997 and 15.09.1999, in series of judicial pronouncements, a consistent approach has been taken to effect that in case of such adjustment of duty which is mandatorily required be abated, Revenue cannot insist upon recovery of amount so adjusted-Appeal allowed."*

The learned Commissioner (Appeals) has set aside the order of Original Authority, confirming the demand and imposing penalty. Aggrieved by the said order, revenue preferred present appeal.

4. We find that Revenue did not contend that the said finding of this Tribunal have been set aside by any Higher Appellate Authority. We, therefore, relying on the decision of this Tribunal in the above stated case relied upon by learned Commissioner (Appeals) hold that there is no infirmity in the impugned order.

5. Therefore, appeal filed by revenue is dismissed.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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