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

APPEAL No.E/1305/2010-EX[DB]

(Arising out of Order-in-Original No. 74/Commr./LKO/CX/2009 dated 29/12/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Radha Rani Trading Co., **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Vineet Kumar Singh, Advocate for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 27/06/2018
Date of Pronouncement : 31/07 /2018

FINAL ORDER NO-71686/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 74/Commr./LKO/CX/2009 dated 29/12/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow.

2. The brief facts of the case are that the appellant were engaged in the manufacture of Pan Masala and Pan Masala containing tobacco (Gutkha) falling under Tariff Item No.21069020 & 24039990 of First Schedule to Central Excise

Tariff Act, 1985 respectively. The appellant were paying Central Excise duty under Pan Masala Packing Machines (Capacity Determination and Collection of duty) Rules, 2008. The appellant filed declaration dated 09.07.2008 with the Jurisdictional Assistant Commissioner of Central Excise and declared that they had 20 pouch packing machines, out of which 14 machines were declared for packing of Gutkha bearing brand name 'Raj Darbar' with MRP Rs.1 and 6 machines were declared for packing Pan Masala (Raj Darbar of MRP Rs.1.00). On 08.08.2008 Central Excise Officers checked the unit along with independent panchas. During the course of checking they found 5 pouch packing machines installed in the room behind the Kattha pulverizing hall in the factory premises which were in addition to the declared pouch packing machines. It was found that the said 5 machines were filled with loose Gutkha and the said machines were connected with power socket. Shri Manoj Hora, Proprietor of the appellant in his statement recorded under Section 14 of Central Excise Act, 1944 on 08.08.2008 stated that he had received the said 5 pouch packing machines in the evening of 30 July, 2008 and information in respect of the same was sent to Central Excise Office through Courier and informed that the machines were connected to electricity for conducting trial of the machines. In addition to the said undeclared 5 pouch packing machines 17 bags of Raj Darbar Gutkha of MRP Rs.1.00 containing 1,88,870 pouches valued at

Rs.94,435/-, 775 kgs of loose Gutkha valued at Rs.1,40,909/- and packing material valued at Rs.5,79,840/- were found in the same room. The goods were seized on 08.08.2008. On the basis of said investigation, it appeared to revenue that in respect of said 5 pouch packing machines during the month of July, 2008 appellant did not discharge Central Excise duty amounting to Rs.62,50,000/-. Therefore, appellants were issued with a show cause notice dated 29.01.2009 calling up to appellant to show cause as to why said seized goods should not be confiscated and why Central Excise duty of Rs.62,50,000/- on said 5 undeclared pouch packing machines should not be demanded for the month of July, 2008 and why penalty should not be imposed. On contest the said show cause notice was adjudicated through the impugned Order-in-Original wherein the Original Authority had confirmed the demand and ordered to confiscate the said seized goods and imposed a redemption fine of Rs.1 lakh. Further, penalty of Rs.62,50,000/- was imposed on appellant under Section 11AC of the Central Excise Act, 1944. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant. He has submitted that there were 20 declared pouch packing machines in the factory and revenue could not establish that the finished goods seized by them were not manufactured out

of those declared 20 pouch packing machines and that after the discharge of duty on declared 20 pouch packing machines the goods manufactured through them are deemed to have been Central Excise duty paid and therefore, the confiscation is not sustainable. Further, the duty is on branded Gutkha whereas the loose Gutkha did not have any brand name and therefore, confiscation of loose Gutkha is also not sustainable. He has further submitted that packing materials were bought out items and the same were not used in the manufacture and they were not liable to pay Excise duty and therefore, confiscation of packing material is also not sustainable. He further submitted that only evidence with the revenue about manufacture of notified goods on 5 undeclared pouch packing machines during the month of July is confessional statement of Shri Manoj Hora recorded on 08.08.2008 and that there is no other evidence that during the month of July, 2008 there were any manufacture out of the said 5 pouch packing machines which were not declared. He has further submitted that Hon'ble Gujarat High Court has ruled in the case of Commissioner of Central Excise Vs M/s Saakeen Alloys Pvt. Ltd. reported at 2014 (308) E.L.T. 655 (Guj.) that confessional statements solely in absence of any cogent evidences cannot make the foundation for levying the Excise duty on the ground of evasion of tax. He further submitted that said ruling is squarely applicable in the present case.

4. Learned A.R. for revenue has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of records, we find that the confirmation of demand was solely on the basis of confessional statement of Shri Manoj Hora and therefore, following the ruling by Hon'ble Gujarat High Court in the above stated case, we hold that the confirmation of demand is not sustainable. We, therefore, hold that since the demand is not liable to be confirmed equal amount of penalty is also not liable to be imposed. We further accept the contentions of the appellant in respect of confiscated goods. We, therefore, hold that the said goods are not liable for confiscation.

6. In terms of above stated findings we set aside the impugned Order-in-Original and allow the appeal. Appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court on-31/07/2018)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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