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

APPEAL Nos.E/482 & 784/2011-EX[DB]

(Arising out of Order-in-Original No. 19/Commissioner/Noida/2010 dated 24/12/2010 passed by Commissioner of Central Excise & Customs, Noida)

Commissioner of Customs, C.E. & S.T., Noida(in Appeal No.E/482/11)

&

M/s Dharampal Satyapal Ltd. (in Appeal No.E/784/11) **Appellants**

Vs.

M/s Dharampal Satyapal Ltd. &

Commissioner of Central Excise, Noida **Respondents**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR) &
Shri Pradeep Kumar Dube, Supdt (AR) for Revenue
Shri T.R. Rustagi, Advocate, for Assessee

CORAM:

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

Date of Hearing : 08/11/2017
Date of Decision : 08/11/2017

FINAL ORDER NOs- **72247-72248 / 2018**

Per: Anil Choudhary

The issue in this cross appeals is, whether the assessee have rightly taken suo-motu abatement under the fact that they operated there factory, manufacturing Pan-Masala– notified goods under the Pan Masala Packing Rules, 2008.

2. The brief facts of the case are that the appellant is a manufacturer of Pan-Masala, was paying duty under the Compounded Levy Scheme. The period of dispute is from September, 2008 to July, 2009. According to the show cause notice appellant-assessee adopted the practice of alteration in number of operating packing machines during the particular month and has paid the duty in respect of that particular operating machine calculated prorata on the basis of total number of days in that month and the number of days remaining in that month counting from the date of such commencement. Therefore, it appeared to revenue that the assessee have not followed the provisions of Rule 7, 8 and 9 of PMPM Rules, 2008 and have short paid the duty. In other words according to revenue Rule 8 of the PMPM Rules provide that an assessee was required to pay duty under Rule 7 of the Notification by 5th of the month which have not been complied with and thus by the practice of short payment of duty during the said period. They are required to pay the short paid duty calculated at Rs.12,50,66,234/-.

3. Show Cause Notice was adjudicated by the impugned Order-in-Original passed by the Commissioner wherein he confirmed a reduced amount of

Rs.8,59,46,469/- under Section 11A of the Act read with Rule 9 and 18 of PMPM Rules, 2008 and further an amount of Rs.3,13,21,622/- which was paid under protest was appropriated. Further, the demand of Rs.3,91,19,765/- was dropped observing that the same is part of proceedings under another show was notice dated 18/09/2010. Further, the learned Commissioner refrained from imposing any penalty on assessee.

4. Being aggrieved, the appellant-assessee is before this Tribunal on the ground that the issue of taking suo-motu abatement for the period or number of days they have not operated their packing machines or part of the packing machines have been held in favour of assessees by Hon'ble Gujarat High Court in the case of Commissioner Vs Thakkar Tobacco Products Pvt. Ltd. reported at 2016 (332) ELT 785 (Guj.). On the other hand revenue is in appeal for not imposing penalty by the learned Commissioner, observing that there is no case of suppression of facts or any contumacious conduct on the part of the assessee.

5. Heard the parties.

6. Having considered the rival contentions, we find that the issue of taking suo-motu abatement by an assessee operating under Compounded Levy Scheme, has

been decided in favour of the assessee by Hon'ble Gujarat High Court in the case of Thakkar Tobacco Products Pvt. Ltd. (supra).

7. Accordingly, there is no merit in the appeal filed by the revenue and the same is dismissed. The appeal filed by the assessee is allowed, with consequential benefits.

8. So far the other issue of whether abatement is permissible when machine (s) producing notified goods of a particular MRP have not operated for 15 days or more in a month, though other machines in the same factory are operated during that month have already been decided in favour of the appellant-assessee in their Appeal No.E/2731/2010-EX[DB] by this Tribunal and accordingly, the said issue also stands allowed and decided in favour of the appellant-assessee.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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