

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
REGIONAL BENCH : ALLAHABAD**

**E/2799/2011-EX[SM]**

(Arising out of Order-in-Appeal No.139/CE/APPL/ALLD/2011 dated 29.08.2011 passed by Commissioner(Appeals) of Central Excise, Allahabad.)

M/s. K.G.Pan Product Pvt.Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad  
RESPONDENT (S)

APPEARANCE

Shri Atul Gupta (Advocate) & Shri Utkarsh Malviya (Advocate) for the Appellant (s)  
Shri Sandeep Kumar Singh (Dy.Commr.) (A.R.) for the Revenue

**CORAM:**

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 31.12.2018

FINAL ORDER NO.72946/2018

**Per ANIL G. SHAKKARWAR :**

After hearing both sides duly represented by Shri Atul Gupta, learned Advocate for the appellant and Shri Sandeep Kumar Singh, learned Dy.Commr.(A.R.) for the Revenue, I note that the issue involved in the present appeal is demand of Central Excise duty of Rs.12,20,020/- on account of installing two machines manufacturing Pan Masala containing Tobacco during the month of October, 2010. At the beginning of the month October 2010 there was only one machine in the factory and from 16.10.2010, two new machines were installed under intimation to Revenue. It appeared to Revenue that in terms of

Rule 8 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, appellant were required to pay Central Excise duty for three machines for the month of October, 2010. Therefore proceedings were initiated which culminated into passing of impugned order and filing of the present appeal.

2. After hearing both sides I find that the issue is no more *res integra* in view of the issue being decided by this Tribunal in the case of Shree Shyam Pan Products Pvt.Ltd. v. Delhi-I [2018 (1) TMI 345 – CESTAT NEW DELHI].This Tribunal in para 8 & 9 has held as follows:-

"8. *The provisions of Rule 9 of the said Rule and more specifically the 3<sup>rd</sup> proviso needs to be reproduced which I do so.*

*"Provided also that in case of increase in the number of operating packing machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5<sup>th</sup> day of the following month."*

9. *It can be seen from the above reproduced proviso, it enshrines the discharge of duty liability on account of addition and installation of packing machines. The differential duty amount, if any, should be paid by the 5<sup>th</sup> of the following month. From plain reading of above said proviso, it transpires that the demand of the duty on the products "Pan Masala" can be done so only from the date of production only, if any new machinery installation is done, which in the case is from 10<sup>th</sup> June, 2013. Since there is no dispute as to the fact that the third packing machine was installed on 10<sup>th</sup> June, 2013, any demands of the duty liability on an assumed production from the period 1<sup>st</sup> to 10<sup>th</sup> June, 2013 does not arise, and Ld.Counsel was correct in pointing out that provisions of Section 3A(ii) 2<sup>nd</sup> proviso thereto of the Central Excise 1944, clearly enshrines that the duty liability has to be discharged on the production of the goods on proportionate basis when there is alteration or modification. The facts being not in dispute that the new machine was installed on 10<sup>th</sup> June, 2013, the demand for the*

*differential duty from the period from 1<sup>st</sup> June, 2013 to 10<sup>th</sup> June 2013 is unsustainable and liable to be set aside and I do so.*

3. As is clear from the final order passed by this Tribunal, collection of duty of Central Excise for the period for which machines were not in operation and goods were not being manufactured such collection of duty is unsustainable. I therefore set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court.)

SD/  
**(ANIL G. SHAKKARWAR)**  
**MEMBER(TECHNICAL)**

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