CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.55067 of 2014-Division Bench

(Arising out of Order-in-Appeal No. MRT/EXCUS/002/APP/219/13-14 dated 28/01/2014 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II)

M/s Dhampur Specialty Sugar Ltd. .....Appellant

(Vill.-Bahchawala, Tehsil-Nehtore, Distt.-Bijnour, U.P.)

VERSUS

Commissioner of Central Excise, Meerut-II ....Respondent

(Opp. Meerut University, Mangal Pandey Nagar, Meerut)

APPEARANCE:

Ms. Stuti Saggi, Advocate for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71306 / 2019

Date of Hearing : 04 July, 2019
Date of Decision : 04 July, 2019

PER: ARCHANA WADHWA

After hearing both the sides, we find that the dispute in the present appeal relates to classification of cane jaggery (Gur). Whereas the appellant claim that the Gur being an agriculture product was not an outcome of any manufacturing activities and as such cannot be held to be an excisable items attracting any duty of excise, the Revenue's claim is that cane jaggery is classifiable under Chapter Sub-heading No.17011110/17011310, attracting duty of excise.

Accordingly demand stands raised and confirmed by way of issuance of a show cause notice dated 22/06/2012 for the period 2007-11.

2. The appellant had taken a categorical stands before the Authorities below that the Gur is manufactured by boiling sugarcane juice, which emerges in the form of brown coloured cuboids having sucrose contents 96.3% by weight on dry basis. The said contention of the appellant also stands supported on testing of the sample drawn by the Revenue. Further the appellant contended that Gur is not discharging any duty of excise throughout India. As such, they submitted that it was a *bona fide* belief in the entire industries that Gur is not excisable, in which case longer period of limitation would not apply.

3. The said contention of the appellant's were not accepted by the Original Adjudicating Authority as also by the Appellate Authority, who upheld the demand to the tune of Rs.17,51,993/- alongwith confirmation of interest and imposition of penalty. Hence the present appeal.

4. Learned advocate appearing for the appellant assails the impugned order on limitation as fact. She submits that even if the Gur is held to be classifiable under Chapter Sub-heading No.17011110 the same is exempted vide Notification No.3/2005-CE, as amended and subsequent Notification No.12/2012-CE dated 17/03/2012. In terms of the said Notification sugar manufactured without the use of power attracts nil rate of duty. However she fairly agrees that the benefit of the Notification was not claimed before the Authorities below.

5. Learned A.R. appearing for the Revenue submits that neither the Original Adjudicating Authority nor the Appellate Authority had occasion to deal with the applicability of the said Notification and as such prays that the matter may be remanded for consideration of benefit of the Notification in question.

6. We note that there is no rebuttal to the fact raised by the appellant that the Gur was not discharging duty liability throughout India by any sugar manufacturers. If the entire industry is entertaining a belief that Gur being an agriculture product cannot be held to be manufactured item and hence excisable, the appellant cannot be attributed any *mala fide* so as to hold that the duty was not being paid with intent to evade payment of duty. As such, we agree with the learned advocate that longer period of limitation would not be available to the Revenue.

However a part of the demand falls within the normal period of limitation for which we remand the matter to the Original Adjudicating Authority for fresh consideration in the light of the assessee's claim of benefit of the Notification referred supra. Needless to say that appellant would be given an opportunity. We also make it clear that we have not dealt with the issue of marketability and excisability of the Gur and appellant is at liberty to contest the same.

7. In the absence of any *mala fide* on the part of the appellant, entire penalty imposed upon them is also set aside.

8. Appeal is disposed in above manner.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks