CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 822 of 2011-[SM]

(Arising out of Order-in-Appeal No. 474-CE/LKO/2010 dated 22/12/2010 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Deep Tobacco Company Pvt. Ltd.

Now known as Yogi Products Pvt. Ltd. .....Appellant

(2/68, Vipul Khand Gomti Nagar, Lucknow-226024)

VERSUS

Commissioner of Central Excise, ...Respondent

(Lucknow)

APPEARANCE:

Shri Rajeev Joshi, Chartered Accountant for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

CORAM: HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO- 71649 / 2019

DATE OF HEARING : 08 August, 2019
DATE OF DECISION : 08 August, 2019

PER: ARCHANA WADHWA

The appellants manufacture pan masala. They stopped manufacturing since 4th February, 2008. There is a remark in RG-1register of the jurisdictional Central Excise Superintendent in this regard. The rules for determining the duty liability of a pan masala unit based on its manufacturing capacity came with effect from 1.7.2008. At that time, the appellants applied for sealing of the machines on 3.7.2008 and the same were sealed on that day. However, as per the requirement of Rule, the appellants did not file declaration in the form F-1 regarding the number of machines installed which they intended to operate. Since no declaration was filed, there was no order of jurisdictional Assistant Commissioner determining their duty liability based on their capacity of productions. However, the Department asked them to file a declaration regarding the number of machines, which they filed declaration on 11.7.2008 mentioning that they did not have any installed machine which they intended to use and the registration certificate was also surrendered. The Department however issued a show cause notice demanding duty along with interest for the period from 1.7.08 to 11.7.08 on the ground that nil declaration was filed only on 11.7.08. The duty demand was confirmed by the Assistant Commissioner vide order in original dated 30.04.2010 along with interest and equal amount of penalty under Rule 17 of the Pan Masala Packing Machines (Capacity Determination & Collection of Duty Rule, 2008 was imposed. On appeal to Commissioner (Appeal), the Assistant Commissioner's order was confirmed vide order in appeal dated 22.10.2010 against which the appeal have been filed.

2. Heard both sides.

3. Shri Rajiv Joshi, Chartered Accountant learned Counsel for the appellants pleaded that as per the records, the appellants stopped manufacturing since 4th February 2008; that there is a remark to this effect made by the jurisdictional Superintendent

in the RG-1 register; that the Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rule, 2008 were notified with effect from 1.7.2008; that they immediately asked for sealing of the machines which was done by the Department on 3.7.2008; that as the machines has been sealed, the same could not be operated; that for this reason, they did not file any declaration regarding the machines installed and to be operated as per the requirement of Rule 6(1); that since no such declaration was filed, no order was issued by the jurisdictional Assistant Commissioner regarding their duty liability; that it is also on record that the machines installed had been sealed on 3.7.2008, and therefore no manufacturing was possible; that the duty demand was unjust on the ground that declaration was not filed under Rule 6(1); that the duty demand is without any basis. Accordingly, he prays for setting aside the impugned order. As per remarks of the Jurisdictional Superintendent on RG-1 register, the factory had stopped manufacturing since 4th February, 2008 and their registration had been surrendered on 11.07.2008.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that as pr the remarks of the Jurisdictional Superintendent on RG-1 register, the factory had stopped manufacturing since 4th February, 2008 and their registration had been surrendered on 11.07.2008. Moreover, as soon as Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008 regarding the determination of duty liability of pan masala came into effect from 01.07.2008,

the appellants rrequested for sealing of the machines which was also done on 03.07.2008 when the machines had been sealed and it is not under dispute that a sealed machine could not be operated and as such, it is not the Department's case that they have actually manufactured pan masala during the period in dispute, I am of the view that just on account of the appellant's failure tto file declaration under Rule 6 (1) of Pan Masala Packing Machine (Capacity Determination & Collection of Duty) Rules, 2008, the duty demand cannot be raised.

5. In view of the same, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

akp