CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 15/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70087/2015 dated 09/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/60416/2013	KANTI CHEMICAL 80/60, COPERGANJ KANAPUR(UP)
	Name and Address of Respondent	CCE ,KANPUR 117/7, SARVODAYA NAGAR KANPUR(UP)-208005

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH SANTOSH KR GUPTA,ADV
26/72-D, CHANDRA LOK COMPLEX
OFFICE NO 203, IIIRD FLOOR
BIRHANA ROAD, KANPUR

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

SPS Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

DATE OF HEARING : 09/12/2015.
DATE OF DECISION: 09/12/2015.

Excise Appeal No. 60416 of 2013

[Arising out of the Order-in-Original No. KNP-EXCUS-000-COM-009-13-14 dated 31/07/2013 passed by The Commissioner of Central Excise & Service Tax, Kanpur.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Kanti Chemical — Appellant

Versus

CCE, Kanpur — Respondent

Appearance

Shri Santosh Kumar Gupta, Advocate – for the appellant.

Shri A.K. Goswami, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70087/2015 Dated : 09/12/2015

Per. B. Ravichandran :-

The present appeal is against order dated 31/07/2013 of the Commissioner of Central Excise, Kanpur. The appellants are engaged in the manufacture of pan masala containing tobacco, which are liable to Central Excise duty. With effect from 01/7/2008 the duty on these products is being discharged on compounding basis, under the provisions of Pan Masala Packing Machines [Determination of Capacity and Collection of Duty] Rules, 2008. It was noticed that during August 2008, December 2008, August 2009 and September 2009, the appellants have manufactured gutkha with Retail Sale Price (RSP) of Rs. 1/- and Rs. 0.50/-. Since they have paid duty as per the duty liability calculated on the basis of RSP of Rs. 1/- during this period, invoking the provisions of Rule 8, the Department initiated proceedings against the appellant for recovery of differential duty of Rs. 75,00,000/-. The case of the Revenue is that as per the proviso to Rule 8 when a manufacturer commences manufacturing of goods of a new Retail Sale Price during the month on an existing machine, it will be deemed to be an addition in the number of operating packing machine for the manufacture. As the appellants have made Rs. 0.50/- pouches alongwith Rs. 1/- pouches, the Revenue initiated proceedings against them to re-determine the duty liability in terms of the deeming provision as per proviso to Rule 8. After a due process, the Commissioner adjudicated the case vide the impugned order and confirmed the demand of Rs. 75,00,000/- and imposed a penalty of equivalent amount. Aggrieved by this order, the appellant is before us.

2. The learned Counsel for the appellant Shri Santosh Kumar Gupta, submitted that the appellants used one single track machine to manufacture two different type of pouches with Retail Sale Price of Rs. 1/- and Rs. 0.50/- and they have paid duty on the highest Retail Sale Price of Rs. 1/- for the impugned period. The learned Counsel submitted that the appellants have paid duty in accordance with the provisions of law as stipulated clearly in above said Rules. The proviso to Rule 8 will apply only when a manufacturer makes pouches with a different RSP falling under different serial number of the Table of Rule 5. As evident from serial number one of the table for RSP upto Rs. 1/- the rate of duty payable per packing machine is same. Since, the appellant made only Rs. 0.50/- pouches in addition to Rs. 1/- pouches, both falling under the same category for rate of duty, there is no ground for additional levy against them. The learned Counsel also relied on Notification No. 18/2010-CE (NT) in respect of 1st proviso to Rule 8 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines [Capacity Determination and Collection of Duty] Rules, 2010 which are similar to the impugned provisions of proviso to Rule 8 in the present case. The learned Counsel pleaded that the effect of the above-mentioned notification is that where a manufacturer uses an operating machine to produce pouches of

different Retail Sale Prices during a month, he shall be liable to pay duty applicable to the pouch bearing the highest Retail Sale Price for the whole month.

3. The learned Counsel relied on the Tribunal's final order No. 50719 of 2015 – EX (BR) dated 18/3/2015 in the case of **Trimurti Fragrance (P) Ltd. vs. CCE & ST, Kanpur** and final order No. 51413 of 2015 – EX (DB) dated 17/4/2015 in the case of **Maa Vindhya Vasini Tobacco Pvt. Ltd. vs. CCE, Kanpur.**

4. The learned AR Shri A.K. Goswami reiterated the findings in the impugned order and stated that the provisions of Rule 8 are very clear and have been correctly given effect by the Original Authority. He further submitted even the retrospective amendment made in the said Rule by Finance Act, 2014 is applicable effective from 13/4/2010 only. In the present case, the period is prior to the effective date for retrospective amendment. As such, he submitted that the provisions of Rule 8 are to be given full effect and the duty demand has to be upheld.

5. We have heard both the sides and examined the appeal records. The dispute is relating correct amount of duty payable by the appellant as per the compounding scheme with specific reference to proviso to Rule 8, discussed above. It is an admitted fact that the appellants did make Rs. 0.50/- pouches alongwith Rs. 1/- pouches during the impugned period. Though prima facie such situation will attract the proviso to Rule 8, when

a combined reading is made of the provisions of Rule 5, Rule 9 and Rule 8, it is clear that the new RSP mentioned in the said proviso to Rule 8 should be taken to mean a new RSP which will be higher than the previous RSP of pouches manufactured and which will attract different category of serial number under Rule 5 with higher duty liability. We find this issue has already been examined by the Tribunal in the case of **Trimurti Fragrance (P) Ltd.** (supra) involving similar set of facts. The Tribunal observed :-

> "8.1 In our view the expression "new retail sale price" has to be understood in the sense in which it is understood in Rule 5. Rule 5 of the PMPM Rules, as explained above, specifies the deemed production per operating machine per month and this deemed production is specified for different RSP slabs. The rate of duty per machine per month specified in Notification No. 42/2008-CE is on this deemed production only. Therefore, first proviso to Rule 8 cannot be interpreted so as to result in levy of duty on deemed production which is more than the deemed production as specified in Rule 5. In terms of Rule 5, so long as a particular single track packing machine in a particular month manufactures Gutkha pouches of RSP upto Rs. 1/- its deemed production would be ~~Rs.~~ 37,44,000 No. of pouches. Thus, even if the machine manufactures in a month the Gutkha pouches of the 25 Paisa, 50 Paisa, 75 Paisa and Rs. 1/-, its deemed production would be ~~Rs.~~ 37,47,000 pouches, and not ~~Rs.~~

37,44,000/- multiplied by 4. Thus, for the purpose of Rule 5, all the RSPs within a particular RSP slab are the same for the purpose of determining deemed production per month, and it is only an RSP which is different from a particular RSP slab which has to be treated as a new RSP as it would result in change of the deemed production. In our view, the term "new retail sale price" used to First Proviso to Rule 8 has to be understood in the same sense in which it is understood in Rule 5 and, therefore, the RSP of 0.50 Paisa cannot be treated as a new RSP, as it belongs to the same slab to which the RSP of Rs. 1/- belongs. The First Proviso to Rule 8 cannot be given an interpretation which results in levy of duty on the quantity which is more than the quantity of Gutkha/Pan Masala pouches deemed to have been manufactured per machine per month as specified in Rule 5".

6. The Tribunal further examined the retrospective amendment of the impugned provisions by Finance Act, 2014 and concluded that the intention of the Government was to levy duty at the rate applicable to highest RSP on a particular machine during a particular month when during that month, on that machine, pouches of different RSPs have been produced. Giving emphasis to the harmonious reading of the various provisions of the said Rules of 2008, the Tribunal held manufacturing of Gutkha pouches of Rs. 0.50/- is not to be considered as a new RSP for the

purpose of proviso to Rule 8. The said findings were followed by the Tribunal in **Maa Vindhya Vasini Tobacco Pvt. Ltd.** (supra).

7. Considering the above legal position, we find that the demand made in the present case is not sustainable. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order pronounced in the open court).

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-

(B. Ravichandran)
Member (Technical)

PK

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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