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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 22/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70791-70792/2017-EX[DB] dated 12/06/2017

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
1	E/364/2011	**SIMLA GOMTI PAN PRODUCTS,** 286/73, NIWAJ KHERA, AISHBAGH, LUCKNOW (U.P.)
2	E/382/2011	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
3		Simla Gomti Pan Products, 286/73, Niwaj Khera, Aishbagh, Lucknow (u.p.),,
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Anurag Mishra
117/10 SK APARTMENT
SARVODAYA NAGAR,
KANPUR,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL Nos.E/364 & 382/2011-EX[DB]

(Arising out of Order-in-Original No. 36/Commissioner/LKO/CX/2010 dated 27/10/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Simla Gomti Pan Products (in Appeal No.E/364/2011)

Commissioner of Central Excise, Lucknow

(in Appeal No.E/382/2011) **Appellants**

Vs.

Commissioner of Central Excise, Lucknow

M/s Simla Gomti Pan Products **Respondents**

Appearance:

Shri Anurag Mishra, Advocate for Assessee
Shri Rajeev Ranjan, Joint Commissioner (AR), for Revenue

CORAM:

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

Date of Hearing : 12/06/2017
Date of Decision : 12/06/2017

FINAL ORDER NOs. 70791-70792/2017

Per: Anil Choudhary

These cross appeals are arise from common Order-in-Original No. 36/Commissioner/LKO/CX/2010 dated 27/10/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow.

Appeal No.E/364/2011 by assessee-appellant

2. The brief facts of the case are that the appellant was a manufacturer of Pan Masala, Gutkha and Sweet Supari, prior to 01/07/2008 when the Compounded Levy Scheme was introduced. Admitted facts are that the appellant had 10 packing machines in

their factory. On 30th June, 2008, they had filed an intimation that they wish to suspend production of their unit with effect from 01/07/2008 till 03/07/2008 (both days inclusive due to off-season). In response thereto the inspector visited the said unit on 01/07/2008 at 10:40 AM and sealed 8 packing machines and further stated that now the number of machine in the factory is nil. Thereafter, the appellant on 03/07/2008 again filed another request, stating therein that they wish to continue the suspension of production. Thereafter, they file intimation dated 07/07/2008 before the Supdt for permission to start production in their unit from 07/07/2008 with 6 packing machines for production of Gutkha. In response thereto on the same date the officers of the Central Excise visited the unit at about 10pm and unsealed 6 pouch packing machines and cleared 2 pouch packing machines in sealed condition outside the factory premises. Further, they record that now the number of packing machines in use are 6. Thereafter, appellant filed their intention in the prescribed form-1 under Notification No.30/2008. It is further stated that the number of packing machines installed in the factory out of the 6+2 (total 8 machines) and out of which 2 machines are being used for manufacture of Sweet Supari (non taxable). It was further mentioned that the speed of the machines is 135 pouches per Minute and so far description of goods to be manufactured, it was stated that they were manufacturing Pan-masala and Gutkha on all the 6 machines and Sweet Supari on the other 2 Machines. Further, retail sale price of the pouches to be manufactured was declared at Rs. 1 for Pan-masala/Gutkha and Rs.0.50 Paisa for Sweet Supari. Ground plan was also submitted.

3. According to the said declaration the appellant had paid the duty on the 6 machines @ Rs. 12.5 lakh per machine per month aggregating Rs.75 lakhs. Thereafter, there was an inspection in the unit led by the Deputy Commissioner on 17/07/2008. At the time of inspection the packing material lying in stock was also verified and it was found that the appellant was having in their stockroom of raw materials, laminated rolls of brands namely 'Gomati Premium' and 'Guide Gutkha' having MRP of Rs. 1.50, totaling 72.23 Kgs. Further, a note was prepared addressed to the appellant unit on 17/07/2008, prepared by the inspector, stating therein that during the visit of your factory on 17/07/2008, on verification of the stock of the laminated rolls, it was found that the laminated rolls of retail sale price Rs. 1.50 wherein 'Gomati Premium' and 'Guide Gutkha' was found stored. In your declaration dated 10/07/2008 in terms of Rule 6(1) of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, the price of MRP Rs. 1.50 is not declared, you are directed to please keep the stock of 72.23 KG laminated rolls as per details in the enclosure till further orders and inquiry. Further, on the same date which is 17/07/2008, Order

No.3/2008 was passed by the Deputy Commissioner stating that the appellant have declared that they are manufacturing Pan Masala and Gutkha of Gomti Brand of retail price Rs. 1.00. Further, number of packing machines available in the factory is 8 and 8 machines are installed and further the appellant is entitled to use 8 machines for production of the notified goods and the maximum speed of packing machines have been declared at 135 Pouches per Minute. Further, stating that after making necessary inquiry including physical verification, it is observed that the appellant is manufacturing Pan Masala and Gutkha of Gomati brand with retail sale price of Rs.1.00 and Rs.1.50 and number of single track packing machines available in the factory is 10 and appellant is found to be operating 10 packing machines for production of notified goods and further maximum speed of the packing machines is found to be 173 pouches per minute. Further, observing that in terms of Sub-rule 6 (2) of the Rules. The Deputy Commissioner approved the declaration filed by the appellant, subject to the modification and accordingly determining the duty payable for MRP Rs. 1.50 for 10 packing machines deemed to be produced number of pouches 37,44,000 per Month. The appellant thereafter filed a representation on 04th August, 2008 stating that the said redetermination dated 04/08/2008 is not accordance to Sub-rule 3 and 4 of Rule 6 and Rule 8 of the Pan Masala packing Materials Rules, 2008 stating therein that it is

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admitted fact that they are manufacturing Gomati Brand Gutkha and Sweet Supari with effect from 7th July, 2008. Further, admitted facts are that out of 10 machines 2 machines have been removed on 30th June, 2008 in sealed condition from the factory. Further, the 8 machines available in the factory are sealed condition on 07th July, 2008. It has been declared that they are manufacturing Pan Masala/Gutkha of MRP Rs.1 from 6 machines and from 2 machines they are manufacturing Sweet Supari. Accordingly, it was further mentioned there is nothing found on the date of inspection dated 17th July, 2008 to the unit invention to the declaration made. Only the presence of packing materials in the store room having MRP Rs.1.50 does not called any adverse inference. Accordingly, the order dated 17/07/2008, modifying the duty payable on compounded basis to a higher amount is wrong and needs to be re-determined properly. In response thereto show cause notice dated 07th August, 2009 was issued alleging therein that the appellant had filed declaration on 10/07/2008 in the prescribed form-1, declaring that they are intended to using 8 packing machines available in the factory and out of these 8 packing machines only 6 machines shall be used for notified goods namely Pan Masala/Gutkha of MRP Rs. 1.00 per pouch. The remaining 2 machines were shown to be used for manufacture of Sweet Supari of MRP Rs.0.50 Paise per pouch. The Ground plan enclosed with the declaration does not indicate the segregation of manufacture of Pan Masala, Gutkha and Sweet Supari as prescribed in the said rules. Further, the Deputy Commissioner who has done the physical verification conducted on 17/07/2008 found that on 01/07/2008, there were 10 machines available and installed in the factory and were being used in the manufacture of the specified goods. During the course of verification laminated roles of Gutkha pouches of RSP Rs.1.50 were also found in the stock which were not declared by the appellant under Para 13 of their declaration dated 10/07/2008. Further, as the provisions of Rule 4, 6(4), 8, there were 10 machines installed in the factory of the appellant on 1st July 2008 and the Deputy Commissioner by his order No.3/2008 dated 17/07/2008 determined the annual capacity considering the installation of 10 pouch packing machines engaged in the manufacture of Gutkha of RSP Rs.1.50 and Pan Masala of RSP Rs. 1.00. And further the show cause stated that the appellant vide their representation dated 04/08/2008 requested for re-determination of Annual Capacity of production, pleading that till June 2008 in addition to manufacturing Gutkha of MRP Rs.1.00, occasionally Gutkha of Rs.1.50 was also manufactured. However, the determination of Annual Capacity of production made on the basis of pouches of MRP Rs.1.50 evidently which was lying in stock. It further appears that the representation of the appellant is not tenable as they have interpreted the Pan Masala Rules, 2008 to their convenience, which is unreasonable and far away from logic. As per the factual position the facts are that on 01/07/2008, 10 packing machines available installed in the factory. The maximum packing machines working during 01/07/2008 to 17/07/2008 are 10, which have been used eligible taken as the number of machines installed, while passing the order. In the Ground Plan submitted by the appellant alongwith the declaration in Form-I, the segregation of the pouch packing machines of different MRP is not reflected. The plea of the appellant is of no avail because it is not supported by tax documents filed by them. The appellant submitted that they had not manufactured Gutkha of MRP Rs. 1.50 appear to be not acceptable. Further observing that the duty liability declared in ER-1 returns filed by the appellant for the month of July, 2008 is not acceptable under the facts and circumstances and accordingly differential duty amounting to Rs.3,32,50,000/- was proposed to be collected as short paid from the appellant for the month of July, 2008 with further proposal to imposed penalty.

4 The said SCN was adjudicated on contest and confirming the demand of Rs.1,14,00,000/- being the differential duty on 6 packing machines admittedly used for manufacture of Gutkha and instead of Rs. 1.00 MRP declared by the appellant, the MRP was taken as Rs. 1.50. The balance proposed demand of Rs.2,18,50,000/- was dropped. Further, penalty of Rs.10,000/- was imposed on the

appellant under Rule 17 of Pan Masala Packing Machine Rules read with Rule 25 of Central Excise Rules, 2002.

5. Being aggrieved, the appellant-assessee is in appeal before this Tribunal on the ground that without there being any finding contrary to what the appellant had declared in the declaration form, the demand have been proposed and confirmed, which is wholly untenable and against the provisions of the Pan Masala Packaging Machine Rules, 2008, read with Section 3A of the Central Excise Act. The only finding on the date of inspection is that the appellant was having packing material in their stock room of raw materials having MRP of Rs. 1.50. There is no finding that the appellant was found manufacturing Pan Masala/Gutkha of MRP Rs.1.50 neither there is any finding that the said packing material was found in the machine room and/or installed on the machine. It is further urged that appellant-assessee is not required to throw away or remove packing material of different MRP which they do not intend to manufacture for the time being and appellant can always modify its declaration for manufacturing of the notified product namely Pan Masala/Gutkha of a new MRP, after giving duty intimation to the revenue. Thus, the whole case made out against the appellant is untenable, as nothing have been found contrary to their declaration. As such the amount demand raised as short paid, is fit to be set aside along with the penalty imposed.

Appeal No.E/382/2011 by revenue

6. Revenue is in appeal against the dropping of demand of Rs. 55.50 Lakhs by the learned Commissioner on Sada Pan Masala for July, 2008 and further ground that non-imposition of proportionate penalty and/or equal penalty is bad. Further, it is urged that the learned Commissioner dropped the demand of duty on Sada Pan Masala holding that there was no evidence on record to indicate that Sada Pan Masala was not manufactured or produced or cleared by the appellant during July, 2008. Sada Pan Masala was reported to be found during stock taking on 17/07/2008 and that onus to prove that Sada Pan Masala was actually manufactured/produced by the appellant during July, 2008 was on the Department. Further, against the confirmed demand of 1.14 Crore, the imposition of penalty Rs.10,000/- is not correct and accordingly revenue have prayed for enhancement of the penalty.

7. Heard both the parties and perused the records.

8. Having considered the rival contentions, we find that the only thing revenue found on the date of inspection was that the appellant was having packing material lying in the storeroom having MRP of Rs.1.50. Accordingly, we find that the revenue have not found anything in contrast to the declaration filed by the appellant on 10th July, 2008 in form-1, as required under the notification for compounded levy. In this view of the matter, we find that the show

cause notice is wholly illusory and not based on the facts on record. It is neither case of the revenue that they have found more packing machines on the manufacturing floor than the number of packing machines declared nor found more number of packing machines engaged in the manufacture of Pan Masala, Gutkha, nor there is any finding of appellant engaged in manufacture of Pan Masala & Gutkha having MRP of Rs. 1.50 or any other MRP other than the declared MRP of Rs.1.00 per pouch. In this view of the matter, we hold that the show cause notice is misconceived and not sustainable. Accordingly, we set aside the impugned order with consequential benefits to the appellant. Under the facts and circumstances, we dismiss the revenue appeal, as having no merits.

9. To sum up, we have allowed Appeal No.E/364/2011 filed by the assessee-appellant and dismissed the Appeal No.E/382/2011 filed by the revenue.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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प्रमाणित प्रति/Certified True Copy
5/08/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण/C.E.S.T.A.T.
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001