FAX : 0532-2400149

REGISTERED / AD

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

Dated: 20/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71110/2017-SM[BR] dated 12/09/2017

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/70590/2016	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
		Name and Address of Respondent
2		Godfreyphilips India Ltd B-19,meerut Road,site-3,industrial Area,, GHAZIABAD ,UP

--

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs-Excise, I.P. Estate, Delhi

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

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

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

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

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

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

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/70590/2016-EX[SM]

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-0336-15-16 dated 04/03/2016 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise & Service Tax, Ghaziabad — **Appellant**

Vs.

M/s Godfrey Phillips India Ltd. — **Respondent**

Appearance:

Shri P. K. Dubey, Superintendent (AR), for Appellant
Shri Chandra Shekhar Sharma, (Authorized Representative) for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing & Date of Decision : 12/09/2017

FINAL ORDER NO. 71110/2017..........

Per: Ashok Jindal

The Revenue is in appeal against the impugned order, wherein the refund claim filed by the respondent was allowed by the ld. Commissioner (Appeals).

2. The brief facts of the case are that appellant is engaged in the manufacture of Pan Masala and paying Central Excise duty in terms of the Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008. During the period in dispute 01/10/2013 to 31/10/2013, the respondent paid duty for the machine which is

manufacturing Pan Masala having RSP of Rs.3/- per pouch. The said machine was discontinued permanently with effect from 09/10/2013 and the machine was sealed. As the respondent paid Central Excise duty for the said machine for the period 01/10/2013 to 31/10/2013, they filed refund claim of duty for the period 10/10/2013 to 31/10/2013 when the machine remained closed under proviso 4 to Rule 9 of Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008. The Adjudicating Authority rejected the refund claim filed by the respondent but on appeal filed before the ld. Commissioner (Appeals) by the respondent, the refund claim was sanctioned by the ld. Commissioner (Appeals). Aggrieved by the said order, Revenue preferred appeal before me.

3. The ld. A. R. for Revenue submits that as per Rule 10 of the said Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008, the respondent is entitled for abatement claim on closure of their factory. Admittedly, the factory was not closed during that period therefore, they are not entitled for abatement claim.

4. On the other hand, the ld. Authorized Representative - Shri Chandra Shekhar Sharma on behalf of the respondent submitted that it is the case of refund claim in terms of proviso 4 to Rule 9 of Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008. As the machine manufacturing Pan Masala of RSP Rs.3/- per pouch

Ashok Jindal

was permanently discontinued and the machine was sealed by Central Excise Officers. In that circumstance, proviso 4 to Rule 9 of the Rule, is squarely applicable to the facts of this case and the ld. Commissioner (Appeals) has rightly allowed the refund claim.

5. Heard the parties and considered the submissions.

6. I find that respondent filed refund claim in terms of proviso 4 to Rule 9 of Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008. The said proviso 4 to Rule 9 of Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008 as follows:-

> *"Provided also that in case a manufacturer permanently discontinues manufacturing of goods of existing retail sale price or commences manufacturing of goods of a new retail sale price during the month, the monthly duty payable shall be recalculated pr-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such discontinuation or commencement and the duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month."*

Ashoy Jain

On going through the said proviso, I find if the assesse has permanently discontinued the manufacture of goods of a particular retail sale price during any month, his duty liability for the month will be recalculated on pro-rata basis and if duty is paid in excess then assesse is entitled for refund by 20th of the following month. Admittedly, in this case, the respondent has permanently discontinued the manufacturing of Pan Masala having RSP Rs.3/- per pouch on 9th October, 2013 and paid duty for whole of the month. In terms of the said Rule, the respondent is required to pay duty on pro-rata basis and since they have paid excess duty, they are entitled for refund.

7. In that circumstance, the respondent is entitled for refund in terms of proviso 4 to Rule 9 of Pan Masala Packing Machines (Capacity Determination & Collection of Duty) Rules, 2008. Therefore, I do not find any infirmity in the impugned order and the same is upheld.

8. The appeal filed by the Revenue is dismissed.

(Dictated & Pronounced in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
03/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001