CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 27777 of 2013

[Arising out of Order-in-Appeal No. 386/2013-CE dated 07.08.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore]

M/s. Dhariwal Industries Limited
2, 3 & 4, Singasandra Village,
Hosur Road,
Bangalore – 560 068 **.....Appellant**

VERSUS

Commissioner of Central Excise
Bangalore – I
P.B. No. 5400, C.R. Buildings
Queens Road, Near Bangalore GPO
Bangalore – 560 001 **....Respondent**

Appearance:

Mr. Hari Radhakrishnan, Advocate for the Appellant
Mr. Neeraj Kumar, AR for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20032 / 2025

Date of Hearing: 19.07.2024

Date of Decision: 17.01.2025

Per: P.A. Augustian

The issue in the present appeal is whether the appellant is entitled for refund of duty paid for the period from 08.02.2011 to 16.02.2011 during the period when the factory belonging to the appellant was closed due to the order of the Hon'ble Supreme Court.

2. The brief facts are M/s. Dhariwal industries limited, the Appellant is manufacturing 'pan masala' containing tobacco known as 'gutkha' and paying excise duty under the compounded levy scheme as envisaged under Notification No. 30/2008-CE (NT) dated 01.07.2008. The

Appellant had paid excise duty of Rs. 10,86,15,000/- for the month of February 2011 based on the number of machines intended for use by them for the said month. However, as per the judgment of the Hon'ble Supreme Court, the factory was closed for immediate implementation with regard to restriction of the manufacture, clearance and sale of such manufactured goods and an intimation was given to the Department by the appellant vide letter dated 07.02.2011 and the machines were sealed by the jurisdictional Range Officer of the Department. Subsequently, when the Hon'ble Supreme Court granted stay on the earlier order, Appellant requested for de-sealing of the packing machines and the jurisdictional officer of the Central Excise de-sealed the packing machines. Thus, Appellant started production and clearance of 'gutkha' w.e.f. 17.02.2011. In effect the unit of the appellant was closed from 08.02.2011 to 16.02.2011 and appellant filed a refund claim for refund of the duty paid, proportionate to the said period from 08.02.2011 to 16.02.2011. However, the adjudicating authority rejected the refund claim vide order dated 30.11.2011 and aggrieved by the said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) also rejected the appeal. Aggrieved by the said order, present appeal is filed before the Tribunal.

3. The Appellant in the appeal memorandum referred to para 5 of the impugned order, where the adjudicating authority has held;

> "05. *In the instant case, the claimant has filed the intimation of closure of the factory on 07.02.2011, as the decision of closure is on account of order of the Hon'ble Supreme Court. Hence, refund cannot be denied on the ground that the assessee did not give intimation three days in advance as substantial duty amount paid in advance for which no manufacturing activity has been attributable cannot be denied for procedural lapse which is*

beyond their control. It appeared therefore that the intimation filed by the claimant on 07.02.2011 can be accepted as a prior intimation and refund can be allowed for 08 days starting from 09.02.2011 to 16.2.2011 as per the provisions of Section 11B of Central Excise Act, 1944. The packing machines were sealed on 08.02.2011 at 12.00 Noon, thereby it can be construed that the packing machines were in inoperative condition from 00.01 hrs to 12.00 Noon on 08.02.2011 and hence the goods were deemed to have been produced on 08.02.2011 even though the packing machines were in sealed condition from 12.00 hrs to 24.00 hrs and in inoperative condition. Similarly on 17.02.2011, the machines were de-sealed at 14.00 hrs and from 14.01hrs to 24.00 hrs the machines were in working condition and hence it is construed that on 17.02.2011 also the goods were deemed to have been produced. In view of the above, it appears that the claimant is not eligible for refund of proportionate duty of ₹3,49,11,964/- already paid in advance for the month of February 2011."

4. When the appeal came up for hearing, the learned counsel submits that the issue in the present appeal is squarely covered by the decision of the Hon'ble Tribunal in appellant's own case as reported in ***2015 (330) E.L.T. 639 (Tri.-Ahmd.).*** In the above matter, Tribunal held that:- –

"13. In the present case, it is revealed from the letter dated 8.2.2011 of the appellant, as referred above, that the appellants had given intimation to the Assistant Commissioner of Central Excise that they closed down their factory due to the notification issued by the Ministry of Environment & Forest, Government of India, banning the use of plastic pouches with immediate effect. There is no dispute that the Superintendent of Central Excise was acted upon on the basis of intimation by letter dated 08.02.2011 and sealed the machine on 10.2.2011. Thus, on 10.2.2011, the

appellant closed down their factory. The intimation given by the appellant to the Assistant Commissioner of Central Excise by letter dated 8.12.2011 would show that the appellant permanently ceases to work in respect of all the machines installed in the factory and it would be followed for surrender of registration. Incidentally, by order dated 17.02.2011, the Hon'ble Supreme Court directed that the ban will be effective from 1.3.2011. As per the direction of Hon'ble Supreme Court, the appellant reopened the factory on 17.2.2011. The jurisdictional Superintendent of Central Excise, de-sealed the machines. In such a peculiar facts and circumstances of the case, in our considered view, the refund claim filed by the appellant would come within the purview of Rule 16 of Rules 2008.

14. The learned Authorized Representative for the Revenue, during the course of hearing, submitted that the appellant reopened the factory on 17.2.2011 and therefore, it cannot be treated as "permanently ceases to work." They have also not surrendered registration. It is difficult to accept the contention of the learned Authorized Representative for the Revenue, as the appellant reopened the factory and therefore, they are not eligible for refund of duty. There is no provision in Rules 2008 that after declaring "permanently ceases to work", the manufacturer would not be entitled to reopen his factory. Rule 16 would cover the situation, where a manufacturer filed an intimation to the Deputy Commissioner of Central Excise intimating permanently ceases to work for surrender of registration. There is no bar on reopening of the factory in Rules 2008, which is a subsequent event. Further, *the appellant in its letter dated 8.2.2011 categorically stated that they were giving intimation of closure of the factory-as required under the Rules, would be implied surrender of registration. It is already observed that in the present case, taking into account of order of Hon'ble Supreme Court, notification of Ministry of Environment and Forest, and the letter dated 8.2.2011 of the appellant to close down their factory and further consequence of surrender of registration may not be followed due to subsequent order dated 17.2.2011 of Hon'ble Supreme Court, the appellant should not be penalized by rejecting the refund claims, for the reason, they had re-opened the factory and such reading of the said provision, would be totally unjust, improper and against all cannons of natural justice and fair play. So, in such peculiar facts and circumstances of the case, we hold that the appellant is entitled to refund of the duty for dosing down of their factory."*

5. The learned counsel also relied on the following decisions:

   a. **Miraj Products Pvt. Ltd. Vs. Indian Asthama Care Society [Order dated 17.02.2011 passed by the Hon'ble Supreme Court of India]**
   b. **Godwin Steels (P) Ltd. Vs. Commissioner of Central Excise, Chandigarh [2010 (254) E.L.T. 202 (P&H)**
   c. **Rajat Industries Pvt. Ltd. Vs. Commissioner of Central Excise, Delhi -I [2012 (284) E.L.T. 581 (Tri.-Del.)**

6. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and also relied on the decision of the Tribunal in the matter of ***M/s. K.P. Pan Products Pvt.***

Ltd. Vs. Commissioner of Central Excise, Lucknow reported in 2024 (3) TMI 792- CESTAT ALLAHABAD.

7. Heard both sides and perused the records.

8. We find that the issue is squarely covered by the decision of the Tribunal in appellant's own case. Further, we do not find any reason to take a different view in the matter. Considering the above, since the factory was closed in deference of the Hon'ble Apex Court's order, the appellant is eligible for refund of duty paid in advance for the period from 09.02.2011 to 16.02.2011 8(eight) days.

9. Accordingly, the Appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 17.01.2025)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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