CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench, Court No. 2

Central Excise Appeal No. 20027 of 2016

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/B.HR/002/ 15-16 (CX) dated 07.10.2015 passed by the Commissioner of Central Excise and Customs, Belgaum.)

M/s. Delight Products
Plot No. 13, Survey No. 121,
Kapnoor, Industrial Estate,
Gulbarga – 585 106. ....**Appellant**

Versus

Commissioner of Central Excise
No. 71, Club Road,
Belgaum – 590 001. ……..**Respondent**

Appearance:

Mr. Pradyumna. G. H, Advocate for the Appellant.
Mr. Rajesh Shastry, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20141 /2025

Date of Hearing: 17.01.2025

Date of Decision: 17.01.2025

Per: P.A. Augustian

The issue involved in the present appeal is regarding the demand of duty from the appellant based on Rule 7 of the Pan Masala Packing Machines (Capacity Determination and Collection of duty) Rules, 2008 read with Notification No. 42/2008-C.E. dated 01.07.2008 and imposition of penalty under Rule 17 (1). Appellant is manufacturing

Gutka and having registration for manufacturing of Pan Masala containing tobacco. The appellant was clearing Gutka after assessing the same on the MRP and discharging duty liability. On 01.07.2008 Central Government introduced Compounded Levy Scheme from 01.07.2008 itself in respect of Gutka vide Notification No. 29/2008-C.E. (NT) dated 01.07.2008, which has specified compounded levy on the said goods in accordance with provisions of Section 3A of Central Excise Act, 1944. From the very same date as per Notification No. 30/2008-C.E. (NT) dated 01.07.2008, the Central Government specified the rate of duty per packing machine depending on the Retail Sale Price (RSP) of Gutka pouches. As per the prevailing method of valuation, appellant had carried out the manufacturing activity on 1st July 2008 and 2nd July 2008. Appellant had produced 9,57,900 pouches of Gutka and accordingly the appellant had paid excise duty of Rs. 6,78,050/- on the goods cleared on 1st and 2nd July 2008 as per rules prevailing prior to 01.07.2008. When appellant came to know about the change of the valuation method, they have intimated the Jurisdictional Range Officer that they were temporarily closing their factory from 02.07.2008. Based on the said intimation, Range Officer had sealed all the 18 packing machines on 02.07.2008 at 17:30 hours. Thereafter, the SCN was issued demanding duty for the month of 2008, on the ground that with the introduction of Pan Masala Packing Machines (Capacity Determination and Collection of duty) Rules (PMPMR), 2008, appellant have to pay the duty as per the Section 3A of the Central Excise Act, 1944. Appellant challenged the same and Adjudication Authority after considering the submission made by the appellant has partially allowed the claim of the appellant and confirmed the demand of duty on pro rata basis for 2(two) days, only. Accordingly, duty of Rs. 26,6,452/- was confirmed and an the amount of Rs. 6,78,050/- is appropriated against the due amount. However, as per the Adjudication Authority as per the impugned order demand of interest was confirmed and also imposed penalty. Aggrieved by said order, present appeal is filed before the Tribunal.

2. When the appeal came up for hearing, learned counsel submits that the duty confirmed by the Adjudication Authority is beyond the scope of SCN. In the SCN there is no proposal for confirming demand of duty for two (2) days as done by the Adjudication Authority.

3. The learned counsel further submits that they were paying the duty as per the prevailing rate and the change proposed in the method of valuation is introduced on 01.07.2008 with the immediate effect and immediately when the facts came to appellant's knowledge, they have informed the Range Officer regarding closure of the factory and stopped further production. Fact being so there is no deliberate attempt on the part of appellant to evade duty as alleged and to confirm demand as per the newly introduced method of valuation is not proper.

4. Learned AR reiterated the findings and submits that though the duty is demanded entire for the entire month as per the SCN, Adjudication Authority confirmed duty only for 2(two) days since they have carried out the production only for 2(two) days. Thus, Adjudication Authority has considered the issue liberally and there is no need for interference. Since, they have failed to pay duty in accordance with the existing method of valuation, the Adjudication Authority has rightly imposed penalty also.

5. Heard both sides perused the records.

6. We find that it is an admitted fact that there is no proposal for confirming demand of duty for 1st and 2nd July, 2008. However, the demand was for the entire month and the Adjudication Authority only after considering the facts and circumstances of the case, restricted the demand only for the days on which the production was carried out. Facts being so, it cannot be held that the demand confirmed by the Adjudication Authority for 1st and 2nd July, 2008 is beyond the scope of the show cause notice (SCN). As regarding the ground of the appellant to follow the method of valuation which was existing prior to 01.07.2008 also for the production carried out on 1st and 2nd July, 2008, we find the above contention is unsustainable. Once legislature has introduced a change of tariff with effect on 01.07.2008, the appellant being the manufacture of the products is bound to pay the excise duty accordingly. However, we find strong force in the submission made by the appellant that there was no suppression of fact to impose penalty. The levy was introduced only with the effect from 01.07.2008 and immediately when they came to know about the change of tariff, they have informed the Range Officer and the Range Officer closed the production and sealed the factory at 17:30 hours. Fact being so, no allegation can be made that appellant had supressed the fact regarding production or made any attempt to evade excise duty. Considering the dispute involved in the present appeal, imposing penalty is unsustainable.

7. Considering the same the appeal is partially allowed. The duty confirmed by the Adjudication Authority is upheld, and the appropriation of the amount paid by the appellant as per the previous method of assessing the duty is also upheld. The appellant is liable to pay balance

amount with interest as applicable after adjusting the excise duty paid by the appellant. The assessing authority is directed to intimate the due amount payable by the appellant and the appellant is directed to pay due amount within 1(one) month from the date of communication of due amount by the respondent. The penalty imposed on the appellant is set aside. Needless to say that appellant is at liberty pay any amount immediately on receipt of this order to limit his further interest liability.

8. Accordingly, the appeal is partially allowed in the above terms.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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