Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/61317/2018

(Arising out of OIA-APPEAL-CE-PKL-108-2018 DATED 26.07.2018 passed by the Commissioner (Appeals) of Central Excise and Service Tax-ROHTAK)

M/s Som Flavours Masala Pvt. Limited : Appellant (s)

Vs

CCE & ST- Rohtak : Respondent (s)

Represented by:
For Appellant (s) : Shri R. R. Yadav, Consultant
For Respondent (s): Shri Tarun Kumar, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Anil G. Shakkarwar, Hon’ble Member (Technical)

Date of Hearing/Decision: 30.08.2018

ORDER No.A/61317/2018

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below.

2. The facts of the case are that the appellant filed declaration under Rule 6 of Capacity Determination and Collection of Duty Rules, 2010 for Chewing tobacco and Un-manufactured Tobocco and paying duty as per the annual capacity of determination of duty under Capacity Determination and Collection of Duty Rules, 2010. An investigation was conducted and the samples were drawn, the samples were sent to CRCL. On the basis of the Report of CRCL, it was alleged that the appellant is manufacturing Jarda Scented Tobacco, therefore, the investigation was
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started in the factory premises of the appellant and during the course of investigation, the appellant made a deposit of Rs. 15,61,27,927/- during the period July to December 2015. Later on, a show cause notice dated 01.07.2016 was issued to demand of differential duty of Rs. 17,99,72,033/- for the period July 2015 to January 2016. The appellant filed a reply on 29.03.2017 with a request for retesting of the samples and also filed refund claim for the amount paid during the course of investigation under protest of Rs. 15,61,27,927/-. Thereafter, a show cause notice dated 18.07.2017 was issued to the appellant for rejection of the refund claim and both the authorities below rejected their refund claim. Against that order, the appellant is before us.

3. The Ld. Counsel for the appellant submits that on the basis of the CRCL Report holding that the appellant are manufacturing Jarda Scented Tobacco, the appellant challenged the same before the Ld. Commissioner (Appeals) and during the pendency of the appeal, a show cause notice dated 01.07.2016 was issued to them to demand duty on the basis of the fact that the appellant is manufacturing Jarda Scented Tobacco. Thereafter, the Commissioner (Appeals) dismissed the appeal filed by the appellant holding that when the issue of classification is pending before the adjudicating authority, the appeal is not maintainable. As the amount paid under protest by the appellant during the course of investigation has not been appropriated till yet, they are entitled to refund claim of the said

amount, as no duty is payable by the appellant. Therefore, he prayed that the refund claim be sanctioned.

4. On the other hand, the Ld. AR submitted that as the order of holding that the appellant are manufacturing Jarda Scented Tobacco and the ld. Commissioner (Appeals) has dismissed their appeal. Therefore, the refund claim cannot be sanctioned at this stage till the finalization of the issue of classification in terms of the show cause notice dated 01.07.2016. He also prayed that at this stage at the most, this Tribunal can direct for time bound adjudication of the show cause notice dated 01.07.2016 in the interest of justice.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both sides, we find that in this case the appellant has disputed the classification of their goods and the CRCL Report and sought re-test of the samples. Instead of doing so, a show cause notice dated 01.07.2016 was issued to demand the differential duty alleging that the appellant is manufacturing Jarda Scented Tobacco, but, the said show cause notice is not adjudicated till date. In that circumstances, the amount paid by the appellant during the course of investigation is not adjudged dues or duties against the appellant. Moreover, the appellant filed refund claim of the said amount paid during the course of investigation on 29.03.2017. Despite that, the adjudicating authority had not taken any pain to adjudicate the show cause notice dated 01.07.2016. Moreover, in the case of Digipro Import & Export Pvt.

Limited vs. Union of India 2017 (350) ELT 145 (Del.), the Hon'ble Delhi High Court has examined the issue and observed as under:-

> "**19.** This illegal practice adopted by the Anti-Evasion Department of Central Excise requires a deeper investigation. The Court has every reason to believe that this has come to light only because the Petitioner has approached this Court. This practice is perhaps being adopted in a number of instances which are yet to come to the notice of the Court. There will be serious ramifications if this practice is allowed to continue unchecked. In the first place, it must be realised that the officers of the Anti-Evasion Wing of the Central Excise Department have to function within the four corners of the law. They are bound by not only the C.E. Act and the Rules made thereunder but all the notifications/circulars/instructions issued from time to time including those issued by the CBEC. There is no scope at all to collect duty and that too without even quantifying the extent of duty evasion."

Admittedly in this case, the amount has been deposited by the appellant during the course of investigation under protest and there is no dues pending against the appellant as on date, in that circumstances, the appellant is entitled for refund of Rs. 15,61,27,927/-. In these circumstances, we direct the adjudicating authority to refund the amount of Rs. 15,61,27,927/- within three weeks from today to the appellant.

7. With these terms, the appeal is disposed of.

(Dictated & pronounced in the Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.