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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1225/2011 - EX[DB] WITH E/S/1574/2011-EX Date **27/12/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S K.P.PAN PRODUCTS (P) LTD **STAY ORDER NO. 1662/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1057/ 2011 EX[DB]** dated 21-12-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S K.P.PAN PRODUCTS (P) LTD
F-81/82, TRANSPORT NAGAR,
LUCKNOW.

2. Adv. / Consult
MR.V K AGGARWAL
B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Stay No. 1574/2011 in /A No.1225/20 11

(Arising out of order in appeal No.16/CE/LKO/2011 dated 21.2.2011 passed by the Commissioner of Customs & Central Excise(Appeals), Lucknow)

Date of Hearing: 22.11.2011

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Lucknow — Appellants

Vs

M/s K.P. Pan Products (P) Ltd — Respondent

Appeared for the Appellant: Shri Nitin Pathak, DR
Appeared for the Respondent: None

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 1662/2011-EX
FINAL ORDER No. 1057/2011-EX

Per Mathew John:

After hearing the matter for a short time we found that the issue involved is very short and already decided in respect of another assessee. So the requirement of pre-deposit was waived and the appeal itself was taken up for hearing with the consent of both sided.

2. Appellants are manufacturers of Pan Masala and Gutka i.e Pan Masala containing tobacco. During January 2010 to March 2010 they were paying duty based on installed capacity as determined under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.

3. Rule 10 of the said Rules provided for abatement from duty liability determined, if the factory did not produce the goods during any continuous period of 15days or more. The relevant Rule is re-produced below:

> "**10. Abatement in case of non-production of goods.** - In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least seven days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period :
>
> **Provided** that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of goods shall be effected by the manufacturer :
>
> **Provided** further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise."

4. The packing machines were sealed on 31.1.2010 by the departmental officers. The machines were unsealed on 2.3.2010. The appellants claimed abatement from 1.2.2010 to 1.3.2010 which is a continuous period in excess of 15 days.

5. The facts of the case are stated in the Appeal Memorandum in very complicated manner coupling the above period of closure with the next period of closure from 10.3.2010 to 31.3.2010. However, it is not relevant to decide the issue at hand. The short point for decision is whether the continuous period from 1-2-2010 to 01-03-2010 can be considered as one single continuous period or whether it consists of two periods namely from 1-2-2010 to 28-2-2010 and a separate period of one day namely 1-3-2010. The lower authorities have held that these are two different periods and the latter period is only one day which is less than the minimum of 15 days prescribed in Rule 10 and abatement cannot be given on account of that day. Aggrieved by the decisions of lower authority the appellant have filed this appeal.

6. The Appellants submit that nothing in Rule 10 of the said Rules specify that if a continuous period falls in two different months it has to be split into two and abatement decided separately. The appellants contest that Revenue is reading extra words into the Rule to canvass the interpretation that they seek.

7. The argument of A. R. is that duty liability is to be determined for each calendar month and duty is to be remitted in advance. So the continuous period specified in Rule 10 also has to be reckoned for each month separately.

8. We have considered arguments on both sides. There is nothing stated in Rule 10 to the effect that a continuous period falling under different calendar months should be split into periods falling under each month and abatement determined separately. The fact that duty liability is determined for each month separately cannot be reason to read extra words into the said Rule. So long

as the days of closure are continuous, even if the days fall in different calendar months it will constitute one continuous period and the abatement under rule 10 is to be determined accordingly.

9. Thus the appeal succeeds and it is ordered accordingly. Thus both stay petition and appeal are disposed of.

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member(Judicial)

MPS*

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **11/06/2012**

MISC Order No : 674/2012
ROM Application No. : E/ROM/12/2012
Appeal No. : E/1225/2011-EX[DB]

1. Appellant :
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.
2. Respondent :
K.P.PAN PRODUCTS (P) LTD
F-81/82, Transport Nagar, Lucknow.
3. Advocate(s) / Consultant(s) : SH. K.K. ANAND, ADV.,
A-103, DEFENCE COLONY,
N. DELHI-24
4. C.D.R
5. Bar Association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-110003
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13. Office Copy
14. Gaurd File
15. Second Folder

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/~~Misc~~ ROM.No.12/2012, E/Appeal No.1225/2011

Date of Hearing: 20.4.2012

CCE, Lucknow — Applicants

Vs

M/s K.P. Pan Products (P) Ltd — Respondent

Appeared for the Appellant:
Appeared for the Respondent: Shri K.K. Anand, Advocate

Coram: **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

MISC. ORDER No. 674/2012-EX(BR)

Per Mathew John:

The Applicants have filed this application for rectification of mistakes in Final Order No.1057/2011-Ex dated 21-12-11 issued disposing of the above stay petition and appeal.

2. We have heard the Ld Counsel for the Applicants who were the Respondents in the appeal and Ld. A. R. for Revenue. We find certain errors apparent on record in the above order.

3. The appeal and stay petition were filed by Revenue. The matter was decided without the presence of Respondents-assessee. The prayer in the stay petition was for staying the order of the Commissioner (Appeal) granting abatement from duty granted under Rule 10 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.

4. We find that though the issue involved in the matter was correctly decided and disposal of appeal was pronounced in Court ordering rejection of Revenue's appeal and recorded so in file. However, the order is issued as if the assesse had filed the appeal

and stay petition. This has resulted in certain errors in the order and need to be corrected. So the following corrections are ordered in different paragraphs of the order issued as indicated below.

4.1 **In para 1 of the order.**

For the sentence,-

> "So the requirement of pre-deposit was waived and the appeal itself was taken up for hearing with consent of both sides.",

the following sentence,-

> "So the prayer of Revenue for staying the impugned order was rejected and the appeal itself was taken up for decision and is being decided based on oral submissions of Revenue and written submissions of the Respondents.",

shall be substituted.

4.2. **In Para 2 of the order.**

For the word "Appellants" the word "Respondents" shall be substituted.

4.3. **In Para 4 of the order.**

For the word "Appellants" the word "Respondents" shall be substituted.

4.4. **In para 5 of the order.**

For the sentences,-

> "The lower authorities have held that these are two different periods and the latter period is only one day with less than the minimum of 15 days prescribed in Rule 10 and abatement cannot be given on account of that day. Aggrieved by the decisions of lower authority the appellant have filed this appeal",

the following sentences,-

> "The adjudicating authority has held that these are two different periods and the latter period is only one day with less than the minimum of 15 days prescribed in Rule 10 and abatement cannot be given on account of that day. Aggrieved by the decision of the adjudicating authority Respondents filed an appeal with Commissioner (Appeal) who held that the two periods constitute one single continuous period and allowed

the appeal. Aggrieved by the order of Commissioner (Appeal) Revenue has filed this appeal before the Tribunal.",

shall be substituted.

4.5. **In Para 6 of the order.**

For the word "Appellants" in the two places where it occurs the word "Respondents" shall be substituted.

4.6. **In para 9 of the order.**

For the sentence,-

"Thus the appeal succeeds and is ordered accordingly."

the following sentence,-

"Thus the appeal is without merits and is rejected",

shall be substituted.

5. The Application for Rectification of Mistake is allowed accordingly.

(Operative part pronounced in Court on 20-04-12)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

MPS*