CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 05.01.2017
Date of decision: 03/02/2017

Excise Appeal No. 691 of 2010

(Arising out of order-in-original No. 59/PKJ/CCE/ADJN/2009 dated 30.11.2009 passed by the Commissioner of Central Excise, Delhi-I)

CCE, Delhi-I Appellant

Vs.

M/s K. P. Pouches (P) Ltd., Respondent

Appearance:

Sh. G. R. Singh, AR for the Revenue
Sh. Rupesh Kumar, Advocate for the respondent-assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50632 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal has been filed by the department arising out of order-in-original No. 59/PKJ/CCE/ADJN/2009 dated 30.11.2009 passed by the Commissioner of Central Excise, Delhi-I. In the show cause notice, the total demand was raised for Rs.34,25,42,166/-. But by the impugned order, the ld. Commissioner has confirmed the duty of Rs. 12,63,77,557/-. Being aggrieved, both the parties have filed the appeals. The respondent-assessee filed Appeal No. E/2806/2010 but did not made the pre-deposit so the Tribunal has dismissed their appeal as non-maintainable. However, against dropping of the demand, the department has filed the present appeal.

2. The brief facts of the case are that the respondent –assessee M/s K. P. Pouches (P) Ltd., during the relevant period, were engaged in the manufacture of pouches containing tobacco bearing the brand name "**Rajshree**" and "**Safal**" falling under the Central Excise Tariff 24039990 of the First Schedule to the Central Excise Tariff Act, 1985, having the maximum retail price of Rs. 1/- per pouch. The manufacturing activity was conducted at Delhi where they were running only fifty machines. The gutka was transported to Chhattisgarh through M/s Supreme Road Transport Pvt. Ltd. (hereinafter known as M/s Supreme).

3. On 17/18.10.2006, a search was conducted at the two godowns of M/s Supreme situated at Raipur. Both those godowns were located at Mahadev Ghat Chowk; and near Indian Oil Depot Ring Road No. 1, respectively. The search was conducted in the presence of the Director of M/s Supreme. During search, stock of nine bags lying in the godown were found. Three vehicles were also found parked in the premises of the godown, where gutka was loaded. As per the details given in the impugned order, the total bags of 2404 were found having the mark of "**Rajshree**" and "**Safal**" brand manufactured by the assessee-respondent. In the godown other gutka having the trade mark of Goa 1000/Talab/Kuber and Moolchand etc. were also found. Thus, total 63,346 bags pertaining to the Gutka were found. The adjudicating authority has levied the duty only on 2404 bags having the trade mark "**Rajshree**" and "**Safal**" brand gutka. The duty on the remaining bags were dropped. Being aggrieved, the department has filed the present appeal.

4. With this background, we have heard Shri G. R. Singh, ld. AR for the Revenue and Shri Rupesh Kumar, ld. Advocate for the respondent-assessee.

4.1 Ld. Counsel for the department has relied on the show cause notice. He submits that the department has examined thirteen nos. of Unloading Registers and two nos. of Gate Registers. These registers contain inter-alia the details of the receipts and unloading of seven bags in the godown premises of M/s Supreme and dispatch/ disposal of gutka from the premises of M/s Supreme to various vehicles. Apart from these, various other records, documents and one computer CPU were also seized from the premises of M/s Supreme and under the same panchnama dated 17/18.10.2006. He submits that as per the chart prepared from the unloading registers M/s Supreme has received 63,346 bags of gutka during the period of April 2006 to October, 2006 from Delhi to Raipur. He again submitted that huge quantity were transported from Delhi to Raipur and distributed from the premises of M/s Supreme. Finally, he submits that entire load of the gutka mentioned in the registers of M/s Supreme belongs to the assessee – respondent. Hence, the adjudicating authority has wrongly dropped the partly demand.

4.2. On the other hand, ld. Counsel for the respondent-assessee Shri Rupesh Kumar relied on the impugned order. He submits that the appellant has only fifty machines even if had it run in three shifts basis then capacity of 12325 bags can have been produced per month so, it is wrong that entire stock mentioned in the register belongs to the respondent assessee, as this quantity cannot be manufactured by the respondent-assessee. He also submits that entries of gutka of trade brand i.e. Goa 1000/ Talab/ Kuber & Moolchand etc. were also found during the search which never belongs to the respondent-assessee. In the registers, gutka bags bearing the brand name of “**Rajshree**” and “**Safal**” were entered into the unloading register with the marks ‘LT’, ‘N’, ‘K’, ‘C’ and ‘10’. He also submits that the entire case material including the 13 unloading registers has recorded a specific 23,321 bags which bore the mark "LT, LTABK, K, ABK, GK, GK, GKABK and 10" contain the gutka under the brand name of "**Rajshree**" and "**Safal"** belonging to the respondent-assessee. The assessee has nothing to do with the other brands of gutka.

5. We have heard both the sides at length and gone through the material on record. From the record, it appears that the search was conducted at Raipur at the premises of the transporter while the gutka was manufactured at Delhi which was transported through M/s Supreme to Raipur. The duty was demanded in the show cause notice on the basis of entries recorded in the unloading register and gate registers seized at the time of search.

6. In the impugned order, the Commissioner has sustained the demand pertaining to "**Rajshree**" and "**Safal**" brand gutka which were in 2404 bags. The adjudicating authority has also confirmed the penalties on Director of M/s Supreme and also levied the personal penalty on the Directors of respondent – assessee company. In the instant case, it is alleged that the entries were pertaining to the total bags of 63,346 bags which were reflected in the thirteen unloaded registers where no name was mentioned. Only the number of bags with the code were mentioned. In the instant case, the department has not checked the manufacturing capacity of the manufacturing assessee and also the vouchers at the time of booking the gutka from Delhi. The entire duty demand was based on the entries made in the unloading registers and gate registers.

7. It may be mentioned that M/s Supreme was also transporting gutka of other companies which were having the different trademarks like Goa 1000/ Talab/ Kuber & Moolchand etc. No attempt was made by the department to examine the records of these manufacturers. Department has adopted a short cut

method by demanding the duty of the entire 63,346 bags reflected in the 13 unloading registers and gate registers. But the fact remains that the respondent-assessee was having the brand name of "**Rajshree**" and "**Safal**" and responsible to pay the duty on its trade marked stock only. The bags containing these trade marks were counted by the adjudicating authority for the purpose of duty. So, the duty was levied only on 2404 bags which were having the trade mark of "**Rajshree**" and "**Safal**" brand (in code also) . The respondent-assessee is not for the duty payment for the brands which were not manufactured by them. When it is so, then we find no reason to interfere with the impugned order passed by the adjudicating authority. The same is hereby sustained alongwith reasons mentioned therein.

8. In the result, the appeal filed by the Revenue is dismissed.

(Pronounced on 03/02/2017).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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