IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/1605- 1069/2009-Ex[DB]
[Arising out of Order-in-Original No. 24/2008 dated 22.12.2008, passed by the Commissioner of Central Excise, New Delhi]

M/s K.P. Pouches (P) Ltd
Shri R.P. Tripathi, Director
Shri Supreme Trading Co.
Shri Supreme Road Transport (P) Ltd
Sh. Ravi Singhal, Director ....Appellant

Vs.

C.C.E. Delhi- I ....Respondent

Appearance:
Sh. J.S. Sinha, M.P. Sahai, Rupesh Kr., Sh. Aditya Kr., Advocate for the Appellant
Sh. R.K. Manjhi, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 13.01.2017
Date of Pronouncement: 01.03.2017

Final Order no. 52034-52038 /2017-EX[DB]

Per V. Padmanabhan

The appellants / assessee (M/s KPP) are engaged in the manufacture of gutkha in pouches bearing brand names of "Rajshree" and "Safal" having MRP of Rs.1 per pack. Gutkha is subject to assessment of duty under section 4A of the Central Excise Act based on maximum retail price after granting admissible abatement. M/s. Supreme Road Transport Pvt. Ltd.

(M/s SRT) were engaged in transportation of gutkha bearing brand name of "Rajshree" and "Safal".

2. On the basis of intelligence that M/s. KPP were clandestinely clearing gutkha from their factory without payment of duty, Central Excise officers visited two godowns of STR at Raipur, one situated at Mahadev Ghat Chowk (A) and other situated near Indian Oil Depot (B) and conducted checks in the presence of Shri Ravi Singhal, Director of the M/s. SRT. At godown A the officers found three goods transport vehicles which were loaded with gutkha. The drivers of these vehicles, in their statements recorded before the departmental officer, stated that these goods (gutkha) were transported from the premises of SRT Delhi to SRT Raipur. On physical verification of the stock of gutkha lying in godown A & B of M/s. SRT a total of 2404 packs of gutkha were found, involving total duty liability of Rs.1,30,25,048/-. Shri Ravi Singhal, Director of M/s. SRT expressed his inability to submit any documentary evidence for payment of excise duty. He also could not submit the details of consignor / consignee in respect of 2404 bags of gutkha bearing the brand name Rajshree and Safal. The entire consignment of goods was detained by the officers. M/s. KPP claimed these goods and came forward for release of the detained goods vide their letter dated 26.10.2006 and intimated their readiness to pay the Central Excise duty in respect of the detained goods and to furnish bond and bank guarantee. The goods were ordered for provisional release on submission of bond and bank

guarantee by KPP. They also deposited the full amount of duty involved. The other vehicles which were also seized were also ordered for provisional release by accepting bond and bank guarantee.

3. M/s. KPP vide their letter dated 04.11.2006 submitted photo copies of some invoices issued by them during the period 05.07.2006-14.10.2006 claiming that seized 2404 packs of gutkha were cleared from their factory premises under these invoices. During the course of investigation the statement of Shri R P Tripathi, Director of M/s. KPP was recorded. He stated that major quantity of gutkha was dispatched to Orissa, Chhattisgarh and other states for sale. In respect of detained 2404 packs of gutkha he stated that the goods were sold to various buyers on cash sale basis and submitted the details of bill numbers 101 to 122 issued between 08.10.2006 and 14.10.2006.

4. The dispute pertains to the Central Excise duty payable on 2404 bags of Gutkha bearing the brand names "Rajshree" and "Safal". These goods were seized at the two godowns of M/s Supreme Road Transport located at Raipur. At the time of provisional release of these seized goods, the appellant assessee paid the entire duty due on seized goods amounting to about Rs 1.3 crores and complied with the other conditions specified by the ld. Commissioner in the provisional realize order. Subsequently, it has been claimed by the appellant-assessee that the duty due on these (2404) bags of

Gutkha has already been paid at the time of clearance of these goods. It has been claimed that these goods were cleared from the factory during the period 8th October, 2006. They have also submitted copies of 22 invoices baring no. 101-122 and claimed that these invoices cover the goods which have been seized and subsequentially provisionally realized at Raipur.

5. The appellant-assessee advanced the above arguments before the adjudicating authority before he passed the impugned order. However, the claims were not accepted by the adjudicating authority and he has gone ahead with the confirmation of the duty due on these 2404 bags by taking the view that these goods are not covered by these 22 invoices submitted by the appellant assessee. He further concluded that the 2404 bags of gutkha were clandestinely cleared without payment of duty. Accordingly, he has confirmed the duty demand along with the interest and penalty. Aggrieved by the impugned order the present appeal has been filed.

6. Heard both sides.

7. In the present appeal, the appellant-assessee has reiterated the same grounds and claimed that the duty on 2404 bags of Gutkha has been paid twice – one at the time of original clearances claiming that these goods are covered by the 22 invoices issued between 8 & 14 , October, 2006. The duty has been paid a second time at the time of provisional release of these goods. Accordingly,

they have submitted that the excess duty should be refunded as well as penalty order should be set aside.

8. Scrutiny of these 22 invoices reveals that Gutkha bags were sold to various individuals on cash sale basis. These invoices do not bear the names or addresses of any individuals/ buyers, who have taken delivery of the goods themselves. Under these circumstances, we failed to understand how the appellant can claim that these invoices cover the consignment of 2404 bags seized in Raipur. The only common factor appears to be that the Gutkha seized had the brand names of “Rajshree” and “Safal” which belongs to the appellant. The appellant also has admitted that the seized goods were manufactured by them and bear their brand name.

9. The investigation undertaken has revealed that the consignment notes and road challans recovered from the premises of M/s Supreme Road Transport, New Delhi, reveals that the Gutkha consignments have been booked by the appellant. Out of the consignees shown in the notes, four were found to be fictious on investigation. This indicates the surreptitious nature of removal of Gutkha from the appellant’s premises.

10. The investigation has revealed that the Gutkha clearance shown by the appellants from their factory during the period 1st October, 2006 has jumped to 2607 bags which is ten times the

average monthly clearance made by the appellants during the previous six months. The 22 invoices claimed by the assessee as having been issued between 8th and 14th October is claimed to cover the 2404 bags seized in Raipur. From this, it is evident that the exceptionally large production and clearances of Gutkha claimed during the first fort-night of October, 2006 is a clear manipulation of the records of the assessee. It leads us to the reasonable conclusion that the 22 invoices claimed to have been issued by the appellant assessee and claimed to be covering the seized 2404 bags of Gutkha have been issued with back date with a view to covering up the clandestine removal of goods from the factory.

The claim of the appellant that the entire quantity of Gutkha seized was sold on cash sale basis to unknown persons is difficult to believe. It is also a mystery how such a huge volume of Gutkha was found in Raipur. Further, the final consignees of the Gutkha could not be traced. It is also on record that neither the consignors nor the consignees chose to come forward for claiming the seized goods.

11. In the peculiar facts and circumstances of the case, by taking note of the totality of the circumstances, we are convinced that the goods seized at Raipur were infact manufactured and cleared by the appellant-assessee clandestinely without payment of duty. We are also equally convinced that the claim of the appellant-assessee that the goods are covered by the 22 invoices submitted by them has

been made only with the view to escape from the clutches of the law. While the onus is on the Revenue to establish clandestine removal, they are not required to prove the case with mathematical precision as such a case involves deliberate and well thought out *modus operandi* to evade duty. The Tribunal in the case *of* ***Ramachandra Rexins Pvt. Limited vs. CCE, Bangalore – 2013 (295) ELT 116 (Tri. Bang.)***, considered the issue in detail. The Hon'ble Supreme Court as reported in 2014 (302) ELT A-61 (SC), while upholding the decision of the Tribunal held as under:-

> "Tribunal further held that in a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such evasion has to be established by Department with mathematical precision. A person indulging in clandestine activity takes sufficient precaution to hide/destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In quasi-judicial proceedings, in such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt.' In case of clandestine removal, benefit of Cenvat/Modvat claim cannot be considered in absence of duty-paying documents."

12. We are in agreement with the findings of the adjudicating authority in the impugned order on the above issues, for the reasons explained in detail by the adjudicating authority and summarized in the above paragraphs. Once the clandestine clearances of the Gutkha is upheld and the claim of the appellant that the seized Gutkha is covered by the 22 invoices is disregarded, we find that the impugned order is to be sustained in totality.

13. In view of the above discussions all the appeals are dismissed.

[Pronounced in the open court on 01.03.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

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