IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi-110066

Date of Hearing/Decision 26.04.2017

Appeal No.E/1992/2011(SM)

(Arising out of Order-in-Appeal No.78 (CB) CE/JPR-II/2011 dated 11.03.2011 passes by the Commissioner, Jaipur II)

Miraj Products (P) Ltd. Appellant

v/s

CCE Jaipur II Respondent

Appearance

Sh. Hemant Bajaj & Ms Sukiriti Dass, Advocates : for the Appellant

Ms. Kanu Verma Kumar, DR : for the Respondent

Coram: Hon'ble Sh Ashok K. Arya, Member (Technical)

Final Order No.53133/2017

Per Ashok K. Arya:

M/s Miraj Products (P) Ltd. is in appeal against Order in Original No. 78/2010 dated 11.03.2011 whereunder the refund claim of excess duty paid under the provision of Chewing Tobacco & Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 has been rejected.

2. Brief facts are that:

i) The Appellant is engaged in manufacture of chewing tobacco under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1995.

ii) They are paying duty in advance on the 5th of each month under the provision of Chewing Tobacco & Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (Compounded Levy Rules).

iii) The Appellant pays duty in advance on the 5th of each month under Compound Levy Rules which is based on the number of packing machines installed and operating in the factory.

iv) For the month of April 2010, the Central Excise duty was paid in advance by 5th. However, vide Notification No.19/2010-CE dated 13/4/2010 rate of duty per machine, manufacturing Chewing Tobacco of MRP of Rs.1/- per pouche, was reduced to Rs.8 lac per month from Rs.12 lac w.e.f. 13.4.2010.

v) Thus by taking proportionate duty on 10 machines for the remaining 18 days w.e.f. from 13.4.2010 to 30.4.2010, the Appellant realized that they had paid excess amount of Rs. 24 lacs as duty.

vi) The Appellant filed a refund claim of Rs.24 lacs on 4.5.2010 for the excess duty paid in advance.

vii) The said refund claim was granted by the Assistant Commissioner after its verification by the Range Officer vide Order –in-Original dated 31.05.2010.

viii) The department filed an appeal against the said Order-in-Original and Commissioner vide the impugned order rejected the said refund claim of Rs.24 lacs. The Appellant is now before the Tribunal in appeal against the said impugned order in appeal

3. With the background of above facts, both sides represented by ld Counsels Shri Hemant Bajaj and Ms.Kanu Verma Kumar, have been heard.

4. The main submission of the Appellant is that the duty paid to the Revenue was not passed on to the customer and they have produced evidences to this effect in the form of their ledger entries and certificate of Chartered Accountant. The ld Counsel for the Appellant states that the said amount was shown in their ledger as amount receivable from the Revenue.

5 On the other hand, the ld Counsel for the Revenue vehemently submits that the test of 'no unjust enrichment' has to be passed in every refund claim, which has not been passed as per the findings given by the Commissioner. Therefore, this refund amount cannot be sanctioned.

6. After going through the facts on the record and the submissions of both sides, it appears that this is a simple case of refund, where original authority namely Assistant Commissioner has got the facts verified from the Range Officer and thereafter sanctioned the refund claim in the normal course. However, the impugned order makes observations that the refund claim was wrongly granted by the original authority saying that the test of 'no unjust enrichment' was not passed. However, on record when the Appellant has produced their ledger account and they are showing excess

duty payment as debts or money receivable from Revenue and this fact has further been supported by the Certificate of the Chartered Accountant, then It seems that there is no question of any further proof required to be submitted by the Appellant.

6.1 The department fails to prove that said excess duty paid of Rs.24 lacs was recovered by the assessee from the customers. Thus, the said excess burden of duty was not passed on to the customers by the Appellant. The Appellant cites Tribunal's decision in case of *Tirumala Bearings (P) Ltd. v/s CCE & C (Appeals), Visakhapatnam* dated 2016(335) E.L.T. 145 (Tri. – Bang.)

The Tribunal in the said case observes that:

5….

As such, we are of the view that the Chartered Accountant certificate is a good evidence to show that cannot be sidelined lightly without production of any other evidence to show that the said certificate is a wrong certificate.

6.2. Further Hon'ble High Court of Allahabad in the case of *CCE v/s Dabur India 2014 (304) ELT 321 (All.)* observes as under:

15. From the materials brought on record, it is clear that the M.R.P of the product was not increased and the deposit of differential excise duty was made by the respondent under protest with clear representation that refund shall be claimed.

16. …

17. …

18. …

19. The conclusion recoded by the Assistant Commissioner Central Excise that the amount of Rs.1,14,78,517/- paid by the respondent was part and parcel of M.R.P. amount that has been realized by them from their buyer during the period of 1994 to 1997 and has to be deemed to have been passed to the buyer, is without any basis and based on surmises and conjunctures. The differential excise duty having been paid by the

> respondent themselves under protest on different dates in the year 1998, there is no basis to come to the conclusion that the incidence of duty was passed to buyers. ….

6.3 In the light of the above discussion and the observations of the Hon'ble Allahabad High Court (supra) and the Tribunal (supra) the impugned order is set aside and appeal allowed with consequential relief to the Appellant.

(Dictated & pronounced in open Court)

(Ashok K Arya)
Member (Technical)

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