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

Date of hearing/decision: 11.05.2017

**Excise Appeal No. 50463 of 2017-SM**

(Arising out of order-in-appeal No. 116-CE/APPL-I/DLH-II/2015 dated 08.12.2016 passed by the Commissioner of Central Excise (Appeals)-I, New Delhi).

M/s Dharampal Satyapal Limited Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Sh. T. R. Rustagi, Advocate for the appellant
Sh. G. R. Singh, AR for the Respondent

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53293/2017

Per: **B. Ravichandran**:

The dispute in the present appeal is only with reference to the liability of the appellant to pay interest on Central Excise duty paid in terms of Chewing Tobacco and Un-manufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. The appellants were discharging duty in terms of the said Rules. During the year 2014 the appellant paid the Central Excise duty liability for the month of December on 12.12.2014. Whereas in terms of the said rules they should have paid the Central Excise duty liability on 05.12.2014.

2. The submission of the ld. Counsel against the interest liability is that the determination of duty liability itself could not be made by the appellant on 05.12.2014, as the unit was closed upto 10.12.2014. As such there could be no determination of duty liability to discharge, on the said date. The unit was reopened on 10.12.2014 and calculating the duty liability for the month, they have discharged the same on 12.12.2014. As such, there is no interest liability on the appellant. He also submitted that the lower authorities adjusted the interest calculated, without issuing any notice towards such demand of interest or proposal to adjust. He also relied on decided cases to support his submissions.

2. Having heard both the sides and after perusal of the appeal records I note that on similar set of facts the Tribunal earlier held that no interest is liable to be paid by the appellant in such situation. In ***Taste Well Product vs. CCE&ST, New Delhi – 2016 (335) ELT 55 (Tri. Del.)*** the Tribunal observed as below:

> "5. *The point for consideration is that liability of the appellant to pay interest for the duty liability that arose during the month of December, 2011 and Feb. 2012. The reason given for confirming the interest is that the due date for payment of duty in terms of the above mentioned Rules is 5th of same month. The same is stipulated in Rule 9. The 3rd proviso to Rule 9 gives an exception that in case of increase in the number of operating machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5th day of the following month. It is an admitted fact that during the period 1.12.2011 to 22.2.2011, there is no operative machine in the appellants' factory. Similarly, during the period 1.2.2012 to 13.2.2012, there was no operating machine with the appellant. In other words, during the period in which the due date falls, there is no manufacturing operation by the appellant. Hence, it follows that no duty could be determined and paid by them by 5th of the same month. The machines were unsealed and allowed for operation much later and such situation will be covered by the 3rd proviso to Rule 9. Reliance is placed on the Tribunal's Final Order dated 24.11.2015 in the case of Trimurti Fragrance Pvt. Ltd. (supra). Considering the above discussion and legal position, I find no merit in the impugned order. Accordingly, the same is set aside and the appeal is allowed*".

3. Considering that the above ratio is applicable to the facts of the present case, I find that the lower authorities are not correct in confirming the interest liability on the appellant. Accordingly, the impugned order is set-aside. The appeal is allowed.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Pant