IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –I

Excise Appeal No.E/741/2011-[DB]

[Arising out of Order-in-Appeal No. 279-280/RPR-I/2010 dated 21.12.2010 passed by the C.C.E. Raipur].

Excise Appeal No.E/1174/2012-[DB]

[Arising out of Order-in-Appeal No. Commr-RPR-CEX-12/2012 dated 28.02.2012 passed by the C.C.E. Raipur].

Kay Pan Sugandh (P) Ltd. …Appellant

Vs.

C.C.E. Raipur … Respondent

Present for the Appellant: Mr. Krishan Kant & Rupesh Kumar(Advocates)
Present for the Respondent: Mr. H.C. Saini (D.R.)

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 13/06/2017

FINAL ORDER NO. 53945-53946 /2017

PER: B. RAVICHANDRAN

Both the appeals have been filed against order in appeal No. 279 & 280 dated 21.12.2010 and 12/2012 dated 28.02.2012.

2. Both the appeals are with reference to denial of abatement to the appellants as claimed by them under Pan Masala Packing Machine (Capacity Determination and Collection of duty) Rules, 2008. The brief facts of the case are that the appellants were operating under the compounded levy scheme and in terms of the above said rules were discharging Central

Excise Duty liability based on the number of machines operated by them. They have given request dated 09.07.2009 intimating their intention to close down the unit from the midnight of 15.07.2009 upto 30.07.2009 midnight, due to less demand in the market. Based on the request, the officers sealed the unit at 12:30 AM on 16.07.2009. Thereafter the appellants vide their letter dated 30.07.2009 requested for removal of seal w.e.f. midnight of 30.07.2009 so that they can start production from 31.07.2009. The officers removed the seal at 12:15 AM of 31.07.2009. There is no dispute on these facts. Since the appellants did not operate the machines for 15 continuous days, they have applied for abatement, as available under Rule 10 of the said Rules. The said abatement of duty was allowed by the original authority vide letter dated 20.11.2009. The Revenue preferred appeal against the same resulting in the impugned order dated 21.12.2010 by the Commissioner (Appeals-I) Raipur.

3. The Commissioner (Appeals) held that the appellants are not eligible for abatement on the ground that sealing of the machinery was not done. Sealing was done for the whole manufacturing unit which is not in line with the said Rules. He further held that there is a shortage of 15 minutes, to apply the abatement for non-operation for 15 days from 16.07.2009 to 31.09.2009. As such, he reversed the decision of the original authority, disallowed the abatement to the appellants.

4. We have heard both the sides and perused the appeal records.

5. The fact remains that the appellant did make proper request for sealing the unit in terms of the said Rules. Instead of sealing the individual machines, the officers who visited the factory chose to seal the premises itself. They have unplugged the machines also. The Revenue has taken a stand that sealing of individual machine is the requirement and sealing of the whole factory will not meet such requirement. We find no rationale in such view taken by the Revenue. The basic fact is that the unit was not under operation during the impugned period and the Revenue also is not alleging any such operation. We find that the Tribunal dealt with the similar issue in appelaInt's own case vide Final Order No. 52058-52059/2017 dated 27.02.2017, dealing with the earlier period. It was held that the said Rules emphasized mainly on the machines to be made non-operational and no production activity takes place during the period of closure. Admittedly, in the case in hand, it is undisputed fact that the entire factory of the appellant was close and sealed. The same was sealed/unsealed in the presence of witnesses and in these facts, we find no merit in the impugned order denying the abatement, otherwise available to the appellant. Regarding shortage of 15 minutes to count 15 days of continuous closure, we note that both the request by the appellant regarding sealing as well as unsealing, have categorically stated the intent of the appellant regarding closure from 16.07.2009 to 31.07.2009. The letter is specific even at the time of intended closure and restarting of operation. The officers did visit the unit around the intended

time of closure as well as intended time of reopening of the operation. The officers completed the work at or around the midnight of the intended operation. We find no infirmity in the original authority's findings that the unit was closed for operation continuously for 15 days. The objection by the Revenue is frivolous and has no legal basis. The sealing and unsealing of the unit is actually carried out by the officers in the presence of witnesses and there is no evidence of any operation for 15 days by the appellant.

6. In view of the above discussion and analysis, we find no merit in the impugned orders and set aside. Both the appeals accordingly are allowed.

(Dictated and pronounced in the open court)

(B. RAVICHANDRAN)	**(JUSTICE (DR.) SATISH CHANDRA)**
MEMBER (TECHNICAL)	**PRESIDENT**

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