IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 16/06/2017.
DATE OF DECISION : 23/06/2017.

Excise Appeal No. 52559 of 2014

[Arising out of the Order-in-Original No. 01-02/D-I/2014 dated 13/01/2014 passed by The Commissioner, Central Excise, New Delhi.]

CCE, Delhi – I Appellant

Versus

M/s Shakti Fragnance Pvt. Ltd. Respondent

Appearance

Ms. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the appellant.

Shri K.S. Gupta, Advocate – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54321/2017 Dated : 23/06/2017

Per. B. Ravichandran :-

Revenue is in appeal against order dated 13/01/2014 of Commissioner of Central Excise, Delhi – I. The respondent was engaged in the manufacture of gutkha and was discharging Central Excise duty in terms of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 readwith Section 3A of Central Excise Act, 1944. During the month of May 2012 the factory of the respondent was closed from 01/05/2012 to 15/05/2012 and thereafter, after a due unsealing of the machines, manufacture started. The respondent paid duty for 16 days of production from 16/05/2012 to 31/05/2012 after availing abatement under Rule 10 of the said rules for the first 15 days. Applicable interest was also paid by them. Notice dated 23/05/2013 was issued to the respondent stating that they have not discharged duty in terms of the said rules on due date, 5th of May, 2012. The respondent contested the notice. The case was adjudicated and the Original Authority held that since no machine was operating during the relevant period/on the due date of payment, the respondent correctly paid the duty by 5th of the following month. Hence, he dropped the proceedings. The Revenue contested the findings on the ground that the procedure relating to abatement under Rule 10 was not followed by the respondent and, as such, the respondent cannot resort to payment of duty on proportionate basis.

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

3. We note that this issue is no more res-integra. The Hon'ble Delhi High Court in the respondent's own case has decided the issue in their favour in **2015 (324) E.L.T. 390 (Del.)**. The Hon'ble High Court held as below :-

> "12. On a collective reading of Rules 9 and 10 of the PMPM Rules, the Court is of the view that the failure to

make the payment of duty on fifth day of every month cannot result in depriving the assessee of the *pro rata* abatement of duty which he is in any way entitled to since admittedly in the present case there has been a closure of the factory from 14th to 31st August, 2012 and an abatement order has also been passed on 28th August, 2012. However, the assessee would be liable to pay the interest for the period of late deposit of duty".

4. In view of the settled position of law, as above, we find no merit in the appeal by the Revenue. Accordingly, the same is dismissed.

(Order pronounced in the open court on 23/06/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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