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/2152, 2186, 2471/2011-[DB]

[Arising out of Order-in-Appeal No. 136-2011-C.Ex-JPR-II dated 31.03.2011 passed by the CCE Jaipur-II]

Excise Appeal No.E/2289-2290, 2338-2339/2011-[DB]

[Arising out of Order-in-Appeal No. 136-2011-C.Ex-JPR-II dated 31.03.2011 passed by the CCE Jaipur-II]

Excise Appeal No.E/2291/2011-[DB]

[Arising out of Order-in-Appeal No. 136-2011-C.Ex-JPR-II dated 31.03.2011 passed by the CCE Jaipur-II]

Shri Arun Joshi S/o Shri M.L. Joshi …Appellant(s)
Kailash Joshi, C/o
Kasam Abdul Rehman Pantni, Prop. Of
Abdul Aziz Patni (Partner of)
Shree Raj Pan Masala (P) Ltd.
Dinesh Kumar Sen
Manoj Kumar Sen C/O

Vs.

C.C.E. Jaipur-II … Respondent(s)

And

C.C.E. & S.T. Jaipur-II …Appellant(s)

Vs.

Shree Raj Exports Pvt. Ltd. … Respondent(s)

Vs.

Shree Raj Exports Pvt. Ltd. … Respondent(s)

Present for the Appellant : Mr. S.P. Mathew, Vijay Joshi (Advocate)
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: 15/06/2017
Date of Decision: 23/06/2017

FINAL ORDER NO. 54326-54333/2017

PER: B. Ravichandran

These bunch of appeals are against order dated 08.06.2011 of Commissioner of Central Excise, Jaipur-II. The main appellant/ assesee, Ms. Shree Raj Pan Masala Pvt. Ltd. were engaged in the manufacture of Pan Masala containing tobacco (Gutka) liable to Central Excise duty. They were manufacturing the said Gutka with a various branded names. M/s Shree Raj Exports Pvt. Ltd., another appellant/ assessee in these proceedings, were also engaged in the manufacture of Gutka. The officers of Central Excise conducted certain verification and investigation in March, April of 2008. During the course of investigation, the officers seized finished goods, transporting vehicles and packing machines in various premises and they have also recorded statements of various persons. On completion of the investigation, SCN dated 23.03.2009 was issued to these two appellants/ assesees along with 23 other co-noticees. The notice proposed demands of central excise duty not paid by these two appellants/ assesees and also proposed imposition of penalties under various provisions of the Central Excise Act, 1944 and Rules made there under on all the noticees. The case was adjudicated resulted in the impugned order. The Commissioner in his order confirmed a total Central Excise demand of Rs. 59,77,881/- on Ms. Shree Raj Pan Masala Pvt. Ltd. He ordered confiscation of packed as well as loose Gutka and permitted the redemption on payment of fine. Similarly, he also ordered confiscation of raw material, packing material and allowed redemption on payment of fine. He confirmed the duty demand of Rs. 2,36,621/- on M/s Shree Raj Exports Pvt. Ltd. He imposed penalties of equivalent amount to duties on both the appellants/ assesees, apart from ordering the seizure of packing material, transporting trucks and allowing them to redeemed on payment of fines. The original authority imposed penalties on various noticees under Rule 26 of Central Excise Rules, 2002.

2. The Ld. Counsel appearing for the main appellant/ assesee M/s Shree Raj Pan Masala Pvt. Ltd. submitted that they have paid Rs. 1,25,97,575/- before the issue of impugned order itself. This is mentioned in the said order also. He submitted that they are not contesting the case on merit. The only plea is for the application of provisions of Section 11A(1A) of the Central Excise Act, 1944 as inserted by Taxation Laws (Amendment) Act, 2006. He admitted that they did not make this claim for closure of the proceedings before the original authority. Since the said legal provision is available to them, the same can be extended on due verification by the Jurisdictional authority.

3. Ld. AR submitted that this is a fresh ground mentioned by the main appellant/ assessee. The facts are required to be verified in order to examine the applicability of the amended provisions of Section 11A to the case at hand.

4. We have heard both the sides and perused the appeal records. The merits of the case are not being contested by the main appellant/ assessee Ms. Shree Raj Pan Masala Pvt. Ltd. Admittedly, they have paid 1.25 Crores even before the adjudication of the case. Section 35 of the Taxation Laws Amendment Act, 2006 reads as under:

35. Amendment of Section 11A.- In section 11A of the Central Excise Act, 1944 (hereafter referred to as the Central Excise Act),–

(a) after sub-section (1), the following sub-section shall be inserted, namely:—
"(1A) When any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, may pay duty in full or in part as may be accepted by him, and the interest payable thereon under section 11AB and penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by such person within thirty days of the receipt of the notice.";

(b) to sub-section (2), the following provisos shall be added, namely:—
"Provided that if such person has paid the duty in full together with, interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notice is served under sub-section (1) shall, without prejudice to the provisions of sections 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein:

Provided further that, if such person has paid duty in part, interest and penalty under sub-section (1A), the Central Excise Officer, shall determine the amount of duty or interest not being in excess of the amount partly due from such person.".

5. We note that the said provisions are available during the relevant period in respect of the main appellant/ assessee. Admittedly, as the appellant did not make specific plea regarding the said legal provision no finding was recorded on this by the original authority. Considering the above admitted facts, we find it fit and proper to set aside the impugned order and remand the matter to the original authority to examine the legal provisions as inserted in 2006 in Section 11A and their applicability to the main appellant/assessee as well as to other noticees in the present proceedings. The Original authority shall verify the facts of payments and the applicability of the benefit of deemed closure of proceedings, to M/s Shree Raj Pan Masala

Pvt. Ltd. and other co-noticees. The original authority shall order the closure of proceedings on satisfactory examination of the fulfillment of the conditions, as per the legal provisions stated above. In case in respect of any of the appellants/ co-noticees, the said provision is not applicable order to that effect with reasons shall be issued. The appellants shall be given an opportunity to present their side of the case during the proceedings. Accordingly, we set aside the impugned order and remand the matter for a fresh consideration of the legal issue as mentioned above and to pass the orders in terms of the above provisions. The appeals are disposed of by above terms.

6. The Revenue has preferred appeal contesting the imposition of lesser redemption fine by the Original Authority. In view of the order being set aside and remanded back to the original authority, the appeal by Revenue also stands disposed of.

[Pronounced in the open Court on_23/06/2017]

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

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