CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Excise Appeal No. Ex/60513/2013-EX [DB]

[Arising out of Order-in-Appeal No. 89/CE/DLH/2013 dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise, Delhi]

M/s. Ashok & Co. Pan Bahar Ltd. ...Appellant

Vs.

C.C.E., Delhi …Respondent

Appearance:
Mr. Manish Pushkaran, Advocate for the Appellant
Mr. M.R. Sharma, DR for the Respondent

CORAM:
HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANBHAN, MEMBER (TECHNICAL)

Date of Hearing.29.06.2017
Date of Decision.__04.072017

Final Order No. 54573 /2017

Per V. PADMANBHAN:

The appeal is against the Order-In-Original no. 89/2013 dated 29.07.2013. The appellant is engaged in the manufacture of Pan Masala under Tariff Heading 2106 90 20 of the Central Excise Tariff Act. Such Pan Masala is packed in pouches with the aid of pouch packing machines (FFS Machines). A portion of Pan Masala is also packed in tins. W.e.f 01.07.2008, Compounded Levy Scheme was notified by the Central Government in terms of the provisions of Section 3A of the Central Excise Act, 1944.

Notification No. 30/2008 dated 01.07.2008 was issued specifying the amount of duty to be paid on Pan Masala packed in pouches. Under the Compounded Levy Scheme, such duty was made payable on the basis of number of pouch packing machines installed in the factory. After the scheme was notified on 01.07.2008, the appellant approached the Central Excise officers on 02.07.2008 for sealing of all the machines installed in the factory. Department was of the view that the appellant was liable to pay duty for one day- on 01.07.2008 on the Pan Masala in terms of notification no. 30/2008. Accordingly, the lower authorities confirmed the demand of duty to the extent of Rs. 39, 74, 838/- along with interest and penalty equal to duty, under Section 11AC. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background we heard Shri Manish Pushkaran ld. Advocate for the appellant as well as M.R. Sharma DR.

3. The ld. Counsel for the appellant submitted that the demand comprised of two parts-

i) For Pan Masala packed in pouches with the aid of packing machines payable for one day i.e on 01.07.2008

(ii) Duty payable on pan Masala packed manually in tin containers.

4. In respect of Pan Masala packed manually tin containers the ld. Counsel submitted that the Compounded Levy Scheme was not

applicable to such goods as has been clarified by the CBEC (Tax Research Unit) vide circular dated 04.08.2008. Since there was no clearance of pan masala in tins on 01.07.2008, no duty is payable. He also argued that the demand of duty on Pan Masala packed in pouches was also not sustainable inasmuch as no manufacture took place in the factory on 01.07.2008. He further submitted that the relevant notification, though dated 01.07.2008, came to be uploaded in the CBEC website only at 21:44 hours on 01.07.2008 and was printed in the Government Press subsequently.

5. DR supported the impugned order.

6. First, we consider the demand attributable to Pan Masala packed manually in tins. The appellant has cited the CBEC circular dated 04.08.2008 in which it has been clarified that the Compounded Levy Scheme notified under Section 3A will not be applicable to Pan Masala packed in tin containers manually. Such scheme is specifically notified only for pan Masala packed in FFS machines. On perusal of the CBEC circular the above fact is confirmed. Consequently the demand of duty on Pan Masala packed in tin containers cannot be sustained and is set aside.

7. Next, we turn to the demand of duty made on the basis of pouch packing machines installed in the factory on 01.07.2008. From a perusal of Section 3A *ibid,* along with the relevant Notification No. 29 and 30/2008 CE NT dated 01.07.2008, it is evident that the Compounded Levy Scheme notified mandatorily required the manufacturer to pay duty as per the number of FFS

machines installed in the factory. The manufacturer has the option of getting his machines sealed to avoid demand of duty under the above scheme. From the record, we find that on 02.07.2008, the appellant has requested the Department to seal all their machines. Accordingly from 2.07.2008 onwards there is no duty liability on the appellant. However, it is not disputed that the machines were installed in the factory and not sealed on 01.07.2008 i.e. available for manufacture of Pan Masala on 01.07.2008. Consequently, in terms of the scheme notified under Section 3A, the appellant is liable to pay duty for one day on 01.07.2008 for the machines which were installed in the factory and are sealed.

8. In view of the above, the impugned order is modified and the duty demand attributable to the Pan Masala packed manually in tin containers is set aside. The rest of the demand is sustained. The original adjudicating authority is directed to requantifiy the demand. Accordingly, for this limited propose the issued is remanded.

9. In the result appeal is partly allowed.

(Pronounced in the open court on 04.07.2017)

(V. PADMANBHAN)
MEMBER (TECHNICAL)

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

Sakshi