CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 22.09.2017

Appeal No. E/50113/2016-EX[DB]

[Arising out of the Order-in-Original No. JAI/EXCUS/000/COM/32/15-16 dated 23.10.2015, passed by the Commissioner of Central Excise, Jaipur]

M/s. Classic Tobacco Products … Appellant

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Shri Rahul Tangri, Advocate for the appellant
Present Shri S.K. Bansal, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 57125 /2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the Order-in-Original No. 32/15-16 dated 23.10.2015. The period of dispute is November 2011 to March 2012.

2. The brief facts of the case are that the appellant is engaged in the manufacturing of chewing tobacco bearing brand name "Classic Natraj" and "Bhaskar" falling under Tariff item 2403 of the First Schedule to the Central Excise Tariff Act 1985. Chewing tobacco with the aid of packing machines and packed in pouches is notified under the notification no. 10/2010-CE(NT)

dated 27.02.2010 issued under Section 3A(1) of the Central Excise Act, 1944 that deals with the compound levy scheme applicable to the manufacturers of certain items, including chewing tobacco.

3. During the period under consideration, it is the allegation of the appellant that for some time all the four machines were closed. They were sealed by the Department after due intimation. So the appellant claimed the suo motto abatement for the period when the machine was sealed. But the Department has not allowed by mentioning that the abatement is allowable by way of refund. First the appellant will have to deposit the duty and then can claim the refund. Being aggrieved, the appellant has filed the present appeal.

4. With the above background, we have heard Shri Rahul Tangri, Advocate for the appellant and Shri S.K. Bansal, DR for the respondent.

5. After hearing both the parties and on perusal of the record, it appears that in the case of ***Trimurti Fragrances Pvt. Ltd. Vs. CCE Delhi 2015 (329) ELT 175 (Tri-Del)*** it was observed that:

> *"6. As regards the dispute for the month of March, 2011 in respect of which duty demand of Rs. 32,25,805/- has been confirmed, there is no dispute that the factory was closed from 1st March, 2011 to 16th March, 2011 and had functioned only from 17-3-2011 to 31-3-2011. There is no dispute that the conditions for claiming abatement under Rule 10 of PMPM Rules are satisfied, that the appellant had applied for rebate and that the rebate is admissible. The*

appellant, however, instead of paying full duty for the Month of March, 2011 by 5th March, 2011 had paid only the proportionate duty for the period from 17th March, 2011 to 31st March, 2011 on 21st March, 2011. The Department's objection is that the appellant should have, first, paid the entire duty for the month of March by the due date, that is, by 5th of the month and only, thereafter, should have claimed the rebate. The duty demand of Rs. 32,25,805/- has been confirmed on this basis which represents the duty for the period from 1st March to 16th March. However, we find that this issue stands settled in favour of the appellant by the judgment of Hon'ble Allahabad High Court in the case of Steel Industries of Hindustan v. CCE, Ghaziabad reported in 2013 (293) E.L.T. 191 (All.), wherein in respect of similar provisions regarding levy of duty on compounded basis in respect of iron and steel product, Hon'ble High Court had held that for claiming the abatement for the period of closure of the factory, depositing duty for the whole month is not a pre-condition and that in such cases the duty would be required to be paid only for the number of days for which a factory was working. We find that same view has been taken by this Tribunal in the case of Shree Flavours Pvt. Ltd. v. CCE, Delhi-IV reported in 2014 (304) E.L.T. 441 - Kuber Khani P. Ltd. v. CCE, Rohtak (Final Order No. 54525/2014, dated 20th November, 2014) Shri Padma Balaji Steel Pvt. Ltd. v. CCE, Coimbatore reported in 2009 (246) E.L.T. 255 (Tri. - Chennai) and also in the appellant's own case for the previous period decided by this Tribunal's Final Order Nos. 50223-50232/2015, dated 21-1-2015. In view of this the duty demand of Rs. 32,25,805/- would not be sustainable. However, since the due date for payment of duty was 5th of the month and the appellant paid the duty only on 21-3-2011, the appellant in respect of the net duty payable by them, would be liable to pay interest on it as per the provisions of PMPM Rules for the period of delay."

6. It may be mentioned that in the factory, there were only four machines. If four machines are sealed then certainly factory is closed for the purpose of production. From the impugned order, it is not clear that for what period the four machines were closed. In other words, when the factory was closed.

7. Hence, we set aside the impugned order and remand the matter back to the adjudicating authority to decide the period for closure of the factory and allow the suo motto abatement but by providing reasonable opportunity to the appellant. If any machine was found working in nay part of the month, then the claim will not be allowed. Fresh evidence, if need be may be admitted as per law.

8. In the result, appeal filed by the appellant is allowed by way of remand.

[Dictated and Pronounced in the open court]

(V. Padmanabhan) Technical Member	(Justice Dr. Satish Chandra) President

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