(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/50070-50071/2016
(Arising out of Order-in-Original No. JAI-EXCUS-000-COM-23 to 24-15-16 dated 30.06.2015 passed by Commissioner CE, Jaipur)

CCE Jaipur …Appellant
Vs
M/s AM Products …Respondent

Appearance:
Present for the Appellant : Shri R.K. Mishra, DR
Present for the Respondent : Shri Alok Kothari, Advocate

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

Date of hearing: 12.10.2017
Date of decision: 20.10.2017

Final Order No.57306-57307/2017

Per B. Ravichandran,

These two appeals are by Revenue against order dated 30.06.2015 of Commissioner, CE, Jaipur-I. M/s AM Producrts (main respondent) are engaged in the manufacture of Pan Masala liable to Central Excise duty in terms of Pan Masala Packing Machine (Capacity, Determination and Collection of Duty) Rules, 2008. The main respondent filed declaration on 13.08.2014 with the Jurisdictional Assistant Commissioner under Rule 6 of the Pan Masala Rules for installation of one packing machine w.e.f. 20.08.2014 for production of pan masala. The production capacity of the main respondent was determined. Thereafter, the main respondent vide their letter dated 26.08.2014 requested for sealing of one pouch packing machine w.e.f. 31.8.2014. It was also informed that they will not be producing pan masala w.e.f. 01.09.2014 for 15 days or more. In terms of the above request, the machine was sealed under panchnama on 31.08.2014 by the Jurisdictional Central Excise Officers. Thereafter, based on certain information that the main respondent is resorting to unaccounted manufacture and clearance of pan masala, certain search and enquiry was carried-out on 15/16.09.2014 in the premises of the main respondent. On conclusion of the investigation, proceedings were initiated through issue of two SCNs on 13.03.2015 and 23.04.2015 proposing confiscation of seized raw material and finished goods and to demand Central Excise duty of Rs.59,60,000/- alongwith imposition of penalties under various provisions of Central Excise Law. On adjudication of these notices, the original authority issued the impugned order. He dropped the proceedings against respondents. Aggrieved by this order, the Revenue filed these appeals.

2. Elaborating the grounds of appeal, the ld AR submitted that though the pouch packing machine was sealed by the officers on 31.08.2014, the evidences gathered by the officers on 15/16.09.2014 indicated that the respondent tempered with the seal and indulged in unauthorized manufacturer and clearance of pan masala without payment of duty. The original authority did not examine, in detail, the existence of packing material and finished goods and accepted the explanation provided by the respondent. The finished goods found in the premises of the respondent had marking indicating the month of packing as September, 2014. The explanation that the respondent used such pre-printed

packing after they ran out of stock of labels for August, 2014, is not acceptable. There were packing materials printed with August, 2014 available in stock. The statement of Shri Gupta (second respondent) would show that the appellants have manufactured and cleared pan masala without accounting. The retraction of statements on 19.09.2014 is only an afterthought. The ld AR submitted that the original authority failed to appreciate all the evidences gathered by the officers and erred in dropping the proceedings.

3. The ld Counsel for the respondent submitted that the Revenue has no case against them. The whole dispute revolves around the alleged cracking or tempering of the seal put on the machine on 31.08.2014 by the officers as per the request of the respondent. The original authority has correctly referred to the report dated 22.09.2014 of Jurisdictional Assistant Commissioner. The letter in detail was reproduced by the original authority and this will clearly show that there is no case for clandestine manufacture or clearance of pan masala. The availability of small quantity of packing material and finished goods have been duly explained by the respondent and the same has been analyzed and recorded by the original authority. In the present appeal, the Revenue did not bring out any material evidence to contradict the findings of the original authority.

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

5. The respondent requested for sealing their machine on 31.08.2014. The same has been done as per the standard practice by the Jurisdictional Officers.

The original authority has given detailed finding regarding the nature of seal and the practice followed in similar such cases. He categorically recorded that when officers visited the factory on 15.09.2014, they have noticed certain crack on the bottle seal and accordingly alleged that the respondent tempered with the seal and indulged in un-accounted manufacture. We note that the Jurisdictional Assistant Commissioner made a physical inspection of the premises and the machine involved in the present proceedings. His report of inspection was produced in full in the impugned order (para 8.2). It is clear that based on that report, the original authority categorically recorded that possibility of the machine having been operated without removing the bottle seal and metal strip is remote.

6. The Revenue also alleged that the case for un-accounted clearance being supported by the availability of certain packing materials and finished goods. These aspects have been examined, in detail, by the original authority. Even if there were certain discrepancies in the recital of evidence, we note that a case for clandestine removal of pan masala with the duty liability of Rs.59.60,000/- can not be made without any basic evidence of actual manufacture and clearance of the impugned goods. In the present case, the incidental stock, circumstantial evidence of availability of small quantity of raw material/goods was the only evidence on which such substantial demand was sought to be confirmed by the Revenue. We note that the original authority has correctly examined the evidences and concluded that no case against the respondent could be established. We are in agreement with the said finding and find no reason to

interfere with the order passed by the original authority. Accordingly, the appeals by the Revenue are dismissed.

(Pronounced in Court on 20.10.2017)

(Justice (Dr) Satish Chandra)
President

(B. Ravichandran)
Member(Technical)

pcs