CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50427 of 2016

(Arising out of Order-in-Original No. 29/Pr. Commr/CEX/BPL-I/2015 dated 29.12.2015 passed by the Principal Commissioner of Central Excise, Customs & Service Tax, Bhopal**)**

DATE OF HEARING : 21.11.2017
DATE OF DECISION : 21.11.2017

M/s Kaipan Pan Masala Pvt. Ltd. …. Appellants
(Rep by Sh. Aditya Kumar, Adv.)

VERSUS

CCE, Bhopal …. Respondent
(Rep. by Sh S.K. Bansal, DR)

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

FINAL ORDER NO. 58071/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. 29/Pr. Commr/CEX/BPL-I/2015 dated 29.12.2015 passed by the Principal Commissioner of Central Excise, Customs & Service Tax, Bhopal. The period in dispute is 1 to 3 April, 2012.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the

manufacture of Pan Masala & Gutkha. There was an apprehension that the Government of Madhya Pradesh is going to ban Pan Masala & Gutkha, so they applied to the Department for sealing their machines on 28.03.2012. On 31.03.2012, a team of Officers came from the Department to seal the machines, but the assessee-Appellants did not allow them by saying that the Notification of the State Government is yet to come. Therefore, the team had to go back without sealing the machines. It is the submission of the assessee-Appellants that, in the late hours of 31.03.2012 they have received the copy of Order No. 3/Food/2/19/06/3765 dated 31.03.2012 banning Pan Masala and Gutkha. Since the following days i.e. 1st and 2nd April, 2012 were Saturday and Sunday, they could give the letter to the Department only on 03rd April, 2012 for sealing the machines. On the basis of this letter, on that very day at 7.30 PM, the Officers visited and sealed the machines. The Department has demanded duty for 1st, 2nd & 3rd April, 2012. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Aditya Kumar, learned counsel for the assessee-Appellants and Shri S.K. Bansal, learned DR for the Department.

4. The learned counsel, at the strength of the Panchnama, submits that, when the team of Officers from the Department came, the machines were covered and stitched with cloth. He also submits that the letter was submitted to the Department on 2nd

April, 2012 where it is stated that the Government Officers from Food & Safety Department visited the factory on 1st April, 2012. He further submitted that when the State Government has banned the Pan Masala & Gutkha, there was no occasion to manufacture the same.

5. On the other hand, the learned DR for the Department has justified the impugned order. He submits that, about the visit of the Officers from the Food & Safety Department, no evidence was produced. He also submits that, when on 31.03.2012 the team of Officers from the Department visited the factory premises, then the owner said that the production will continue and duty will be paid.

6. After hearing both sides and on perusal of the material available on record, it appears that the factory was sealed only at 7.30 PM on 3rd April, 2012. On 31st March, 2012, at midnight, when the Officers visited the factory premises, the assessee-Appellants did not allow them by saying that the State Government notification is yet to come and production will continue and duty will be paid. But it is the mystery before the Tribunal that at midnight wherefrom the order of the State Government banning Pan Masala & Gutkha has come into the possession of the assessee-Appellants.

7. In these circumstances, it is, *prima facie,* evident from the record that the factory was sealed on 3rd April, 2012 at 7.30 PM and assessee-Appellants were covered by the compounded levy of

duty under Section 3A of the Central Excise Act, 1944 in terms of which duty is required to be paid on the basis of number of packing machines installed in the factory. Actual production is not necessary. For the period prior to sealing the machines, the duty is leviable. Hence, we do not find any reason to interfere with the impugned order and the same is hereby upheld along with the reasons mentioned therein.

8. In the result, the appeal filed by the assessee-Appellants is dismissed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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