

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Order: 12.1.2018

Appeal No. E/50316-50317/2017-DB

(Arising out of Order-in-Original No. 28/COMMR/CEX/UJN/2016 dated 20.10.2016 passed by the Commissioner of Central Excise & Service Tax, Ujjain)

Pradeep Billaiya
Kuldeep Billaiya

Appellant

Vs.

CCE & ST, Gwalior

Respondent

Appearance

Shri B.K. Singh, Advocate
Ms. Vandana Singh, Advocate

- for the appellant

Shri H. Saini, D.R.

- for the respondent

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

Final Order No. 50175-50176/2018

Per Justice Dr. Satish Chandra :

The present appeals have been filed by the appellant against the Order-in-Original No. 28/2016 dated 20.10.2016. The period of demand is April 2013 to 29.1.2014.

2. The brief facts of the case are that both the appellants who are the brothers were engaged in the manufacturing of the chewing tobacco which was sold in the pouches of Rs. 2/- and 5/- by the appellant. A search was conducted at the business premises of the

assessee on 29.1.2014, where two pouch packing machines, raw material and finished goods were found. The Hathi Chhap brand was used by the appellant. On the basis of the seized material, a case of the clandestine removal has been made. Penalty was also imposed on the appellants. Being aggrieved, the appellants have filed the present appeals.

3. With this background, heard Shri B.K. Singh. The Id. Counsel in his lengthy arguments, at the strength of written submission, submits that his client is innocent. He submits that Shri Kuldeep Billilaiya, the resident of Chhatarpur (appellant) is, of course, engaged in the manufacturing of the chewing tobacco. They are the owner of the machines which were installed at the factory premises. Shri Mohammad Hussain Alias Raju Khan was working as machine operator/labourer. In his statement, he submitted that the entire tobacco was sold to Shri Manoj Gupta (Monu Bhaisahab) of Gwalior. It is the submission of the Id. Counsel that the appellant was not engaged in the manufacturing of the gutkha. The classification has wrongly been made by the lower authority for levy of the duty. He also submits that for the period Jan to May 2013, there was no machine available so the duty demand for this period is against the law. He also submits that no opportunity was provided for cross examination of Shri Raju Khan alias Mohammad Hussain which is the violation of the natural law as per the ratio laid down in the case of

K.K. Sales Vs. CCE, Delhi-II – 2017 (345) ELT 540 (Tri.-Del.). To support his arguments, he also relied on the ratio laid down in the case of ***Lakshman Exports Limited Vs. CCE*** - 2002 (143) ELT 21 (SC). Lastly, he submits that the impugned order may kindly be set aside.

4. On the other hand, Shri Saini, ld. DR had justified the impugned order. He submits that at the time of search, along with the two pouch machines, sufficient raw material and inputs were found. The appellant prepared the packing pouches of Rs. 2/- and 5/- which were sold to Shri Manoj Gupta (Monu Bhaisahab) of Gwalior. In the statement of Shri Mohammad Hussain Alias Raju Khan, it is stated that the real owner of the machine and tobacco is the appellant i.e. Shri Kuldeep Billaiya. Lastly, he submits that in the show cause notice, proper opportunity was given to the appellant to furnish the reply.

5. After hearing both the parties and on perusal of record, we are of the view that in the instant case, Sh. Kuldeep Billaiya, the appellant was engaged in the manufacturing of chewing tobacco. He engaged two persons namely Bhola and Shri Mohammad Hussain Alias Raju Khan, for the purpose. Hathi Chhap tobacco was prepared in the factory and packed in the pouches of Rs. 2/- and 5/- each and the same was sold. The statement of the concerned

persons were recorded. The appellant is not availing the compounding scheme at the time of manufacture of chewing tobacco. So, the appellant was not paying any duty. The servants made the statement which requires no verification or cross examination as they merely stated about the ownership.

6. Thus, it is evident that the appellant was manufacturing the chewing tobacco without paying any duty in the clandestine manner. When it is so, then we find no reason to interfere with the impugned order.

7. However, during the course of arguments, the Id. Counsel for the appellant submits that for the period Jan. to May. 2013, the machines were neither purchased nor the premises was hired. So, there was no manufacturing activity during this period. Hence, he submits that during the period there was no manufacturing activity. For this limited purpose, we remand the matter to the original authority to verify whether there was any manufacturing activity for the period Jan. to May 2013 or not and levy the duty and penalty for this period, accordingly, but by providing reasonable opportunity to the appellant. Except it, we find no reason to interfere with the impugned order which is hereby sustained along with reasons mentioned therein.

8. In the result, appeals filed by the appellant are disposed of by modifying impugned order for the limited purpose (supra).

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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