

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Appeal No. E/75250/2015

(Arising out of Order-in-Appeal No. 01/KOL-III/2014 dated 14/11/2014, passed by the Commissioner (Appeals-II), Central Excise, Appeal-I, Kolkata.)

Commissioner of Central Excise, Kolkata-III Applicant (s)/Appellant (s)

Vs.

M/s. Paras Surti Products (P) Ltd.

Respondent (s)

Appearance:

Shri S. S. Chattopadhyay, Suptd. (A.R.) for the Revenue

Shri A. K. Das, Adv. for the Respondent(s)

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -08.08.2018

Date of Pronouncement:-04/12/2018

Order No. FO/77063/2018

PER CORAM

Briefly stated the facts of the case are that the Respondent is engaged in the manufacture of Pan Masala without Tobacco and Nicotine classifiable under Chapter 21 of the Central Excise Tariff Act, 1985. They filed Refund/Abatement claim under Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 under Notification No. 11/2010-CE (NT) dated 27.02.2010 as amended for non-production of Pan Masala. The Assistant Commissioner of Central Excise, Barasat Division sanctioned the abatement due to non-production of Pan Masala (without Tobacco and Nicotine). Revenue filed appeal before the Commissioner (Appeals) against the Order of the Adjudicating authority. By the impugned Order, the Commissioner (Appeals) upheld the Adjudication Order. Hence, the Revenue filed this appeal.

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2. Shri S. S. Chattopadhyay, Suptd. (A. R.) appeared on behalf of the Revenue and Shri A. K. Das, Ld. Advocate appeared on behalf of the Respondent.
3. After hearing the Learned A/R and on perusal of the records, I find that the main contention of the Revenue is that Pan Masala Packing Machine's specification like Model No., Identification mark were not mentioned and pouching work was closed on flimsy ground. It is also contended that Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008, prescribes a continuous period of 15 days closed down for being eligible for abatement. In this case the assessee has closed down for 26 days i.e. for the period from 05-09-2013 to 30-09-2013 (i.e. 26 days) after deduction of duty payable for four days (01-09-2013 to 04-09-2013).
4. The assessee contended that the machine was closed down for more than 15 days continuously for non-manufacturing activities. For the proper appreciation of the case, the findings of the Commissioner (Appeals) are reproduced below:

7."I have gone through the OIO, Review order, ground of appeal, cross objection of respondent/reply of cross objection and proceedings of the PH and find that Rule 10 and 13 of PMPM (CD & CD) Rules, 2008 has prescribed a procedure for abatement of duty, sealing and removal of machine. In this appeal, the application of sealing was received on 02.09.2013 prior to three working days on ground of 'rainy season' and said machine was sealed on 5.9.2013 thereafter said machine became non operative w.e.f. 5.9.2013. September month is a rainy season therefore in anticipation of heavy rain a manufacture can close down their machine to avoid the moisture in pan masala commodity. Since said machine was put into operation on 1.9.2013 and on next day on 2.9.2013 it was decided not to keep continue the production

of pan masala due to rainy season therefore application of uninstalling the said machine were filed before Astd. Commissioner. In Review order, Department has wrongly raised the doubt that on next day of installment of said machine, respondent again requested for suspension of operation. A manufacture can decide whether to continue or discontinue the operation of manufacturing activities even on the very first day of operation and after intimation of closure from manufacturer, Department is only required to exercise the due supervision of sealing, uninstalling and removal activities of said machine. Verification of specification like machine serial number etc is job of departmental officer who had submitted his report timely which has not been questioned in review order. I do not find any contradiction in 'wordings' of applications specifically when respondent had requested to install only 'one' machine therefore no detail specification is required in single number machine. I do not find any misdeclaration or excess number machines case, if any, against the Respondent therefore such type pedantic approach is only hypothetical rather than any cogent evidence. Drawing of Panchnama while sealing the such Panmasala Machine has not been prescribed in PMPM (CD&CD) Rules, 2008. Non mentioning of place removal in application may be a technical error which could be verified from the report of superintendent in whose physical supervision said machine was removed upto place of removal.

8. I find that sanctioning of abatement, legality and prosperity of OIO, sealing procedure and closing of machine has not been disputed in review order but without any reasoning inference has been drawn against Respondent's applications of installation and un-installation on presumption basis. The Respondent had given prior intimation on 2.9.2013 regarding closure of the factory in terms of the provisions of Rule 10 of the Pan Masala packing Rules well in advance, that just because the Respondent did not mention the specification of machine cannot make their abatement claim fraudulent. There is no evidence that said machine had functioned after these three days. Once the Respondent had given the intimation at least three days prior to the closure of the factory, it is for the department to seal the factory in time. Wherever a

manufacturer of Pan Masala sends an application to the Jurisdictional Assistant Commissioner informing him as to whether the unit is to be closed down for a certain period or that unit is to restart after a specific period then, in my view, that would be sufficient compliance of Rule 10 & 13 of PMPM (CD&CD) Rules, 2008 all that the manufacturer can do is to intimate the jurisdictional Assistant Commissioner who would be the competent officer on whom information regarding closure or restart of the unit can be given. Since in reply of cross objection of Respondent, department has informed vide letter No.V(2)1/Paras Surti (U-II)/Appeal/Tech/BST/2014/1501 dated 28.05.2014 wherein all the brief facts of verification of installing and uninstalling of the said machine was reiterated and finally mentioned that OIO was passed after conducting pre-audit verification and following all the procedure as laid down in rule 10 and rule 13 of PMPM (CD&CD) Rules 2008 (as amended). Therefore, I do not find any illegality or perversity in OIO and there is no justification in the reasoning of above said review order therefore I consider the departmental liable for dismissal."

5. I find that the assessee submitted calculation of abatement of duty for which the machine was in sealed condition during the relevant month. It is seen from the Adjudication Order that no other production was made on and from 05.09.2013 to 30.09.2013 i.e. for 26 days for which the abatement was claimed. After considering the facts and law of the case, I do not find any reason to interfere with the orders of the lower authorities and accordingly they are sustained.

6. The appeal filed by the Revenue is dismissed.

(Pronounced in the court on 04/12/2018.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Pooja