IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76133 of 2014

(Arising out of Order-in-Appeal No. 08/Kol-III/2014 dated 30.04.2014 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s Loknath Prasad Gupta,
(R. K. Dev Path, P.O.-Titagarh, Dist.-North 24 Parganas,
Kolkata-700119)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata-III,
GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

.. ...**Respondent**

APPERANCE :

Ms. Payal Bharwani, Mr. Deepro Sen & Mr. Vasudev A. Advocates for the Appellant

Shri K. Chowdhary, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No. 76599/2024

DATE OF HEARING : 02.08.2024

DATE OF DECISION : 02.08.2024

PER R. Muralidhar :

The appellant Lokenath Prasad Gupta is manufacturer of chewing tobacco known as Raja Khaini. On 5.6.2012, they have submitted a letter stating that the packing machines installed at their factory premises would not be operated after 9.6.2012. They have also intimated that the factory will remain closed with effect from 9.6.2012 and thereafter there will be no manufacturing activities with effect from 9.6.2012. On 7.6.2012, the Deputy Commissioner acknowledged the appellant's intimation and directed the appellant to ensure that no manufacturing activity takes place after 6 p.m on 8.6.2012, till further order, except for removal of goods already produced before 9.6.2012. The machines were sealed on 9.6.2012. There was no production during the period July and August 2012. On 21.08.2012, the appellant surrendered their Central Excise Registration online. On 23.08.2012, the appellant filed a refund claim under Rule 17 of Tobacco Rules, claiming refund of Rs.70,40,000/-. The adjudicating authority rejected the refund claim, holding that the refund claim filed by them does not fulfill the conditions specified in Rule 17 of Tobacco Rules. On appeal, the Commissioner dismissed the appeal filed by the appellant. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that there is no dispute that on 5.6.2012 itself, the appellant has filed a letter with the jurisdictional Deputy Commissioner to the effect that they do not intend to operate any of the packing machines installed after 9.6.2012. Thus, they have given three clear days advance notice about their stoppage of their operations with effect from 9.6.2012. They have also intimated in the letter that the factory will remain closed "with effect from 9.6.2012". Admittedly, there is no allegation in the Show Case Notice or in the orders passed that the appellant has carried out any manufacturing activity during the month of June, July and August 2012.

3. After surrendering of their Central Excise Registration on 21.08.2012, the appellant has filed the refund claim on 23.08.2012. Taking the stand that there is a gap of more than two months from the date of stoppage of the manufacturing activity on 9.6.2012 and surrendering of registration on 21.08.2012, both the lower authorities have held that Rule 17 conditions have not been fulfilled. A on this ground the refund was denied.

4. The Learned Counsel submits that this stand is erroneous since it is on record that no manufacturing activity has taken place from 9.6.2012 onwards and nothing has been brought in by the department to show that there was any production during the period June, July and August 2012 till the registration was surrendered on 21.08.2012. Therefore, the appellant submits

that they have correctly filed their refund claim for the amount lying with the department. As an alternate submission, they also submit that under Rule 10 of the Tobacco Rules, if there is no production for a continuous period of 15 days or more, then the amount lying with the Department is required to be refunded. In this case, it is on record that there was no production from 9.6.2018 onwards. Therefore, even under Rule 10, they are eligible to get the refund claim. In view of these submissions, the Learned Council submits that the present appeal may be allowed.

5. The Learned AR reiterates the findings of the lower authorities and submits that there was a delay of more than two months in surrendering their registration and hence the lower authorities have correctly taken the stand that the conditions of Rule 17 have not been fulfilled. Hence, he submits that the present appeal may be dismissed.

6. Heard both sides and perused the documents placed by both the sides. At page No. 50 of the appeal Paper Book, we find that the appellant has enclosed copy of the letter addressed to the Deputy Commissioner, Karnad 1 Division, Kolkata. Vide this letter dated 5.6.2012, they have informed that the packing machines installed in their factory premises would cease to be operational with effect from 9.6.2012. They also stated that the factory itself will be closed with w.e.f. 9.6.2012 onwards. It is also on record that this letter has been acknowledged by the Deputy Commissioner and he has also sent a letter stating that no further activity of manufacture should be taking place after this date. There is no allegation from the Department side that there was any manufacturing activity during the period June 9.6.2012 to 21.8.2012, the date on which the Central Excise Registration was surrendered by the appellant. Based on this factual evidence, we do not see any reason as to why the appellant should be denied the refund claim filed by them. The main intention of Rule 17 is to ensure that no activity of production/manufacture

takes place in order to claim the refund claim. In this case, it is very clear that no manufacturing activity has taken place after 9.6.2012, the date on which the machines were sealed by the Central Excess Officials. Though admittedly the appellant has committed procedural errors, but as can be seen from the above details, substantial compliance is in place. Therefore, in the interest of justice, we take the view that the benefit should not be denied on account of such procedural errors. Hence, we hold that the lower authorities have erred in not granting the refund claim sought by the appellant.

7. We also see force in the appellant's argument that even under Rule 10 of the Tobacco Rules, once the manufacturing activity ceases for 15 days or more, then the assessee should be refunded the amount lying with the Department. We hold that even on this count, the appellant would be eligible for the refund claimed by them.

8. In view of the foregoing, we set aside the impugned order and allow the appeal. The appellant would be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(R. Muralidhar)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

Tushar Kr.