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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75701 of 2016

(Arising out of Order-in-Appeal No.31/SH/CE(A)/GHY/2016 dated 28.03.2016 passed by Commissioner of Customs(Appeals), Central Excise & Service Tax, Guwahati)

M/s. Dharampal Satyapal Ltd.,

Unit-2, Arundhutinagar Industrial Area, Agartala, Tripura (West)

...Appellant

VERSUS

Commissioner of Central Excise, Shillong

.....Respondent

(Morello Compound. M.G.Road, Shillong, 793001)

APPEARANCE

Shri Dipankar Majumdar, Advocate for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K.ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO 75711/2025

DATE OF HEARING :04.03.2025
DATE OF DECISION: 04.03.2025

Per :Ashok Jindal :

The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the Ld. Commissioner (Appeal). The brief facts are as under:

"*2.1. M/s. Dharampal Satyapal Ltd., Arundhutinagar Industrial Estate, Agartala, Tripura (West), holding Central Excise Registration No. AAACD0132HXM006 a manufacturer of Zarda Scented Tobacco falling under Central Excise Tariff Sub Heading No. 24039930 of the Central Excise Tariff Act, 1985, has submitted refund claim of excise duty of Rs. 8,77,419/- on 18.04.2012 against abatement claimed for non production of notified goods for continuous period of seventeen days i.e. during the period 15.03.2012 to 31.03.2012 in terms of rule 10 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines*

(Capacity Determination and Collection of Duty) Rules, 2010 as amended.

2.2. The said appellant in their refund application dated 18.04.2012 stated that they had paid an amount of Rs. 16,00,000/- towards excise duty for operation of 2(two) nos. of single track FFS machine in the month of March/2012 for production of pouches of notified goods i.e. Tulsi o X 0.225 paper mint pouch (Retail Sale Price Rs. 1.00 per pouch) vide e-Challan No. 3881 dated 05.03.2012. Further, another single Track FFS Machine namely PST-I newly purchased by the said appellant had been added in the said factory during the month of March, 2012 and the said machine had been installed and operated for two days i.e. 13.03.2012 & 14.03.2012 for production of notified goods i.e. Tulsi "00" X 25 Gram of paper pouch (retail sale price of Rs. 115.00 per pouch, rate of duty being 4,55,15,000.00 per packing machine per month specified for Chewing Tobacco without lime tube vide Notification No. 19/2010 CE dated 13.04.2010). For operating the said PST-I machine, the appellant also deposited an amount of Rs. 29,36,245/- on 30.03.2012. Due to change in production plan they had intimated excise department for sealing of all FFS machine on 14.03.2012 and accordingly all FFS machines were uninstalled and sealed on 14.03.2012 at 23.59 hrs and there was no production of notified goods in their factory premises for continuous period of 17 days starting from 15.03.2012. to 31.03.2012. And since no notified goods has been produced in their factory premises for continuous period of 17 (seventeen) days and no notified goods was cleared during that period except notified goods already produced has been cleared within first two days of the commencement of the said period they are satisfying the criteria for getting abatement of excise duty in terms of Rules made under Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, as amended. And as such they are eligible for excise duty abatement of Rs. 8,77,419/- for not producing of notified goods for continuous period of 17(seventeen) days starting from 15.03.2012 to 31.03.2012 in terms of rule made under Chewing

Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, as amended.

2.3. Having regards to the above facts the Assistant Commissioner, Central Excise & Service Tax Division, Agartala vide his order in original No. 01/AGT/ACA/2012-13 dated 02.01.2013 rejected the refund application stating that during the month of March, 2012 the said factory did not produce any notified goods during a Continuous period of 17 (seventeen) days w.e.f. 15.03.2012 to 31.03.2012. Out of 5(five) nos. of packing machines available in the factory premises of M/s. Dharampal Satyapal Ltd. (Unit-2), 2 (two) nos. of packing machines remained uninstalled and sealed for whole of the month of March/2012, and the other three nos. of packing machine remained uninstalled and sealed w.e.f. 15.03.2012 to 31.03.2012. The said appellant is found to have followed all the conditions as laid down under rule 10 ibid as amended. If the said appellant would have discharged their central excise duty liability for the month of March, 2012 correctly, the said appellant would have been eligible for abetment of duty calculated on a proportionate basis for a continuous period of 17 (seventeen) days w.e.f. 15.03.2012 to 31.03.2012, as per rule 10 ibid. But as discussed above, the said assessee is found to have not discharged their duty liability for the month of March, 2012. Hence the said appellant is found to be not eligible for duty abatement as per rule 10 ibid.

2.4. On being aggrieved by the said Order passed by the Learned Assistant Commissioner, Central Excise & Service Tax, Agartala the said appellant preferred appeal before the Hon'ble Commissioner (Appeals), Customs, Central Excise & Service Tax, Guwahati vide Order-in-Appeal No. 19/SH/CE(A)GHY/2015 dated 26.02.2015 has remanded the case to the original authority to re-decide the case after observing the Principles of Natural Justice as well as under the Act and Rules in force. "

2. The appellant contested the issue before the Adjudicating Authority and the Adjudicating Authority rejected the refund claim

holding that payment of appropriate duty at the beginning of the month is mandatory under rule 9 of Chewing Tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. Further, proper duty was not paid in respect of the said three machines despite having clear legal provision for payment of such enhanced and differential duty in the statute of the relevant compounded levy scheme. Under Chewing tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, actual production of goods is not the basis for levy of duty and the very object of the present compounded levy under Sec3A of CEA is to collect the monthly duty determined under said Rule by 5th of every same month, otherwise the very purpose of the Rule would be defeated. However, he accepted, the appellant's contention that abatement arises from an amount paid as "duty" when it as "not leviable". But, in the present case under consideration, that amount which is paid as "duty" was not fully discharged as required under the relevant rule. The said order was challenged before the Ld. Commissioner (Appeal) who affirm the order of the Adjudicating Authority.

3. Aggrieved from the said order appellant is before us.

4. The Ld. Counsel for the appellant submits that the appellant paid duty initially for two machines and another machine was installed 13th March, 2012 and 14th March, 2012 on which the appropriate duty was paid by them on 30th March, 2012. Therefore, appellant has paid whole of the duty, whether the whole of the duty was payable by them in advance or not was examined by this Tribunal in their own case in CE appeal No. 75381/2014 vide Final Order No. 75071-75072/2025 dated 17th January, 2025 wherein the duty paid by the appellant on 30th March, 2012 was found to be correct duty paid by the appellant. Therefore, no demand is sustainable by the appellant for the said month and machine remain closed for more than 15 days continuously. In that circumstances, the appellant is entitled to claim the refund/abatement for the period when the machine remain closed.

5. In that circumstances, we do not find any merit in the impugned order. The same is set aside.

6. In result, appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K.ANPAZHAKAN)
MEMBER (TECHNICAL)

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