CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 88538 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/157/2017-18 dated 16.05.2018 passed by the Commissioner of CGST & CE(Appeals), Nagpur I)

M/s. Fasttrack Packers P. Ltd. **.....Appellant**
Gut no. 59, Behind Mahalaxmi Petrol Pump,
Jalna Beed Road, Parner,
Tal. Ambad, Dist. Jalna

VERSUS

Commissioner of Central Excise & **.....Respondent**
Service tax, Aurangabad
N-5, Town Centre, CIDCO,
Aurangabad

APPEARANCE:

None for the appellant
Shri N.N. Prabhudesai, Supdt. (AR) for the respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86629 / 2019

DATE OF HEARING : 18.09.2019
DATE OF DECISION : 18.09.2019

Nobody appeared for the appellant. Accordingly, I have heard the Learned AR and gone through the impugned order.

2. It is seen that the appellant is engaged in the manufacture of tobacco products and was liable to discharge duty liability in

terms of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. Their factory remained closed from 18.04.2015 to 15.05.2015 for a period of 28 days after due intimation to the Revenue. The machines were accordingly sealed by the Jurisdictional Central Excise authorities.

3. In terms of the provisions of Rule 9 of the said Rules, an assessee is required to first deposit the duty fixed under the said Rules by 5th of the succeeding month. Rule 10 permits abatement of duty if the factory is closed continuously for a period of 15 days or more. The duty deposited by the assessee at the start of the month is required to be refunded to him in case of abatement claim filed by him.

4. In the present case, the appellant claimed abatement for the month of April 2015 inasmuch as the duty was deposited for the said period. However, for the next month i.e. May 2015 he did not deposit the duty for the period of closure till 15.05.2015 and claimed abatement himself.

5. In the above background, the Asst. Commissioner passed an order considering that the factory was closed for a continuous period of 28 days and as such the appellant was entitled to the abatement for the month of April 2015, and granted the abatement for ₹46,10,233/-. The said order of Asst. Commissioner was appealed against by Revenue before the Commissioner (Appeals). The appellate authority observed that

inasmuch as in the month of April, the factory was closed only for a period of 13 days, thus not fulfilling the criteria of closure of 15 days, the abatement cannot be sanctioned. He also observed that for the month of May till 15.05.2015, the appellant *suo motu* did not deposit the duty, whereas they were required to first deposit the duty and then claim the abatement. As such, he observed that the continuous closure of the factory for a period of 28 days cannot be adopted for purpose of abatement and only the closure of 13 days in the month of April 2015 is required to be considered. Inasmuch as the said closure was less than 15 days, he held the abatement cannot be sanctioned. Accordingly, he set aside the order of Asst. Commissioner and allowed the Revenue's appeal. Hence the present appeal by the assessee.

6. I find that there is no dispute about the fact that the factory was continuously closed from 18.04.2015 to 15.05.2015. In such a scenarios, the assessee was entitled to the abatement of duty for the month of April 2015 as also May 2015 depending upon the closure period. The artificial bifurcation done by the Commissioner (Appeals) for April 2015 and May 2015 separately thus holding the period of closure in April was only 13 days, cannot be appreciated. No doubt, for May 2015 appellant was required to pay duty and then claim abatement but the said procedural lapse on the part of the assessee cannot lead to the denial of benefit otherwise available to the assessee. At the most, he would be liable to pay the interest from the date when

he was required to deposit the dues in terms of the said Rules and till the date when he was entitled to the abatement. As such I set aside the impugned order holding that the assessee was entitled to the abatement for both the months for the closure period, with directions to the original authority to quantify the interest liable to the assessee in terms of the observation made above.

7. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

//SR