CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85729 of 2020

(Arising out of Order-in-Appeal No. AJV/20/RGD-APP/2019-20 dated 20.12.2019 passed by the Commissioner of CGST & Central Excise (Appeals), Raigad)

M/s Godfrey Phillips India Ltd **.... Appellant**
Plot No. 19, MIDC TTC Industrial Area, Opp. Rabale Stataion, Rabale, Navi Mumbai – 400701.

Versus

Superintendent of Central Excise-Belapur **.... Respondent**
CGO Complex, 10, CBD Belapur, Navi Mumbai-400614.

Appearance:

Shri Saurabh Bhise, Advocate for the Appellant

Shri Xavier R. Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85379/2023

Date of Hearing: 14.03.2023

Date of Decision: 14.03.2023

Per: Anil G. Shakkarwar

Appellant is manufacturer of Cigarettes. They were issued with a show cause notice dated 18.01.2018 proposing to impose penalty under Rule 27 of Central Excise Rules, 2002, for not filing quarterly return in Annexure-G format prescribed under Cigarette Excise Manual for the period from 2013-14 to 2015-16. Original authority imposed a penalty of Rs. 60,000/- on the appellant under the said rule. Learned Commissioner (Appeals) did not interfere. Therefore, the appellant is before this Tribunal.

2. Heard the learned Counsel for the appellant. He has submitted that maximum penalty imposable under Rule 27 *ibid* is Rs. 5,000/- whereas penalty of Rs. 60,000/- was imposed on them. He submitted that all the returns prescribed under Rule 12 of Central Excise Rules, 2002 are being regularly filed by them. Revenue never pointed out in the past that any return in said Annexure-G was required to be filed by them. He further relied on final order of this Tribunal in the case of Nangia Enterprises Private Limited reported at 2015 (317) ELT 475 (Tri-Delhi) and submitted that this Tribunal has also held that after issue of Central Excise Rules, 2002 returns as required under Rule 12 of Central Excise Rules, 2002 are required to be filed. He further submitted that this Tribunal has also held that the records required to be maintained under Rule 94 of Central Excise Rules, 1944. Were required to be maintained before issue of said 2002 Rules and that there is no provision of maintaining records required by said Rule 94 after issue of Central Excise Rules, 2002. He further prayed to set aside the penalty imposed.

3. Heard the learned AR. He has submitted that Cigarette Excise Manual requires the appellant to file quarterly return and it is a fact that they have not filed the return and therefore, supports the impugned order.

4. I have carefully gone through the records of the case and submissions made. I find that there is no dispute that the appellant were filing the returns as required under Rule 12 of Central Excise Rules, 2002. I have also gone through the final order relied upon

by the appellant. I reproduce para 8 of the said final order as follows:-

> *8. As per Rule 12 of the said Rules, the appellants are required to file monthly returns as specified by the notification but no notification has been issued to maintain the records as desired by the lower authorities in the impugned order. Moreover, I have gone through the earlier Rules also i.e. Central Excise Rules, 1944. As per these Rules, Rule 94 requires that appellants are required to maintain such records but there is no provision of maintain such records as cited by the lower authorities in the impugned order under new Rules. Therefore I hold that penalties are not imposable on the appellants and impugned orders are set aside and appeals are allowed with consequential relief, if any.*

It is clear from the precedent decision of this Tribunal that there is no provision under the Central Excise Rules, 2002 to maintain records as required by Rule 94 of Central Excise Rules, 1944. Therefore, the penalty imposed is not justified. I, therefore, set aside the impugned order and allow the appeal.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha