CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH

Excise Appeal No. 86553 of 2013

(Arising out of Order-in-Appeal No. PIII/RP/07/2013 dated 10.01.2013 passed by the Commissioner of Central Excise (Appeals-III), Pune.)

M/s. Godfrey Philips India Ltd. ....Appellant
Plot No. A-1/1, MIDC Industrial Area,
Baramati, Pune – 413 102.

VERSUS

Commissioner of Central Excise & Service Tax, Pune-III ....Respondent
Ice House, 41-A, Sasson Road,
Opp. Wadia College, Pune,
Maharashtra – 411 001.

<u>APPERANCE:</u>

Shri Gajendra Jain, Advocate for the Appellant alongwith
Shri Saurabh Bhise, Advocate

Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85686/2023

Date of Hearing: 29.03.2023
Date of Decision: 29.03.2023

PER: ***Dr. Suvendu Kumar Pati***

Legality of the order passed by the Commissioner (Appeals) modifying duty liability of the appellant under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 to Eight numbers from Sixteen numbers of machines having production capacity, as determine by the Original Authority for determination of duty liability, while two machines are claimed by the appellant as actually in operation in the appellant's factory, is assailed by the appellant in this appeal. Facts of the case, in nutshell, is that appellant is a manufacture of Pan Masala on whom provisions governing levy of Central Excise duty on Pan Masala contained in Section 3A of the Central Excise Act, 1944 read with Notification No. 42/2008-CE dated 01.07.2008 and Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 is applicable and accordingly, he has been discharging duty liability in terms of those provisions and rules. *Vide* Notification No. 13/2012-CE dated 17.03.2012, rate of duty for packing machine per month was increased by amending Notification No. 42/2008-CE dated 01.07.2008. Pursuant to the said notification, appellant was called upon for redetermination of its annual capacity of production and taking note of his submissions, *vide* Order-in-Original No. APCD-01/CEX/2012-13 dated 12.04.2012 its annual production capacity and monthly duty liability were determined with effect from 17.03.2012 by taking into consideration uninstalled and sealed packing machines lying in the factory and determining the capacity of some machines in packing pouches of two MRPs of Rs. 2.50 and Rs. 6 respectively as two productive machines. Appellant challenged the said order before the Commissioner (Appeals) who reduced the number of machines from 16 as determined in Order-in-Original to 8 machines by holding that there was no justification to consider all 8 machines for fixing monthly duty liability for having capability to manufacture pouches of two categories having two MRPs. The said order is assailed by the appellant before this forum.

2. During the course of hearing, learned Counsel for the appellant submitted that proviso read with Rule 7 clearly indicate that duty payable for a particular month is to be collected on the basis of the capacity of number of operating packing machines available in the factory during a particular month and machines uninstalled as well as sealed by the Superintendent of Excise if, not feasible to remove out of factory, is not to be considered as operational. He further pointed out that placing reliance on the judgment of the Hon'ble Allahabad High Court in the case of *Commissioner of Central Excise Vs. Kay Pan Masala Pvt. Ltd. – 2014 (301) ELT 165 (ALL.),* and on the decision of this Tribunal in the case of *Commissioner of Central Excise, Lucknow Vs. Phool Chand Sales Corporation - 2018 (364) ELT 934 (Tri-All.)*, this bench had passed Final Order on dated 19.05.2022 in appellant's own case holding that determination of annual capacity and duty liability is to be made on the basis of operational machines and the packing machines sealed in the factory is to be treated as uninstalled and accordingly, the matter for the earlier period of the appellant was remanded to the Original Authority for determination on the basis of observation made in para 4.10 of the said order.

3. We, therefore, consider it proper to remand this appeal also to the Original Authority for re-determination on the basis of the order passed by this Tribunal on dated 19.05.2022 read with ROM passed in Miscellaneous Order No. M/85676-85679/2022 dated 20.09.2022. Hence the order.

4. The appeal is allowed by way of remand to the Original Authority for determination of the production capacity and computation of duty liability accordingly, in terms of observation made above in Excise Appeal Nos. E/167/2012, E/168/2012, E/589/2012 & E/714/2012 and Excise ROM Nos. E/ROM/85880-85883/2022. Accordingly, the order passed by the Commissioner (Appeals) on dated 10.01.2013 is hereby set aside.

(Dictated & Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sujeet