CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87850 of 2013

(Arising out of Order-in-Appeal No. PIII/RP/111/2013 dated 12.04.2013 passed by the Commissioner (Appeals-III), Central Excise, Pune.)

Godfrey Phillips India Ltd. **.... Appellant**
Plot No. A-1/1, MIDC Industrial Area,
Baramati, Pune- 413 102.

Versus

Commissioner of Excise and Service Tax, Pune-III **.... Respondent**
41-A, ICE House, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

With

Excise Appeal No. 89866 of 2013

(Arising out of Order-in-Appeal No. PUN-EXCUS-003-APP-267-13-14 dated 18.09.2013 passed by the Commissioner (Appeals), Central Excise, Pune-III.)

Godfrey Phillips India Ltd. **.... Appellant**
Plot No. A-1/1, MIDC Industrial Area,
Baramati, Pune- 413 102.

Versus

Commissioner of Excise and Service Tax, Pune-III **.... Respondent**
41-A, ICE House, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

APPEARANCE:

Shri Rajesh Ostwal a/w Shri Gajendra Jain, Advocates for the Appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87634-87635/2024

Date of Hearing: 05.12.2024

Date of Decision: 05.12.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are registered with Central Excise department for manufacture of Pan Masala without Tobacco. Central Excise duty liability is determined on the said manufacture, based on the capacity of production and the same is governed by the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. In compliance with the said Rule, the appellants during the period August, 2012 had filed two letters dated 27.08.2012 and 28.08.2012 before the jurisdictional Range Superintendent, requesting for sealing/un-installing the machine used for manufacture of Pan Masala. In terms of provisions of sub-rule (2) of Rule 6 of the Rules of 2008, the Range Superintendent visited the factory premises of the appellants and sealed the machines. However, subsequently the department had contended that though the machines were sealed, but since those were available within the factory, it has to be construed that the machines were in operation. On the basis of such understanding, two orders dated 08.10.2012 and 20.12.2012 were passed by the adjudicating authority, in determining the annual capacity of production and the monthly duty liability of the factory for 31.08.2012 and subsequently w.e.f. 01.09.2012. In these orders, it was held that un-installed and sealed packing machine lying in the factory should also be considered as operative machine and annual capacity and duty should be determined for the said machine also. Appeal filed against these orders-in-original order dated 08.10.2012 and 20.12.2012 were disposed of by learned Commissioner (Appeals), vide impugned order dated 12.04.2013 and 18.09.2013, holding that only sealing of the machine was carried out by the Range Superintendent and the said machine was neither un-installed nor removed from the factory by the appellants at any point of time. Accordingly, it was held in the impugned orders that the machine was lying installed in the factory on and after 31.08.2012 and thus, the capacity of the machine was enhanced and the differential duty liability was confirmed and it was ordered for payment of the differential higher duty. Feeling aggrieved with the Orders-in-Appeal dated 12.04.2013 and 18.09.2013 (impugned herein), the appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that as per the requirements of sub-rule (1) of Rule 6 of the Rules of 2008, the appellants had filed the declaration before the Jurisdictional Range Office, intimating the detailed particulars, which were required to be furnished as per the said Rule. Pursuant to the declaration filed by the appellants, the Central Excise authorities had

inquired into the contents in the declaration and orders were accordingly passed, in approving such declaration. Thus, he submitted that the requirements of Rules 2008 have been duly complied with by the appellants. He further submitted that the proceedings are barred by limitation of time inasmuch as the approval was sanctioned by the department beyond the prescribed time limit provided under sub-rule (2) of Rule 6 of Rules of 2008. Learned Advocate further submitted that the issue arising out of the present dispute is no more *res integra* in view of the order dated 06.09.2023 passed by this Tribunal in the case of the appellants themselves, for the previous period February 2012.

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned orders.

4. Heard both sides and perused the case records.

5. We find that the issue arising out of the present dispute was dealt with by the Co-ordinate Bench of this Tribunal in the case of the appellants for the prior period February 2012. In the order dated 06.09.2023 (supra), it was held by the Tribunal that the requirements of the Rules 2010 were duly complied with by the appellants and as such, additional duty demand cannot be fastened against them and the capacity of the machines used for manufacture of chewing tobacco cannot be enhanced.

6. In view of the settled issue as per the order dated 06.09.2023 passed by the Co-ordinate Bench of this Tribunal in the case of the appellants themselves, we are of the view that the present impugned orders passed against the appellants cannot be sustained. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM