



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 5<sup>th</sup> OF NOVEMBER, 2024

CENTRAL EXCISE APPEAL No. 7 of 2012

*COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE*

*Versus*

*M/S KAIPAN PAN MASALA PVT. LTD.*

.....  
Appearance:

*Shri Himanshu Shrivastava - Advocate for appellant.*

*Shri Anshuman Singh - Advocate for respondent.*  
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ORDER

*Per. Justice Sanjeev Sachdeva*

1. Subject appeal has been preferred by the Revenue impugning final order dated 14.08.2012 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi. The appeal raises the following substantial questions of law :

(i) Whether on the facts and circumstances of the case, the respondent is entitled to claim abatement as stipulated in Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 for the period 01/04/2011 to 10/04/2011 which is less than 15 days continuous closure in each calendar month as envisaged in the Rules or not ?

(ii) Whether on the facts and circumstances of the case and looking to the fact that the work "abatement" and "closure" having not been defined under the Pan Masala Packing Machines



(Capacity Determination and Collection of Duty) Rules, 2008, can the period from 01/04/2011 to 10/04/2011 be allowed for the purpose for granting abatement particular when the entire Rules speak about a particular month except Rule 10 and whether the same can be read in isolation for the purpose of abatement ?

2. Respondent-Assessee is a manufacturer of Pan Masala and liable to pay Central Excise Duty under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred to as “the Rules”).

3. The respondent applied for abatement under Rule 10 of the Rules, claiming that during the period from 01.03.2011 to 10.04.2011, its factory remained closed and since the period was over 15 days and no production of notified goods took place during the said period, it was eligible for abatement for the entire period.

4. Revenue granted abatement for the period 01.03.2011 to 31.03.2011. However, for the period 01.04.2011 to 10.04.2011 abatement was not allowed on the ground that the factory did not remain closed continuously for a period of over 15 days in the month of April.

5. Reliance is placed by the Revenue on the Rules to contend that the Rules throughout refer to a particular calendar month and since the factory had remained closed for a period only of 10 days in the month of April, abatement was not admissible.

6. *Per contra*, contention on behalf of the Assessee is that requirement of Rule 10 is that the factory should remain closed and manufacturing



activities suspended for a continuous period of 15 days. Learned counsel submits that there is no reference to a calendar month in Rule 10 and it would not make a difference as to whether the period of 15 days and more is in one month or more than one month.

7. It is not in dispute that the factory of the Assessee remained closed from 01.03.2011 to 10.04.2011 i.e. for a period of 41 days and there was no manufacturing activity of excisable goods carried out in the said factory for the said period. Reference may be had to Rule 10 of Rules 2008 which reads as under:

*"RULE 10. 'Abatement in case of non-production of' goods. - In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period provided the manufacturer of such goods files an intimation to this effect with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, [at least three working days] prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of Superintendent of Central Excise, in the manner that these cannot be operated during the said period :*

*[Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be under taken and no removal of notified goods shall be effected by the manufacturer except that notified goods already produced before the commencement of said period may be removed within first two days of the said period :]*

*Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, where upon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise."*

8. Rule 10 stipulates that if a factory did not produce the notified goods during any continuous period of fifteen days or more, the



duty calculated on a proportionate basis shall be abated in respect of such period subject to the manufacturer complying with other stipulations of Rule 10 *inter alia* of intimation to the department at least seven days prior to commencement of said period. Reference is made by the Revenue to Rule 7 which prescribes for a manner of payment of duty. Rule 7 reads as under :

*"RULE 7 : Duty payable to be calculated - The duty payable for a particular month shall be calculated by application of the appropriate rate of duty specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.42/2008-CE, dated the 1st July, 2008 to the number of operating packing machines in the factory during the month."*

9. Rule 7 merely stipules that duty payable for a particular month is to be calculated by application of the appropriate rate of duty specified in the notification of the Government of India to the number of operating packing machines in the factory during the month.

10. Rule 10, which provides for abatement, requires a continuous period of 15 days or more and there is no stipulation in the said Rule as to the period of 15 days or more being in one month or more than one month. The only stipulation being that the continuous period without a break has to be more than 15 days. In the instant case, there was no production of notified goods for a period of 41 days in the factory of the respondent.

11. Similar issue arose before the High Court of Punjab and Haryana in *Commissioner of Central Excise vs. Kay Fragrance P. Ltd. 2013 SCC OnLine P&H 26914 : (2014) 305 ELT 109*, wherein in similar circumstances, the Division Bench of Punjab and Haryana High Court held



that the continuous period of 15 days or more prescribed under Rule 10 could not be read in isolation to raise an inference that if closure in a month, was less than 15 days, a party would not be entitled to abatement of duty.

12. We are in complete agreement with the view taken by the Punjab and Haryana High Court that the requirement of Rule 10 is a continuous period of 15 days or more and said period is not qualified by restricting the same to a calendar month.

13. Consequently, the questions of law raised are thus answered by holding that closure of a continuous period of 15 days or more is not restricted to a calendar month and can be spread over in more than one month. Even in a particular month, if the closure is less than 15 days, the Assessee would still be entitled to abatement provided the continuous period of closure is more than 15 days and other stipulations of Rule 10 are satisfied by the Assessee.

14. The questions of law are thus answered in favour of the Assessee and against the Revenue.

15. In view of the above, the appeal of the Revenue is dismissed.

(SANJEEV SACHDEVA)  
JUDGE

(VINAY SARAF)  
JUDGE

m/-