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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ CEAC 1/2016

COMMISSIONER OF CENTRAL EXCISE
DELHI-II ..... Petitioner
Through: Mr. Rahul Kaushik, Senior Standing counsel.

versus

SOM PAN PRODUCTS ALLOYS PVT LTD ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% 11.01.2016

CM APPL No. 834 of 2016(for condonation of delay)

1. For the reasons stated in the application, the delay in filing the appeal is condoned.

2. The application is disposed of.

CEAC 1 of 2016 & CM APPL No. 833 of 2016

3. This appeal by the Department under Section 35G of the Central Excise Act, 1944 (Act) is directed against the order dated 17th March 2015 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') in

Appeal No. E/59193/2013-EX(SM). By the impugned order the CESTAT affirmed the Order-in-Appeal passed by the Commissioner (Appeals) on 1st May 2013 allowing the appeal of the Assessee against the Order-in-Original dated 27th November 2012 passed by the Additional Commissioner.

4. The facts in brief are that the Respondent Assessee manufactures *pan masala* containing *gutka*. The Assessee has ninety nine FFS machines of single track out of which eighty one FFS machines of single MRP of Rs.1 per pouch were operative in the month of January 2011 being 1st January 2011 to 15th January 2011. The eighteen machines were already sealed and installed. There was no production in the Assessee's factory from 16th January 2011 till 31st March 2011. Accordingly, in terms of Rule 10 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 the Assessee was entitled to abatement of duty for the period of closure during the month of January 2011 as the duty had been paid in excess. The amount of abatement was Rs. 5,22,58,065. On 2nd February 2011, the Assessee informed the Department that it was seeking adjustment of the aforementioned sum of abatement of excess duty for the duty payable for the month of February 2011, since it proposed to commence production. For reasons which are not clear, the Department took three months to decide

this request and sanctioned the abatement only on 4th May 2011. The question that arose was the justification for the demand of interest for the interim period between 5th February 2011 and 3rd May 2011. A demand was raised on the Assessee for the said interest amount, which was confirmed by the Order-in-Original dated 27th November 2012 of the Additional Commissioner.

5. The appeal filed by the Assessee was allowed by the Commissioner (Appeals) who by order dated 1st May 2013 set aside the demand *inter alia*, on the ground that it was beyond the period of one year and therefore the extended period of limitation under Section 11A of the Act could not be invoked. This order had been upheld by the CESTAT by the impugned order dated 17th March 2015.

6. Learned counsel for the Department sought to urge that the question of law concerning the applicable limitation period for raising the demand of interest on the duty paid in the above circumstances arose in the present case and therefore in the light of the decisions concerning the interpretation of Section 11A of the Act, the Court should examine the correctness of the decision of the CESTAT.

7. The Court, however, is not inclined to entertain the appeal urging the above question. No plausible reason has been given by the Department in the first instance for the delay of three months in deciding the Assessee's request for abatement of the excess duty paid by it during the month of January 2011. The Court is not satisfied that the demand of interest for a period of three months, which was occasioned on Department's own inability to promptly decide the request of Assessee, is sustainable in law. Consequently, the Court leaves the question raised in the present case for examination in an appropriate case if the facts so warrant.

8. The appeal as well as the application are accordingly dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 11, 2016
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