IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14310 of 2019

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Shiv Ranjan Kumar @ Gopal Jee, aged about 41 years, Gender-Male, Son of Late Vidyadhar Prasad Singh, Resident of 91-C, Village- Goswari, P.S.- Bakhtiyarpur, District- Patna.

... ... Petitioner/s

Versus

1. The Union of India.
2. The Commissioner, Central GST (Goods and Service Tax) and Central Excise, Patna- 1.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.
Mr.Vinay Ranjan, Adv.

For the Respondent/s : Mr. S. D. Sanjay, Sr. Adv.
Mr. Alok Kumar Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 19-08-2019

Heard learned counsel for the petitioner and counsel for the Union of India.

In this case, the petitioner is challenging the order dated 26.12.2018 issued on 27.12.2018 under the signature of the Commissioner, Central GST and Central Excise, Patna vide Memo No. 14369, relevant portion whereof, reads as follows:-

"ORDERS

(i) I order to confiscate the seized finished goods i.e.

(a) 16,160 pouches of Pan Pasand Pan Masala,

(b) 124 Kg. Pan masala (loose),

(c) 49 kg. Tobacco/Zarda (loose),

(d) packing materials viz.

(I) PARAG TOBACCO 9000-8 Rolls

(II) PARAG PAN MASALA – 2 Rolls,

(III) P.P. Zarda – 5 Rolls,

(IV) Sri Ram BoPP Tape Bag-1.75 Kg.

(V) PAN PASAND (PAN MASALA)- 3.5 Kg.

(VI) Pan Masala Cash coupon – 2 Kg.

total value at Rs. 1,64,342/- (Rupees One Lakh Sixty Four Thousand Three Hundred Forty Two only) under Rule 17(1) of the Pan Masala packing machines (Capacity determination and Collection of Duty) Rules, 2008 read with Rules 25 of the Central Excise Rules, 2002. However, I give an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the confiscated goods. The release of such goods on payment of redemption fine shall be done only when the goods are found to be fit for human consumption and meet other legal requirement relating to health and safety.

(ii) I also order to confiscate the two FFS machines valued at Rs. 5,00,000/- (Rupees Five Lakh only) under Rule 18 of the Pan Masala Packing Machines (Capacity determination and Collection of Duty) Rules, 2008 read with Rule 25 of the Central Excise Rules, 2002 as the said machines were used for the manufacture of illegal PAN PASAND Pan Masala containing tobacco. However, I given an option to pay Redemption fine in lieu of confiscation which shall be 50% of the value of the confiscated FFS machines.

(iii) I confirm the demand of Central Excise duty amounting to Rs. 9.40 Crores (Rupees Nine Crores Forty Lakh only) including Education Cess and Secondary & Higher Education Cess and order for its recovery from

the notice no.1 and 2 jointly and severally under the provisions of proviso to Section 11A of the Central Excise Act read with Rule 17(2) of the Pan Masala Packing Machines (Capacity determination and Collection of Duty) Rules, 2008.

(iv) I order for charging of interest against the demand confirmed at 113(iii) above and order for its recovery under the provisions of Section under Section 11 AA of the Central Excise Act, 1944 read with Rule 17(2) of the Pan Masala Packing Machines (Capacity determination and Collection of Duty) Rules, 2008.

(v) I impose penalty of Rs. 9.40 Crores (Rupees Nine Crores Forty Lakh only) on the noticee no.1 under the provisions of Rule 17(1) of the Pan Masala Packing Machines (Capacity determination and Collection of Duty) Rules, 2008 read with Rule 25 of the Central Excise Rules, 2002 and Section 11 AC of the Central Excise Act, 1944.

(vi) I impose penalty of Rs. 9,40 Crores (Rupees Nine Crores Forty Lakh only) on the noticee no.2 under the provisions of Rule 17(1) of the Pan Masala Packing Machines (Capacity determination and Collection of Duty) Rules, 2008 read with Rule 25 of the Central Excise Rules, 2002 and Section 11 AC of the Central Excise Act, 1944.

(vii) I impose a penalty of Rs. 5,000/- (Rupees Five Thousand only), upon Shri Rakesh Kumar (noticee no.3), under the provisions of Rule 27 of the Central Excise Rules, 2002 for the reasons discussed above.

(viii) I impose a penalty of Rs. 5,000/- (Rupees Five Thousand only), upon Shri Dhairya Kumar (noticee

no.4), under the provisions of Rule 27 of the Central Excise Rules, 2002 for the reasons discussed above.

The noticee will be liable to pay the penalty equal to 25% of the adjudged amount of the penalty imposed at para no.113 (v) and (vi) above, if outstanding amount of Central Excise Duty along with interest and reduced amount of penalty is paid within thirty days from the date of communication of this order."

The petitioner has taken various grounds including the perverse finding but, the Union of India has taken a plea that there is a provision for appeal and, in the first page of the order itself, it has been mentioned that if the petitioner feels aggrieved, he can file an appeal before the Appellate Tribunal within a period of three months from the date of the order. It has also been mentioned that for filing an appeal, he will have to deposit 7.5% of the demand raised.

Having considered the rival contentions of the parties, as there is a provision of appeal and the petitioner is challenging the factual part of the findings recorded by the Authority concerned, it will be proper that the petitioner should challenge the same before the appropriate authority and in a case the appeal is filed within a period of three weeks, while dealing with the issue of limitation, the Appellate Authority will take into consideration the pendency of this case before this Court and will decide the issue on its merit.

With the aforementioned observation, this writ application is disposed of.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2019
Transmission Date	