IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228 -2 **CEA-50-2015** (O&M)
Date of decision:-01.09.2023

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX COMMISSIONERATE SONEPAT DELHI III

.... Appellant

Vs

M/S KAYS FRAGRANCE PRIVATE LIMITED

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Tajender Joshi, Advocate for the appellant.

Mr. Amar Pratap Singh, Advocate for the respondent.

Ritu Bahri, J. (Oral)

Short question for consideration in the present appeal is whether the respondent can claim and be given abatement on account of non-functioning of its machine for the relevant period, for payment of central excise duty.

2. The case of the respondent was that its factory remained closed during the year 2012 for 15 days or more continuously during the assessment year, and therefore, it was eligible for rebate in terms of Rule 10 of the Pan Masala Packing Machines (Capacity

Determination and Collection of Duty) Rules, 2008 (for short 'PMPM Rules') and Rule 10 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2020 (for short 'CTUTPM Rules').

3. The respondents had issued show cause notice alleging contravention of Rules 7, 8, 9 and 18 of PMPM Rules, 2008 upon it and had imposed central excise duty to the tune of Rs.3,61,38,710/- along with interest and penalty. The respondent had filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (for short 'Tribunal) which was allowed vide order dated 02.02.2015 which has been impugned by the revenue. Learned counsel for the respondent has placed on record a copy of circular issued on 16.02.2018 by the Ministry of Finance (Department of Revenue) Central Board of Excise and Customs, New Delhi, showing that no appeal had been filed by the revenue against judgment dated 01.10.2015 passed in Tax Appeal No.619 of 2015 titled as ***Commissioner Vs. M/s Thakkar Tobacco Products Pvt. Ltd.*** He has placed on record copy of the above said judgment which reveals that the High Court of Gujarat while dealing with a similar issue had observed that Rule 10 of PMPM Rules provide for abatement of duty calculated on proportionate basis in case where the factory does not produce notified goods during any continuous period of 15 days or more. In that case, the factory of the manufacturer assessee had

remained closed for a continuous period of 15 days or more. The assessee had claimed abatement in duty without firstly depositing it. It was observed that the action of the assessee was not violative of the PMPM Rules. Learned counsel for the respondent has also placed on record a copy of judgment passed by a co-ordinate Bench of this Court in ***Commissioner of Central Excise Vs. Kays Fragrance Pvt. Ltd.,*** 2014(305)E.L.T. 109 (P&H) which was pertaining to the respondent assessee itself. There was no production in the factory of the respondent for a period of 36 days during the period from 01.04.2011 to 05.04.2011. The respondent had claimed refund on account of abatement of duty. It was held that the abatement could be granted.

4. Learned counsel for the appellant has also not controverted this position of law and has also not disputed the above stated facts. As such, we see no reason to interfere in the order passed by the Tribunal whereby orders passed by the Commissioner imposing central excise duty and interest as well as penalty thereupon was set aside. Accordingly, the appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.09.2023
pooja saini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No