

## **Benefit of abatement can't be withheld on failure on part of Superintendent to make proper recordings**

The Hon'ble Tripura High Court in case of *M/S Dharampal Satyapal Ltd. v. Commissioner of Central Excise and Service Tax, Agartala [Central Excise Appeal No. 01/2018 & 02/2018, dated May 17, 2021]* held that abatement of duty can't be withheld solely on ground that Superintendent did not record that sealing was done in such a manner that machine could not be operated as it was not within the control of the Appellant in what manner the Superintendent passed an order after sealing the machine.

### **Facts:**

M/S Dharampal Satyapal Ltd. ("**the Appellant**") is a manufacturer of Jarda Scented Tobacco. In terms of Section 3A of the Central Excise Act, 1944 ("**the Central Excise Act**") read with Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 ("**Tobacco Packing Machines Rules**") the Appellant was liable to pay excise duty on the installed capacity of manufacture instead of actual manufacture and clearance of goods.

The Appellant had installed one machine in its factory which was sealed and de-sealed at the Appellant's request by the Excise authorities during the period between August 31, 2015 to November 06, 2015.

Following two orders passed while sealing the machine are relevant for discussion:

- Order dated August 31, 2015- It was not recorded by the Superintendent that the machine in such a manner that it cannot be operated.
- Order dated October 19, 2015- It was recorded that the machine was heavy and thus it was uninstalled and sealed in such a manner that it cannot be operated.

**Hon'ble CESTAT, Kolkata**- Rejected the Appellant's claim for abatement for the period between October 1, 2015 to October 7, 2015 under Rule 10 of the Tobacco Packing Machines Rules on the ground that the machine was not uninstalled and sealed in such a manner that it cannot be operated as evident from the sealing order dated August 31, 2015 vide Order dated September 14, 2017 ("**Impugned Order**")

Being aggrieved by the Impugned Order, this appeal has been filed.

### **Issue:**

Whether abatement of duty shall be allowed for the period between October 01, 2015 to October 07, 2015?

**Held:**

The Hon'ble Tripura High court in ***Central Excise Appeal No. 01/2018 & 02/2018, dated May 17, 2021***, held as under:

- Noted that as per Rule 6(5) of the Tobacco Packing Machines Rules the machine which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his supervision.
- Further, the proviso to Rule 6(5) of the Tobacco Packing Machines Rules, in case it is not feasible to remove the machine, it shall be uninstalled and sealed in such a manner that it cannot be operated.
- Held that, in the sealing order dated August 31, 2015 the Superintendent may not have used this expression that he had sealed the machine in such a manner that it cannot be operated. However, this would not be sufficient for the Department to deny the benefit of abatement to the assessee in terms of Rule 10 of the Tobacco Packing Machines Rules.
- Further, it was the duty of the Superintendent to seal the machine and record it in the order dated August 31, 2015 that it was so sealed that it cannot be operated. In what manner the Superintendent passed an order after sealing the machine was not within the control of the Appellant. Further, the machine was subsequently de-sealed at the request of the Appellant, at which point there was no allegation that the seal was broken or that despite the seal the manufacturing activity was continued.
- Furthermore, the very purpose of sealing a machine is to keep it out of use and to render it inoperative. When the Superintendent thus sealed the machine and also passed an order to this effect, the presumption would arise that such sealing was in such a manner as that the same cannot be operated. In absence of any allegations by the Department and any material on record suggesting that despite sealing the Appellant operated the machine, it would not be permissible under Rule 10 of the Tobacco Packing Machines Rules to withhold the abatement of duty only on the ground that the Superintendent did not record that the sealing was done in such a manner that the machine could not be operated.
- Directed the Department to give the benefit of abatement of duty for the period between October 1, 2015 to October 7, 2015 to the Appellant.

**Relevant Provisions:**

**Rule 6(5) of the Tobacco Packing Machines Rules:**

*“Rule 6 Declaration to be filed by manufacturer:*

*(5)The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision.*

*Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated.”*

**Relevant portion of Rule 10 of the Tobacco Packing Machines Rules:**

*“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 the packing machines so sealed cannot be operated during the said period..”*

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