

**GIB/TR/DHARAMPAL SATYAPAL/17.05.2021/HC-218**

**High Court Category :** ABATEMENT OF DUTY

**State :** Tripura

**Order No.:** GIB/TR/DHARAMPAL SATYAPAL/17.05.2021/HC-218

**Name of Entry :**  
DHARAMPAL SATYAPAL LTD

**Date :** 17-05-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case the appellant is a manufacturer of Jarda Scented Tobacco falling under Chapter 24 of the Central Excise Tariff Act, 1985. In terms of Section 3A of the Central Excise Act, 1944 read with Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (hereinafter to be referred to as "the Rules of 2010") the assessee 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 its request by the Excise authorities during the period between 31st August 2015 to 6th November 2015. According to the appellant, such machine was operated/not-operated during the said period.

Since there was closure of production at the unit for continuous period on more occasions than one, the appellant filed a single abatement claim for the periods between 1st October 2015 to 7th October 2015 and 20<sup>th</sup> October 2015 to 31st October, 2015 under Rule 10 of the said Rules of 2010 and claimed that a total of ₹ 50,32,548/- was admissible. The Assistant Commissioner of Central Excise rejected the application by an order dated 1st January 2016 on two grounds namely, the closure of the production activity at the unit was not for a continuous period exceeding 15 days and that provisions of Rule 6(5) of the said Rules of 2010 were also not satisfied since the machine was not removed from the factory. The appellant filed appeal against the said order.

**Decision of Advance Ruling Authority :**

**DECISION:**

In terms of sub-rule (5) of Rule 6 of the said Rules, the machines which the manufacturer does not intend to operate would be uninstalled and sealed by the Superintendent of Central

Excise and removed from the factory premises under his physical supervision. For the period during which the machine is thus rendered incapacitated, the concerned manufacturer would be spared the burden of excise duty since the entire levy is based on installed production capacity and not on actual manufacture or clearance of goods - In case of the present assessee, under an order dated 19th October 2015, the Inspector of Central Excise recorded that the machine was uninstalled and sealed on the said date under his supervision. However, since the machine was heavy and removal would require large number of skilled labourers and the tools which were not available, the machine was sealed in such a manner that it cannot be operated. As noted, this order was found sufficient by the Commissioner(Appeals) to enable the assessee to claim abatement of duty. It appears that the department has also accepted this order of the Commissioner(Appeals).

However, for the remaining period, the claim of the assessee is rejected on the ground that the sealing order did not specify that it was sealed in such a manner that the machinery cannot be operated - the proviso to sub-rule (5) envisages that in case it is not feasible to remove such 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. The fact that the machine is too heavy to be removed was recorded by the Superintendent of Central Excise in his order dated 19th October, 2015. Being the same machine, the situation for a different period, would not change.

In absence of any allegations by the department and any material on record suggesting that despite sealing the assessee operated the machine, it would not be permissible to withhold the abatement of duty only on the ground that the Superintendent of Central Excise did not draw proper proceedings and did not elaborately record that the sealing was done in such a manner that the machine could not be operated.

The question of law is answered in favour of the assessee.