

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 12619 of 2018 - DB**

(Arising out of OIA-AHM-EXCUS-002-APP-22-18-19 dated 16/07/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**Urmin Marketting P Ltd**

.....Appellant

(Now known as Unicorn Packaging Llp)  
61, Mahagujarat Industrial Estate, Opp. Bonsai Pharma,  
Village-moraiya, Taluka-sanand,  
AHMEDABAD,  
GUJARAT

*VERSUS*

**COMMISSIONER OF CGST & CENTRAL EXCISE  
- CGST & Central Excise Ahmedabad North**

.....Respondent

First Floor, Custom House,  
Navrangpura, Ahmedabad,  
Gujarat-380009

**WITH**

**Excise Appeal No. 10077 of 2015 - DB**

(Arising out of OIO-AHM-EXCUS-002-COMMR-13-14-15 dated 07/10/2014 passed by Commissioner of Central Excise-AHMEDABAD-II)

**Unicorn Packers P Ltd**

.....Appellant

61, Mahagujarat Industrial Estate, Opp. Bonsai Pharma,  
Village : Moraiya, Taluka : Sanand,  
AHMEDABAD,  
GUJARAT

*VERSUS*

**Commissioner of C.E.-Ahmedabad-ii**

.....Respondent

CUSTOM HOUSE... FIRST FLOOR,  
OLD HIGH COURT ROAD, NAVRANGPURA,  
AHMEDABAD,  
GUJARAT-380009

**APPEARANCE:**

Shri N K Tiwari, Consultant, appeared for the Appellant  
Shri Tara Prakash, Deputy Commissioner (AR)&Shri A K Samota, Superintendent  
(AR)appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

**Final Order No. 11729-11730/2024**

DATE OF HEARING: 01.07.2024/08.07.2024  
DATE OF DECISION: 08.08.2024

**RAMESH NAIR**

The limited issue involved in the present case is that whether the appellant is liable to pay the service tax for the entire period and thereafter should claim the abatement of the duty attributed to the period when the machine was sealed as contended by the Revenue or whether the appellant can claim the abatement without payment of duty for the said period, as claimed by the appellant.

2. Shri N. K. Tiwari, Learned Counsel appearing on behalf of the appellant submits that this issue is no longer res-integra as in the various judgments it was held that it is not necessary that the assessee should first pay the duty and thereafter, claim the abatement by way of filing refund claim during the period when the machine was inoperative and sealed. In those judgements, it was categorically held that in terms of Rule 10 of the Pan Masala Packaging Machines (Capacity Determination and Collection of Duty) Rules, 2008, the appellant can claim the abatement without first payment of duty. He placed reliance upon the following judgments:-

1. PM PRODUCTS reported at 2023 (384) E.L.T. 713 (Tri.-Ahmd.)
2. KAIPAN PANMASALA PVT LTD. reported at 2012 (285) E.L.T.296 (Tri.-Del.)
3. K FRAGRANCE PVT LTD. reported at 2014 (305) E.L.T.109 (P & H)
4. SHREE FLAVORS PVT LTD. reported at 2014 (304) E.L.T. 441 (Tri.-Del.)
5. SHREE FLAVORS PVT LTD. reported at 2015 (321) E.L.T. A-152 (P & H)
6. PANPARAG INDIA LTD. reported at 2016 (344) E.L.T. 497 (Tri.-Bang.)
7. SHAKTI FRAGRANCE PVT LTD. reported at 2015 (324) E.L.T.390 (Del.)
8. VARUN SILK MILLS PVT LTD. reported at 2007 (214) E.L.T.227 (Tri.-Ahmd.)
9. GODFREY PHILIPS INDIA LTD. reported at 2015-TIOL-1216-CESTAT-Del
10. TRIMURTI FRAGRANCE reported at 2015-TIOL-1099-CESTAT-Del
11. THAKKAR TOBACCO reported at 2015- TIOL-690-CESTAT-Ahm.
12. STEEL INDUSTRIES OF HINDUSTAN INDUSTRIAL AREA reported at 2013 (293) E.L.T.191 (All)

13. UNICORN PACKERS PVT LTD. Order No. A/11068-11072/2015, dated 22.07.2015 of Tribunal Ahmedabad.

14. THAKKAR TOBACCO PRODUCTS PVT LTD. reported at 2016 (332) E.L.T. 785(Guj.)

3. Shri Tara Prakash, learned Deputy Commissioner (AR) & Shri A K Samota, learned Superintendent (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that from the record it is not in dispute that the appellant have scrupulously followed the procedure for sealing and desealing of the machines under the supervision of the departmental officer and claim the abatement only for the period when the machine was under closure. The only contention of the department is that the appellant should have first paid the excise duty for the entire period and thereafter, they should have claimed the abatement in respect of the proportionate duty attributed to the period when the machine was under closure. This very issue has been considered time and again in various decisions by this Tribunal and held that there is no need to first pay the duty and thereafter claim the abatement. This Tribunal considering Rule 10 of the Pan Masala Packaging Machine (Capacity Determination and Collection of Duty) Rules, 2008 held that the claiming the abatement without paying the duty for the period when the machine was under closure is in order, therefore, on this account the demand is not sustainable. Some of the judgments are referred below:-

4.1 In the case of PM PRODUCTS reported at 2023 (384) E.L.T. 713 (Tri-Ahmedabad) Division Bench of this Tribunal on the identical issue passed the following order:-

"4. We have carefully considered the submission made by both sides and perused the records. We find that in the present case the appellant have followed the procedure for taking abatement of duty provided under Rule 10 of "Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008" which is reproduced below :-

"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 seven 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 these cannot be operated during the said period :*

*Provided that during such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of goods shall be effected by the manufacturer :*

*Provided further that when the manufacturer intends to restart his production of notified goods, he shall inform to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent of Central Excise."*

*From the plain reading of the above Rule 10 it is clear that the abatement is available to the appellant on following the condition laid therein. As per the condition the appellant has to intimate the jurisdictional officer in advance regarding sealing and de-sealing of the machines. In the present case there is no dispute that the intimation was given well in advance and the Jurisdictional Range Superintendent has de-sealed and re-sealed the machine and the machine was operated only during that period. From the above Rule 10 we do not find any provision for payment of duty for the whole month and thereafter to claim refund on account of abatement of duty. There is no dispute even by the department that the appellant is not liable to pay duty during the period when the machine was not in operation. The contention of the Adjudicating Authority is that the appellant was supposed to pay the entire duty first and thereafter claim the refund. In the present case, the appellant is eligible for abatement in principle and under no circumstances the full duty can be demanded for the period of abatement when the machine was not in operation. This issue has been considered in various judgments.*

**4.1** *In the case of Commissioner v. Thakkar Tobacco Products Pvt. Ltd. - [2016 \(332\) E.L.T. 785](#) (Guj.) the Hon'ble Gujarat High Court considered the same issue and passed the following judgment :*

9. *The facts of the case are required to be examined in the light of the above statutory provisions. From the facts noted hereinabove, it is apparent that the assessee did not produce the notified goods during a continuous period of fifteen days in the month of March and accordingly claimed that it was entitled to abatement of duty on a proportionate basis for the period when the factory was not producing notified goods and accordingly adjusted duty to that extent from the duty payable in the month of April. The contention of the Revenue is that abatement amounts to refund and, therefore, the procedure for availing refund as laid down under section 11B of the Act is required to be followed. In this regard, it may be noted that the expression "abatement" has not been defined anywhere in the Act or in the PMPM Rules. Therefore, the popular or dictionary meaning of the said expression is required to be looked into. In Black's Law Dictionary, the term "abatement" has been defined as a reduction, a decrease, or a diminution; the suspension or cessation, in whole or in part, of a continuing charge, such as rent. In the context of tax, abatement has been stated to be diminution or decrease in the amount of tax imposed. In the New Oxford Dictionary of English, "abatement" has been defined as the ending, reduction or lessening of something. In the Dictionary of English Language, "abatement" has been defined as an amount abated, a deduction from the full amount of tax. On the other hand, "refund" has been defined as to pay back "money" to give or to put back. Tax abatement is ordinarily known as reduction of or exemption from tax by a Government for a specific*

*period. A tax incentive is also stated to be a form of tax abatement. Thus, the ordinary meaning of abatement is reduction, diminution and, therefore, when an assessee is entitled to abatement of duty, he is entitled to reduction of duty to that extent and not refund thereof as is sought to be contended on behalf of the Revenue. It would have been a different matter if the rules prescribed for the manner in which abatement has to be granted. However, in the absence of any rule in this regard or any specific provision providing for the mode of availing abatement, the course of action adopted by the respondent-assessee cannot be said to be in violation of any rule or any provision of the Act. As can be seen on a plain reading of Rule 10 of the PMPM Rules, the same merely provides that in case of factory which has not produced the notified goods during a continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period. The abatement, however, is subject to the condition stipulated in Rule 10, namely that, the manufacturer of such goods is required to file an intimation to that 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 such period, who on receipt of such information, is required to direct 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 these cannot be operated during the said period. Thus, subject to the fulfilment of such conditions, Rule 10 of the PMPM Rules provides that the duty calculated on a proportionate basis shall be abated.*

*10. Since great emphasis has been laid on the circular dated 12th March, 2009 on behalf of the appellant for contending that the principle of contemporanea expositio guides that contemporaneous administrative construction should be given considerable weight and should not be lightly overturned, it may be apposite to examine the nature of the said circular. A perusal of the circular dated 12th March, 2009 shows that the subject of such circular is "Pre-and post-audit of abatement orders in terms of Rule 10 of the Pan Masala Packing Machine Rules, 2008 - clarification regarding". A perusal of the contents of the said circular shows that the same says that in terms of Rule 10 of the PMPM Rules, the abatement of duty is to be given in case the factory did not produce notified goods during any continuous period of fifteen days or more. The JDA/JAC has to pass an abatement order in the case. The circular further says that representations have been received from field formations regarding whether the abatement orders need to be subjected to pre- and post-audit in the same manner as refund/rebate orders. Thus, the subject matter of the said circular is as to whether abatement orders need to be subjected to pre- and post-audit. The circular further says that circulars have been issued in the context of procedure to sanction pre/post-audit of refund/rebate claims and as the abatement order is in the nature of refund, they are required to be subjected to the same administrative procedure of pre- and post-audit as laid down by the Board from time to time regarding refund. Accordingly, it has been provided that all Board circulars issued in the context of pre- and post-audit of refund/rebate claims will apply mutatis mutandis to the abatement orders also.*

*11. Thus, the said circular proceeds on the footing that abatement orders are to be passed by the JDC/JAC and accordingly provides for application of circulars issued in the context of pre- and post-audit in relation to refund/rebate claims to abatement orders. However, the said circular nowhere provides for the procedure to be followed for granting abatement. As noticed earlier, the Act and the PMPM Rules are totally silent as regards the manner in which the abatement is to be granted and do not speak of any order of abatement being passed by the JDC/JAC. In the opinion of this*

*Court, in the absence of the Act or the rules framed thereunder making any such provision, no such provision can be read into the Act and the rules.*

*12. In the above backdrop, the merits of the impugned order may be examined. The Tribunal, in the impugned order, has recorded that in none of the orders impugned before it, it is in dispute that there was a closure of the factory for more than fifteen days and the required procedure of due intimation of closure, sealing and due intimation or reopening was followed. Thus, there was no dispute that the requirements of Rule 10 of the PMPM Rules had been fulfilled. There was also no dispute that the amount adjusted was not more than the amount of duty mandated to be abated in terms of Rule 10 of the PMPM Rules. The Tribunal has taken note of the fact that Rule 10 of the PMPM Rules does not make any stipulation about abatement having to be claimed by filing an application, though it also does not imply to the contrary. Referring to Rule 9 of the PMPM Rules, it was observed that when the intention of the Government is that the amount is to be refunded and an express provision is provided therefor, whereas Rule 10 does not make any such provision. It may be noted that insofar as Rule 96ZO of the Central Excise Rules is concerned, sub-rule (2) thereof expressly provides for claim of abatement being made under sub-section (3) of Section 3A of the Act, which would be allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order. Similarly, sub-rule (7) of Rule 96ZQ provides for abatement being allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order, subject to the conditions enumerated thereunder. Similarly, sub-rule (2) of Rule 96ZP provides for abatement being allowed by an order passed by a Commissioner of Central Excise of such amount as may be specified in such order subject to the fulfilment of the conditions laid down thereunder. Thus, in relation to independent processors of textile fabrics, manufacturers of non-alloy steel hot re-rolled products and manufacturers of non-alloy steel ingots, who were also assessed on the basis of annual production capacity under section 3A of the Act, there was an express provision for making an order of abatement whereas the PMPM Rules are totally silent in that regard. There is no provision for making an order of abatement under Rule 10 of the PMPM Rules.*

*13. As noticed earlier, Rule 10 of the PMPM Rules provides for abatement of duty calculated on proportionate basis in case where the factory does not produce notified goods during any continuous period of fifteen days or more. However, such abatement is subject to the conditions stipulated thereunder as referred to hereinabove. Once such conditions are satisfied, the assessee becomes entitled to abatement of duty to the extent of the days the factory did not produce the notified goods.*

*14. On a plain reading of Rule 10 of the PMPM Rules, it is apparent that while the same provides that duty calculated on a proportionate basis shall be abated, it does not provide for any procedure for doing so. Thus, whereas Rules 96ZQ, 96ZO and 96ZP of the Central Excise Rules, 1944, which also are schemes under the compounded levy scheme, there were express provisions for making an order of abatement by the Commissioner, Rule 10 of the PMPM Rules is wholly silent in that regard. Under the circumstances, having regard to the fact that Rules 96ZQ, 96ZP and 96ZO provided for making an order of abatement, however, there is no corresponding provision in the PMPM Rules, it can be inferred that the rule making authority has consciously omitted making such provision. Therefore, in the absence of any specific provision for making an order of abatement, it cannot be said that the action of the assessee in calculating the duty on a proportionate basis and setting off the same against the duty payable in the succeeding month is, in any manner, violative of the rules or the statutory scheme.*

15. Besides, in the light of the findings recorded by the Tribunal to the effect that it is not disputed that the adjustments made were not more than the amounts of duties mandated to be abated as per Rule 10 of the PMPM Rules, the action of the respondent-assessee in computing the proportionate amount of duty towards the abatement and setting it off against the duty payable in the next month does not adversely affect the revenue in any manner. The abatement, in the opinion of this Court, is not akin to refund and means reduction or diminution of the duty. Therefore, when the duty stands reduced to the extent provided in the rule, there is no liability to pay the same, inasmuch as, to that extent the duty stands abated. Therefore, if the assessee has correctly calculated the proportion of duty and set off the same against the duty payable for the next month, it cannot be said that the said action is contrary to the statutory scheme. When the rules do not provide for the manner in which duty is required to be abated, nor do they provide that abatement shall be by an order of the Commissioner or any authority, but nonetheless provide for abatement of duty and the extent of entitlement to such abatement, no fault can be found in the approach of the assessee in suo motu taking the benefit of such abatement.

16. In the light of the above discussion, it cannot be said that the view adopted by the Tribunal is not a plausible view warranting interference by this Court. In the absence of any infirmity in the impugned order passed by the Tribunal, it is not possible to state that the same gives rise to any question of law, much less, a substantial question of law. The appeals, therefore, fail and are accordingly dismissed.”

In the case of *CCE, Delhi-I v. Shakti Fragrances Pvt. Ltd. Unit-II* - [2015 \(324\) E.L.T. 390](#) (Del.), the Hon'ble Delhi high Court also considered the similar issue and passed the following judgment :

"11. In the present case, the appellant had pressed into service Rule 10 of the PMPM Rules requires the duty calculated on a proportional basis to be abated in case the factory does not produce the notified goods during any continuous period of 15 days in a month. Rule 10 further requires the intimation to that effect to be given to the authorities at least three working days prior to the commencement of the period of closure. Rule 9 requires the monthly duty payable to the authorities to be paid by the fifth day of the same month. There is nothing in Rule 9 to suggest that the failure to pay the duty payable on all the machines upfront by the 5th day of a month would disentitle the assessee to claim pro rata abatement of duty. The requirement under Rule 10 of giving intimation three days prior to the closure has been complied with by the assessee.

12. On a collective reading of Rules 9 and 10 of the PMPM Rules, the Court is of the view that the failure to make the payment of duty on fifth day of every month cannot result in depriving the assessee of the pro rata abatement of duty which he is in any way entitled to since admittedly in the present case there has been a closure of the factory from 14th to 31st August, 2012 and an abatement order has also been passed on 28th August, 2012. However, the assessee would be liable to pay the interest for the period of late deposit of duty.”

The same issue has been considered by the Hon'ble Allahabad High Court in the case of *CCE, Kanpur v. Trimurti Fragrances Pvt. Ltd.* - [2019 \(370\) E.L.T. 257](#) (All.). wherein the Hon'ble Court decided as under :-

"22. The sole issue under consideration is as to giving benefit of abatement for non-production, whether the assessee could on their own calculate Excise duty and set off the same against the duty payable in the next month. The argument of the Department relying upon Rule 9 of the

*PMPM Rules, 2008 claiming that the monthly duty on notified goods is to be paid by 5th day of the month and the assessee cannot simpliciter claim set off without first depositing the same had been repelled by the Gujarat High Court in the case of Thakker Tobacco (supra) holding that Rule 10 of the PMPM Rules, 2008 envisages a situation and provides for abatement of excise duty calculated on proportionate basis, in case where factory does not produce notified goods during continuous period of 15 days or more.*

*23. Moreover, the statute, that is proviso to sub-section (2) of Section 3A itself provides for abatement where a factory producing notified goods did not produce the same during any continuous period of 15 days or more, the duty calculated on the proportionate basis shall be abated in respect of such period, if the manufacturer of such goods fulfils such condition as may be prescribed. In the present case as the assessee having complied the statutory requirement, is entitled to the benefit claimed by him.*

*24. The judgment in case of Thakker Tobacco (supra) having been accepted by the C.B.D.T. in its circular dated 16-2-2018, the controversy does not remain any longer as the matter is not res integra any more.*

*25. In view of the above, we are of the considered opinion that once the Department has accepted the judgment in case of Thakker Tobacco (supra) and has issued circular holding that assessee is entitled to abatement of duty, in the event of closure of factory for continuous period of 15 days or more, without first depositing the duty in terms of Rule 10 of PMPM Rules, 2008, the appeal of the revenue has no force and is hereby dismissed.*

*26. The question of law is, therefore, answered in favour of the assessee and against the revenue."*

**5.** *In view of the above High Courts judgments and observation made by us herein above, the demand is not sustainable. Accordingly, the impugned order is set aside. Appeal is allowed."*

4.2 Somewhat identical issue has been considered by the Hon'ble Punjab & Haryana High Court in the case of KAY FRAGRANCE P. LTD. (supra) wherein, the Hon'ble Court has passed following order:-

**"3.** *We have heard counsel for the revenue, perused the impugned order as well as the provisions of Rules 7, 9 and 10 of the Rules and have no hesitation in holding that order passed by the Tribunal does not suffer from any error of law, much less, in terms of the question of law, framed by the revenue, which reads as follows :-*

*"Whether the Tribunal is justified in allowing the abatement of duty of five days, i.e., 1-4-2011 to 5-4-2011 on the consideration of the fact that though the duty liability is determined for each month separately yet the continuous period as stipulated in Rule 10 of Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008 is not required to be restricted for a particular month only?"*

**4.** *The respondent manufactures excisable items. The respondent made a request that all pouch packing machines be sealed. The department placed its seals on 28-2-2011. It is not denied that no manufacturing activity or clearances took place between 1-3-2011 to 5-4-2011. The department de-sealed 25 pouch packing machines on 6-4-2011. The respondent deposited requisite excise duty for the month of April, 2011 in accordance with Rules 7*



and 9 of the Rules by including excise duty payable from 1-4-2011 to 5-4-2011. The respondent thereafter, vide letter dated 23-5-2011, prayed for abatement of excise duty of Rs. 8,33,333/- for the first five days of April from 1-4-2011 to 5-4-2011 during which period, machines remained sealed the department rejected the application, by holding that 15 days' continuous period of non-production, in a calendar month alone, entitles an assessee to abatement. The respondent filed an appeal which was allowed by the Commissioner (Appeals). An appeal filed by the revenue, before the Tribunal, has been dismissed by holding as follows :-

*"We do not find merit in above submission. The plea taken by Id. DR is misconceived and is based on incorrect reading of Rule 10 quoted above. Bare reading of the above quoted rule would show that as per the rule an assessee is entitled to abatement provided there has been no production in the factory for a continuous nonproduction of excisable goods should be during a given calendar month. Admittedly in this case, there was no production. In the factory of the assessee for a continuous period 36 days and all the 40 Gutkha machines were sealed, therefore, we are of the view that the claim of the respondent for abatement is fully justified under Rule 10 of Pan Masala Packing Machines Rules, 2008 and the order of the Commissioner (Appeals) allowing the abatement cannot be faulted.*

*In view of the discussion above, we do not find any merit in the appeal. Appeal is, therefore, dismissed in limine."*

**5.** *Admittedly, there was no production for a period of 36 days, i.e., from 1-4-2011 to 5-4-2011 including from 1-4-2011 to 5-4-2011. Reference by counsel for the appellant to Rules 7 and 9 of the Rules in support of his contention, that as duty liability is determined for each month, abatement cannot be granted for a fraction of a month, in our considered opinion, is misplaced as no such intent is discernible from a reading of these rules. Rule 7 of the Rules merely provides that duty payable shall be calculated for a particular month and Rule 9 of the Rules merely prescribes that monthly duty payable on notified goods, shall be paid by the 5th day of the same month. We fail to comprehend as to how these rules can be pressed into service by the revenue in support of its view that abatement cannot be claimed for a fraction of a month. This apart, reference to a continuous period of 15 days or more under Rule 10 of the Rules relating to the right of an assessee, pertains to its obligation, to inform the Deputy Commissioner or the Assistant Commissioner of Central Excise, of closure of machines and, therefore, cannot be read in isolation to raise an inference that if closure in a month, is less than 15 days, a party shall not be entitled to abatement of duty.*

**6.** *In view of what has been stated hereinabove, we find no merit in the appeal and dismiss the same in limine."*

4.3 In the case of SHREE FLAVOURS PVT LTD (supra) Principal Bench of Delhi also taken the same view as under:-

**"3.** *The issue in the present appeal relates to the abatement, in terms of the said rules referred (supra). The first ground on which the Commissioner has denied the abatement for the period from 17-9-2010 to 30-9-2010 is that though the factory was closed for a period of more than 15 days, the said closure spread over two months i.e. September and October, 2010. He held*

that in terms of the rules, in question, the continuous closure of 15 days has to be in the same calendar month. Inasmuch as the period of closure in the month of October was around 22 days, he allowed the abatement, but confirmed the demand of duty for the period 17-9-2010 to 30-9-2010.

**4.** We find that on the said issue, there are number of decisions of the Tribunal laying down that the period of 15 days closure, need not fall within the same calendar month. It is sufficient if the unit is closed for a continuous period of 15 days, irrespective of the fact that the said period falls within two calendar months. One such reference can be made to the Tribunal decision in the case of *CCE, Bhopal v. Kaipan Pan Masala Pvt. Ltd.* reported in [2012 \(285\) E.L.T. 296](#) (Tri. - Del.). As such, we find no merits in the above reasoning of the Revenue.

**5.** The adjudicating authority has also referred to the fact that in terms of the said rules, the appellant is first required to discharge its duty liability for the entire month and then to claim abatement. The contention of the learned advocate is that inasmuch as they were a new unit, they were required to discharge their duty liability within a period of 5 days from the date of the production. As the appellant knew that their factory is going to be closed from 17-9-2010 and the due intimation was given to the Revenue, they discharged their duty liability on 11-9-2010, for the period 8-9-2010 to 16-9-2010. It is his contention that there are Board Circulars issued in respect of compounded levy schemes on Iron and Steel as also for Textile clarifying that where an assessee knew about the closure of the factory, there was no requirement of first depositing the amounts and then claiming the refund of the same on account of abatement in duty. He submits that the entire exercise is a futile exercise and is Revenue neutral exercise, even though he agrees that the same invite some interest. He further clarifies that the Revenue, vide their letters dated 11-7-2011 and 14-7-2011 had directed them to pay the interest of around Rs. 1,09,000/- approximately, which they have already paid and are not disputing the same.

**6.** We agree with the learned advocate on the above issue. The deposits of dues are required to be done by a manufacturer by the 5th of a particular month. It is in this scenario that the Rules required a manufacturing unit to deposit the entire duty for that particular month by 5th day of that particular month. If subsequently the unit is closed, they are given liberty to file abatement and seek refund of duty. However, in a scenario where a manufacturing unit is aware of the closure of its unit, before the duty is deposited by him for the entire month, he may seek abatement at that particular point of time, make deposit of duty for working days only. The non-following of the said procedure, may result in confirmation of interest against the assessee, but will not result in denial of the substantive benefit available to him in terms of the rules, in question. As the appellant have already deposited the interest amount and is not contesting the same, we find no justification for confirmation of demand against him for the period of admitted closure of the factory. As such, we set aside the impugned order and allow the appeal itself, with consequential relief to the appellant.

**7.** Stay petition as also appeal get disposed of, in above manner.”

The aforesaid decisions of the Tribunal was upheld by the Hon'ble Punjab & Haryana High Court by dismissing the Revenue's appeal which was reported at *Commissioner vs SHREE FLAVOURS PVT LTD* reported at 2015(321) E.L.T. A-152 (P & H).

4.4 The Hon'ble Delhi High Court in the case of SHAKTI FRAGRANCE PVT LTD also considered the similar issue and passed the following order:-

**7.** *At the outset it must be noticed that para 2 of the impugned order of the CESTAT (of which only a typed copy has been placed on record by the appellant) erroneously refers to the sealing of the packing machines of the assessee in the month of July, 2012 although admittedly the appeal pertains to the determination by the Commissioner of the SCN pertaining to closure of the packing machines in the month of August, 2012.*

**8.** *The CESTAT in the impugned order notes in para 4 that there was no dispute about the appellant's entitlement to abatement and that Revenue's only objection was as regards the non-compliance by the assessee with the procedural obligation under the PMPM Rules. The CESTAT then proceeded to rely upon its earlier decision in *Shree Flavours Pvt. Ltd. v. CCE, Delhi-IV - 2014 (304) E.L.T. 441* (Tri. - Delhi) wherein it took note of another earlier decision in *Kaipan Pan Masala Pvt. Ltd. - 2012 (285) E.L.T. 296* (Tri. - Delhi) in which it was held that non-deposit of the duty and any subsequent claiming of abatement in violation of the procedure under the PMPM Rules would not result in the substantive benefit being denied to the assessee. The only consequence would be the liability to pay interest.*

**9.** *The aforementioned decision in *Shree Flavours Pvt. Ltd. v. CCE, Delhi-IV (supra)* was challenged by the Revenue before the High Court of Punjab & Haryana by way of CEA No. 4 of 2015 (O&M) in the High Court of Punjab & Haryana. By an order dated 7th May, 2015 [*2015 (321) E.L.T. A152* (P&H)], the Division Bench of the Punjab & Haryana High Court dismissed the said appeal following its earlier decision dated 4th October, 2007 in *Commissioner of Central Excise, Rohtak v. Kay Fragrance (P) Ltd. (CEA 52 of 2013) [2014 (305) E.L.T. 109* (P&H)].*

**10.** *The Court has been shown the judgment of the High Court of Punjab & Haryana in *Kay Fragrance (P) Ltd.* The question addressed there was whether the duty liable was to be determined under the PMPM Rules for each month separately. The case of the Revenue was that the closure of a factory for less than 15 days in a month would not entitle the assessee to claim abatement of duty pro rata. The High Court held that Rules 7 and 9 could not be pressed into service by the Revenue to contend that the abatement cannot be made for a fraction of month. In other words, abatement of duty could not be denied to the party if in a particular month the closure was for less than 15 days.*

**11.** *In the present case, the appellant had pressed into service Rule 10 of the PMPM Rules requires the duty calculated on a proportional basis to be abated in case the factory does not produce the notified goods during any continuous period of 15 days in a month. Rule 10 further requires the intimation to that effect to be given to the authorities at least three working days prior to the commencement of the period of closure. Rule 9 requires the monthly duty payable to the authorities to be paid by the fifth day of the same month. There is nothing in Rule 9 to suggest that the failure to pay the duty payable on all the machines upfront by the 5th day of a month would disentitle the assessee to claim pro rata abatement of duty. The requirement under Rule 10 of giving intimation three days prior to the closure has been complied with by the assessee.*

**12.** *On a collective reading of Rules 9 and 10 of the PMPM Rules, the Court is of the view that the failure to make the payment of duty on fifth day of every month cannot result in depriving the assessee of the pro rata abatement of duty which he is in any way entitled to since admittedly in the present case there has been a closure of the factory from 14th to 31st August, 2012 and an abatement order has also been passed on 28th August,*

2012. However, the assessee would be liable to pay the interest for the period of late deposit of duty.

**13.** Consequently, the impugned order of the CESTAT does not call for interference. No substantial question of law arises therefrom.

**14.** The appeal is dismissed.”

5. In view of catena of judgments on the same issue in hand including the above judgments the issue is no longer res-integra and the appellants are entitled for the abatement even without first payment of the duty for the period of closure of machine. Therefore, the demand of duty in the present case is not sustainable. Accordingly the impugned Orders are set aside. The appeals are allowed with consequential relief.

*(Pronounced in the open court on 08.08.2024)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(C L MAHAR)**  
**MEMBER (TECHNICAL)**