REGISTERED POST
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/196(I to XXII)/17-RA /6212 Date of Issue: ~~.10.2022~~ 02.11.2022

ORDER NO. 1006-1027/2022-CX (WZ) /ASRA/MUMBAI DATED 31.10.2022 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Village Silli, Silvassa – 396 230.

Respondent: The Commissioner, CGST, Vapi.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal Nos. VAD-EXCUS-003-APP-123 to 144/13-14 dated 28.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara (Appeals – III) at Vapi.

ORDER

These Revision Applications have been filed by M/s Shree Meenakshi Food Products Pvt. Ltd., Survey No. 179/1/5, Kuvapada Industrial Estate, Village Silli, Silvassa – 396 230 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal Nos. VAD-EXCUS-003-APP-123 to 144/13-14 dated 28.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara (Appeals – III) at Vapi

2. The applicant is a manufacturer of Pan Masala with Gutkha falling under CSH 24039990 of First Schedule to the Central Excise Tariff Act, 1985. The impugned goods are notified under Section 3A of Central Excise Act, 1944. The applicant was clearing the said notified goods for home consumption as well as for export. The applicant was working under Compounded Levy Scheme and the duty is levied under Section 3A read with Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter referred as "PMPM Rules") as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. As per these rules, the factor relevant to the production of notified goods shall be the number of packing machines in the factory of manufacturer under Rule 5 of the PMPM Rules. The duty payable is to be calculated under Rule 7 of the said PMPM Rules read with Notification No. 42/2008-CE dated 01.07.2008, on the number of operating packing machines in the factory during the relevant period. The applicant filed 22 rebate claims for duty of Excise paid on the goods exported as per the procedure prescribed under Notification No. 32/2008-CE (NT) dated 01.07.2008 along with supporting documents.

3. The rebate sanctioning authority sanctioned the rebate claims to the applicant as detailed below.

Sr. No.	O/O No. & Date	ARE-1 No. & Date	Amount of rebate granted Rs.
1	125/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	039/11-12 dated 07.10.2011	45,67,307/-
2	126/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	042/11-12 dated 03.11.2011	45,67,307/-
3	127/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	043/11-12 dated 05.11.2011	45,67,307/-

4	128/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	044/11-12 dated 07.11.2011	45,67,307/-
5	129/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	051/11-12 dated 29.11.2011	45,67,307/-
6	130/DC/SLV-IV/Rebate/2012-13 dated 22.05.2012	052/11-12 dated 06.12.2011	45,65,307/-
7	141/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	054/11-12 dated 08.12.2011	37,56,010/-
8	142/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	055/11-12 dated 09.12.2011	37,56,010/-
9	143/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	056/11-12 dated 11.12.2011	37,56,010/-
10	144/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	061/11-12 dated 19.12.2011	32,55,208/-
11	145/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	062/11-12 dated 20.12.2011	32,55,208/-
12	146/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	065/11-12 dated 23.12.2011	16,27,604/-
13	147/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	078/11-12 dated 30.01.2012	12,56,010/-
14	149/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	074/11-12 dated 04.01.2012	29,68,750/-
15	150/DC/SLV-IV/Rebate/2012-13 dated 05.06.2012	073/11-12 dated 04.01.2012	21,15,385/-
16	263/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	058/11-12 dated 16.12.2011	45,54,656/-
17	261/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	070/11-12 dated 28.12.2011	45,54,656/-
18	260/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	015/11-12 dated 20.05.2011	34,86,462/-
19	264/DC/SLV-IV/Rebate/2012-13 dated 22.06.2012	016/11-12 dated 29.05.2011	34,86,462/-
20	304/DC/SLV-IV/Rebate/2012-13 dated 29.06.2012	010/11-12 dated 24.02.2011	27,54,406/-
21	301/DC/SLV-IV/Rebate/2012-13 dated 29.06.2012	017/11-12 dated 05.06.2011	34,86,462/-
22	634/DC/SLV-IV/Rebate/2012-13 dated 05.02.2013	080/11-12 dated 05.02.2012	6,07,288/-

3.1 However as it appeared that the applicant had misdeclared the facts to the department and as the rebate was erroneously granted to them on the basis of such misdeclared facts, show cause notices were issued to the applicant for recovery of the rebate erroneously granted.

4. The adjudicating authority confirmed the recovery of erroneously sanctioned rebate, under Section 11 A(10) of the Central Excise Act, 1944 read with Rule 6,7, and 14 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (PMPM (CD & CD) alongwith interest under Section 11AA of the Central Excise Act, 1944 read with Rule 18 of the PMPM (CD & CD) Rules, 2008 and also imposed penalty under Section 11AC read with Rule 17(1) of the PMPM (CD & CD) Rules, 2008 as below

Sr. No.	OIO No. & Date	ARE 1 Nos	Total amount of duty confirmed Rs.
1	03/ADC/DEM/VAPI/2014-15 dated 29.04.2014	074/11-12 dated 04.01.2012	29,68,750/-
2	04 to 13/ADC/DEM/VAPI/2014-15 dated 29.04.2014	039/11-12 dated 07.10.2011 042/11-12 dated 03.11.2011 043/11-12 dated 05.11.2011 044/11-12 dated 07.11.2011 051/11-12 dated 29.11.2011 052/11-12 dated 06.12.2011	3,91,19,238/-

		078/11-12 dated 30.01.2012 015/11-12 dated 20.05.2011 016/11-12 dated 29.05.2011 017/11-12 dated 05.06.2011	
3	14 to 20/ADC/DEM/VAPI/2014-15 dated 29.04.2014	054/11-12 dated 08.12.2011 055/11-12 dated 09.12.2011 056/11-12 dated 11.12.2011 061/11-12 dated 19.12.2011 062/11-12 dated 20.12.2011 065/11-12 dated 23.12.2011 010/11-12 dated 24.02.2011	2,21,60,456/-
4	21 to 23/ADC/DEM/VAPI/2014-15 dated 29.04.2014	058/11-12 dated 16.12.2011 070/11-12 dated 28.12.2011 080/11-12 dated 05.02.2012	97,16,600/-
5	24/ADC/DEM/VAPI/2014-15 dated 29.04.2014	073/11-12 dated 04.01.2012	21,15,385/-

5. Aggrieved with the Orders-in-Original, the applicant filed appeals with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara (Appeals – III) on the following grounds

5.1 That the impugned orders were non-speaking orders as the same were issued without jurisdiction, against legal provisions of Central Excise Act;

5.2 That the declarations for the items, ie. "My Teacher (Gutkha) Export", "Goa 1000 Gutkha", "JM Gutkha MRP Rs.2.50", "Society-Gutkha MRP 1-00" were filed and the export products were declared, capacity was determined or that the duty was paid and accounted for as per PMPM Rules;

5.3 That the CESTAT judgement in the case of Voltas Ltd. and CBEC Circular 423/56/98- CS dated 22.09.1998 was relevant to the case;

5.4 That there was no willful misstatement or collusion, suppression of facts or contravention done with intent to evade duty and the show cause notice had not demonstrated any evidence of intent to evade duty and penalty was not warranted;

5.5 That the rebate had nothing to do with whether the raw materials suffered duty or were procured duty free under DFIA license and rebate could not be denied as the end product had suffered duty of excise which was paid at the beginning of the month as per PMPM Rules;

5.6 That the rejection of the present claim on the basis of SIIB letter dated 28.08.2012 was not correct as the examination of goods mentioned in the letter pertained to M/s Kirti Industries and not the applicant;

5.7 That the core aspect or fundamental requirement for rebate was its manufacture and subsequent export and as long as this requirement was met, other procedural infraction of Notification, Circulars etc were to be condoned. In the subject case, even for non indication of 1.8 gm in the daily stock register, by a series of verification at various stages, the duty was collected on the goods which were exported and hence rebate was admissible.

That case pertaining to Birla VXL Ltd [1998(99) ELT 387] was relevant to the case

6. The Appellate Authority vide Orders-in-Appeal Nos. VAD-EXCUS-000-APP-123 to 144/16-17 dated 28.10.2016 rejected the appeals. The observations drawn by the Appellate Authority on the above issues are as under :-

6.1 That most of the grounds in all the Show Cause Notices were common. And if the applicant had filed their reply in respect of on show cause notice there would have been justification to seek time. Also the applicant had full opportunity to place their contentions before the Appellate Authority and were personally heard and all their contentions on the subject were duly considered and hence, no prejudice was caused to the applicant.

6.2 That is was imperative that the item declared should be accounted for, only in the same description as given in the declaration for the simple reason that the commodity in question was capable of being sold and marketed in different net weight. The Appellate Authority observed that the presumption was derived from the fact that the applicant manufactured the notified goods in different net weight and different Retail Sale Prices (MRP/RSP). Further when the description of the item is mentioned as "Pan Masala Gutkha Society MRP Rs.1" in export documents such as ARE-1, Shipping Bills etc., there was no merit in the applicants' contention that mention of weight in the description of the item in the DSA was not mandatory requirement.

6.3 The applicants had undisputedly received non duty paid materials for manufacture of notified goods against DFIA Licence and exempted material from domestic market but had failed to establish that they had satisfied Sub Rule (ii) of Rule 14A of the said PMPM Rules, according to which no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which were exported out of India.

6.4 Further the Appellate Authority has also made specific observations in respect of different OIO's

(a) Observations in respect of OIO No 03/ADC/DEM/VAPI/2014-15 dated 19.04.2014

i) that in respect of non declaration of the product 'My Teacher Gutkha 2.00 gms MRP 1.50' in the declaration dated 28.11.2011, the applicant had not followed the mandatory requirement of Rule 6 of the PMPM Rules, 2008 of declaring the product for the purpose of manufacture as there was difference in the description of the product as mentioned in the export invoice when compared to the DSA;

ii) that under self removal procedure for exports, copies of ARE-1 were endorsed by Range officers, in token of verification on the basis of documents submitted by exporter without physical verification of goods and that the onus of establishing that the said exported goods were manufactured and cleared from their factory for exports lay on the claimant;

iii) From the shipping bills it was seen that the consignment was not opened by Customs for verification and thus the exact identity of the said goods was not ascertainable even from the endorsement of Customs Officer indicating that there was a difference in the goods mentioned in export documents and as mentioned in DSA;

Reliance has been placed on the case of CCE vs. Avis Electronics Ltd., [2000 (117) ELT 571 (Tri. LB)]

iv) that the said Shipping Bill No. 7073438 dated 11.01.2012 declared the state of origin as "Nagaland" and not 'Silvassa' unit and there was lack of correlation of goods being exported (on which rebate is being claimed) vis-à-vis their description, quantity, place of manufacture;

v) that from the customs documents it was noticed that the goods were loaded in two containers and sealed by bottle seals but there was no mention if the containers were stuffed and sealed under customs supervision.

(b) O-I-O No. 04-13/ADC/DEM/VAPI/2014-15 dated 29.04.2014

The discrepancies mentioned at Sr. No 6.4(a) (i),(ii), (iii) and (v) above were noticed in respect of 'Goa 1000 Gutkha Green strip/Goa 1000 Gutkha' which were exported but not declared in their DSA.

(c) O-I-O No. 21-23/ADC/DEM/VAPI/2014-15 dated 29.04.2014

The discrepancies at Sr. No 6.4(a) (i),(ii),(iii) and (v) above were noticed in respect of the exported goods 'Goa 1000 Gutkha Red Strip' which were not declared in their DSA.

(d) O-I-O No. 14-20/ADC/DEM/VAPI/2014-15 dated 29.04.2014

(i) That the exported goods 'Society Gutkha 1.5 Gms, MRP 1.00' could not be correlated to the goods mentioned in the rebate claim as applicant had not filed declaration for the same;

(ii) The correlation of export goods vis-a-vis documents was not forthcoming as the goods were said to be loaded in 7 vehicles numbers of which were mentioned on the reverse of invoices but the goods were exported in three containers.

7. Aggrieved by the impugned Orders-in-Appeal, the applicant have filed the instant separate Revision Applications on the following grounds :-

7.1 That the impugned order is non est. in law as there was no Review under Section 35E of the Central Excise Act, 1944 against the adjudication orders by which refunds were sanctioned and paid. As there was no appeal filed under Section 35 and 35A of the Central Excise Act, 1944 the adjudications order had become final. Since the adjudication orders for the sanction of the rebate were not challenged, demanding the refund sanctioned and paid, without setting aside such adjudication orders was against the declared law. Reliance has been placed on the following case laws

i) CCEX. vs M.M. Rubber Co. [1991 (55) E.L.T. 289 (S.C.)]

ii) M/s Asian Paints (India) Ltd. vs. Collector [2002 (142) E.L.T. 522 (S.C.)]

iii) M/s Eveready Industries India Ltd. vs CESTAT, Chennai [2016 (337) E.LT. 189 (Mad.)]

iv) M/s Voltas Limited vs Commissioner of Customs & Central Excise, Hyderabad [2006 (202) E.L.T. 355 (Tri. Bang.)]

v) M/s Doothat Estate Kanoi Plantations (P) Ltd vs C.C.E. Shillong [2001 (135) E.L.T. 386 (Tri. Kolkata)]

7.2 That CBEC Circular Nos. 423/56/98 CS dated 22.09.1998 and No. 768/01/2004-CX dated 01.05.2004 which clarified that procedure under Section 11A was to be followed simultaneously with the Review order and that all refund orders should invariably also be a speaking order in the form of an Order-in-Original were binding on the department

7.3 That Judicial discipline was to be followed and Circulars are binding and the Appellate Authority should not have acted against the binding circulars as held in the case of M/s Dhiren Chemical Industries [2002 (139) E.L.T. 3 (S.C.)] and [2002 (143) E.L.T. 19 (S.C.)] and Circular No. 695/11/2003-CX dated 24.02.2003 and F.No. 201/01/2014-CX.6 dated 26.6.2014.

7.4 That there was no dispute of the export of the goods which were cleared under ARE1's and triplicate copies were filed with the jurisdictional Superintendent who was to verify with the factory records and then forward the same to the Divisional Office. This factual verification was done and rebate was recommended which showed that the Deputy Commissioner sanctioned the refund after verification by the Range officer. Circular No 510/06/2000-CX. Dt. 03.02.2000 clarifies that triplicate of ARE1 is meant for scrutiny by the Range Superintendent.

7.5 That Daily Stock Account was maintained and had entries of production and clearances etc., as required under Rule 10 of CER and if such record was not maintained product and rate wise, it did not obliterate the rebate due.

7.6 That if there were to be any procedural infringements they do not wipe away the substantial benefit of rebate and that the report of SIIB discussed in the impugned order does not relate to the present exports and has no bearing on the present issue.

7.7 That on the grounds mentioned above the impugned Orders-in-Appeal be set aside.

8. Personal hearing was scheduled in this case on 22.10.2021, 29.10.2021, 25.11.2021, 01.12.2021 and 16.12.2021. However, no one appeared before the Revision Authority for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

8. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

9. The facts stated briefly are that the applicants held Central Excise Registration Certificate and are engaged in the manufacture of Pan Masala containing tobacco commonly known as Gutkha falling under Chapter 24039990 of the First Schedule to the Central Excise Tariff Act, 1985 which is brought under the Compounded Levy Scheme with effect from 1.07.2008 as per the PMPM Rules notified vide Notification 30/2008-CE (NT) dated 01.07.2008. The issue involved in this case pertains to the rebate claims filed by the applicants in respect of notified goods exported by them i.e "My Teacher Gutkha, 2.00 GMS, MRP 1.50", "Goa Gutkha Green Strip/Goa 1000 Gutkha", "Society Gutkha 1.5 Gms, MRP 1.00", "Goa 1000 Gutkha Red Strip" and "J.M Gutkha 2.0 Gms, MRP Rs.2.50/". The rebate claims filed by the applicant were initially sanctioned by the department. Subsequently it was noticed that the applicant had misdeclared facts and as the department was of the view that the rebate claims were erroneously granted, show cause notices were issued and the Adjudicating Authority, vide the impugned Orders-in-Original, confirmed the demand for recovery of erroneously granted rebate amounts alongwith interest and penalty. The Show cause notices for recovery of erroneous sanction of the rebate claims by the department on account of various acts of misdeclaration and misrepresentation of facts on the part of the applicant.

10. Before adverting to the merits of the opposing contentions, it is pertinent to refer to statutory provisions relevant to the case. The applicant has in the revision application has submitted that the impugned order is non est in law and has averred that no review of the sanctioned orders were done and as no appeal was filed against the sanctioned order, they had attained finality.

11. Government observes that while the sanction of the rebate claims are on record, the instant case has relevance to the statutory provisions pertaining to the recovery of the such sanctioned rebate claims as subsequent events had brought to light the misdeclaration, suppression and misrepresentation of facts in the clearance of the goods which are as under:

(i) That the mandatory requirement of Rule 6 of the PMPM (CD & CD) Rules, 2008 to declare the description of goods to be manufactured and their brand names in the prescribed Form-1 has not been complied with by the applicant.

(ii) That the goods exported represented a different brand from the brand declared in the declarations filed by the applicant, in the light of definition of 'Brand' name.

(iii) That the present market value of the exported goods in some cases was less than the amount of rebate claimed and thus the condition(vi) of *Notification No. 32/2008-CE(NT) dated* 28.08.2008 was violated by the applicant.

(iv) That there was no mention of the goods cleared for export in the Daily Stock Account and hence the applicant had not manufactured the goods from their factory no any duty was paid on the exported notified goods.

(v) That there was no physical supervision and verification of the goods by the jurisdictional central excise officers and were not physically examined

by the Customs and thus there was no co-relation between the containers under which the goods were shown as exported and the goods exported by the applicant.

(vi) That transportation of notified goods was not proved and the documents submitted along with the rebate claims were contradictory. Also there was no link between the goods exported and the goods stated to have been manufactured and cleared by the respondent from their factory.

(vii) That Special Investigation and Intelligence Branch (SIIB), Mumbai, vide their letter dated 28.08.2012 informed the department that the goods, were found to be packed in card paper boxes. The shipping bills involved in the instant claims are also found mentioned in the list contained in the said letter.

viii) That SIIB further informed that it was found that the pouch contained '1.8 gms' of Gutkha and not '2.00 gms' as declared in the pouch. Therefore, it was not possible to ascertain the quantity of manufactured goods.

ix) That the applicant had license to use only one particular product but the goods exported are of the different brand and is a separate brand having *distinct MRP and quality.*

x) That the goods were not stuffed under Excise supervision or Customs supervision at the port of exportation. Therefore there is no link between the goods cleared by the applicant and the goods exported

xi) In the ARE-1 the applicant had declared that "Customs and excise duty leviable has been paid on the raw material used in the manufacture of goods". The applicant has used non-duty paid material imported under DFIA License and exempted raw material obtained from domestic market. Therefore, the applicant has thus filed a fraudulent rebate claim by giving a false declaration.

xii) That the specific provisions under Rule 6(1) for declaration to be filed under PMPM (CDCD) Rules, 2008, has been violated.

(xiii) The applicant violated provisions of Rule 14A(ii) as they had used raw materials imported under DFIA scheme as well as duty free material from domestic market.

11.1. Government notes for a better understanding of the statutory provisions and applicability in cases of erroneous recovery of refunds, the provisions of Section 11A of the Central Excise Act, 1944 are reproduced as under

> ***Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-***
>
> *(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-*
>
> *(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*
>
> *b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-*
>
> *(i) his own ascertainment of such duty; or*
>
> *(ii)the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.*
>
> *(2) .....*
>
> *(3) .....*

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

(a) fraud; or

(b) collusion; or

(c) any wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

Explanation 1. *- For the purposes of this section and section 11AC,-*

(a) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b).....;

(i).....;

(ii).....;

(iii).....;

(iv).....;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

[(vi) .....

.....

Section 11AC. Penalty for short-levy or non-levy of duty in certain cases. -

(1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the

reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher:

(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

(c) where any duty of excise has not been levied or paid or has been short-levied or shortpaid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined: Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;

11.2. Government notes that as stated above, the statute in the Central Excise Act, has provided a remedy in the event of a refund having been having been sanctioned erroneously and recovery of the same in the light of subsequent omission on the part of the noticees.

11.3 Government notes that the issue has been discussed at various judicial forums and the Courts have held that Section 11 A is an

independent substantive provision and is a complete code in itself for realization of excise duty erroneously refunded ant there are no pre-conditions attached for issuance of notice under Section 11 of the Act for *recovery of amount erroneously refunded. Government relies on the* observations of the Hon'ble High Court of Judicature at Bombay in the case of Indian Dyestuff Industries Ltd vs. Union of India [2003(161) E.L.T. 12(Bom)] at Para 15 which is reproduced as under

> *"15. The submissions of the Petitioners that when the refund was granted as a consequential relief by accepting the order-in-original dated 11-9-1984, it was not open to the Revenue to resort to Section 11A of the said Act and purport to recover the amount refunded on the ground that the amount was erroneously refunded and that if at all the revenue was aggrieved by the order-in-original, the proper course open to the revenue was to file an appeal u/s. 35 of the said Act and that having accepted the order-in-original dated 11-9-1984, it was not open for the revenue to invoke jurisdiction u/s. 11A of the said Act have no merit, because, before invoking the jurisdiction u/s. 11A of the said Act, it was not mandatory for the Revenue to challenge the order-in-original by filing appeal. The show cause notice u/s. 11A of the said Act can be issued, if there are grounds existing such as short levy or short recovery of erroneous refund etc. under the Scheme of the said Act. The only way by which an erroneously refunded duty could be recovered is by resorting to the powers conferred under Section 11A. The issuance of a notice under Section 11A is a primary and fundamental requirement for recovery of any money erroneously refunded. Section 11A is the fountain head of all the powers for recovery of any money erroneously refunded. There are no preconditions attached for issuance of notice under Section 11A for recovery of the amount erroneously refunded. There is no requirement of passing an adjudication order and if adjudication order is passed, there is no need to initiate appellate proceedings before issuing notice under Section 11A. Second proviso to Section 35A(3) which states that no order-in-appeal requiring the appellant*

to pay any duty erroneously refunded shall be passed unless the Appellant is given show cause notice within the time limit prescribed in Section 11A also shows that Section 11A is a independent substantive provision and it is a complete code in itself for realisation of excise duty erroneously refunded. Under the circumstances, the contention of the Petitioner that notice under Section 11A could not be issued without challenging the order-in-original is without any merit."

11.4 Government notes that the above order of the High Court of Judicature in Bombay has been maintained by the Hon'ble Supreme Court in the case of Navinon Ltd vs. UOI [2004(163)E.L.T A 56(SC)]

11.5 Further Government also relies on the following case laws which echo the decisions of the Courts as quoted supra:

(i) Bharat Box Factory vs. Commissioner of Central Excise, Ludhiana [2005(183) E.L.T. 461(Tri-Del)]

(ii) GOI order in Re: Evershine Polyplast Pvt Ltd [2012(278) E.L.T 133(GOI)]

11.6. Government observes that the impugned Orders-in-Original has clearly brought out the misdeclarations, suppression and misrepresentation on the part of the applicant and the objections on the part of the applicant on this count are flawed and thus rejects the same and moves on to merits of the case.

12. Government observes that the applicant in the Revision Application has averred that the goods were cleared under ARE1s and Triplicate copies were filed with the jurisdictional Superintendent who was to verify with the factory records" that the Daily Stock Account was maintained and this had the entries of production and clearances etc., as required under Rule 10 of CER' that if such record was not maintained product and rate wise does not obliterate the rebate, due which is an export incentive; that the goods were

exported by containers with the OTS (One Time Seal) is also not in doubt since the seals were verified by the Customs; that if there were to be any procedural infringements they do not wipe away the substantial benefit of rebate; that the report of SIIB discussed in the impugned order does not relate to the present exports.

13. In view of the several averments made by the applicant propagating their claim that the initial sanction of the rebate claims were in order and that the actions of the department to initiate actions to recover the rebate sanctioned were flawed, Government proceeds to analyse the claims based on the various issues raised in the impugned Orders-in-Original and Orders-in-Appeal.

14. Issue regarding violation of PMPM Rules, non filing of declaration and 'Brand' issues:

14.1 The Government finds that the applicant in the instant cases had cleared the notified goods "My Teacher Gutkha, 2.00 GMS, MRP 1.50", "Goa Gutkha Green Strip/Goa 1000 Gutkha", "Society Gutkha 1.5 Gms, MRP 1.00", "Goa 1000 Gutkha Red Strip" and "J.M Gutkha 2.0 Gms, MRP Rs.2.50/" each" for export under the ARE1's mentioned above and claimed rebate of the excise duty under Rule 18 of Central Excise Rules 2002. The impugned goods are notified under Section 3A of the Central Excise Act, 1944 and the duty is levied under PMPM Rules, 2008 as notified under Notification No. 30/2008-CE(NT) dated 01.07.2008. The relevant factor for levy of duty has been specified as the 'number of machines' in the factory of the manufacturer under said rules. The manufacturer of impugned notified goods is required to file declaration under Rule 6 of the PMPM Rules, 2008 to the jurisdictional Central Excise Office before commencement of production. The duty payable is to be calculated under Rule 7 of the said rules read with Notification No. 42/2008-CE dated 01.07.2008, on the number of operating packing machines in the factory during the relevant period.

14.2. For better appreciation of the dispute, Rule 6(viii) of PMPM Rules is reproduced as under.

Rule 6. Declaration to be filed by the manufacturer. –

(1) A manufacturer of notified goods shall, immediately on coming into force of these rules, and, in any case, not later than ten days, declare, in Form 1, -

(i) .....

(ii) .....

(viii) description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc;

(ix) ..."

14.3. On perusal of the Rule 6(viii) of PMPM Rules as above, it noticed that the manufacturer of the notified goods operating under PMPM Rules must file declaration with the competent authority giving details such as description of notified goods to be manufactured with their brand names. Further to comprehend the precise connotation of the term 'brand', the definition of 'brand' as given by 'The American Marketing Association' is reproduced below :-

"A brand is a name, term, design, symbol, or any other feature that identifies one seller's good or service as distinct from those of other sellers. The legal term for brand is trademark. A brand may identify one item, a family of items, or all items of that seller. If used for the firm as a whole, the preferred term is trade name."

Thus, in common parlance, it is understood that the name, symbol, sign, product, service, logo, person, or any other entity that makes you distinguish a product from a clutter of products is known as a Brand. Also,

anything that helps the customers to identify the product and distinguish the product from each other can be attributed as brand of the product.

14.4. In the instant case the very fact that the applicant were attaching the grammage, MRP, the words "Red" or "Green", and other specific features to the name of product while marketing it, shows that the intention is to convey the distinguishing features of the products to their customers. Being reason to choose, the Government holds that, attachment of these words, grammage, MRP and other specific features to product name makes the products fall under different brands.

14.5. At the backdrop of discussion in the forgoing paras, the Government finds that the applicant in the Agreement dated 25th October 2009 had declared the products viz. GOA, GOA 1000, GOA GOLD GUTKHA, GOA MITHI SUPARI 1000, GOA MITHA PAN MASALA 1000, GOA KARISHMA, GOA CAPTAIN, GOA TIGER Gutkha, GOA TIGER Pan Masala, GOA FRESH Mouth freshener and GOA ONE. Simultaneously, it is also observed that the applicant had not declared the product "My Teacher Gutkha, 2.00 GMS, MRP 1.50", "Goa Gutkha Green Strip/Goa 1000 Gutkha", "Society Gutkha 1.5 Gms, MRP 1.00", "Goa 1000 Gutkha Red Strip" and "J.M Gutkha 2.0 Gms, MRP Rs.2.50/" each" in the said agreement nor did they declare the product in the declaration filed with the department under Rule 6 of PMPM Rules. The applicant, being manufacturer of notified goods, were expected to be more accurate while filing the declaration under Rule 6 of the PMPM Rules.

14.6. The Government further notes that the Rule 18 of PMPM Rules states that all provisions of the Central Excise Act, 1944 and the Central Excise Rules, 2002, including those relating to maintenance of daily stock account, removal of goods on invoice, filing of returns and recovery of dues shall apply mutatis mutandis to the manufacturers operating under PMPM Rules.

However, it is observed that the applicant had failed to maintain the Daily Stock Register in respect of the notified products manufactured by them.

14.7. In view of above discussion, Government holds that the applicant had failed to comply with statutory provisions of the PMPM Rules and follow the procedure thereunder rendering them to be ineligible for rebate of excise duty paid on export of products "My Teacher Gutkha, 2.00 GMS, MRP 1.50", "Goa Gutkha Green Strip/Goa 1000 Gutkha", "Society Gutkha 1.5 Gms, MRP 1.00", "Goa 1000 Gutkha Red Strip" and "J.M Gutkha 2.0 Gms, MRP Rs.2.50/ each". Therefore, the conclusions arrived at in the impugned Orders-in-Original and Orders-in-Appeal in this regard were just and proper.

15. Issue regarding the 'state of origin' of the goods exported:

15.1. The Government finds that in Shipping Bill No. 7073438 dated 11.01.2012 pertaining to clearance under ARE No 074/11-12 dated 04.01.2012, the state of origin was declared to be "Nagaland", and in Shipping Bill No. 7077593 dated 11.01.2012, pertaining to clearances under ARE No. 073/11-12 dated 04.01.2012 the state of origin was declared as "Gujarat" in the shipping bill whereas the factory of the applicant falls under Silvassa in UT of Dadra 86 Nagar Haveli. The Government observes the adjudicating authority while passing the impugned order has observed that the source of goods was not established beyond doubt which was in contravention of the condition No (iii) of Notification No 32/2008-CE (NT) dated 28.08.2008 and the applicant had not come forward with any explanation in this regard.

15.2. The Government opines that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export from the factory premises under the relevant ARE-1 applications were actually exported. The second is that the goods are of a duty paid character as certified on the triplicate copy

of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods removed from the factory on payment of duty and the same have been exported. The Government holds that, being recipient of export incentives in the form of rebate, it is essential on the part of applicant to satisfy the rebate sanctioning authority on the above two aspects particularly when the variation is noticed in respect of state of origin of the notified goods as above. In the instant case, no logical explanation was given by the applicant for variation in the state of origin as noticed above. The Government finds that the facts such as state of origin, month of manufacture of notified goods could not be validated due to non-maintenance of the Daily Stock Register by the applicant. In view of above, the Government finds no cause to oppose the orders passed by the Adjudicating Authority and the Appellate Authority on this issue.

16. Issue regarding non maintenance of the 'Daily Stock Account' of the exported goods

Before analysing the facts, it would be pertinent to keep in sight the objective of the legislature in requiring manufacturers to maintain daily stock account in the era of self assessment. The entire system of self assessment bases its faith in the assessee. There is no day to day interference of the Department in the working of a manufacturer assessee. Therefore, the Department is entirely dependent upon the records maintained by the assessee manufacturer to assess the central excise duty due to the exchequer. The records maintained by the assessee manufacturer are a crucial cog in the era of self assessment. The work flow from the point of receipt of duty paid inputs/inputs procured without payment of duty, the credit utilised on such inputs and capital goods, the quantity of inputs

utilised for manufacture, the quantity of inputs used up in the manufacture of final products, the quantity of inputs present in work in progress products and finally the quantity of goods manufactured by the assessee manufacturer is documented by the assessee himself. These records enable the Department to ascertain whether the revenue due to the government has correctly been paid. It is towards this end that the requirements of maintenance of records by the assessees have been prescribed in the statute and the rules. Hence, this should be the milieu in which the provisions for maintaining daily stock account must be looked at for clarity in the matter.

16.2. The text of Rule 10 of the CER, 2002 which has been made applicable to the PMPM Rules, 2008 by Rule 18 thereof is reproduced below:

> *"Rule 10 Daily stock account –*
>
> (1) *Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid."*

The rule firstly requires that the assessee is to maintain proper records on a daily basis and in a legible manner. The words "proper records" finding mention in the rule have a definite purpose. They place upon the assessee the responsibility of maintaining records accurately and in such a manner that the Department is able to get a full picture of the manufacturing activity being carried out. Going further, the rule requires the assessee to record the description of the goods on a daily basis, giving details of the entire gamut of the quantity, quality, inventory etc, of each and every variety of the product. The rule also requires the assessee to maintain an "inventory of goods". The word "inventory" means a detailed list of all things. In layman's terms all useful particulars which have a bearing on the

valuation, duty liability of the manufactured goods must be recorded in the daily stock register. From the Central Excise point of view, a detailed list would be one where one is able to comprehend the measure of a particular manufactured goods; viz. in actual physical terms in a standard of weight or measure. Needless to say, this view would be of particular relevance insofar as evasion prone commodities like "gutkha" are concerned. In the absence of Daily Stock Account being maintained by the applicant or not containing any details as prescribed, ascertaining the inventory would be an impossibility and would serve no useful purpose.

16.3. The use of these three sets of words in Rule 10 of the CER, 2002 should be enough to signify the importance attached by the rule to the detail in which the daily stock register is required to be maintained. An interpretation which renders words in a statute to be superfluous cannot be accepted. The contention of the applicant that maintenance of the daily stock account register in not a mandatory requirement for sanction of rebate *defeats the very purpose of the rule and is an absurdity*. Surely such an interpretation of the rule prescribing maintenance of daily stock account would render it redundant. Therefore, Government strongly disapproves of this contention of the applicant as they are manufacturing gutkha in packages of various sizes/weights/brands/identity/colours. In the absence of daily entries in the Daily Stock Account register as envisaged in the Rules, the claim of clearance of the said product on payment of duty is far-fetched.

16.4. The non-maintenance of Daily Stock Account Register by itself implies that the applicant has not manufactured the said exported notified goods. In view of above, it is found that there is no correlation of goods exported to that of duty discharged by the applicant. As such, Government holds that the rebate of duty on goods claimed to have been exported cannot be

determined and granted in the instant case as rightly held by the appellate authority.

17. Issue regarding the claim of the applicant of verification and supervision of the loading of the goods by Customs authorities

17.1. With regard to the assertion made by the applicant that the goods were verified by the Customs Officers at the port of export, samples were drawn and stuffed in containers under customs supervision etc., Government notes that the Customs Officers could not have halted the export. It is an admitted fact that the applicant had not followed the procedures prescribed under PMPM Rule, 2008 and therefore the essential requirement of Rule 18 of the CER, 2002 read with Notification No. 32/2008-CE(NT) dated 28.08.2008 and Notification No. 19/2004-CE(NT) dated 06.09.2004 of co-relating the duty paid goods cleared from the factory of manufacturer with the exported goods has not been adhered to. The fact whether the goods were duty paid could not be verified by the jurisdictional Central Excise Officers due to mismatch in the dates of manufacture in various documents and due to non maintenance of Daily Stock Account register by the applicant.

18. Issue regarding use of exempted raw material and raw material procured under DFIA licence

18.1 Government finds that the applicant had procured the materials against DFIA Licence and also exempted material from domestic market for the manufacture of notified goods. In this regard, the provisions under Rule 14A of the PMPM Rules, 2008 are very clear. The Rule 14A reads as under :-

> *"Rule 14A. Export without payment of duty.*
> *Notwithstanding anything contained in these rules or in the Central Excise Rules, 2002 -*

(i) no notified goods shall be exported without payment of duty; and
(ii) no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which are exported out of India."

18.2 On perusal of the above Rule, it is observed that the law specifically prohibits the procurement of any material for use in the manufacture or processing of notified goods which are exported out of India. The applicant had not denied the fact that they have procured the materials under DFIA scheme and / or from domestic market without payment of duty for use in the manufacture of notified goods exported by them. The Government, therefore, holds that being beneficiary of the export incentive in the form of the rebate, it is obligatory on the part of the applicant to prove the compliance of all the conditions of the law. Therefore, the onus to prove that they have not contravened provisions of Rule 14A(ii) lies on the applicant. The Government finds that the applicant has failed to comply with the requirements of Rule 14A(ii) of the PMPM Rules in as much as they have not been able to controvert the factum of procurement of duty free material for manufacture of notified goods.

19. Issue regarding lack of corelation between goods transported and goods exported:

19.1. Government notes that another issue in the instant matter is regarding the absence of the correlation between the goods cleared from the factory and the goods exported. This is particularly in view of the fact that under self removal procedure, the endorsement of the ARE 1's is done on the basis of documents provided by the applicant and without any physical verification of the goods. Government notes that it is evident from the case records that the goods were loaded and transported in vehicles as evidenced by the endorsements on the ARE1 and invoices. Despite the same, the shipping documents mention that the goods were loaded in containers and

sealed with bottle seals. Government observes that the applicant has not provided anything to the effect that the goods that were transported in in vehicles were the same goods that were loaded and sealed under the supervision of the customs authorities. Thus Government observes that there was no link between the goods exported and the goods mentioned in the ARE -1's which were produced by the applicant for claim of rebate. Government holds that the rebate of duty on goods claimed to have been exported cannot be determined and granted in the instant case as rightly held by the appellate authority.

20. Issue regarding Present Market Value being lesser than the rabate claimed:

20.1 With regard to the issue regarding Present Market Value (PMV) of the exported goods being lesser than the rebate claimed, the details of each of the two rebate claims impugned in these proceedings is as under.

Sr. No.	Shipping Bill /Date	PMV (Rs.)	Rebate claimed (Rs)
1.	7077593/11.01.2012	18,74,987/-(FOB 18,92,396/-)	21,15,385/-
2.	9392456/22.02.2011	24,50,374/- (FOB 22,01,323/-)	27,54,406/-

20.2 Government observes that rebate on pan masala and gutkha has been granted by the Central Government by exercising its powers under Rule 18 of the CER, 2002 and issuing Notification No. 32/2008-CE(NT) dated 28.08.2008. Condition (vi) and condition (ix) thereof are reproduced below.

"(vi) the market price of the excisable goods at the time of exportation is, in the opinion of the Assistant Commissioner or Deputy Commissioner of Central Excise, not less than the amount of rebate of duty claimed;"

"(ix) the procedure as laid down in the notification No. 19/2004-CE(N.T.) dated 6th September, 2004 shall be followed *mutatis mutandis*;"

As per condition (vi) the Assistant Commissioner or Deputy Commissioner with powers to ensure that the market price of the exported goods in rebate claims filed before him/her in terms of Notification No. 32/2008-CE(NT) dated 28.08.2008 is not less than the amount of rebate of duty claimed by the applicant. Meanwhile, condition (ix) of the notification stipulates that the procedure laid down in Notification No. 19/2004-CE(NT) dated 06.09.2004 is followed as far as possible. Similar to condition (vi) of Notification No. 32/2008-CE(NT) dated 28.08.2008, condition (2)(e) of Notification No. 19/2004-CE(NT) dated 06.09.2004 prescribes an almost identical mandate.

> "(e) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;"

The Notification No. 19/2004-CE(NT) dated 06.09.2004 then goes on to specify that the rebate claim shall be sanctioned if the rebate sanctioning authority is satisfied that the claim is in order.

20.3 In such manner, the two notifications attach considerable importance to the parameter that the market price of the exported goods is not less than the amount of rebate of duty claimed. After having taken due note of the submissions made by the applicant in the revision application in this regard, Government proceeds to examine the amplitude of the term "market price" used in these notifications. "PMV" is the acronym used to denote "present market value" of the goods. On the other hand, the FOB value of the goods is the price which the seller quotes as the cost of delivering the goods at the nearest port. The price at which the buyer receives the goods at the port of export would include the cost of the goods plus the cost of transporting them from the factory to the port. The sum of these costs is referred to as the "FOB value" of the goods.

20.4 The rebate of duty is the refund of duties of excise paid on excisable goods or the materials used in the manufacture of goods exported out of India. After introduction of new Section 4 w.e.f. 01.07.2000 by the Finance

Act, 2000, excise duty is chargeable on the transaction value of the goods at the place of removal. The transaction value in case of export goods would be their price at the place of removal which would be the port of export. Undoubtedly, only the price of the goods within the territory of India can be subjected to the levy of central excise duty and the port of export is the last point where the excisable goods remain within the country. Government observes that the FOB value has been approved as the "transaction value" for grant of rebate on export goods in various decisions. The para 10 of one such decision In Re : Banswara Syntex Ltd.[2014(314)ELT 886(GOI)] is reproduced below.

> *"10. From above, it is clear that expenses incurred upto the place of removal/point of sale are includible in the value determined under Section 4 of Central Excise Act, 1944, In this case, there is no dispute about place of removal which is stated as port of export where ownership of goods is transferred to the buyer. Applicant's claim that in this case place of removal is not factory but the port of export, is not disputed by department. Since applicant has included only local freight for transportation of export goods from factory to port of export and not the ocean freight or freight incurred beyond port of export, there is no reason for not considering the local freight as part of value in view of above discussed statutory provisions. As such the demand of duty and interest as confirmed with the impugned orders is not sustainable. Government therefore set aside the impugned orders and holds that initial sanction of rebate was in order."*

20.5 The applicant has sought to justify the approach of the rebate sanctioning authority in arriving at the market value of the gutkha on the basis of the MRP of the goods in the domestic market. Moreover, the value for the purpose of assessment to central excise duty under Section 4 of the

CEA, 1944 can only be its transaction value at the place of removal. In the present case, the transaction value at the place of removal is its FOB value. The FOB value of the goods is the market value of the goods to the buyer of the goods. Hence, the applicant cannot substitute this value with any other permutation. The rebate claims filed by the applicant are clearly hit by condition (vi) of Notification No. 32/2008-CE(NT) dated 28.08.2008 and condition (2)(e) of Notification No. 19/2004-CE(NT) dated 06.09.2004. Given the facts of the present case where the applicant has claimed rebate which by their own admission is in excess of the FOB value of the goods, the rebate claims cannot be sanctioned and has been correctly rejected by the adjudicating authority.

20.6 Government further observes that despite the fact that the goods in question in all the cases are 'gutkha' having different brands with a marginal difference in quantity in each pouch, in cases other than the two cases mentioned in the table above, the value shown by the applicant in the shipping bills is higher than the rebate claimed and the value in the shipping bills in the other cases are disproportionately higher than the value shown in the shipping bills mentioned in the table, considering the marginal variance in quantity. Government observes that this shows use of inflated value in the shipping bills of same goods in the other cases to ensure that the FOB is higher than the rebate claimed and thus keep it out of the purview of the issue regarding MRP being lower than the rebate claimed.

21. Government also observes that despite the claims of the applicant that the investigations by SIIB did not pertain to them, it is crystal clear from the investigations that the applicant was actively involved in the irregularities & discrepancies noticed as regards contents of the product as well as the manufacture of goods, meant for export, as the applicants' name was shown as the manufacturer of the goods on the pouches. The irregularity points

towards applicant's incorrect claim of weight of said goods and name and place of manufacture of goods in question.

22. Government also observes that the reliance placed by the applicant on various case laws mentioned in para 7 supra is misplaced in as much as the applicants/appellants in those cases had substantially complied with the provisions under the relevant Notifications/Circulars whereas in the instant case the applicant has failed to follow the provisions under PMPM Rules, 2008 as rightly held by Commissioner (Appeals) in his Orders-In-Appeal. The applicant has failed to pay duty on the packing machines installed in their factory, failed to maintain the Daily Stock Account in respect of the goods exported, utilised non-duty paid material for manufacture of notified goods, failed to substantiate their claim of clearance of duty paid goods from factory, misstated the place of manufacture of the exported goods and had claimed rebate of an amount which was higher than the market value of the exported goods. The PMPM Rules, 2008 have been introduced specifically to curtail revenue leakage in respect of pan masala and gutkha which are evasion prone commodities. These rules are consistent with the provisions of the Central Excise Act, 1944 and the rules thereunder and therefore they carry statutory force. The applicant has failed to comply with the provisions of the PMPM Rules, 2008 and the notifications granting rebate. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018(362) ELT 404(Mad)] would be relevant here. The relevant text is reproduced.

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. ....."

Since the applicant has failed to comply with the requirements of the PMPM Rules and the CEA, 1944 and the rules/notifications issued thereunder, the reliance placed on these case laws by the applicant is also misplaced.

23. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeals filed by the applicant. Thus, Government does not find any infirmity in the Orders-in Appeal Nos. VAD-EXCUS-003-APP-123 to 144/16-17 dated 28.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara (Appeals – III) at Vapi, and, therefore, upholds the impugned Orders-in-Appeal.

24. The Revision Applications are dismissed being devoid of merit.

31/10/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER NO. 1006-1027/2022-CX (WZ) /ASRA/MUMBAI DATED 31.10.2022

To,

M/s. Shree Meenakshi Food Products Pvt. Ltd.,
Survey No. 179/1/5, Kuvapada Industrial Estate,
Village Silli, Silvassa – 396 230

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, GST Bhavan, RCP Compound, Vapi – 396 191.
2. The Commissioner of GST & CX, Surat Appeals, 3rd floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.