



**REGISTERED
SPEED POST**

F.No.195/648/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....

28/11/13

ORDER NO. 1386 /13-Cx DATED 25.11.2013 OF THE
GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE
CENTRAL EXCISE ACT, 1944.

Subject : Order in Revision Application filed under Section 35 EE of
the Central Excise Act, 1944 against the order-in-appeal
No.46-CE/GZB/2011-12 dated 29.4.11 passed by the
Commissioner of Central Excise (Appeals), Ghaziabad.

Applicant : M/s Kurele Pan Products (P) Ltd., Ghaziabad

Respondent : The Commissioner of Central Excise, Ghaziabad,

Order

This revision application is filed by M/s Kurele Pan Products (P) Ltd., Ghaziabad against order-in-appeal No.46-CE/GZB/2011-12 dated 29.4.11 passed by the Commissioner of Central Excise (Appeals), Ghaziabad with respect to letter dated 1.2.2011 passed by the Additional Commissioner of Central Excise, Ghaziabad.

2. Brief facts of the case are that the applicant was engaged in the manufacture of Gutkha. On 30.5.2006 a search operation was conducted by the departmental officers in the factory premises of the applicant. During the course of search, the department found 15,800 kgs of loose Gutkha valuing Rs.3160000/- lying in the factory premises. The departmental officer seized the said loose Gutkha under the Panchnama and handed it over to Shri K.M. Shukla, the Director of the applicant company vide Supurdnama dated 30.5.2006. A Show Cause Notice dated 28.11.2006 was issued proposing confiscation of the seized goods demand of duty and imposition of penalty. The Additional Commissioner, Central Excise, Ghaziabad, vide order-in-original No.02/ADC/GZB/09 dated 13.2.2009 held, in regard to the said seized loose Gutkha, as under:-

"From the perusal of the defence reply of Noticee No.1 and 3 and the contents of the show cause notice, it appears that the said goods i.e. Gutkha (ready to pack) cannot be said to have attained the status of finished goods until these are packed in unit containers The Noticee is bound to quantity of the finished goods in daily stock account when the goods reaches the state of finality i.e. marketable. Thus, it appears that Noticee No.1 did not finally pack the (ready to pack) Gutkha in unit containers, hence, not to be termed as the finished goods..... Thus, the said ready to pack Gutkha does not appear to be liable for confiscation. It may be worth mentioned here that the said ready to pack Gutkha are ordered to be accounted for properly in the account and may be removed after payment of Central Excise duty as applicable at the time of removal."

The Adjudicating Authority confirmed the duty demand of Rs.329734/- confiscated other goods and imposed penalty on various notices.

Applicant claimed that due to such long storage of Gutkha lying loose, the same became unfit for human consumption and, thus, was not marketable. Accordingly, the applicant, vide its letter dated 27.3.2009 applied to the Assistant Commissioner, Central Excise, Division-IV, Ghaziabad for permission to destroy the said 15,800 kgs of loose gutkha in the presence of departmental officer. The Superintendent, Central Excise, Range-III, Ghaziabad stated that the permission for destruction of goods could be given only after the competent officer had passed the order for remission. The applicant filed application dated 23.4.10 for remission of duty and permission for destroying the said goods to the jurisdictional Commissioner of Central Excise. In response to their said application for remission of duty, the Additional Commissioner of Central Excise vide letter dated 1.2.2011, conveyed the direction of the Commissioner Central Excise that your remission request was already rejected by Deputy Commissioner of Central Excise.

3. Being aggrieved by the said letter dated 1.2.2011, the applicant filed appeal before Commissioner (Appeals) who rejected the same by holding that the appeal filed before him was beyond jurisdiction as the impugned order was issued with approval of competent authority i.e. Commissioner of Central Excise, Ghaziabad and as such, it was the decision of Commissioner of Central Excise and appeal against such decision lies before CESTAT.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The Commissioner (Appeals) failed to appreciate that admittedly, the loose gutkha was seized by the department on 30.5.2006. Thus, the gutkha manufactured in May 2006 cannot even be presumed to be fit for human

consumption at present in the year 2011. Under these circumstances, the Commissioner (Appeals) ought to have granted the permission to the applicant for destruction of the said goods which have become unfit for human consumption, in the presence of departmental officers. The Commissioner (Appeals) failed to appreciate the direction of the Food Inspector, Nagar Nigam, Ghaziabad, given to the applicant to destroy the said 15,800 kgs of gutkha as it had become unworthy for human consumption.

4.2 The Commissioner (Appeals) ought to have appreciated that the direction given by the Additional Commissioner vide order-in-original dated 13.2.2009 to take the said gutkha in the RG-I register and clear the same after payment of duty at the time of removal does not apply due to the subsequent event that the said gutkha had become unfit for human consumption and, therefore, not capable of being sold in the market and, as per the direction dated 24.5.2009 of the Food Inspector, Nagar Nigam, Ghaziabad to destroy the said gutkha immediately.

4.3 The Commissioner (Appeals) ought to have appreciated that as the loose gutkha in question was not capable of being cleared in market, there is no question of its removal and when there is no issue relating to removal being unfit for human consumption, there is no point in taking the same in RG-1 register as finished product.

4.4 It is most respectfully submitted, the applicant had never applied for remission of duty and, therefore, the direction issued by the Superintendent vide its letter dated 7.10.2009 is totally contrary to the facts available on record.

5. Personal hearing scheduled in this case on 17.10.2013 was attended by Shri K.M.Shukla, Director of the Company and Mrs. Swati Gupta, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

5.1 The applicant, further, vide their letter dated 23.10.2013 apart from reiterating contents of revision application mainly stated as under:

5.1.1 The Commissioner (Appeals) erred in holding that the applicant ought to have challenged the letter dated 1.2.2011 issued by the Additional Commissioner (Tech.) before the Hon'ble Customs, Excise & Service Tax Appellate Tribunal as the same was issued with the approval of the Commissioner of Central Excise, Ghaziabad. The Commissioner (Appeals) failed to appreciate that appeal lies before the Hon'ble Tribunal against the decision or order passed by Commissioner of Central Excise as an adjudicating authority. There is no dispute to the fact that the Commissioner, in the present case, has not acted as an adjudicating authority which is quite apparent from the bare perusal of the letter dated 1.2.2011 issued by the Additional Commissioner (Tech.). In fact this, at best, can be considered to be decision taken by Additional Commissioner (Tech.) and as the application was filed by the applicant before the Commissioner, therefore, reference of such communication was made to the Commissioner also. Therefore, the applicant cannot file any appeal before the Hon'ble Tribunal under the provisions of Section 35B of the Central Excise Act, 1944 and therefore, the Commissioner (Appeals) ought to have entertained the appeal of the applicant on merits. Even otherwise, if the Commissioner (Appeals) was of the considered view that appeal lies before the Hon'ble CESTAT, he would have granted liberty to the applicant to file appropriate proceedings before the Hon'ble CESTAT.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused impugned order-in-original and order-in-appeal.

7. Government observes that the applicant had filed application dated 23.4.10 before CCE, Ghaziabad seeking remission of duty as well as permission of destruction of seized gutkha, which was claimed to be unfit for human consumption. The Additional Commissioner of Central Excise vide impugned letter dated 1.2.2011 conveyed the direction of Commissioner

Central Excise that their request for destruction of goods was already rejected by Divisional Deputy Commission as they had not complied with the order-in-original No.02/ADC/GZB/09 dated 13.2.09 so far it related to seized goods of 15800 Kg Gutka. The appeal filed against said letter was rejected by Commissioner (Appeals) by holding that the appeal filed before him was beyond jurisdiction as the impugned order was issued with approval of competent authority i.e. Commissioner of Central Excise, Ghaziabad and it becomes the decision of Commissioner of Central Excise and appeal against such decision lies before CESTAT. Now the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Relevant provision regarding remission of duty and destruction of goods are stipulated in part-I of Chapter 18 of supplementary instructions relating to Miscellaneous Provisions, provisions for remission of duty and destruction of goods of Central Excise Manual on Supplementary Instructions. Para (1.2) of said Chapter reads as under:

8.1 "1.2 Where it is shown to the satisfaction of the Central Excise Officers specified in the Table below that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods as to the extent specified in the corresponding entry in the said Table, subject to such conditions as may be imposed by him by order in writing. The competence to supervise destruction of excisable goods claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal has also been specified in column 4 of the said Table. Destruction shall be carried on only after the competent officer has passed the order for remission.

Table

Sl.No.	Competent Central Excise Officer	Amount of duty empowered to remit	Monetary limit to supervise destruction
(1)	(2)	(3)	(4)
1.	Commissioner	Without limit, but normally any amount exceeding Rs.5,000	-
2.	Additional/Joint Commissioner	Rs.2,500 to Rs.5,000	-
3.	Deputy/Assistant Commissioner	Rs.1,000 to Rs.2,500	Exceeding Rs.20,000
4.	Superintendent	Below Rs.1,000	Rs.5,000 but not exceeding Rs.20,000
5.	Inspector	None	Below Rs.5,000

8.2 From above, it is ample clear that Commissioner of Central Excise is competent authority in the impugned case as the amount involved was more than Rs.5000. As such, the decision in impugned case on request of applicant was to be taken by Jurisdictional Commissioner of Central Excise.

8.3 The letter dated 1.2.11 of Additional Commissioner of Central Excise states as under:

"Please refer to your letter dated 23.4.2010, addressed to the Commissioner Central Excise, Ghaziabad, on the captioned subject whereunder a request for remission of duty and destruction of goods was made.

2. The matter has been examined in this office. The undersigned has been directed to inform you that you have not complied with the order-in-original No.02/ADC/GZB/09 dated 13.2.2009, passed by Shri Vijay Kumar, Additional Commissioner Central Excise, Ghaziabad, so far as it relates to the captioned quantity of 15,800 kgs of semi-finished loose Gutkha. Moreover,

your request for destruction of goods has already been rejected by the Divisional Dy.Commissioner.

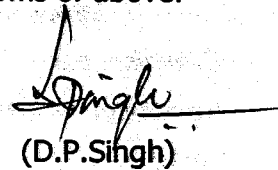
3. *This issues with approval of the Commissioner Central Excise, Ghaziabad."*

8.4 Government notes that the said letter dated 1.2.11 simply communicates the rejection of request by Deputy Commissioner. It does not say that Commissioner of Central Excise has rejected their request dated 23.4.10. So it implies that applicant's request dated 23.4.10 for remission of duty & destruction of goods is still pending and not finally disposed off by Commissioner. As regards letter dated 6.10.09 of Deputy Commissioner of Central Excise, the said letter conveys only refusal for destruction of goods for non-compliance of order-in-original dated 13.2.09. As discussed above the competent authority in this case is Commissioner of Central Excise and therefore final order of competent authority will settle the issue. Applicant should have approached the Commissioner for orders on their request dated 23.4.10 rather than filing appeal before Commissioner (Appeals). The appeal was not maintainable as the same was not filed against any order-in-original passed by authority lower than Commissioner of Central Excise. In this case the said letter dated 1.2.11 is a direction of Commissioner of Central Excise which cannot be contested before Commissioner (Appeals) and this authority.

9. In view of above position, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

10. Revision application thus stands rejected in terms of above.

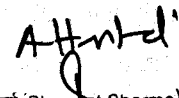
11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Kurele Pan Products (P) Ltd.,
C-87/1, Site No.1, B.S.Road, Industrial Area
Ghaziabad



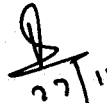
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली/ New Delhi

Order No. 1386 /2013-CX dated 25.11.2013

Copy to:-

1. The Commissioner of Central Excise, CGO Complex, Kamala Nehru Nagar, Ghaziabad.
2. The Commissioner (Appeals), Central Excise, Room No. 232, CGO Complex, Kamla Nehru Nagar, Ghaziabad.
3. The Additional Commissioner (Tech), Central Excise Commissionerate Ghaziabad.
- ~~4. PS to JS (Revision Application)~~
5. Guard File.
6. Spare Copy.

ATTESTED



(B.P.Sharma)
OSD (Revision Application)