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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. 195/315-317/14-RA/6145 Date of Issue: 20.10.2021

ORDER NO. 341-343 /2021-CX (WZ) /ASRA/MUMBAI DATED 29.09.2021 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,
Silli, Silvassa – 396 230.

Respondent : The Commissioner, CGST, Vapi.

Subject : Revision Applications filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. VAP-EXCUS-000-APP-119 to 121-14-15 dated 26.06.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

ORDER

These Revision applications have been filed by M/s Shree Meenakshi Food Products Pvt. Ltd., Silvassa (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAP-EXCUS-000-APP-119 to 121-14-15 dated 26.06.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers 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 and the duty is chargeable with reference to number of operating packing machines in the factory. The applicants are 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) Rues, 2008 (hereinafter referred to as " the PMPM Rules") as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. 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 3 Rebate claims in respect of duty paid on impugned goods claimed to have been exported by them.

3. The details of rebate claims filed and the orders rejecting the same are as under :-

Sl. No.	ARE-1 No. / Date	OIO No. / Date	Amount of Rebate claimed (Rs.)
1.	010 dt. 31.10.2012	959/DC/SLV-IV/Rebate/2013-14 dated 20.01.2014	91,09,311/-
2.	011 dt. 03.11.2012	958/DC/SLV-IV/Rebate/2013-14 dated 20.01.2014	45,54,656/-
3.	012 dt. 03.11.2012	957/DC/SLV-IV/Rebate/2013-14 dated 20.01.2014	81,98,380/-

4. Aggrieved by the said Orders in Original, the applicant had filed an appeal before the Commissioner (Appeals), Central Excise, Vapi on the following grounds. The appellate authority vide Orders in Appeal No. VAP-EXCUS-000-APP-119 to 121-14-15 dated 26.06.2014 rejected all the three

appeals of the applicant. Amongst others, following grounds are noted by the Appellate Authority while passing the impugned Order in Appeal :-

a) *The Applicant had not declared nor manufactured the impugned goods, "Goa 1000 Gutkha Red Strip 1.80 gms M.R.P. Rs. 3.00 per pouches" exported by them under PMPM Rules.*

b) *The applicant had failed to establish that they had satisfied Rule 14A(ii) of the said PMPM Rules, according to which no material shall be removed without payment of duty from factory of warehouse or any other premises for use in the manufacture or processing of notified goods which are exported out of India.*

c) *Non declaration of the export item in terms of PMPM Rules was not a procedural or technical lapse.*

d) *The applicant had not discharged duty liability in full in as much as they had not paid duty in respect of 5 machines installed in the factory premises during June 2012 and the demand SCN dated 05.07.2013 had been adjudicated and the demand had been confirmed by the adjudicating authority.*

5. Aggrieved by the Orders in Appeal, the applicants have filed the instant Revision Applications on the following grounds:-

a) They had declared the MRP of the product and the brand name and the number of machines proposed to be used for manufacturing the concerned MRP product in the Form 1. As per the PMPM Rules, 2008 applicable, duty was liable to be paid with reference to the number of machines proposed to be used for manufacturing the declared product of specified MRP, as the duty changes with the MRP. Accordingly, for product 'Goa 1000 Gutkha (Red) Export MRP 3.00 per pouch' was discharged.

b) It can be observed from description in the manufacturers documents and export documents that the only difference is non-mention of '1.8 gms' and there was no difference either in brand or MRP of the product.

c) Rule 6 of the PMPM Rules, 2008 prescribes the declaration to be made in Form-1does not mention that weight of each pouch should be recorded.

d) The Daily Stock Register is maintained as per Rule 10 of the Central Excise Rules, 2002 which does not state that weight is to be recorded.

e) From the string of documentation for each export, it could be seen that the goods were manufactured, removed from the factory and the same were only exported and the duty paid aspect of the goods has been verified by the Departmental officers.

f) The appellate authority relied on the case of CCE vs. Avis Electronics Pvt. Ltd. 2000 (117) ELT 571 (Tri.-LB), which is not at all relevant to the present case. This case law refers to Modvat credit when there was loss of duty paying document. Moreover, this decision was distinguished by the other Tribunals. In the other case law relied upon by the Appellate authority of M/s Kaizen Organics Ltd 2012 (283) ELT 743,(GOI), the facts of the case were totally contrary, hence the relied upon judgment was not applicable in their case.

g) The applicant relied upon the following case laws in support of the applicant's contention that procedural infractions should be condoned in favour of actual export having been established.

(i) M/s Shrenik Pharma Ltd, - 2012 (281) E.L.T. 477 (G.O.I).
(ii) M/s Ace Hygiene products Pvt Ltd, - 2012 (276) ELT 131 (G.O.I)
(iii) M/s Sanket Industries. - 2011 (268) E.L.T. 125 (G.O.I.)
(iv) M/s Leighton Contractors (India) Pvt. Ltd. — 2011 (267) ELT 422 (G.O.I).

h) The applicants exported goods under Duty Free Import Authorisation (DFIA) scheme license issued by the DGFT and are entitled for procurement of duty free imports. The issue of removing goods without payment of duty for manufacturing notified goods was raised out of context.

i) There was no fraud or suppression of fact or clandestine removal of goods and no material evidence was forthcoming on record and no case law was found reasonable to hold that the applicant was not eligible to claim the rebate. There may be only a procedural lapse in following the prescribed procedural which was not intentional and that can be condoned as per the settled legal position explained supra, and this was done by the proper authority in the order in original. The appellate authority did not give any basis as to why such condonation granted is not valid.

6. Personal hearings were scheduled in this case on 16.01.2020, 22.01.2020, 25.02.2020, 19.03.2021 and 26.03.2021. However, no one appeared before the Revisionary 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 records available.

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

8. The facts stated briefly are that the applicants hold Central Excise Registration Certificate and are engaged in the manufacture of Pan Masala containing tobacco commonly known as Gutkha falling under Chapter Heading No. 24039990 of the First Schedule to the Central Excise Tariff Act, 1985 which was brought under the Compounded Levy Scheme with effect from 1.07.2008 as per the PMPM Rules, 2008 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 duty paid on the excisable goods "Goa 1000 Gutkha Red Strip 1.8 gms M.R.P. Rs.3.00". The rebate claims were rejected by the adjudicating authority vide aforementioned three Orders in Original issued separately. Against the said Orders in Original, the applicants had filed an appeal before the Commissioner(Appeals), Central Excise, Customs & Service Tax, Vapi. The

appeals filed by the applicant were rejected by the Appellate Authority vide impugned Order in Appeal. Aggrieved by the said Order In Appeal, the applicant have filed instant revision application on the grounds mentioned in para 5 supra.

9.1 The Government finds that the applicant had cleared the notified goods "Goa 1000 Gutkha Red Strip 1.8 gms M.R.P. Rs.3.00 per pouch" for export 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.

9.2 For better appreciation of the dispute, the Rule 6(viii) of PMPM Rules is produced below.

"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) ..."

9.3 The Government notes that the declaration under Rule 6(viii) as above, in the prescribed Form-1, is mandatory to enable the competent authority to determine annual capacity of production for each product/brand manufactured and exported by the manufacturer. The text

of the column in Form-1 requiring the manufacturer to make declaration of the description of manufactured goods reads as "Description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc.". In the instant case, it is observed that the applicant had declared the description of goods as "Goa 1000 Gutkha (Red) Export" whereas the export documents such as ARE-1, Shipping Bills etc. show the description as "Goa 1000 Gutkha Red Strip 1.80 gms M.R.P. 3.00 per pouch". On the basis of the said declaration, the Jurisdictional Assistant/Deputy Commissioner had determined the annual production capacity for the product "Goa 1000 Gutkha (Red) Export". The Government notes that there is difference in the description of the goods manufactured and goods said to have been exported by the applicant. The description of the goods merely as "Goa 1000 Gutkha (Red) Export" is insufficient because the Assistant/Deputy Commissioner will not be able to correctly determine the annual capacity of production of the factory without knowing the different types of packages that they are able to produce with the machinery installed. It would be obvious that any change in the quantity of gutkha that is packed in the pouch will have a direct effect on the number of pouches totally manufactured; viz. less quantity or weight will take lesser time to pack and hence more pouches packed. Likewise, more quantity or weight will take more time to pack and hence fewer pouches packed. Hence, a standard description of the product manufactured without mentioning the weight of the gutkha packed in the pouch would be an incomplete declaration.

10.1 It is further observed that the Daily Stock Register showed the goods manufactured as "Goa 1000 Gutkha red strip M.R.P. Rs. 3.00" instead of "Goa 1000 Gutkha Red Strip 1.80 gms M.R.P. 3.00 per pouch". The applicant has made out some arguments to justify the manner in which they have maintained their daily stock account. 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.

10.2 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 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. The description of the goods merely by their brand name when they have manufactured and sold in different sizes/weights

would not be "description of the goods produced or manufactured" as signified by the rule. Such a description as is sought to be canvassed by the applicant would be inadequate and worthless as the daily stock register would only mention the brand name of the product. Nothing can be deciphered from such a "description" about the stock of goods manufactured and stored in the BSR of the assessee. 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. Any other kind of inventory which merely mentions the name of a product would serve no useful purpose.

10.3 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 the rule does not require an assessee to record the weight of gutkha pouches 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 whereas the said product has not been declared to the Department while determining the capacity of production. Additionally, the daily stock register maintained by the applicant does not anywhere evidence the manufacture of "Goa 1000 Gutkha Red Strip 1.8 gms MRP Rs. 3.00" and therefore the claim of clearance of the said product on payment of duty is far-fetched.

10.4 The Government finds that as per the Notification No. 42/2008-CE dated 01.07.2008, the impugned product i.e. 'Gutkha' attracts Central Excise Duty under Section 3A of Central Excise Act, 1944 under Compounded Levy Scheme and the amount of duty payable fluctuates based on the Retail Sale Price per pouch of each product and duty structure stipulated under the Notification No. 42/2008-CE dated 01.07.2008. Therefore, determination of annual capacity of production for each notified product manufactured is essential to ascertain the appropriate amount of duty payable per machine per month in terms of PMPM Rules, 2008. In the instant case, it is found that the applicant had not filed declaration under Rule 6(viii) of PMPM Rules, 2008 for the exported goods viz. "Goa 1000 Gutkha Red Strip 1.8 gms M.R.P. Rs.3.00 per pouch". As such, the duty payable in respect of the product claimed to have been exported by the applicant has not been paid. Therefore, the goods exported by the applicant cannot be co-related with duty paid by the applicant during the relevant month / period. Further, it is also noticed that the applicant had not maintained the Daily Stock Account Register, required under provisions of Rule 10 of Central Excise Rules, 2002, in respect of the exported goods. These facts indicate that the applicant had failed to determine the production of the exported notified goods and to discharge duty liability in respect of goods exported.

10.5 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.

10.6 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 product "Goa 1000 Gutkha Red Strip 1.8 gms M.R.P. Rs.1.50".

11.1 As regards the other ground in Revision Application, the Government finds that the applicants had procured the materials for the manufacture of notified goods against DFIA Licence and also exempted material from domestic market. 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."*

11.2 From perusal of Rule 14A of PMPM Rules 2008 as above, it is observed that the provisions of Rule 14A(ii) of the PMPM Rules provide that no materials 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. The fact that the applicant had neither filed declaration under Rule 6(viii) of PMPM Rules, 2008 for the impugned notified goods nor maintained the Daily Stock Account Register required under Rule 10 of the Central Excise Rules, 2002 further confirms that the pouches used for packing the impugned goods i.e. "Goa 1000 Gutkha Red Strip 1.8 gms M.R.P. Rs.3.00" and other raw materials were non duty paid. Since, the applicant has distinctly failed to adhere to the provisions of Rule 14A(ii) of PMPM Rules, it would be inconsistent to grant rebate of duty paid on goods under Section 11B of the Central Excise Act, 1944.

11.3 The discussion in the previous para also establishes the fact, pointed out by the adjudicating authority at para 26 of the Order in Original, that the applicant had given false declaration on ARE-1 by stating that " ....Customs and Central Excise Duty were leviable has been

paid on the Raw Material use(d) in the manufacture of goods...". The applicant by furnishing the false and misleading declaration have violated the provisions of Rule 18 of the Central Excise Rules, 2002 rendering the impugned rebate claims liable for rejection for such violations.

11.4 Moreover, since Rule 14A(ii) of the PMPM Rules, 2008 prohibits the exporter of notified goods to procure the raw materials duty free barred the benefit of rebate under Rule 18, the fact that the applicant had not maintained the Daily Stock Account Register in respect of exported goods negates their eligibility to the benefit of rebate under Rule 18 of the CER, 2002. Government observes that the applicant has made no attempt to clarify on this aspect. Therefore, the apprehension of the lower authorities is reasonable.

12.1 It is observed that the adjudicating authority had rejected the rebate claim on the further ground that the applicant had not discharged full duty liability in as much as they had not paid duty in respect of 5 machines installed in factory premises during June 2012 and that demand SCN dated 05.07.2013 had been issued by the Commissioner, Central Excise Customs and Service Tax, Vapi. The applicant had contended that the commodity scented supari is classifiable under Tariff Sub Heading 21069030 which is notified under Section 4A of Central Excise Act, 1944. Therefore, the five machines declared and accepted to be used for the manufacturing this item cannot be covered under Section 3A of Central Excise Act, 1944 or Compounded Levy under PMPM Rules. The Government notes that the appellate authority at para 12.2 of the impugned Orders in Appeal has drawn the observations which read as

> *"12.2 In this regard, I find that the said SCN dated 05.07.2013 has been adjudicated by Commissioner, Central Excise, Customs and Service Tax, Vapi vide Order in Original No. VAP-EXCUSE-000-COM-063-067-13-14 dated 11.12.2013 whereby the demand of duty has been confirmed. This fact shows that the appellant has not discharged duty liability in full and therefore I hold that the Rebate claim of the appellant is hit on this ground, also. In this regard, it is surprising that the appellant did not*

disclose the real status of the said Show Cause Notice dated 05.07.2013, even at the time of Personal Hearing on 07.06.2014.".

12.2 The Government finds that the applicant has not contested this point in the instant revision application. As held by the courts from time to time, admitted facts need not be proved. The admission of the findings by the applicant further strengthens the fact that the exported goods were removed from the factory without determination and discharge of appropriate duty amount. In view of above, it is held that the impugned rebate claims were not admissible and liable for rejection as correctly observed by the appellate authority.

13. 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 in the absence of requisite declaration filed by the applicant under Rule 6(viii) of PMPM Rules, 2008.

14.1 Government also observes that the reliance placed by the applicant on various case laws mentioned in para 5 supra is misplaced in as much as the applicants/appellants in these 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.

14.2 The Government 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. It must be borne in mind that the provisions under PMPM Rules, 2008 are consistent with the provisions of the Central Excise Act, 1944 and the rules and therefore they carry statutory force. 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. .....".

14.3 The applicant have not filed mandatory declaration under Rule 6 of PMPM Rules, 2008 in respect of impugned goods and therefore had not followed the procedure laid down under PMPM Rules, 2008. They have not made any assertions to the contrary. Needless to say, following the procedure contained in said Rules would have established their bonafides and ensured that goods purportedly removed from factory premises of manufacturer are co-relatable with the exported goods. However, far from being contrite about their failure the applicant has contended that there may be only a procedural lapse in following the prescribed procedures which was not intentional and that this lapse could be condoned. The Government holds that declaration under Rule 6 of PMPM Rules, 2008 in respect of impugned goods was crucial to determine Annual Production Capacity and duty payable on these goods. The applicant failed to file declaration in respect of notified goods exported by them in the instant case. Undoubtedly, a failure on the part of an assessee which defies the basic requirements of a piece of legislation introduced specifically to protect revenue in respect of an evasion prone commodity cannot be characterized as a procedural lapse. Acceptance of such contention would go against the very spirit of legislation. Further, the procedure laid down under PMPM Rules which has been outlined precisely to take care of situations like the one in the present case

would be rendered redundant. Hence the reliance placed on these case laws by the applicant is also misplaced.

15.1 Without prejudice to the findings on facts recorded hereinbefore, Government notes that these exports have been effected by the applicant during the period when various State Governments had started to ban the manufacture, storage, sale and distribution of gutkha due to its harmful effect on public health. The exports of gutkha by the applicant have purportedly been effected through ports in Gujarat and Maharashtra.

15.2 The Government of Gujarat had issued a notification on 03.09.2012 bringing into effect prohibition on production, sale, storage and distribution of gutkha which came into effect from 11.09.2012. However, the prohibition was not applicable to 100% EOU's. It would be apparent from the nature of prohibition introduced that the State Government had in its wisdom made it applicable to all manufacturers except 100% EOU's. Needless to say, the very purpose of 100% EOU's is to manufacture goods for export. Therefore, the clear intent here was to allow manufacture and exports only by 100% EOU's. It would go without saying that if the Government had so intended that the prohibition would not be applicable to exports of gutkha, the notification would have clearly specified that exports of gutkha were exempt from the ban. The fact that only 100% EOU's were exempt from the prohibition reveals that domestic manufacturing units were prohibited from exporting gutkha.

15.3 Likewise the Commissioner of Food and Drug Administration, State of Maharashtra had issued a notification dated 19.07.2012 under Section 30(1)(a) of the Food Safety and Standards Act, 2006 prohibiting the manufacture, storage, distribution and sale of gutkha. Thereafter, an order dated 23.08.2012 had been issued by the Assistant Commissioner(Food) to the Superintendent of Customs requesting him to intimate the Office of the Assistant Commissioner(Food), Food and Drug Administration, Maharashtra State if any consignment of Gutkha or Pan Masala is received for export or import and to not allow export/import of such products. In effect, the

provisions of the Food Safety and Standards Act, 2006 had been invoked and export of Gutkha was prohibited.

15.4 At this juncture, it would be germane to make reference to the provisions for grant of rebate under the Central Excise Act, 1944. The Notification No. 32/2008-CE(NT) dated 28.08.2008 has been issued in exercise of powers vested in the Central Government under Rule 18 of the CER, 2002 to allow rebate on exports of pan masala and gutkha to any country except Nepal and Bhutan. The condition (ix) of the said notification stipulates that the procedure laid down in Notification No. 19/2004-CE(NT) dated 06.09.2004 shall be followed *mutatis mutandis*. One of the conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 which is applicable to the export of goods under its auspices at para (2)(g) is *"that the rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made."* On analyzing the prohibition on gutkha brought into effect in the State of Gujarat, it is observed that the only exception thereto is made in respect of 100% EOU's whereas the applicant in the present case is a domestic manufacturing unit and not a 100% EOU. In the result, the gutkha exported by the applicant in their avatar as a domestic manufacturing unit is hit by the bar of prohibition introduced by the State of Gujarat. In the State of Maharashtra, the Food and Drug Administration has vide its order dated 23.08.2012 specifically issued directions to the Customs Authorities to not allow export/import of gutkha. The fact that the customs authorities have allowed the export notwithstanding, the condition at para (2)(g) of Notification No. 19/2004-CE(NT) dated 06.09.2004 forbids grant of rebate in absolute terms. In the result, the gutkha exported through both Gujarat or Maharashtra would be prohibited under the extant state laws and therefore the rebate on the same, even otherwise, cannot be allowed.

16. In view of above position, Government holds that the lower authorities have rightly concluded that the rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

17. Government, therefore, does not find any reason to modify Orders in Appeal No. VAP-EXCUS-000-APP-119 to 121-14-15 dated 26.06.2014 passed by the Commissioner (Appeals), Central Excise, Vapi and therefore refrains from exercising its revisionary powers in these Revision Applications.

18. The revision applications filed by the applicant are hereby rejected.

Shrawan 29/9/21

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

To

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

ORDER NO. 341-343 /2021-CX (WZ) /ASRA/MUMBAI DATED 29.09.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Daman, 2nd floor, Hani's Landmark, Vapi Daman Road, Chala, Vapi – 396.
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.