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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.195/24-27/14-RA / 6150 Date of Issue: 20.09.2021

ORDER NO. 352-355 /2021-CX (WZ) /ASRA/MUMBAI DATED 30.09.2021 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-354 to 357-13-14 dated 25.10.2013 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-354 to 357-13-14 dated 25.10.2013 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. The applicants are clearing the said notified goods for home consumption as well as for export. 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) 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 4 Rebate claims towards 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 the supporting documents.

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

| Sr. No. | OIO No. & Date | ARE-1 No. & Date | Amount of rebate granted Rs. |
|---|---|---|---|
| 1 | 84/DC/SLV-IV/Rebate/2013-14 dated 08.04.2013 | 009/12-13 dt. 02.07.2012 | 28,84,615/- |
| 2 | 85/DC/SLV-IV/Rebate/2013-14 dated 08.04.2013 | 005/12-13 dt. 15.06.2012 | 45,67,308/- |
| 3 | 86/DC/SLV-IV/Rebate/2013-14 dated 08.04.2013 | 008/12-13 dt. 02.07.2012 | 1,46,15,385/- |
| 4 | 87/DC/SLV-IV/Rebate/2013-14 dated 08.04.2013 | 007/12-13 dt. 21.06.2012 | 85,76,923/- |

4. Aggrieved by the said Orders in Original, the department filed an appeal before the Commissioner (Appeals), Central Excise, Vapi on the following grounds.

a) The applicant had not discharged CE duty in respect of some machines installed in the factory as a result of which they had not discharged duty liability to full extent thereby ineligible to claim the rebate.

b) The applicant had been found indulging in export of goods of less weight than declared and packed in plastic pouches.

c) 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.

d) The market value of the goods exported is less than the amount of rebate claimed and granted.

e) Transportation of notified goods 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 at Silvassa factory.

5. The appellate authority vide Orders in Appeal No. Vap-EXCUS-000-APP-354 to 357-13-14 dated 25.10.2013 allowed all the four appeals of the department except proposal for penal action and set aside all the four respective Orders in Original. The observations drawn by the Appellate Authority on the above issues are as under :-

a) The department contended that there were total 14 machines installed in the factory of the applicants. The applicants had paid duty in respect of 9 machines only instead of 14 machines during the material period and hence they had violated the provisions of Rule 4, Rule 7 and Rule 9 of the PMPM Rules and therefore the applicants had filed fraudulent rebate claims. According to the applicants, the remaining 5 machines for which declaration was filed were used for manufacturing 'Supari Mix' classifiable under CETH 21063090 which was not notified

goods under PMPM Rules. The appellate authority found that the lower authority had specifically given his finding and conclusion that 'Supari Mix' classifiable under CTH 21063090 had not at all been specified as notified goods on which levy and collection of duty should be in accordance with the provisions of Section 3A of CEA. Sub Section 2 of Section 3A of CEA 1944 can only be resorted to if the notified goods have been manufactured out of the said packing machines. Hence, the appellate authority had concluded that duty cannot be demanded on the 5 FFS machines declared to have been used for manufacture of Supari Mix in the month of June 2012. There is no force in the decision of the adjudicating authority that Section 3A(2) would be resorted to in respect of 9 machines only, which were used for manufacture of notified goods, in view of the legal position that the PMPM Rules framed under the said Section 3A prescribing for the manner of computing the production capacity for payment of duty, does not grant any exemption in respect of machines installed in the factory but not used for production of notified goods.

b) As regards second allegation related to use of plastic pouches and offence cases booked against the applicant for discrepancies in the export cargo, the applicants contention was accepted and this ground of the department was rejected.

c) The applicants had received non duty paid materials for manufacture of notified goods against DFIA Licence and exempted material from domestic market, which was not disputed. The applicants had failed to establish that they have 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.

d) In terms of the condition (vi) of Notification No. 32/2008-CE (NT) dated 28.08.208, the market price of the excisable goods should not be less than the rebate amount sanctioned. Undisputedly in all the four cases involved in the appeal, the Present Market Value of the

exported goods was less than the respective amount of Rebate claimed and granted by the lower authority. Exported goods are specifically excluded from the purview of the Standards and Measures Act, 1976. Under the circumstances, the JDC has erred in applying the MRP as the PMV as envisaged in the condition (vi) of Notification No. 32/2008-CE(NT) dated 28.08.208.

e) The department had contended that the applicants had retained both Transport's copy and Original Copy of Central Excise Invoices and hence the goods were not exported. In this regard, the impugned goods were not exported under supervision of Central Excise authority at the factory of the manufacture. The applicants had not produced any documentary evidence to prove their contention that the goods were stuffed in the container under the Customs supervision / examination of the goods so as to establish the link between the goods shown in the ARE-1 and the goods said to have been manufactured by the applicant's factory at Silvassa. The dispute on the mention of Origin of the goods had not been explained by the applicants.

6. Aggrieved by the impugned Order in Appeal, the applicants have filed the instant Revision Applications on the following grounds :-

(i) The impugned order was passed by the lower appellate authority without verifying the factual position of the export, documents with reference to the submissions made and the case laws submitted, in violation of principles of natural justice.

(ii) The appeal order had not considered the basic argument that, for being covered by PMPM Rules, the item of manufacture should be notified to be covered for levy of duty under Section 3A. As per the written submissions made on 17/10/2013, it was categorically explained that, as per the Section 3A (2), the Pan Masala Packing Machines (Capacity determination and collection of duty) Rules '2008 have been notified. Rule 2(b) of the PMPM Rules say 'notified goods' means goods specified by Central Government under subsection 1 of section 3A of the Act.

(iii) To be covered by the PMPM Rules and to be levied duty accordingly, the item first need to be a notified item. Notification No. 29/2008- C.E. (N.T) date 01.07.2008 has been issued by the Government of India notifying the items leviable for duty under Section 3A. This Notification shows that 'Pan Masala' falling under tariff item 21069020, and 'Pan Masala containing tobacco, commonly known as Gutkha' falling under tariff item 2403 99 90 are the two notified items to be levied duty under Section 3A. `Supari mix' falls under Tariff item 21069030, and is not a notified item to be levied duty under Section 3A and /or PMPM Rules. The duty in case of this item is to be discharged under Section 4 of the Central Excise Act,1944 which was done and is in the knowledge of the Dept.

(iv) The Commissioner (Appeal)'s observation that as per Rule 4, 6(4), 7 of PMPM Rules, the number of packing machines installed in the factory were deemed to be the number of packing machines for production during the month was arrived at superseding the basic notification which allows the levy of duty itself. This argument is erroneous, in as much as the duty cannot be levied and collected both under Section 3A and Section 4 of the same Act, and even for an item not covered under Section 3A, the duty cannot be levied as is not authorized under the Act Itself.

(vi) This observation is contrary to even the CBEC clarification which allowed manufacture of goods other than notified goods too, as is quoted in the Order in Original itself at para 17 with reliance placed on the CBEC D.O. Letter vide F. No: 334/1/2010- TRU date 26/2/2010. This observation of the Deputy Commissioner was not discussed and contradicted by the appellate authority, contrary to principles of justice, if he has to pass a contrary order.

(vii) The other ground that 'Respondent failed to establish that they have satisfied sub-rule (ii) of Rule 14A of 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 manufacture of notified goods which were exported out of India'. This was totally an erroneous logic. It is

the responsibility of the Department to prove that the Respondent has violated any legal statute.

(viii) It has been averred that it is within the knowledge of the entire department both at time of export, and at time of manufacture as it was always declared that some materials are imported under DFIA scheme. On export of the product, which mention the DFIA number etc. on the export shipping bill etc. the discharge of export obligation is achieved. This being the case, the Department failed to establish where the Rule 14A is violated which says that no material shall be removed from a factory without payment of duty. If such violation happened the central excise authority ought to have seized the goods and initiated the penal action. Rather than proving a violation, the Commissioner (Appeal) is saying that the Unit had not satisfied them that there was no violation. It is the responsibility of the Department to first prove a violation, so that the Unit can demonstrate that they have not committed any violation.

(ix) Reliance was placed on the copy of the shipping bill 9463992 dated 19/061/2012 and the ARE1 005 dated 15/06//2012 for physical verification. The shipping bill shows the FOB value in Indian rupees as mandated in the proforma of the customs shipping bill in the EDI scheme. The value shown in the shipping bill is the FOB as can be made out with reference to the heading in the shipping bill, as the PMV entry is blank. The PMV is declared in the ARE1 as Rs. 88,28,438 in very clear terms, and this has been a link document with each shipping bill as shown in the page 3 of the shipping bill. The ARE-1 also has been perused by the customs verification staff. The rebate amount of Rs.45,67,308 is much less than the PMV declared on the documents and duly verified by the customs staff, and central excise staff.

(x) The Commissioner (Appeal) had not perused the documents filed and the entries shown despite the written submissions pointing out the same, and had chosen to take the FOB value showing so specifically as the PMV. The rebate amount is remarkable lower than the PMV declared in the ARE1 which is a link document at time of export, and had been verified by the

customs staff to certify the same goods to have been exported vide the shipping bill. For the failure to physically ascertain the reality of the documents, the Appeal order was suffering from revenue prejudice and contrary to facts, by virtue of which the order merits to be set aside.

(xi) This observation was even contrary to satisfaction of the original authority who after perusing the MRP based on which duty was paid, and printed on the pouches, arrived at conclusion that the rebate claimed is less than the present market value, and as per the stipulated Notification No. 32/2008-CE(NT), it was the satisfaction of this officer as regards this fact after ascertainment, and this condition had been satisfied. This categorical observation of the Deputy Commissioner and how he arrived at this conclusion was discussed in detail in the order in original which was not contradicted by the Appellate authority with reason.

(x) It can be seen from the above documents that the markings of the packages, weight and other particulars are matching from the factory stage to the export stage. After self removal of goods for export purposes, the stipulated procedure as per Notification No. 19/2004 CE (NT) is followed, whereby, the original and duplicate copy of the ARE1 is sent along with goods to port of export, triplicate and quadruplicate is sent to the jurisdictional Superintendent of excise within twenty four hours of removal of the goods. The Superintendent, after verifying the particulars of the duty paid and correctness or otherwise of these particulars, had sent the declarations given to the officer with whom rebate claim was to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records. At the port of export, the officer concerned should verify the goods markings with the declarations, and allow export thereof. The officer of customs should certify on the application that the goods had been duly exported citing shipping bill number, date and other particulars of export. The customs officer should return original and quadruplicate (optional copy of exporter) to the exporter, and forward duplicate copy either by post or by handing over to exporter in

a tamper proof sealed cover to the officer specified in the application from whom the exporter wants to claim rebate.

(xi) The stipulated process has been followed completely. At so many stages, various third party agencies such as Municipal corporation, Steamer agents, Chemical examiners etc. apart from the Excise and Customs officers have perused the documents and goods and allowed export. It has been amply verified by the jurisdictional Superintendent that the goods are manufactured in factory and are duty paid and have entered the official records. It also need be taken into view that several officers have verified the duty paid aspect and export of the goods, which was not set aside by the Department, and truth was not brought out as to why and how they certified so, unless the same goods which were duty paid were exported as certified.

(xii) The Customs authority including the appellate authority had resources at disposal to cross verify with the customs Department as to whether the subject shipping bills and goods covered by them were carted, examined by customs, sealed in the containers and in which CFS, through official channels. In fact, the Department got it verified and this verification sent by the Dy Commissioner, Air Cargo, New Delhi vide his letter date 03/04/2013 as regards genuineness of the export has been also taken on record in the Order in Original of the Dy Commissioner who sanctioned the rebate claim.

(xiii) In the face of verification by the Department, the Appellate authority's observation that the goods have been exported or not is not conclusive and that the violations are not technical in nature but mandatory conditions are not satisfied was incorrect as per our submissions above, and were squarely covered under the various case laws as below, which were relied upon:

(a) In RE: Shrenik Pharma Ltd, - 2012 (281) E.L.T. 477 (G.O.1) wherein it was held that procedural condition of technical nature and substantive condition in interpreting statute can be condoned so that substantive benefit is not denied for mere procedural lapses.

(b) In RE: M/s Ace Hygiene products Pvt Ltd, - 2012 (276) ELT 131 ( G.O.1) wherein it was held that "Claim for rebate can't be denied merely on procedural/technical lapse - Rule 18 of Central Excise Rules, 2002. - It is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses".

(c) In RE: M/s Sanket Industries. - 2011 (268) E.L.T. 125 (G.O.I.) wherein it was held that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses.

(d) In RE: Leighton Contractors (India) Pvt. Ltd. — 2011 (267) ELT 422 (G.O.1). In this case it was held that it is now a title law that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. This view of condoning procedural infractions in favour of actual export having been established has been taken by tribunal/Government of India in a catena of orders.

(xiv) The findings given by the appellate authority to reject the rebate claim were prejudiced in as much as factual verification was not done, documents were not perused and were insufficient to hold the impugned order as reasonable and judicial. 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 procedures which was not intentional and that can be condoned as per the settled legal position explained supra, and as 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.

(xv) On these grounds, the applicant requested to set aside the impugned order in appeal.

7. Personal hearing was scheduled in this case on 05.02.2021, 19.02.2021, 19.03.2021 and 26.03.2021. 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 Order-in-Original and Order-in-Appeal.

9. 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 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 duty paid on the excisable goods "Pan Masala (Gutkha)". The rebate claims were sanctioned by the adjudicating authority. Against the said Orders in Original, the department had filed an appeal on the grounds as details in foregoing para. The appeal filed by the department was allowed 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.

10. Before adverting to the merits of the opposing contentions, it is pertinent to refer to statutory provisions relevant to the case. Section 3A of the Central Excise Act, 1944 makes provision for "Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods". Sub-section (3) thereof provides that the duty of excise on notified goods shall be levied, at such rate, on the unit of

production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed. The proviso thereto provides that where a factory producing notified goods does not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed. Thus, sub-rule (3) provides for the rate of duty and the manner in which such duty is to be collected and the proviso thereto provides for abatement of duty on a proportionate basis if the factory producing notified goods does not produce notified goods for a continuous period of fifteen days or more. Therefore, the proviso limits the collection of duty to the extent specified therein. Further, as per Rule 4 of the PMPM Rules, 2008, the factor relevant to the production of notified goods shall be the number of packing machines in the factory of the manufacturer.

11. The Government finds that the dispute concerns determination of number of machines installed for calculation of duty. The department had contended that a total of 14 machines were installed in the factory of the applicants. Whereas, the applicants had paid duty on 9 machines instead of 14 machines during the relevant period. In this regard, the applicants had claimed that 5 machines out of 14 machines were used for manufacture of excisable goods viz. 'Supari Mix' classifiable under CSH 21063090 which were not notified goods under PMPM Rules, 2008. A such, the applicants contended that the collection of the duty on these goods i.e. 'Supari Mix' would not be in accordance with the provisions of Section 3A of the Central Excise Ace, 1944.

12.1 The Government finds that the Sub-rule (4) & (5) of Rule 6 and Rule 8 of PMPM Rules, 2008 are relevant to the present issue. The same read as under :-

*"Rules 6. Declaration to be filed by the manufacturer-*

....

.....

*(4) The number of operating packing machines during any month shall be equal to the number of packing machines installed in the factory during that month.*

*(5) The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent of Central Excise and removed from the factory premises under his physical supervision:*

*Provided that in case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated."*

*"Rules 8. Alteration in number of operating packing machines-*

*In case of addition or installation or removal or uninstallation of a packing machine in the factory during the month, the number of operating packing machine for the month shall be taken as the maximum number of packing machines installed on any day during the month:*

***Provided** that in case a manufacturer commences manufacturing of goods of a new retail sale price during the month on an existing machine, it shall be deemed to be an addition in the number of operating packing machine for the month:*

***Provided** further that in case of non-working of any installed packing machine during the month, for any reason whatsoever, the same shall be deemed to be operating packing machine for the month."*

12.2 On perusal of these rules, it is noticed that the number of operating machines during any month shall be equal to the number of packing machines installed in the relevant month. Further, the Rules clarify that even in case of addition or installation or removal or uninstallation of a packing machine in the factory during the month the number of operating

packing machine for the month shall be taken as the maximum number of packing machines installed during the month. In view of the above, the Government holds that, being maximum number of machines installed in the factory during relevant period, the number of operating machines in the instant case should be taken as 14.

12.3 The Government also notes that Rule 7 of the PMPM Rules provides for calculation of duty payable and lays down that duty payable for a particular month shall be calculated by application of the appropriate rate of duty specified in the notification of the Government of India dated 1st July, 2008 to the number of operating packing machines in the factory during the month. Under rule 9 of the PMPM Rules, the monthly duty payable on the notified goods is required to be paid by the 5th day of the same month. **Therefore, the duty is payable in advance before the goods are actually manufactured.** Thus, under the PMPM Rules, the assessee is required to calculate the duty payable for each month in terms of the notification of the Government and pay the duty payable for each month on the 5th day of that month. However, when the factory does not produce notified goods for a continuous period of fifteen days or more, Rule 10 of the PMPM Rules provides for abatement of duty for the period during which the factory was not producing such notified goods. In the instant case, the Government observes that though the applicants were obligated to pay duty on 14 machines by 5$^{th}$ day of the relevant month, they paid the duty on 9 machines only.

12.4 The Government notes that the applicants have contended that 5 out of total 14 machines installed in the factory were used for manufacture of excisable goods "Supari Mix" falling under CSH 21063090 which were not notified goods under PMPM Rules and therefore the collection of the duty on these goods shall not be in accordance with the provisions of Section 3A of the Central Excise Ace, 1944. It is found that that the para 5.5. of the D.O.F. Letter No. 334/1/2010-TRU dated 26.02.2010 issued by Joint Secretary (TRU-I) provides that the manufacturer of notified goods can also

remove other goods from his factory. The Para 5.5 of the letter relevant to the issue is produced below for reference:-

> *"5.5 Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008 have also been amended to effect certain technical changes. A manufacturer is now allowed to remove goods, other than notified goods, from his factory during the period of abatement specified in rule 10 and the notified goods already produced before the commencement of said period can also be removed within the first two days of the abatement period".*

12.5 It is seen from the para 5.5 produced above, that the manufacturer is allowed to remove goods other than notified goods from his factory during the period of abatement specified under Rule 10. As noted earlier, rule 10 of the PMPM Rules provides for abatement of duty calculated on proportionate basis in case where the factory does not produce notified goods during any continuous period of fifteen days or more. However, such abatement is subject to the conditions stipulated thereunder as referred to hereinabove. Once such conditions are satisfied, the assessee becomes entitled to abatement of duty to the extent of the days the factory did not produce the notified goods.

12.6 However, the PMPM Rules do not have any express provisions for mode and manner of payment of duty / abatement when the installed machines are used for manufacture of goods other than notified goods. The PMPM Rules are wholly silent in that regard. Under the circumstances, having regard to the fact that there is no corresponding provision in the PMPM Rules, it can be inferred that the rule making authority has not provided for manufacturer of non-notified goods. In this view, the Government finds that the Rules do not accord any immunity to the manufacturer from payment of duty on the machines used for manufacture of the goods other than notified goods. In the circumstances, it is held that

the action of the applicant in calculating the duty on 9 machines instead of 14 machines installed in his factory is violative of the rules.

12.7 The Government further notes that the department had issued a show cause notice F. No. V(21)3-49/DEM/13 dated 05.07.2013 demanding differential duty from the applicant for the month of June 2012 on the basis of number of packing machines installed in the factory, irrespective of their use. In view of the same, the inconsistent opinion given by the JRO on the issue does not hold substance. In view of above discussion, the Government finds that the applicants had failed to pay full duty as per the provisions of PMPM Rules, 2008 during the relevant period of time.

13.1 As regards another ground of 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."*

13.2 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.

14.1 The Government observes the appellate authority while passing the impugned order has observed that the transportation of notified goods was not proved and documents submitted along with the rebate claim were contradictory and also that there was no link between the goods claimed to be exported and those manufactured and cleared by the applicant from Silvassa factory. The Appellate Authority further observed that the applicants had retained the Original Copy as well as Transporters copy of Excise Invoice which did not bear any vehicle number or mode of transportation mentioned on it. It was further observed that in respect of ARE-1 No. 007/12-13 dated 21.06.2012, relevant to the impugned rebate claims, the applicant had stated in the corresponding shipping bill that the origin of the notified goods exported is 'Maharashtra' and hence the impugned goods were not produced at Silvassa factory.

14.2 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, the applicant has not been able to satisfy on the above two aspects particularly when the variation is noticed in respect of origin of the notified goods and transport of goods from the factory premises in Silvassa has not been established.

15.1 With regard to the issue regarding PMV of the exported goods being lesser than the rebate claimed, the details of each of the four rebate claims impugned in these proceedings is as under.

| Sr. No. | Shipping Bill /Date | PMV (Rs.) | Rebate claimed (Rs) |
|---|---|---|---|
| 1. | 9718290/05.07.2012 | 27,33,060/- | 28,84,615/- |
| 2. | 9463992/19.06.2012 | 42,61,130/- | 45,67,308/- |
| 3. | 9745541/06.07.2012 | 1,34,73,584/- | 1,46,15,385/- |
| 4. | 9538023/20.06.2012 | 81,26,299/- | 85,76,923/- |

15.2 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.

15.3 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.

15.4 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."

15.5 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. In this regard, the Commissioner(Appeals) has appositely pointed out that export goods are outside the purview of MRP based valuation in terms of the Standards of Weights and Measures Act. 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.

15.6 The applicants, with reference to the shipping bill No. 9718290/05.07.2012 corresponding to ARE-1 No. 009 dated 02.07.2012, have stated that the shipping bill shows FOB value in Indian Rupees as mandated in the proforma of the customs shipping bill in the EDI scheme. Further, they submitted that the value shown in the shipping bill is the FOB value as can be made out with reference to the heading in the shipping bill as the PMV entry was blank. The applicants with reference to the above further submitted that PMV declared in the ARE-1 as Rs.56,17,675/- in very clear terms and this had been a link document with each shipping bill. The

Government observes that the applicants have not bothered to furnish copies of the relevant shipping bills and ARE-1s along with their submissions and they also did not avail of the opportunities for personal hearings offered to them. Be that as it may, in the light of the discussions at para 15.1 to 15.5 hereinbefore, the market value of the exported goods cannot be different from its FOB value. The rebate claims filed by the applicant in such manner are therefore liable to be rejected.

16. Government also observes that the reliance placed by the applicant on various case laws mentioned in para 6 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, 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.

17. In view of the above discussion, Government holds that the appellate authority has rightly allowed the appeal filed by the department. Thus, Government does not find any infirmity in the Vap-EXCUS-000-APP-354 to 357-13-14 dated 25.10.2013 passed by the Commissioner (Appeals), Central Excise, Vapi and, therefore, upholds the impugned order in appeal.

18. The Revision Application is dismissed as being devoid of merits.

Shrawan 30/9/21

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

ORDER NO. 352-355 /2021-CX (WZ) /ASRA/MUMBAI DATED 30.09.2021

To,

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

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.