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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.195/211-215/14-RA/6034

Date of Issue: 14.10.2021

358-362
ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 12.10.2021
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 Order-in-Appeal No. VAP-
EXCUS-000-APP-575 to 579-13-14 dated 14.03.2014
passed by the Commissioner (Appeals), Central Excise,
Vapi.



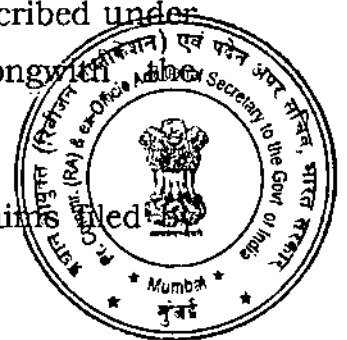
ORDER

This Revision application is 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-575 to 579-13-14 dated 14.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers of Pan Masala with Gutkha falling under CSH 24039990 of the 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 5 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.

3.1 The rebate sanctioning authority rejected the rebate claims filed by the applicant vide Order in Originals as detailed below.

Sl. No.	ARE-1 No. / Date	OIO No. / Date	Amount of Rebate claimed (Rs.)
1.	057 dt. 26.12.2011	616/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	45,67,307/-
2.	067 dt. 26.12.2011	615/DC/SLV-IV/Rebate/2012-13 dated 30.09.2013	45,67,307/-
3.	068 dt. 27.12.2011	620/DC/SLV-IV/Rebate/2012-13 dated 30.09.2013	45,67,307/-
4.	069 dt. 28.12.2011	621/DC/SLV-IV/Rebate/2012-13 dated 30.09.2013	22,83,653/-
5.	077 dt. 30.01.2012	619/DC/SLV-IV/Rebate/2012-13 dated 30.09.2013	55,96,474/-



3.2 The adjudicating authority had denied the rebate on the main ground that the item viz. "Goa 1000 Gutkha Green Strip 1.8 Gms M.R.P. Rs.1.50" was not declared in Declaration dated 24.10.2011. The declaration also shows the MRP Rs. 1.50 and based on this only, capacity determination was done and the duty was deposited. The DSA also showed the item which had been manufactured to be "Export" 'Goa 1000 Gutkha MRP Rs. 1.50'.

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.

- a) The item declared was 'Goa 1000 Gutkha'. The declaration also showed that the MRP was Rs. 1.50. Based on this only, capacity determination was done and the duty was deposited. The DSA also showed the item which had been manufactured to be 'Export Goa 1000 Gutkha MRP Rs. 1.50'. Hence these goods had been exported.
- b) The goods were verified by the Customs officers at port of Export, samples were drawn and the goods stuffed in two containers under Customs supervision, were sealed and moved to the port under Customs escort. Thereafter, the goods were exported under Customs supervision. To the same effect, the ARE-1 under which the goods were removed from the factory were removed from the factory also was endorsed to demonstrate the linkage of the goods.
- c) The rebate claim has nothing to do with the duty suffered on the raw materials used in production of the item. Whether raw materials suffered duty or were procured duty free under DFIA license, rebate cannot be denied as the end product has suffered duty of excise which was paid at the beginning of the month as per PMPM Rules.
- d) The adjudicating authority came to the conclusion on the basis of the SIIB letter dated 28.08.2012 which pertained to examination of goods covered by shipping bill dated 21.04.2012 which pertained to Kirti Industries and not the applicant. Therefore, rejection of the present claims on this ground was not correct.



- e) With regard to non indication of 1.8 gm in the daily stock register the applicant submitted that the duty is collected on the goods which are exported by a series of verification at various stages. Hence rebate was admissible.

5. The appellate authority vide Orders in Appeal No. VAP-EXCUS-000-APP-575 to 579-13-14 dated 14.10.2014 rejected all the five appeals of the applicant and upheld all five Orders-in-Original. The observations drawn by the Appellate Authority on the above issues are as under :-

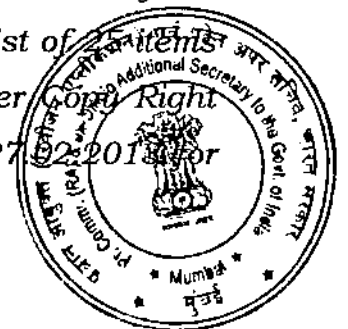
(i) The similar issue relating to non filing of declaration of the product "Goa 1000 Gutkha Red Strip" and its effect on rebate claim in the case of the same applicant was decided vide Order in Appeal No. VAP-EXCUS-000-APP-339 to 343-13-14 dated 24.10.2013. The discussion and conclusion arrived at in the said Order dated 24.10.2013 holds good for the present issue as well. The relevant portion of the findings and conclusions arrived at therein were in brief as under:-

- a) *"As per Notification No. 42/2008-CE dated 01.07.2008, 'Gutakha' attracts excise duty under Section 3A of the Central Excise Act, 1944 (C.L. Scheme) and amount of duty varies depending upon Retail Sale Price per pouch and the duty structure prescribed in the Table of the said Notification 42/2005-CE dated 01.07.2008. Further it was found that for determining the quantum of duty, payable per machine per month in terms of the said PMPM Rules, the JAC/ ADC should determine the Annual Capacity of production in respect of each product. And for determining such Annual Capacity of Production, there must be a declaration filed by the manufacturer in the prescribed format.*
- b) *The second last column clearly requires declaration of the description of the goods manufactured. In the present case, admittedly, the applicant had filed declarations under the said PMPM Rules in respect of a series of products except "Goa 1000 Gutkha Red strips", which was claimed to have been exported in the instant cases. The applicant had thereby admittedly failed to file declaration in respect of the export goods,*



was mandatorily required under the PMPM Rules. When there was no declaration in respect of the particular quality of gutkha exported, there could not be determination of Annual Capacity of production and under these circumstances, whatever duty paid could not be attributed to 'Goa 1000 Gutkha Red strip' exported by the applicant. Consequently, whatever goods shown as exported could not be related to duty paid by the applicant. The applicant did not record production of the said export goods (Goa 1000 Gutkha Red strip) in the DSA for the relevant periods. Further, in Daily Stock Accounts, few pages were bearing serial number and few of them were without bearing serial number. Thus applicant neither maintained Daily production in the DSA Register nor they had submitted relevant document as per Section 1113 of CEA 1944. Therefore, there was no evidence to show that duty liability had been discharged on the notified goods exported in the instant cases. When there was no correlation between the duty paid and the goods claimed to have been exported, rebate of duty could not be granted.

- c) The applicant had argued which was accepted by the lower authority that description of goods "Goa 1000 Gutkha" was same as "Goa 1000 Gutkha Red strip" and the significance/purpose of different colours strip was to differentiate the product quality-wise and MRP-wise. They had argued that they have only one brand Goa 1000 for various products. The department had relied upon the Agreement dated 25th October 2009, which revealed that the applicant were in agreement for products viz. GOA, GOA 1000, GOA GOLD GUTKHA, GOA MITHI SUPARI 1000, GOA MITHA PAN MASALA 1000, GOA KARISHMA, GOA CAPTAIN, GOA TIGER Gutkha, GOA TIGER Pan Masala, GOA FRESH Mouth freshener and GOA ONE. The department contended that the goods "Goa 1000 Gutkha Red strip' was a separate brand having distinct MRP and quality whereas the applicant had licence to use only "Goa 1000". The argument of the applicant that they had license for a common trade name was not correct in as much as the list of registered for Trade Marks and 8 items registered under Registration. The applicant had filed declaration dated 27



'Goa 1000 Gutkha (purple strip), Goa 1000 Gutkha (Green strip), Goa 1000 Gutkha (Red strip) which stand duly approved by the JAC.

- d) It was not disputed that the daily stock account for the relevant period mentioned the description of product as "Goa 1000 Gutkha export" and "Goa 1000 Gutkha (export) with tobacco" whereas in the invoice and other export documents, the description of goods was mentioned as "Goa 1000 Gutkha Red strip" for which no stock account was maintained. Further the declarations filed by the applicant also did not declare the said goods sought to have been exported. The applicant's further explanation that in the description of Goa 1000 Red Strip, Red Strip was only for internal documentation. This explanation was not correct since it had been mentioned so in the ARE-1, Export invoice, Shipping Bill and Bank Realisation Statement. Therefore, the brand "Goa 1000 Gutkha red strip" and Goa 1000 Gutkha were different brands and it was not declared by the applicant during the relevant period, hence no such brand was manufactured in their factory and no duty was paid on the export goods. Consequently, the rebate of duty was contrary to Rule 14A and Section 11B.
- e) The Ratio in the case of CCE V/ s Avis Electronics Pvt Ltd. 2000 (117) ELT 571 (Tri.-LB) wherein the Larger Bench of Hon'ble CESTAT has held that "When a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise" is applicable in the case. The applicant should have filed separate declaration for "Goa 1000 Gutkha Red strip" during the material time also as they did for later period and the failure on the part of the applicant to file separate declaration for the item in question was fatal and not a mere technical fault".

(ii) The Appellate Authority also observed that the applicant had 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 are exported out of India. When the said



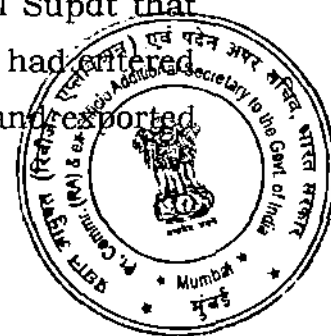
puts such a condition, then the applicant should not have received/used non-duty paid materials for the manufacture of notified goods against DFIA Licence and exempted material from domestic market. Since, the condition had not been fulfilled, the rebate claim would be adversely affected.

(iii) There was no link between the containers and notified goods cleared by the respondent under ARE-1, Excise Invoice/export invoice/shipping bill. These facts show that the procedure laid down under Rule 18 of Central Excise Rules, 2002 was not followed. The applicant had not adduced any documentary evidence to prove their case to counter the arguments of the department and thus their arguments had no merit.

6. Aggrieved by the impugned Order 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 'Goa 1000 Gutkha' 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. As per Section 10 of Trade and Merchandise Act' 1958 so far as a trade mark is registered without limitation of color, it shall be deemed to be registered for all colors. From the above, it is explicit that, unless a product is registered with limitation of colour, in ordinary course, it is deemed to be registered for all colors.

(b) After self removal of goods for export purposes, the stipulated procedure as per Notification No. 19/2004 CE (N.T.) dated 06.09.2004 was 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 Supdt that the goods were manufactured in factory and were duty paid and had entered the official records. The goods which had been manufactured and exported



were Goa 1000 Gutkha 2 gms' of the specified MRP, and because there was a red strip on the pouch for internal differentiation, the field staff had also mentioned red strip' on the description. It was amply demonstrated with marks and numbers, grammage, weight of the packages, number of packages, and heading of the description that Goa 1000 Gutkha 1.80 gms which was declared and duty paid only was exported.

(c) 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 it has been verified by the Departmental officers about the duty paid aspect of the goods.

(d) Irrespective of whether 'red' or 'green' colour strip shown on the pouches, the goods were of Goa 1000 Gutkha' brand of specified grammage and MRP, and the duty was discharged with reference to this only. By showing the color strip on pouch in words in the invoice, as is done, it does not make the goods to be of different brand or different product.

(e) The additional description 'Green strip' in the documents is superfluous, and the stock register also shows only 'Goa 1000 gutkha' which was manufactured in the factory and exported. The allegation that the stock register did not show the product exported as description of 'Green strip' was not shown and as the stock was showing the product manufactured irrespective of the color of the pouch used to pack it was incorrect. They requested that this superfluous description be condoned and should not cause deprivation of a substantial benefit of export rebate as long as it was confirmed that the goods which were duty paid were exported. There was a seamless movement of the goods from the factory to the export stage as demonstrated by the string of documents and Goa 1000 gutkha which was duty paid was exported as could be seen from the test analysis reports and marks and numbers on the documentation. The judicial pronouncements are explicit that the substantial benefit to the exporter should not be deprived based on non critical objections. Several officers had verified the duty paid aspect and export of the goods.



(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,(G01) , the facts of the case were totally contrary, hence the relied upon judgment was not applicable in their case.

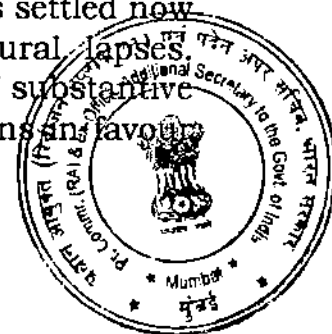
(g) On the contrary, there are several judicial pronouncements which were relied upon in the Order in original which granted the rebate, as discussed against as below. These relied upon case laws were neither discussed nor distinguished with reasons in the impugned order, making the impugned order bad in law, and violating the principle of justice. The case laws relied are referred below in support of the applicant's contention:

(i) In RE: Shrenik Pharma Ltd, - 2012 (281) E.L.T. 477 (G.O.I) 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.

(ii) In RE: M/s Ace Hygiene products Pvt Ltd, - 2012 (276) ELT 131 (G.O.I) 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".

(iii) 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.

(iv) 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 is in favour



of actual export having been established has been taken by tribunal/Government of India in a catena of orders.

(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 not removing goods without payment of duty for manufacturing notified goods was quoted out of context.

(i) The findings given by the appellate authority to reject the rebate claim were vague and 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 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.

The applicant requested to set aside the impugned order in appeal.

7. Personal hearing 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 appointed dates 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. Before going into the merits of the case, Government seeks to address the grounds raised by the applicant alleging violation of natural justice. In this regard, it is observed that the applicant has failed to avail of the five opportunities of personal hearing granted to them in these revisionary proceedings.

Veracity of their claims of being denied natural justice are borne out by the factual position. An applicant who is not diligent cannot allege violation



natural justice. Government, therefore, concurs with the findings recorded by the Commissioner(Appeals) in this regard.

9. The facts briefly stated 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 Green Strip 1.8 gms M.R.P. Rs. 1.50 each". The rebate claims were rejected by the adjudicating authority vide aforementioned five 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 6 supra.

10.1 The Government finds that the applicant had cleared the notified goods "Goa 1000 Gutkha Green Strip 1.8 gms M.R.P. Rs. 1.50 each" 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.

10.2 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) ...”

10.3 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” whereas the export documents such as ARE-1, Shipping Bills etc. show the description as “Goa 1000 Gutkha Green Strip 1.80 gms”. On the basis of the said declaration, the Jurisdictional Assistant/Deputy Commissioner had determined the annual production capacity for the product “Goa 1000 Gutkha”. 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 Green Strip” 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.

10.4 In addition to these inferences that ensue from the reading of the rules, Government finds that the applicant in the Agreement dated 25th October 2009 had declared the products viz. GOA, GOA 1000, GOA GOLD GUTKHA, GOA MITHI SUPARI 1000, GOA MITHA PAN MASALA 1000, GOA KARISHMA, GOA CAPTAIN, GOA TIGER Gutkha, GOA TIGER Pan Masala, GOA FRESH Mouth freshener and GOA ONE. However, the applicant had not declared the product "Goa 1000 Gutkha Green Strip 1.8 gms M.R.P. Rs.1.50" in the said agreement nor did they declare the product in the declaration filed with the department under Rule 6 of PMPM Rules. The applicant being a manufacturer of notified goods which are subject to strict compliance under the rules was expected to be assiduous while filing declaration under Rule 6 of the PMPM Rules.

11.1 As such, the Daily Stock Register does not record manufacture of "Goa 1000 Gutkha Green Strip 1.80 gms M.R.P. 1.50 each". However, 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.



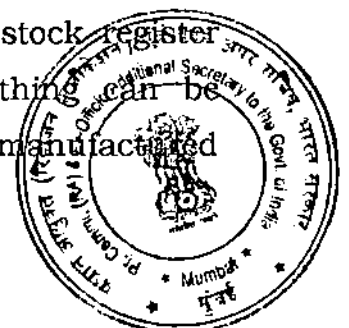
The work flow from the point of receipt of duty paid inputs/inputs procured without payment of duty, the credit utilised on such inputs and capital goods, the quantity of inputs utilised for manufacture, the quantity of inputs used up in the manufacture of final products, the quantity of inputs present 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 assesseees 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.

11.2 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.”*

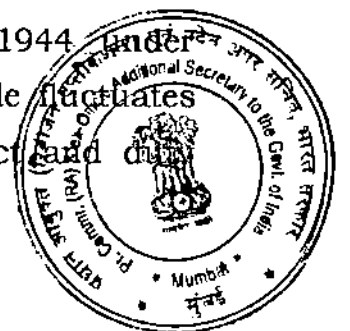
The rule firstly requires that the assessee is to maintain proper records on a daily basis and in a legible manner. The words “proper records” finding mention the rule have a definite purpose. They place upon the assessee the responsibility of maintaining records accurately and in such a manner that 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.

11.3 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 Green Strip 1.8 gms MRP Rs. 1.50 each" and therefore the claim of clearance of the said product on payment of duty is far-fetched.

11.4 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 Green Strip 1.8 gms M.R.P. Rs. 1.50 each". 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.

11.5 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.

11.6 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 Green Strip 1.8 gms M.R.P. Rs.1.50 each".

12.1 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."*

12.2 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 Green Strip 1.8 gms M.R.P. Rs. 1.50 each" 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.

12.3 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.

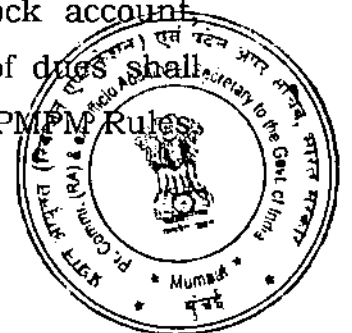


12.4 Moreover, since Rule 14A(ii) of the PMPM Rules, 2008 prohibits the exporter of notified goods to procure the raw materials duty free barred the benefit of rebate under Rule 18, the fact that the applicant had not maintained the Daily Stock Account Register in respect of exported goods negates their 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.

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 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. 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.

16. Government, therefore, does not find any reason to modify Orders in Appeal No. VAP-EXCUS-000-APP-575 to 579-13-14 dated 14.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi and therefore refrains from exercising its revisionary powers in these Revision Applications.

17. The revision applications filed by the applicant are hereby rejected as being devoid of merits.

Shrawan
12/10/21

(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. ³⁵⁸⁻³⁶² /2021-CX (WZ) /ASRA/MUMBAI DATED \2_10.2021

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.

