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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.195/210/14-RA/6299 Date of Issue: 27.10.2021

ORDER NO. 411/2021-CX (WZ) /ASRA/MUMBAI DATED 26.10.2021 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 the Order-in-Appeal No. Vap-EXCUS-000-APP-607-13-14 dated 26.03.2014 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-607-13-14 dated 26.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicants are manufacturers of Pan Masala with Gutkha falling under CSH 24039990 of 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 a Rebate claim 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 as under

Sr. No.	OIO No. & Date	ARE-1 No. & Date	Amount of rebate granted Rs.
1	623/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	006/12-13 dt. 16.06.2012	43,50,962/-

3. The rebate sanctioning authority rejected the rebate claim filed by the applicant on the grounds that the applicant had contravened the provisions of PMPM Rules, 2008 as well as Section 11B of the Central Excise Act, 1944 and had also not fulfilled the conditions of Notification No 32/2008-C.E (N.T) dated 28.08.2008

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

a) The order in original had been passed in violation of principles of natural justice as the impugned order on original was issued without grant of personal hearing

b) The rebate amount is less than the market price of the goods. FOB value is less due to market strategy and

c) Commodity scented supari is charged to duty under Section 4A of CEA under MRP based valuation and therefore the commodity is not covered under Section 3A of CEA and PMPM Rules.

d) The applicant contention was that whether the raw materials suffered duty or were procured under DFIA licence, rebate cannot be denied as the end product suffered duty of excise which was paid at the beginning of the month.

e) The core aspect or fundamental requirement of rebate is its manufacture and subsequent export and procedural infraction of notification, circulars etc are to be condoned i.e in the instant case non indication of 1.8 gms in the daily stock register.

5. The appellate authority vide Orders in Appeal No. Vap-EXCUS-000-APP-607-13-14 dated 26.03.2014 rejected the appeal filed by the applicant and upheld the order in original. The observations drawn by the Appellate Authority on the above issues are as under :-

i) The applicant had full opportunity to place their contentions at this appellate stage and they were personally heard at this stage and all their contentions on the subject are being duly considered herein. Hence, no prejudice had been caused to the appellant.

ii) In terms of the condition (vi) of Notification No.32/2008-E(NT) dated 28.08.2008, the market price of the excisable goods should not be less than the rebate amount sanctioned. Undisputedly in the case 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. The exported goods are specifically excluded from the purview of the Standards and Measures Act, 1976. Under the circumstances, there was no merit in the contention of the applicant and in this case the applicant is not eligible for rebate for non compliance of condition (vi) of Notification No 32/2008-CE(NT) dated 28.08.208.

iii) It is imperative that the item declared should be accounted for only in the same description as given in the declaration for the simple reason that the commodity in question is capable of being sold and marketed in different net weight. The applicant appellant manufactures the notified goods in different net weight and different Retail Sale Prices (MRP/RSP). Further when the description of the item is mentioned as "J.M Gutkha 2.00 Gms: MRP Rs.3.00" in export documents such as ARE-1, Shipping Bills etc., there is no merit in the applicants contention that mention of weight in the description of the item in the DSA is not mandatory requirement.

iv) 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.

v) As regards the offence cases booked against the applicant for discrepancies in the weight of the pouches, the applicants contention was accepted and this ground of the department was rejected as the department had not relied on any documentary evidence except a letter regarding the discrepancy pertaining to an export consignment of another manufacturer and not of the applicant.

vi) The appellate authority has refrained from commenting on the rejecting of the rebate claim by the sanctioning authority on the

ground that the applicant had not discharged full duty liability as they had not paid duty in respect of five machines as the status of the adjudication proceedings of the show cause notice in the matter were not known.

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 considering the submissions made and the case laws submitted in violation of principles of natural justice. The applicant has stated that the appellate authority has glossed over the issue of the appellant having not been granted even personal hearing to represent their issue. Non granting of chance to file reply to show cause notice, not granting personal hearing to represent their argument at the original stage cannot correct the defect in adjudication which has crept in by pacifying observations at the appellate stage that the contentions are taken on record.

ii) As per the PMPM Rules 2008 applicable, duty is 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. The applicant, in the Form 1, had declared the MRP of the product and the brand name "JM Gutkha - export' and the number along with serial number of machines proposed to be used for manufacturing the product. The observation of the appellate authority that the weight is not mentioned in the daily stock account which does not signify the complete description as declared is an erroneous observation. The description of the goods is JM Gutkha', and the same description was noted in the stock register and non mentioning of the pouch weight does not vary the production record. There is not mandatory method of maintaining the register. Non mention of the pouch weight does not vary the facts, and the department has not come up with any evidence of any violation of misdeclaration of the weight or goods.

iii) The duty on 'Scented Supari' is leviable under Section 4 of the Central Excise Act, 1944 and is not a notified item to be levied duty under Section 3A of the PMPM Rules. Hence, the argument that duty on 14 machines to have been paid under Section 3A is a presumption and does not stand legal scrutiny.

iv) 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.

(v) 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.

vi) The applicants exported goods under Duty Free Import Authorisation (DFIA) scheme license issued by DGFT and are entitled for procurement of duty free imports. The Show Cause Notice, Order in Original and Order in Appeal allege contravention of Rule 14A (ii) of PMPM Rules. The applicants have stated that they manufacture the final notified goods that are directly exported after clearing them from their factory and no material used in manufacture or processing of exported notified goods were removed by the applicants from their factory or warehouse. The show cause notice does not allege receipt of materials from any other manufacturer from any factory or warehouse, without payment of duty, for subsequent utilisation in manufacture of exported notified goods. The issue of not removing goods without payment of duty for manufacturing notified goods is quoted out of context and the criteria for grant of rebate stipulated in Notfn 32/2008 has been satisfied.

vii) The applicant states that the observation that the rebate amount is more than the FOB value, and contravenes condition (vi) of Notfn. No 32/2008 NT dated 28.08.2008 is wrong. The applicant has contended that the Deputy Commissioner shall have to find the market price of the goods, which per se shall include the basic cost and the duty paid on the goods, apart from the profit margin. In the very context that the duty is paid the basis of MRP shows the market price of the goods. Based on this the rebate amount is much less than the market price of the goods exported. The FOB value is less due to the market strategy overseas of gaining the market access, wherein looking at the incentive of rebate of excise duty paid, the goods are sold at cost price, but this does not mean that the goods are having market price at which realisation is done from overseas. It is neither the definition of the present market value that the FOB is the PMV.

viii) 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 any 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 is not considered.

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

7. Personal hearing was scheduled in this case on 16.01.2020, 22.01.2020, 25.02.2020, 24.12.2020, 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 rejected by the adjudicating authority. Against the said Orders in Original, the applicant had filed an

appeal on the grounds as details in foregoing para. The appeal filed by the applicant was 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. 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 out of which 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 were used for manufacture of excisable goods viz.

'Scented Supari' classifiable under CSH 21063090 which were not notified goods under PMPM Rules, 2008. As such, the applicants contended that the collection of the duty on these goods i.e. 'Scented Supari' 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 5th day of the relevant month, they paid the duty on 9 machines only.

13.1 It is further observed that the applicant had exported notified goods 'JM Gutkha 2.0 Gms, MRP Rs. 3.00' and had submitted the relevant pages of the Daily Stock Account which were not authenticated and did not bear the mention of the net weight of the pouch. The applicant has made only superficial attempts to justify not mentioning the weight of the pouches, stating that non mentioning the weight of the pouch does not vary the production record and there is no mandatory method of maintaining the register. 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.

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

"Rule 10 Daily stock account –

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

The rule firstly requires that the assessee is to maintain proper records on a daily basis and in a legible manner. The words "proper records" finding mention in the rule have a definite purpose. They place upon the assessee the responsibility of maintaining records accurately and in such a manner that the Department is able to get a full picture of the manufacturing activity being carried out. Going further, the rule requires the assessee to record the description of the goods on a daily basis, giving details of the entire gamut of the quantity, quality, inventory etc, of each and every variety of the product. The rule also requires the assessee to maintain an "inventory of goods". The word "inventory" means a detailed list of all things. In layman's terms all useful particulars which have a bearing on the valuation, duty liability of the manufactured goods must be recorded in the daily stock register. From the Central Excise point of view, a detailed list would be one where one is able to comprehend the measure of a particular manufactured goods; viz. in actual physical terms in a standard of weight or measure. Needless to say, this view would be of particular relevance insofar as evasion prone commodities like "gutkha" are concerned. In the absence of Daily Stock Account being maintained by the applicant or not containing any details as prescribed, ascertaining the inventory would be an impossibility and would serve no useful purpose.

13.3 The use of these three sets of words in Rule 10 of the CER, 2002 should be enough to signify the importance attached by the rule to the detail in which the daily stock register is required to be maintained. An interpretation which renders words in a statute to be superfluous cannot be

accepted. The contention of the applicant that maintenance of the daily stock account register in not a mandatory requirement for sanction of rebate defeats the very purpose of the rule and is an absurdity. Surely such an interpretation of the rule prescribing maintenance of daily stock account would render it redundant. Therefore, Government strongly disapproves of this contention of the applicant as they are manufacturing gutkha in packages of various sizes/weights/brands/identity/colours. In the absence of daily entries in the Daily Stock Account register as envisaged in the Rules, the claim of clearance of the said product on payment of duty is far-fetched.

13.4 The non-maintenance of Daily Stock Account Register by itself implies that the applicant has not manufactured the said exported notified goods. In view of above, it is found that there is no correlation of goods exported to that of duty discharged by the applicant. As such, Government holds that the rebate of duty on goods claimed to have been exported cannot be determined and granted in the instant case as rightly held by the appellate authority.

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

15.1 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 "Scented Supari" falling under CSH 21069030 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".*

15.2 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.

15.3 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 manufacture 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.

15.4 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.

16.1 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."*

16.2. 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.

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

Sr. No.	Shipping Bill /Date	PMV (Rs.)	Rebate claimed (Rs)
1.	9463401/19.06.2012	40,59,287/-	43,50,962/-

17.2 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.

17.3. 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.

17.4. 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."

17.5. 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.

18. 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.

19. The applicant has contended that the impugned order was passed by the lower appellate authority without considering the submissions made and

the case laws submitted. As regards this ground of the applicant, the government concurs with the findings of the appellate authority and notes that the applicant was given enough opportunity to present the case before the appellate authority and the contentions of the applicant has been taken into consideration by the appellate authority

20. In view of the above discussion, Government does not find any infirmity in the Order in Appeal No. VAP-EXCUS-000-APP-607-13-14 dated 26.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi and therefore, upholds the impugned order in appeal.

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

Shrawan 26/10/21

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

ORDER NO. 411 /2021-CX (WZ) /ASRA/MUMBAI DATED 26.10.2021

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