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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. 195/18/14-RA/6448 Date of Issue: ~~10.2021~~
11.11.2021

ORDER NO. 416/2021-CX (WZ) /ASRA/MUMBAI DATED 28.10.2021 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 Kirti Industries,
Survey No 490/2/1,2,3, Village Galonda,
Silvassa

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-
336-13-14 dated 24.10.2013 passed by the Commissioner
(Appeals), Central Excise, Vapi.

ORDER

This Revision application is filed by M/s Kirti Industries, Survey No 490/2/1,2,3, Village Galonda, Silvassa (hereinafter referred to as the 'applicants') against the Orders-In-Appeal Vap-EXCUS-000-APP-336-13-14 dated 24.10.2013 passed by the Commissioner (Appeals), Central Excise, Vapi.

2. The applicant is a manufacturer of 'Pan Masala/Pan Masala containing Tobacco commonly known as Gutkha' falling under Chapter Heading No. 21069020/24039990 and also of 'Zarda Scented Tobacco' falling under Chapter Sub Heading No. 24039930 of the First Schedule to the Central Excise Tariff Act, 1985. The applicant was holding Central Excise Registration No. AAGFK4136KEM003. The applicant is clearing the above said finished product for home consumption as well as for export directly from their factory. The applicant is 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 (PMPM (CDCD) Rules, 2008) as notified under Central Excise Notification No. 30/2008-CE(NT) dated 01.07.2008. The applicant is also working under the Compounded Levy Scheme and following the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty Rules, 2010[in short "CTUTPM [CDCD] Rules, 2010"] as notified under Central Excise Notification No 11/2010-C.E (N T.) dated 27.2.2010, as amended and is paying duty as prescribed under Rule 7 of the above said rules read with Notification No 16/2010- C.E. dated 27.02.2010, as amended. The applicant submitted an abatement claim for Rs.2,45,80,644/- for non production of goods for a continuous period of 15 days or more from 20.07.2012 onwards when production had been stopped and machines had been sealed as per procedure of PMPM, Rules 2008.

3. The Adjudicating Officer vide Order in Original No. 631/DC/SLV-IV/Rebate/2012-13 dated 09.01.2013 sanctioned the abatement claim filed by the applicant.

4. Aggrieved by the said order, the department filed an appeal before the Commissioner (Appeals), Central Excise, Vapi. The Appellate Authority vide impugned Order in Appeal allowed the appeal filed by the department on the grounds of non-compliance statutory provisions contained in Rule 10 of the PMPM/CTUTPM Rules, by the applicant.

5. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the various ground mentioned in the application.

6. Personal hearing scheduled in this case on 16.01.2020, 22.01.2020, 11.02.2021, 25.02.2021, 19.03.2021, 26.03.2021, 16.07.2021 and 23.07.2021. 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 records available.

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

8. Government observes that issue involved in this case pertains to abatement filed by the applicant under Proviso of Rule 10 of PMPM Rules, 2008. Government finds that this issue does not fall in the category of cases mentioned in proviso to Section 35B(1) of the Central Excise Act, 1944 and hence revision application is filed beyond jurisdiction and not maintainable under Section 35EE of the Central Excise Act, 1944. The applicant is required to file appeal

before Hon'ble CESTAT. As such, Government is constrained to dismiss this revision application as not maintainable.

9. Revision Application thus stands dismissed.


28/10/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,

M/s Kirti Industries,
Survey No 490/2/1,2,3,
Village Galonda, Silvassa

ORDER NO. 416/2021-CX (WZ) /ASRA/MUMBAI DATED 28.10.2021

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.