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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.195/216-224/14-RA/6454

Date of Issue: ~~10.10.2021~~
11.11.2021

ORDER NO. 417-425/2021-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 : Kirti Industries,
Survey No.490/2/2,
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-597 to 605-13-14 dated 26.03.2014 passed by the
Commissioner (Appeals), Central Excise, Vapi.

ORDER

These Revision Applications have been filed by Kirti Industries, Survey No.490/2/2, Village-Galonda, Silvassa (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAP-EXCUS-000-APP-597 to 605-13-14 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 9 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 rejected the rebate claims filed by the applicant as detailed below.

Sr. No.	OIO No. & Date	ARE-1 No. & Date	Amount of rebate granted Rs.
1	624/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	015/09.07.2012	91,09,312
2	625/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	021/16.07.2012	91,09,312
3	626/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	023/21.07.2012	91,09,312
4	627/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	022/21.07.2012	91,09,312
5	628/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	016/10.07.2012	91,09,312

6	629/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	020/15.07.2012	91,09,312
7	630/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	018/12.07.2012	91,09,312
8	631/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	026/20.08.2012	91,09,312
9	632/DC/SLV-IV/Rebate/2013-14 dated 30.09.2013	024/08.08.2012	91,09,312

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

5. The appellate authority vide Orders in Appeal No. VAP-EXCUS-000-APP-597 to 605-13-14 dated 26.03.2014 rejected all the nine appeals of the applicant. The Appellate Authority while rejecting the nine appeals have made the observations as under: -

(a) Though there was merit in the applicants contention that natural justice was not followed but now after amendment in section 35A, the Commissioner (Appeals) has no power to remand. All their contentions of the applicant, being common for all appeals, are being discussed and all the contentions made by the appellant were being considered to follow the principles of natural justice.

b) The issue relating to the non filing of declaration of a product "Goa 1000 Gutkha Red Strip" and its effect on the rebate claim had been decided in the past vide OIA VAP-EXCUS-000-APP-339 to 343-13-14 dated 24.10.2013 and the instant issue being identical and only the description of the item involved in the present cases is different and hence the discussion and conclusion arrived at in the said OIA dated 24.10.2013 holds good in these cases also.

c) The appellate authority, quoting parts of the order in appeal No. VAP-EXCUS-000-APP-339 to 343-13-14 dated 24.10.2013 held the findings to be applicable in the instant cases. The findings, as applied to the instant case are as under

i) As per Notification No. 42/2008-CE dated 01.07.2008, 'Gutkha' attracts excise duty under Section 3A of the Central Excise Act, 1944 (Compounded levy 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 42/2008-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 there must be a declaration filed by the manufacturer in the prescribed format for determining such Annual Capacity of Production.

ii) Further, the appellate authority has held that the assessee (applicant in the RA) had filed declarations under the said PMPM Rules in respect of a series of products except "GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each", which was claimed to have been exported in the instant cases and had thus failed to file declaration in respect of the export goods, which was mandatorily required under the PMPM Rules. The applicant has filed a declaration for the product "Goa 1000 Gutkha (Red)-Export" and jurisdictional ACCE also determined the annual capacity of production vide letter dated 04.05.2012 respect of item viz. "Goa 1000 Gutkha (Red)-Export" and MRP Rs. 3.00 per pouch and not the impugned goods exported by the applicant. When there was no declaration in respect of the particular quality/brand 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 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each" exported by the applicant. Consequently, the goods shown as exported could not be related to duty paid by the applicant.

iii) The department has been able to prove that the assessee (applicant in the RA) did not record production of the said impugned export goods in the

Daily Stock Account the relevant periods but "GOA GUTKHA RED MRP Rs.3.00" in some cases and "Goa Gutkha Red strip MRP Rs. 3.00" in other cases but without identifying the goods by its net weight of 1.80 gms per pouch. Further, in the DSA, few pages were bearing serial numbers and few were without serial number. Thus, the assessee neither maintained daily production in the DSA Register nor submitted relevant document as per Section 11B 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 and rebate of duty could not be granted.

iv) The brand "GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each" 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 of PMPM Rules and Section 11B of CEA, 1944

v) Applying the ratio in the case of CCE V/ s Avis Electronics Pvt Ltd. 2000 (117) ELT 571 (Tri.-LB), the Appellate Authority held that the assessee 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 said goods was not a mere technical fault.

vi) Reliance was placed on the case of Kaizen Organics Ltd 2012 (283) ELT 743 (GOI) wherein Revision Authority has denied rebate for difference in the description of the goods in the export documents and that manufactured by the exporter

d) 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.

e) The applicant failed to link the goods exported mentioned in the export documents to the goods mentioned in the Daily stock account as well as the notified goods declared by the appellant before the central excise authorities, in terms of PMPM Rules.

f) The applicant has submitted documents not relevant to the present appeals and having no bearing on the cases and there was no link between the goods cleared by the assessee under ARE-1, Excise Invoice/export invoice/shipping bill which showed that the procedure laid down under Rule 18 of Central Excise Rules, 2002 was not followed by the appellant in the present case.

g) As per letter dated 28.08.2012 received from the Special Investigation and Intelligence Branch, Mumbai (SIIB) in another investigation by SIIB, it was found that the pouch contained 1.8 gms of Gutkha and not 2.00 gms as declared in the pouch and other observations. The applicants objection that the said SIIB letter dated 28.08.2012 pertained to Shipping bill dated 21.04.2012 of Kirti Industries and not of the M/s Shree Meenakshi Food Products has no force as SIIB had found discrepancies in respect of the consignments of the appellant M/s Kirti Industries only

h) The reliance of the applicant on the case laws including Birla VXL Ltd 1998(99)ELT 387 and others are not applicable to the present case as Non declaration of the impugned export goods in terms of PMPM Rules is not a simple procedural or technical lapse and when the particular item is not declared, question allowing entries of that particular item in Daily Stock Register does not arise. When the goods are not considered as manufactured

under Compound Levy Scheme, question of allowing Rebate on such goods does not arise.

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

6.1 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 original order in original should have been set aside, which the Appellate Authority) glossed over, which is not legal. The order in original is defective, and can not be cured, but has to be set aside.

6.2 The Unit has declared the MRP of the product and the brand name 'Goa 1000 Gutkha Red' 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 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. Accordingly, for product 'Goa 1000 Gutkha Red' of the specified MRP duty was discharged.

6.3 The description in the ARE1 is declared as "Pan Masala Gutkha" as main heading under which 'Goa 1000 Gutkha Red strip MRP Rs 3 per pouch (1.80 gms)' is stated. On the shipping bill, the product is declared as 'Pan Masala Gutkha Goa 1000 Gutkha Red Strip 1.80 gms'. Admittedly the daily stock account register shows the item as 'Goa 1000 Gutkha Red Strip MRP Rs 3.00'. After self removal of goods for export purposes, the stipulated procedure as per Notification No. 19/2004 CE (N.T.) was followed. From the string of documentation for each export and examination by various agencies, it could be seen that the goods were manufactured, removed from the factory and the same were only exported, and the duty paid aspect of the goods has been verified by the Departmental officers. The goods which have been manufactured and exported are "Goa 1000 Gutkha Red MRP Rs 3 and

1.80 gms', It is amply demonstrated with marks and numbers, grammage, weight of the packages, number of packages, and heading of the description that 'Goa 1000 Gutkha Red MRP Rs 3,1.8 gms per pouch' which was declared and duty paid only was exported.

6.4. This chain of documentation clearly establish the link between the AREI and the shipping bills of export to demonstrate that the goods removed from factory only have been exported.

6.5. The only discrepancy between the description in the declaration, and the export documents is all being same the word 'strip' along with already declared 'Red' in the declaration and the export documents. This discrepancy is not there when compared to the DSA also. The very fact is that the goods with exact description as in export documents only including the word 'strip' is manufactured as evidenced from the daily stock account vis a vis all the AREI and shipping documents which are verified by so many independent officers. The amplification of word 'Strip' is not changing the brand or the product.

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

6.7. The applicants relied upon the following case laws in support of their 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.I). 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

6.8. 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 Notification No. 32/2008 has been satisfied.

6.9. 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.

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, 05.02.2021, 19.02.2021, 19.03.2021 and 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 available records.

8. Government has carefully gone through the relevant case records and perused the impugned Orders-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 sanctioning 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.

10.1 The government observes that as regards the grounds of the applicant that there was a denial of natural justice, the Appellate authority has stated there was merit in the applicant's contention in the instant case and equity demanded that the case be remanded to the adjudicating authority but the Appellate authority had no power to remand.

10.2 Government notes that Section 35(A) of the Central Excise Act, 1944/ Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as

"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be after taking additional evidence, if necessary. "

The above underlined phrase of the above referred Section was amended with effect from 11.05.2001 and the new section read as

"Commissioner(Appeals) shall after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".

10.3 Further, the said amendment with effect from 11.05.2001 withdrew the powers of remand which was earlier vested with the Commissioner (Appeals). The said amendment was made in the Finance Act, 2001 by way of approval/assent given by the Parliament. Since then, the Commissioner

(Appeals) has been authorized to act as an Adjudicating Authority and pass necessary orders if it is found that the original Adjudicating Authority has passed an order which is not legal and proper, by calling for the adjudication proceeding's record and re examine the issue afresh/suo moto. The Commissioner (Appeals) has been given powers to issue orders after ascertaining the facts at his end while in the earlier he could order the original Adjudicating Authority to adjudicate the matter in question afresh by way of remand directions.

10.4 The Hon'ble Supreme Court of India in its judgment dated 01.07.2007 in Civil Appeal No.6988/2005 in the case of M/s MIL India Ltd [2007 (210) ELI 188 (S.C.)] has noted the provisions of amended law by observing that

"in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that Clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (Appeals) to remand matter back to the adjudicating authority for fresh consideration."

10.5 The Hon'ble High Court of Punjab & Haryana in the case of

- (a) M/s Enkay India Rubber Co Pvt. Ltd. [2008 (224) ELT 393 (P&H)],
- (b) M/s B.C. Kataria [2008 (221) ELT 508 (P & H)], and
- (c) M/s Hawkins Cookers Ltd

has stated that the observations made by the Hon'ble Supreme Court in the above referred order in Civil Appeal No 6988/2005 decided on 01.03.2007, are part of the ratio decided by the Apex Court in its judgment passed in case of M/s MIL India Ltd [2007 (210) ELT 188 (S.C.)].

10.6 All the above referred Orders passed by Hon'ble High Court of Punjab & Haryana have been passed in 2007 and 2008 i.e. after passing of order in case of M/s Medico Lab by the Hon'ble Gujarat High Court on 21.09.2004. Even the Hon'ble Supreme Court's judgment in the case of MIL India Ltd. dated 01.03.2007, has been passed after the order passed by Hon'ble Gujarat High Court. All these orders affirm the amendment made in the Finance Act, 2001 by the Parliament vide which remand back powers of the Commissioner (Appeal) have been done away with.

10.7 In the light of the above, Government notes that the Appellate authority had not remanded the case but had followed the principles of natural justice and had granted personal hearing to the applicant and passed the order in appeal on merits after considering the say of the applicant and the provisions of law involved in it.

11.1. The Government finds that the applicant in the instant cases had cleared the notified goods "GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each" for export under the ARE1's mentioned above 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.

11.2. 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) ...”

11.3. 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 failed to file any declaration in the prescribed Form-1, which was mandatorily required under the PMPM Rules, for the product mentioned in the export documents such as ARE-1’s, Shipping Bills etc. which showed the description as “GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each”, or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)” or goods “GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH” or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each”. In the absence of the said declaration, the Jurisdictional Assistant/Deputy Commissioner was unable to determine the annual production capacity for the impugned notified products. In the absence of the mandatory declaration in Form-1, and as a result, non determination of the annual production capacity, it is evident without an iota of doubt, that the goods exported are not the goods on which duty is payable under the Rule 7 of the said PMPM Rules read with Notification No. 42/2008-CE dated 01.07.2008.

11.4. Government notes that the applicant, in the instant case, have claimed that the MRP of the product and the brand “Goa 1000 Guthka(Red)-Export” had been declared by them and that it was applicable to the impugned notified goods i.e “GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each”, or (GOA 1000

Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)” or goods “GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH” or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each” “Goa 1000 Gutkha Red Strip 1.80 gms”. Government observes that the contention of the applicant is far from the facts. Government also observes that the applicant in the daily stock account has mentioned the item as “GOA GUTKHA RED MRP Rs. 3.00” in some cases and “1000 Gutkha Red Strip MRP Rs. 3.00”. On perusal of the Rule 6(viii) of PMPM Rules as above, it noticed that the manufacturer of the notified goods operating under PMPM Rules must file declaration with the competent authority giving details such as description of notified goods to be manufactured with their brand names. Further to comprehend the precise connotation of the term ‘brand’, the definition of ‘brand’ as given by ‘The American Marketing Association’ is reproduced below:-

“A brand is a name, term, design, symbol, or any other feature that identifies one seller’s good or service as distinct from those of other sellers. The legal term for brand is trademark. A brand may identify one item, a family of items, or all items of that seller. If used for the firm as a whole, the preferred term is trade name.”

11.5 Thus, in common parlance, it is understood that the name, symbol, sign, product, service, logo, person, or any other entity that makes you distinguish a product from a clutter of products is known as a Brand. Also, anything that helps the customers to identify the product and distinguish the product from each other can be attributed as brand of the product.

11.6 In the instant case the very fact that the applicant have added the weight, price and colour to the name of product while marketing it shows that the intention is to convey the distinguishing features of the products to their customers. The Government holds that, attachment of these words to product name makes the products fall under different brands.

12.1 It is further observed that the Daily Stock Register showed the goods manufactured as “GOA GUTKHA RED MRP Rs. 3.00” in some cases and “1000 Gutkha Red Strip MRP Rs. 3.00” instead of “GOA 1000 GUTKA-RED

STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each" 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 assessee 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.

12.2 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.

12.3 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 as the description ‘red strip’ is not shown it can not be concluded that the stock register does not show the

product exported, 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/identity/colours, whereas the impugned notified products i.e “GOA 1000 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each”, or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)” or goods “GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH” or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each” 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 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each”, or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)” or goods “GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH” or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each” and therefore the claim of clearance of the said product on payment of duty is far-fetched.

12.4 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 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each”, or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)” or goods “GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH” or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- each” under various ARE1’s mentioned above. 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 correlated 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.

12.5 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.

12.6. 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.

13.1 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."*

13.2 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 GUTKA-RED STRIP (1.80 GMS) MRP Rs.3.00 PER POUCH or each", or (GOA 1000 Gutka-Red Strip) MRP Rs.3/- per pouch (1.80 Gms)" or goods "GOA 1000 GUTKA-(RED STRIP 1.80 GMS)) MRP Rs.3.00 PER POUCH" or (GOA 1000 GUTKA-RED STRIP) MRP Rs. 3/- 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.

13.3 The discussion in the previous para also establishes the fact, pointed out by the adjudicating authority at para 24 of the impugned Orders 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.

13.4 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.

14. 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 Appellate Authority in the Orders In Appeal. The applicant has failed to file declaration in the prescribed format in respect of the exported goods, failed to record the production of the said goods in the Daily Stock Account, misstated the place of manufacture of the exported goods and failed to substantiate the payment of duty on the clearance of goods exported. 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.

15. In view of the above discussion, Government holds that the appellate authority has rightly rejected the appeal filed by the applicant. Thus, Government does not find any infirmity in the VAP-EXCUS-000-APP-597 to 605-13-14 dated 26.03.2014 passed by the Commissioner (Appeals), Central Excise, Vapi and, therefore, upholds the impugned order in appeal.

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


28/10/21

(SHRAWAN KUMAR)

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

ORDER NO. 417-⁴²⁵/2021-CX (WZ) /ASRA/MUMBAI DATED 28.10.2021

To,

M/s Kirti Industries,
Survey No.490/2/2,
Village-Galonda, Silvassa

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.