

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 10189 of 2024 - DB**

(Arising out of VAD-EXCUS-001-COM-19-2023-24 dated 21/02/2024 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals)-Vadodara-I)

**SURESH TOBACCO CO**

605 1 1 Banejada House Near Vasad  
Crossing Borsad Anand,  
Anand, Gujarat-388540

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise and  
Service Tax - CGST  
& Central Excise Vadodara I**

Central GST Building, Race Course  
Circle, Vadodara, Gujarat- 390007

**.....Respondent**

**APPEARANCE:**

Shri Anand Nainawati, Advocate for the Appellant

Shri Rajesh Nathan, Assistant Commissioner(AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 11060/2024**

DATE OF HEARING: 09.05.2024  
DATE OF DECISION: 15.05.2024

**RAMESH NAIR**

M/s. Suresh Tobacco Co. (hereinafter referred to as "the Appellants") are a partnership firm inter alia engaged in the business of supply of raw, unmanufactured, and unprocessed tobacco without lime tube under the brand name "Suresh Tamakhu". The dried cut tobacco leaves contained in the retail pouches supplied by the Appellants can be used by the end user in a number of ways, like after mixing with lime it can be used as Zarda or it can be further crushed to convert into tobacco powder to be used as snuff, or crushed into powder for tooth rubbing etc. Under a bona fide belief that such dried cut tobacco leaves are in the nature of unmanufactured tobacco classified under HSN 2401 and Chapter Heading 24.01 of the Central Excise Tariff Act, 1985, the Appellants cleared them on payment of GST at the rate of 28% under Sr. No. 13 of Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and

compensation cess @ 71% under Sr. No. 5 of Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017. The present appeal does not pertain to these levies. With the introduction of GST regime from 01.07.2017, Basic Excise Duty (BED) on all tobacco products of Chapter 24 was exempted vide Sr. No. 1 of Notification No. 11/2017-CE dated 30.06.2017. Subsequently, relevant entry in Notification No. 11/2017-CE dated 30.06.2017 was omitted vide Notification No. 02/2019-CE dated 06.07.2019 and a fresh Notification No. 03/2019-CE dated 06.07.2019 was issued, prescribing different rates of BED for tobacco products of Chapter 24 from 06.07.2019 onwards. Relevant entries of this notification is reproduced below:

| Sl. No. | Chapter or heading or sub-heading or tariff item | Description of goods | Rate |
|---------|--------------------------------------------------|----------------------|------|
| (1)     | (2)                                              | (3)                  | (4)  |
| 1.      | 2401                                             | All Goods            | Nil  |
| ..      | ...                                              | ...                  |      |
| ..      | ...                                              | ...                  |      |
| 19.     | 2403 99 10                                       | Chewing tobacco      | 0.5% |

In view of Sr. No. 1 above, after the introduction of Notification No. 03/2019-CE dated 06.07.2019, the tobacco products of Chapter Heading 2401 continued to remain exempt from BED. Thus, from 01.07.2017 onwards, all tobacco products of Chapter Heading 2401, including unmanufactured tobacco sold under a brand name without lime tube, continued to remain exempt from BED. However, in view of Sr. No. 19 above, chewing tobacco classified under Chapter Heading 2403, became taxable at the rate of 0.5% from 06.07.2019 onwards.

1.1 Based on an intelligence that Appellants are misclassifying the tobacco product cleared by them under the brand name 'Suresh Tamakhu', as 'Unmanufactured Tobacco' under CTH 2401 instead of CTH 2403 as 'Chewing Tobacco' with an intention to evade payment of tax, investigation was conducted by the DGGI. The applicable rates of GST, GST Compensation Cess, Basic Excise Duty ('BED') and National Calamity

Contingent Duty ('NCCD') as applicable on goods classifiable under CTH 2401 and CTH 2403 are as detailed below:

| LEVY                               | 'UNMANUFACTURED TOBACCO' UNDER CTH 2401                                  | 'CHEWING TOBACCO' UNDER CTH 2403                                                              |
|------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Goods and Services Tax             | 28%<br><br>S. No. 13 (Schedule-IV) of Notification No. 01/2017-CT (Rate) | 28%<br><br>S. No. 15 (Schedule-IV) of Notification No. 01/2017-CT (Rate)                      |
| Compensation Cess                  | 71%<br><br>S. No. 5 of Notification No. 01/2017-CC (Rate)                | 160%<br><br>S. No. 26 of Notification No. 01/2017-CC (Rate)                                   |
| Excise Duty                        | NIL<br><br>S. No. 1 of Notification No. 03/2019-Central Excise (Tariff)  | 0.5% (From 06.07.2019)<br><br>S. No. 19 of Notification No. 03/2019-Central Excise (Tariff)   |
| National Calamity Contingency Duty | NIL<br><br>Not covered in Seventh Schedule to Finance Act, 2001          | 10% [upto 31.03.2020]<br>25% [w.e.f. 01.04.2020]<br><br>Seventh Schedule to Finance Act, 2001 |

Based on the above intelligence, the officers of DGGI visited the factory of the Appellants as well as the suppliers and collected samples of the raw material and finished products and recorded their statements. The samples were sent to the Central Revenue Controls Laboratory ('CRCL'), Vadodara for examination and testing, to ascertain the actual contents of the samples. The CRCL issued test reports vide letter dated 13.09.2021, where it was observed that that the sampled products of both the supplier and the Appellants have the characteristics of cut leaves of tobacco.

1.2 As an outcome of the above investigation, the DGGI officers concluded that the Appellants are misclassifying the tobacco products

cleared under the brand name 'Suresh Tamakhu', as 'Unmanufactured Tobacco' under CTH 2401. Whereas the correct classification of the aforesaid product is under CTH 2403 as 'Chewing Tobacco'. The present SCN dated 04.10.2022 was issued to the Appellants by invoking extended period of limitation wherein it was proposed to recover Basic Excise Duty ('BED') amounting to Rs.5,81,848/- for the period July 2019 to March 2022 and National Calamity Contingent Duty ('NCCD') amounting to Rs.3,11,60,125/- for the period between September 2017 to March 2022, along with applicable interest and penalty on the ground that the Appellants have mis-classified their product and consequently not discharged the applicable BED and NCCD.

1.3 It is alleged therein that the product in question is being used for chewing purposes and the same is also corroborated by the warning mentioned on the retail pack. It was also alleged that the process of procurement of raw material i.e. tobacco and then the process of packing of tobacco into small retail packs to make the product marketable amounts to manufacture in terms of Note 3 to Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985. Accordingly, it was concluded that the tobacco supplied by the Appellants in retail pouches is manufactured tobacco. Detailed oral and written submissions were made by the Appellants. The Ld. Commissioner has adjudicated the aforesaid SCN dated 04.10.2022 vide the Impugned Order-in-Original No. VAD-EXCUS-001-COM-19-22-23 dated 21.02.2024, confirming the entire demand of duty along with applicable interest and penalty.

1.4 Being aggrieved by the findings of the Ld. Commissioner in the Impugned Order dated 21.02.2024, the Appellants have filed the present appeal.

2. Shri Anand Nainawati Learned Counsel appearing on behalf of the appellant submits that they are correctly classifying their product under Chapter Heading 2401, specifically under Tariff Item No. 2401 20 90 as "Other unmanufactured tobacco, partly or wholly stemmed" inasmuch as the subject product solely comprises of dried and crushed tobacco leaves.

2.1 Appellant submits that as per HSN Explanatory Notes of Chapter Heading 2401, the heading covers unmanufactured Tobacco as well as tobacco leaves used. It is clear that in various form unmanufactured tobacco from whole plants and leaves and natural state are considered as unmanufactured tobacco. He submits that the Central Board of Excise and Customs and Tribunals at multiple occasions have clarified as to what is manufactured tobacco and what will constitute unmanufactured tobacco and laid down certain criteria to make distinction between manufactured tobacco and unmanufactured tobacco. In this regard, he placed reliance on the following judgments and circulars:-

- Bell Mark Tobacco Company & Ors. Vs. Government of Tamil Nadu, (1961) 12 STC 126 (Mad)
- State of Madras v. Bell Mark Tobacco Co.-[1967] 19 STC 129 (SC).
- Circular bearing F. No. 81/5/87-CX.3 dated 23.06.1987
- clarification issued by Ministry of Finance vide Letter bearing F. No. 81/01/2015-CX.3 dated 01.04.2015

2.2 He further submits that Hon'ble Tribunal has also in following cases has consistent view that cutting of unmanufactured tobacco leaves into small pieces , labeling with strings and packing containers without adding any foreign ingredient, did not amount to manufacture and will be classified under 2401.00 of Central Tariff Act as unmanufactured tobacco.

- VH Patel Tobacco Pvt. Ltd. v. CCE, Aurangabad, -1998 (2) TMI 359
- CCE v. Ravindra & Co.,-2000 (120) ELT 699
- CCE v. Ranchhoddar Zinabhai & Sons-1998 (104) E.L.T. 509 (T)
- T.P.N.S. Chettiar Parvathi Vilas Tobacco & Cigars Co. v. CCE,-1989 (41) E.L.T. 79
- Ishwar Grinding Mills v. CCE Calcutta-I,-2000 (117) E.L.T. 743 (T)
- Shrikant Prasad v. CCE Calcutta, -2000 (117) E.L.T. 345
- Borsad Tobacco Co. Pvt. Ltd. v. CCE, Ahmedabad, -2020 (372) ELT 156
- Collector of Central Excise, Pune v. Jaikisan Tobacco Co.,- 1986 (23) ELT 184

- SB Sugar Mills v. Union of India, -1978 ELT (J336)
- In re; India Tobacco Co. Ltd., -1981 (8) ELT 847
- CCE, Salem v. Muthuvelappa Gounder & Sons, -2010 (256) ELT 320
- Prakash Tobacco Limited v. Commissioner of Central Excise, Kanpur, -1999 (107) ELT 104

2.3 He submits that as per the undisputed process of packing, it is clear that the unmanufactured tobacco in cut form is repacked as such without carried out any process for retail sale without adding any other ingredient therefore, same remain as unmanufactured tobacco. He submits that even the test report of Central Excise and Custom Laboratory also support in the case of the appellant that there is no difference between the tobacco procured by the appellant and re-packed tobacco. Therefore, there is no changes between the raw material of finished good, except the retail packing. Therefore, the product of the appellant clearly falls under the category of unmanufactured tobacco under Chapter 2401.

2.4 He also submits by drawing a reference to following advance rulings wherein it has been ruled that unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand name is appropriately classifiable under CTH 2401 even it is meant for consumption as chewing tobacco:-

- Shailesh Kumar Singh, reported at 2018 (13) G.S.T.L. 373 (A.A.R. - GST).
- Pragathi Enterprises, reported at 2018 (19) G.S.T.L. 327 (A.A.R. - GST)
- M/s Gyankeer Products Private Limited - 2022 (7) TMI 967
- JCP Agro Process P Ltd. (A.A.R. - GST - Guj.) 2023 (3) TMI 786
- M.L. Agro Products Pvt. Ltd. - 2020 (32) G.S.T.L. 438 (A.A.R. - GST - A.P.)
- Deccan Tobacco Company - 2020 (39) G.S.T.L. 168 (A.A.R. - GST - A.P.)
- Maddi Lakshmaiah and Company Pvt. Ltd. - 2020 (32) G.S.T.L. 277 (A.A.R. - GST - A.P.)

- M.L. Tobacco Developers Pvt. Ltd. - 2020 (32) G.S.T.L. 311 (A.A.R. - GST - A.P.)

In view of his above submission, he submits that the subject product is rightly classifiable as unmanufactured tobacco under CTH 2401, on which no BED or NCCD is required to be discharged by the appellant.

2.5 As regard the claim of the Revenue that the product is classifiable under CTH 2403 as other manufactured tobacco, he referred to the HSN explanatory notes for chapter heading 2403. According to which he submits that in order to merit classification under chapter heading 2403 as a smoking tobacco, it is mandatory to first qualify as manufacture tobacco. Further, chewing tobacco would fall under said heading only if it is highly fermented and liquored. However, the subject product could not be classified as manufactured tobacco. Therefore, the same cannot be classified under heading 2403.

2.6 He submits that in order to understand the scope of the term 'manufacture' used in relation to tobacco products, reference needs to be made to the decision in the case *Shree Biswa Vijaya Industries v. CCE, Bhubaneshwar* - 1997 (4) TMI 204. This judgment has been upheld by the Hon'ble Supreme Court reported at 1998 (104) ELT A136 (SC). He also placed reliance on the decision of this Tribunal in the case of *Yogesh Associates Vs. CCE Surat-II*- 2005 (9) TMI 173.

2.7 He further submits that the understating of the Learned Commissioner that since Note 3 to Chapter 24 provides that process of re-packing raw material of tobacco leaves from bulk packs to retails packs amounts to manufacture, the instant product involving preparation of a small retail pack, becomes manufactured tobacco classifiable under CTH 2403, is also devoid of logic and common sense. He submits that Chapter Note 3 creates a fiction only to charge Excise Duty pertain such case the product remained same except the process of labeling or re-packing from bulk to retail. Even in that case as per the deemed manufacturing since the

product is unmanufactured tobacco the classification remain under CTH 2401.

2.8 In view of above submission the appellant submits that the subject product does not merit classification under Chapter heading 2403 and the Learned Commissioner has grossly erred in classifying subject product as 'Chewing Tobacco' under chapter heading 2403.

He further submits that the extended period of limitation cannot be invoked in the facts of the present case for the following reason :-

- (i) The department has not shown any positive act done by the Appellants which proves any intention of evasion of tax.
- (ii) The Appellants submits that their certificate of registration dated 12.05.1995 under Central Excise Act, 1944, explicitly certifies that the Appellants have been granted registration for manufacture of "Branded Unmanufactured Tobacco classifiable under Chapter Heading 2401 00".
- (iii) The Appellants have been subjected to regular statutory audits wherein the fact that the Appellants have been classifying their product under the category of "Unmanufactured Tobacco Branded" category was declared as well as recorded by the officers in the Audit Reports and no doubt was ever raised by the Audit Officers regarding classification of the product.
- (iv) The Appellants have regularly filed ER-1 returns declaring classification of the product under Chapter Heading 2401.
- (v) In the erstwhile regime, the subject product was notified under Section 3A of Central Excise Act, 1944 and accordingly was required to be assessed for duty of excise on the basis of the provisions of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. In order to verify the declarations filed by the Appellants under the aforesaid rule, the Jurisdictional Officers used to visit the factory of the Appellants on regular intervals for verification of the subject product, the number of machines involved and other records for assessment of the

duty required to be discharged by the Appellants. The Jurisdictional Officers in their orders of assessment from time to time have duly taken note of and considered the fact that the Appellants are engaged in manufacturing of 'Branded Unmanufactured Tobacco' falling under Heading 2401 of Central Excise Tariff Act, 1985.

2.9 Without prejudice he submits that the extended period of limitation cannot be invoked in cases involving classification of goods. Reliance is placed on following cases: :

- Narmada Bio Chem Pvt. Ltd. Vs. C.C.E. & S.T. - Vadodara-I - 2019 (7) TMI 459 - CESTAT AHMEDABAD
- CCE, Chandigarh Vs. Raja Forgings & Gears Ltd. - 2009 (233) ELT 404 (Tri. - Del.)  
Affirmed by Hon'ble Supreme Court in order reported at 2016 (337) ELT A42 (SC)
- M/s. Novel Digital Electronics v. the Commissioner of Customs (Imports), Customs House, 2015 (4) TMI 347 - MADRAS HIGH COURT
- Damodar J. Malpani Vs. Collector of Central Excise- 2002(146) ELT 483 (S.C.)

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that since, the product is nothing but chewing tobacco and the same clearly finds place in the Tariff entry under chapter CTH 2403, the correct classification is 2403 instead of 2401. Therefore, the demand was rightly confirmed. He placed reliance on the following judgments:-

- Commissioner of C. Ex., Delhi Vs. Parveen Tobacco Co. (P) LTD.- 2013 (288) ELT 433 (Tri.-Del.)
- Dharampal Premchand Ltd Vs. CCE Noida - 2019 TIOL 3490 CESTAT- All

4. We have carefully considered the submission made by both the sides and perused the records. In the present case the issue to be decided by us is that whether the appellant's product i.e. 'Tobacco' supplied in retails pack is classifiable under CTH 2401 as claimed by the appellant or 2403 as claimed by the Revenue. It is necessary to first analyze the entire process right from procurement of raw material up to the sale of goods in retails pack, which is described as under:-

1. During the course of their business, the Appellants procure dried cut tobacco leaves in bulk quantities from their suppliers who classify the same under Chapter Hearing 2401 of the First Schedule to the Central Excise Tariff Act, 1985 and charge Goods and Services Tax (*hereinafter referred to as "GST"*) @ 28%.

**Activity carried out by the Appellants' suppliers:**

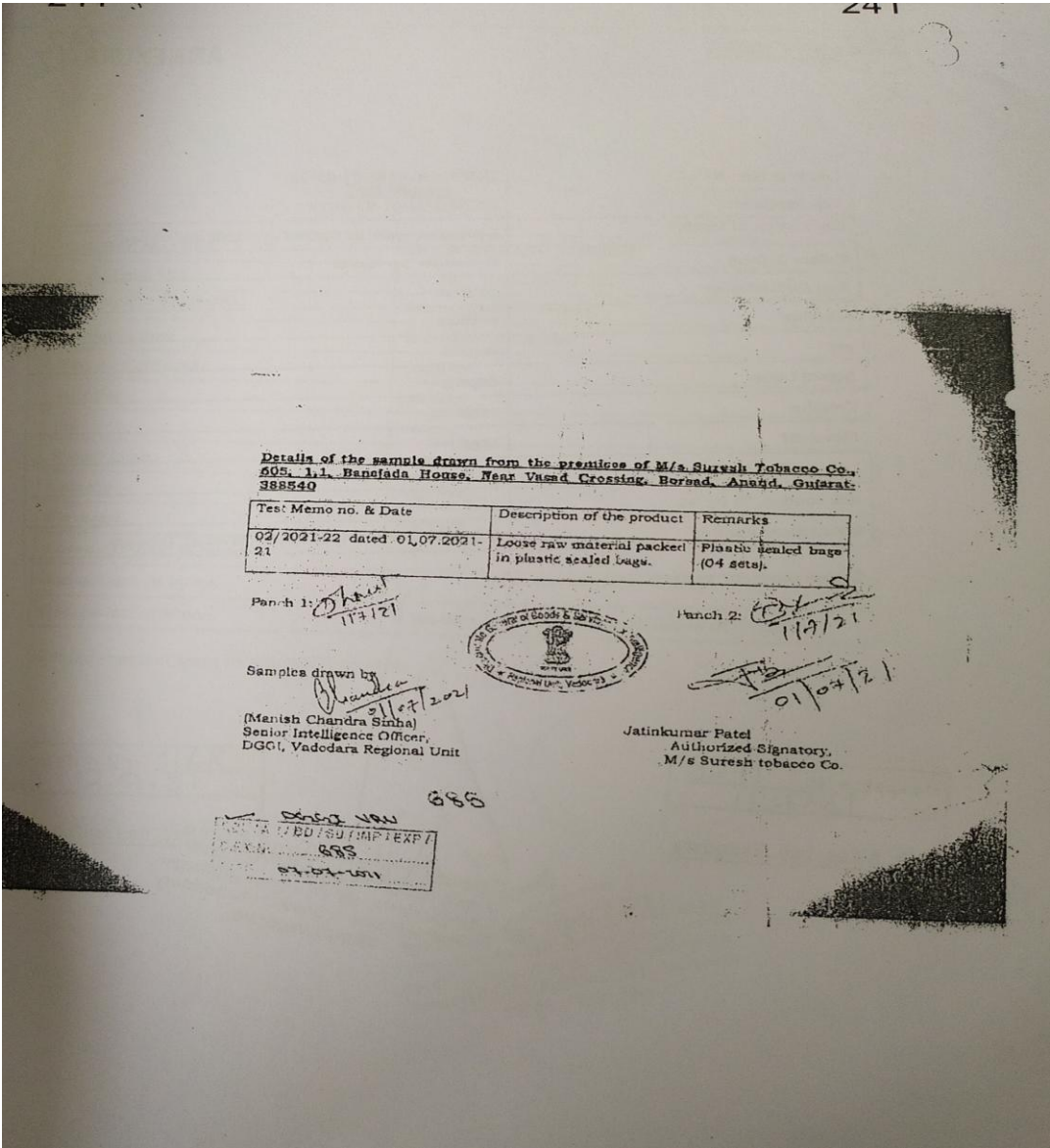
2. The suppliers of the Appellants purchase dried tobacco leaves from farmers. Such dried tobacco leaves are also known as cured tobacco leaves in the industry. The suppliers of the Appellants carry out activity of cutting the leaves into smaller pieces with a cutting & segregator machine and the cut leaves of tobacco are segregated by size with the help of a perforated iron sheet (jali) fitted in the machine. Thereafter, the dried cut tobacco leaves of sizes 04 no./05 no. Farmas are sent through conveyer belt to the packing section, where they are packed in jute gunny bags.

**Activity carried out by the Appellants:**

3. Once the above dried cut tobacco leaves are received by the Appellants, the only activities carried out by the Appellants are unpacking the dried cut tobacco leaves from the jute gunny bags and repacking the same into retail pouches containing less than 10 gm of the dried cut tobacco leaves with the help of manual packaging machines operated by labour. Each retail pouch weighs approximately 9 grams and carries the brand name "Suresh Tamaku" along with the description "unmanufactured tobacco". 50 such large packets are packed into a corrugated box for transportation. The goods in this condition are dispatched to their dealers like M/s Saurashtra Tobacco and M/s Rajesh Tobacco for further distribution in retail markets.

From the above activity, it can be seen that the product tobacco in dried cut tobacco leaves does not undergo any further process but the same are packed as such in the retail packing for further distribution in the retail market. Therefore, the appellant has not under taken any activity on the unmanufactured tobacco. Moreover, not a single foreign ingredient is added to the dried tobacco leaves which is not under dispute as there is no such allegation in the show cause notice or in the impugned order.

4.1 It is also observed that the raw material as well as final product of the appellant were tested by Central Excise and Custom laboratory of Vadodara, the test reports are scanned below:-



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ANNEXURE-12

|                          |                                                     |
|--------------------------|-----------------------------------------------------|
| Lab Reg. No.: RCL/       | DGGI/VRU/685/07-07-2021                             |
| Test Memo NO.            | 02/2021-22/01-07-2021                               |
| Description of sample    | Loose raw material packed in plastic sealed bag     |
| Colour & form            | Brownish cut leaves                                 |
| Test for Cellulose       | positive                                            |
| Nicotine                 | positive                                            |
| pH                       | neutral                                             |
| Slaked Lime              | negative                                            |
| Catechu                  | negative                                            |
| Flavorant                | negative                                            |
| Loss on Drying, % by wt. | 10.6                                                |
| Ash content, % by wt.    | 15.8                                                |
| Conclusion/ opinion      | It has the characteristic of cut leaves of Tobacco. |

Sealed remnant sample returned herewith.

Despatch No. 1168  
Dt. 13.9.21  
C.Ex. & Cus. Lab., Vadodara

Signature of Vinay Kumar  
Vinay Kumar  
Senior Inspector  
Central Excise & Customs Laboratory  
Vadodara / Vadodara

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Details of the sample drawn from the premises of M/s Suresh Tobacco Co., 605, 1st, Bhandari House, Near Vasad Crossing, Borad, Anand, Gujarat. 388540

| Test Memo no. & Date        | Description of the product                  | Remarks                                                                   |
|-----------------------------|---------------------------------------------|---------------------------------------------------------------------------|
| 01/2021-22 dated 01.07.2021 | Small pouch having "Suresh Tambakoo" pouch. | One large pouch containing 20 small pouches of 09 grams approx. (04 sets) |

Pouch 1: Dhruv 11/7/21

Pouch 2: 11/7/21

Samples drawn by Manish Chandra Sinha Senior Intelligence Officer, DGGI, Vadodara Regional Unit

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Jatinkumar Patel Authorized Signatory, M/s Suresh tobacco Co.

Stamp: Regional Unit, Vadodara

Stamp: 01/07/21

Stamp: 01/07/21

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Test Report

|                          |                                                                                  |
|--------------------------|----------------------------------------------------------------------------------|
| Lab Reg. No.: RCL/       | DGGL/VRU/684/07-07-2021                                                          |
| Test Memo NO.            | 01/2021-22/01-07-2021                                                            |
| Description of sample    | Small pouch having "Suresh Tambakoo" pouch                                       |
| Colour & form            | Printed unit pack containing 20 pouches. Each pouch contains Brownish cut leaves |
| Test for Cellulose       | positive                                                                         |
| Nicotine                 | positive                                                                         |
| pH                       | neutral                                                                          |
| Slake Lime               | negative                                                                         |
| Catechu                  | negative                                                                         |
| Flavorant                | negative                                                                         |
| Loss on Drying, % by wt. | 11.0                                                                             |
| Ash content, % by wt.    | 15.7                                                                             |
| Conclusion/ opinion      | It has the characteristic of cut leaves of Tobacco.                              |

Sealed remnant sample returned herewith.

Despatch No. 1168  
Dt. 13.9.21  
C.Ex. & Cus. Lab., Vadodara.

Signature  
9/9/2021  
Vijay Kumar  
Assistant Commissioner Gr-II  
Central Excise & Customs Laboratory  
Vadodra

4.2 From the comparison of test report in respect of raw material as well as the final product of the appellant, the nature of product remain exactly same except the packing in as much as the packing of raw material is in bulk and packing of final product is in retail pack. Therefore, the nature of raw material i.e. unmanufactured tobacco in cut leaves form remained as such even after repacking into retail pack. Consequently, the Chapter Heading of the product remained under 2401 which is also in respect of raw material in bulk form. Even if the chapter Note 3 of Chapter 24 is applied, after re-packing of the product it will remain under CTH 2401 only, even though the manufacturing in terms of Central Excise is carried out. The contention of the Revenue that chewing tobacco has a specific entry under Chapter heading 2403 and the product of the appellant is chewing tobacco, the correct classification is 2403.

4.3 We find that even though the chewing tobacco has a specific entry under 2403 but before arriving at this entry the test of chapter heading has to be satisfied. The description of chapter heading is as under :-

**2403-** *"Other manufactured tobacco and manufactured tobacco substitutes; " Homogenised" or " Reconstituted" tobacco; Tobacco extracts and essences "*

4.4 In this regard, it is necessary to refer the HSN explanatory Notes to chapter heading 2401 which is reproduced below:-

*(1) Unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).*

*Tobacco leaves, blended, stemmed/stripped and "cased" ("sauces" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading.*

*(2) Tobacco refuse, e.g., waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products (stalks, stems, midribs, trimmings, dust, etc.).*

4.5 From the above explanatory note, it can be seen that the appellant's raw material as well as the finished goods are cut leaves from the natural leaves of tobacco. Therefore, the product of the appellant is unmanufactured tobacco. Now to take this product under CTH 2403 the tobacco has to undergo process of manufactured tobacco. Since the product of the appellant remained unmanufactured tobacco right from the raw material stage up to the finished stage it remains under Chapter heading 2401 and by any stretch of imagination cannot be called as manufactured tobacco. Therefore, since the tobacco has not been converted into manufactured tobacco, taking the same into CTH 2403 is without authority of law. Consequently, the unmanufactured tobacco even though it is consumed as a chewing tobacco since same remained as unmanufactured tobacco cannot be classified under 2403 9910. There was a dispute on this issue particularly due to the reason that there is chapter

Note 3 of chapter 24, the matter was examined by Central Board of Excise and Customs wherein vide circular No. 81/5/87-CX.3 dated 03.06.1997 the following clarification was issued :-

*"3. The Conference, after discussion, came around to the view that the only argument which could possibly be adduced in favour of classification of such products as 'Zarda' under the category of manufactured chewing tobacco would be that such products are found to have been marketed as 'Zarda', may not be enough to bring the product in the category of manufactured tobacco under Heading No. 248. **The HSN description of unmanufactured tobacco under corresponding Heading No. 2401 is stated to cover unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed or trimmed or untrimmed, broken or cut (including prices cut to shape) but not tobacco ready for smoking.***

*4. The Conference was, therefore, inclined to support the classification of the product in question under Heading No. 2401 in the category of unmanufactured tobacco. It was, however, noted by the Conference that normally understood 'Zarda' preparation which come in the category of chewing tobacco as manufactured tobacco product would not be entitled to classification under Heading No. 2401 since these are squarely covered by the description appearing in sub-heading No. 2404.41 or 2404.49.*

*5. The Board has accepted the above views of the conference. Accordingly, **it is clarified that unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand name for consumption as chewing tobacco, which may be commonly known in the market as 'zarda', would be appropriately classifiable under heading No. 2401 of the Schedule to the Central Excise and Tariff Act, 1985 as 'unmanufactured tobacco'.**"*

(Emphasis supplied)

4.6 The above circular, categorically clarified that unmanufactured tobacco merely because the same is broken by beating and then seived and packed in retail packets with or without brand name for consumption as chewing tobacco, which may be commonly known in the marked as 'Zarda' would be appropriately classifiable under heading No. 2401 of the Schedule to the Central Excise Tariff Act, 1985 as 'unmanufactured tobacco'. The appellant has placed reliance upon the clarification issued by Ministry of Finance vide Letter bearing F. No. 81/01/2015-CX.3 dated

01.04.2015 in response to a query raised by the Ld. Additional Chief Secretary to Government of Maharashtra. The same is scanned below:-

15-B

T.No 81/01/2015-CX.3  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
\*\*\*\*\*

dated: 01.04.15

To  
The Additional Chief Secretary,  
Finance Department, Mantralaya,  
Madam Cama Road,  
Muntaz Rajguru Chowk,  
Mumbai-400032

Sir,

Sub: Issuance of clarificatory Circular explaining the impact of note 3 of Chapter 24 on classification of product-reg

Please refer to your letter No.-VAT 1513/CR-75/Taxation 1 dated 31<sup>st</sup> December, 2014.

2. In this regard, I am directed to inform that "unmanufactured tobacco" sold in small packs under brand name would be classifiable under Chapter sub heading 2401 of the Central Excise Tariff. Chapter sub heading 2403 pertains to other manufactured tobacco.
3. Chapter Note 3 to Chapter 24 of Central Excise Tariff prescribes a deeming provision of "manufacture" to goods of heading 2401, 2402 or 2403, if these are subject to activities such as labeling, repacking etc as mentioned therein, so that these become liable to Central Excise duty.
4. In this regard, your attention is invited to the explanatory notes to the HSN for Chapter 24 wherein the scope of these headings namely, "24.01-Unmanufactured tobacco; tobacco refuse" & "24.03-Other manufactured tobacco and manufactured tobacco substitutes: "homogenized" or "reconstituted" tobacco; tobacco extracts and essence" is explained. Copy of the same is enclosed for reference.

Yours faithfully,

From the above clarification, it can be seen that particularly dealing with impact of Note 3 of chapter 24, it was concluded that 'unmanufactured tobacco' sold in small packets under brand name would be classified under Chapter Sub-heading 2401 of the Central Excise Tariff Act, 1985 and Chapter sub-heading 2403 pertains to other manufactured tobacco.

4.7 As discussed above, we opine that the conversion from bulk to retail pack of unmanufactured tobacco remained as unmanufactured tobacco, hence the same cannot be classified under Chapter heading 2403. This issue has been considered in the various judgments as cited by the appellant, some of the judgments are reproduced below:-

A) In the case of V H Patel Tobacco Pvt, Ltd (supra) this Tribunal considering the identical issue passed the following order:-

*"4. We have carefully considered the submissions. We find that the classification of the goods followed in the search of the appellants premises when jarda tobacco was seized. The department at the time of seizure had also drawn sample and sample was to be tested to ascertain whether chewing tobacco is manufactured tobacco or whether it is unmanufactured tobacco. The Chemical Examiner has reported on testing of the sample that the sample is in the form of bits of tobacco leaves packed in a paper pouch with printed label bearing brand name and no added ingredient could be detected. Another sample was in the form of bits of tobacco leaves with no added ingredients. The Chemical Examiner himself has drawn attention to the Board's circular dated 23-6-1987 referred to supra wherein the Board has clarified that jarda unmanufactured tobacco merely broken by beating and then served and packed in retail packets for consumption as chewing tobacco, which may be commonly known in the market as jarda would be appropriately classifiable under Heading No. 24.01 of CETA as un-manufactured tobacco. The test report as noted above made clear that the tobacco in question was containing only bits of tobacco without any ingredients and the test report would clearly show it did not answer the description of manufactured tobacco since there were no tracing of any Ingredients added to it. In such a context the Board's clarification dated 23-6-1987 would be clearly attracted. The Supreme Court decision in the case of Ranadey Micronutrients (supra) has laid down that the Central Board of Excise & Customs which is by statute entrusted with the task of classifying excisable goods uniformly. The objective of the circular is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The Supreme Court observed that it does not lie in the mouth of the Revenue to*

*repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. The Supreme Court further observed that it is not open to the Revenue to raise a contention that is contrary to a binding circular issued by the Board. In that case also submission was made to the Supreme Court by the department that the circular which is not issued by invocation of the provisions of Section 37B was merely advisory in nature and not having a binding effect. As noted above, the department's submission did not find acceptance with the Supreme Court. Therefore, in the present case the classification of the tobacco in question being in the nature of unmanufactured jarda chewing tobacco will be fully covered by the Board's circular dated 23-6-1987 and the grounds on which the Commissioner chosen not to follow it are not sustainable in view of the Supreme Court judgment supra. The Commissioner could not therefore, take this stand as he has done in the impugned 35 order that the Ministry's instructions are for guidance and such instructions have no legal authority unless They are issued under provisions of Section 37B of the Act. This stand has clearly been now over-ruled. The appellants have also lead evidence to show that jarda tobacco could be both unmanufactured variety as well as processed manufactured tobacco and in this case the department has not shown that any ingredients had been added to the tobacco in question, in these circumstances, when once the goods are seen to be unmanufactured tobacco, the question of applying Chapter Note 2 of Chapter 24 CETA will not arise because that chapter note does not apply to unmanufactured tobacco falling under Heading 24.01 of CETA.*

*5. In the result, it is held that the tobacco in this case was correctly classifiable under Heading 24.01 as unmanufactured tobacco and in this view of the matter the impugned order is set aside and the appeal is allowed."*

B) In the case of Commissioner of Central Excise Kanpur Vs. Ravindra and company (supra) the Tribunal in the fact that Tobacco leaves even by processing of beating, crushing and seived and packing and sold under brand name "Hari Chhap", "Bandar Dholak Chhap" has been classified under CTH 2401 as unmanufactured tobacco and not under sub heading 2404.41. The case of the appellant is on much

better footing on the ground that the appellant have procured the cut pieces of the tobacco and the same was re-packed as such for retail sale. Therefore, the appellant even have not carried out the process such as beating, crushing and sieved of the tobacco leaves. Accordingly, the judgment of Ravindra and company (supra) directly support the case of the appellant.

- C) Similar issue has been considered in the case of Ranchhodhar Zinabhai and Sons (supra) by this Tribunal wherein it was held that labelling and re-labelling of unmanufactured chewing tobacco falling under CTH 2401 (in the reported judgment wrongly mentioned as 2501) of Central Excise Tariff Act, 1985 not dutiable. Since, duty liability on branded unmanufactured tobacco brought into force w.e.f. 16.03.1995 by amendment to Note 2 of Chapter 24 ibid which has no application to the matters pertaining to the period to 16.03.1995. This judgment is not directly on the fact of the present case but have it's persuasive value.
- D) In the case of T.P.N.S. Chettiar Parvathi Vilas Tobacco & Cigars Company (Supra) the special bench of this Tribunal held that cutting unmanufactured tobacco leaf into small pieces, labeling with string and packing in container without adding any foreign ingredients not preparation of chewing tobacco and not amounts to manufacture. The fact of this case is exactly identical to the fact of the present case.
- E) In the case of Iswar Grinding Mills (supra) this Tribunal held that crushing / powdering of tobacco leaves first manually and then with power aided crushing/ grinding machine to form tobacco flakes / powder does not amount to manufacture. Unmanufactured tobacco classifiable under Heading 24.01 of Central Excise Tariff Act, 1985 attracting nil rate of duty.
- F) In the case of Shrikant Prasad (supra) this Tribunal has viewed that tobacco powder obtained by crushing of tobacco leaves, stems and

stalks fall under Heading 24.01 of Central Excise Tariff Act, 1985 as unmanufactured tobacco attracting nil rate of duty.

In view of the above judgments, as well as the many more judgments cited by the Learned Counsel, the issue is no longer res-integra as merely by packing of cut leaves of tobacco does not change the status of unmanufactured tobacco. Therefore, even by application of Note 3 of Chapter 24 the activity amount to manufacture, the impugned good falls under Chapter heading 2401. Therefore, by virtue of chapter Note, the activity though amount to manufacture as per the Central Excise. Hence, the appellant have rightly paid the duty as manufacture goods but since the goods is correctly classified under CTH 2401, the demand of basic Excise duty and NCCD is not sustainable as the same is correctly classified under 2401 and not under 2403 as contemplated by the Revenue. Therefore, on merit itself the demand is not sustainable.

4.8 The appellant have vehemently raised issue of time bar as part of the demand is under extended period. In this regard, we find that it is not the case that the appellant have not paid the duty at all. The appellant have already considered the activity as manufacture in terms of Central Excise Act and were paying duty. They were under bonafide belief that since their activity is only re-packing of unmanufactured tobacco, the goods is classifiable under CTH 2401. Since, appellant is registered unit paying excise duty and under going very stringent audit and periodical check from the department. Entire activity of the appellant were in the knowledge of the department. It is also undisputed that the appellant have been regularly filing their ER-1 return, wherein the classification of the product was declared under Chapter heading 2401.

4.9 It is the submission of the appellant that in the earlier period very same product was notified under Section 3A Central Excise Act, 1944 and accordingly was required to be assessed for duty of Excise on the basis of the provisions of chewing tobacco and unmanufactured tobacco packing machines (capacity Determination and collection of duty) Rules, 2010. In order to verify the declarations filed by the appellants under the aforesaid

rules the jurisdiction officers used to visit the factory of the appellants on regular intervals for verification of subject products, number of machines involved and other records for assessment of the duty required to be discharged by the appellant. The jurisdictional officers in their orders of assessments from time to time have duly taken the note of and considered the fact that the appellant are engaged in manufacturing product branded unmanufactured tobacco falling under Heading 2401 of Central Excise Tariff Act, 1984. We find force in this submission of the appellant that the entire activity of re-packings of cut leaves tobacco from bulk to retail pack and classification thereof under Heading 2401 of Central Excise Tariff Act, 1985, was very much in the knowledge of the department. Therefore, there is absolutely no suppression of fact, fraud, mis-declaration, etc. on the part of the appellant therefore, we have no hesitation in holding that the demand of duty adjudged in the impugned order under the extended period is not sustainable also on limitation. In this regard the following judgments cited by the appellant directly support their case :

- Narmada Bio Chem Pvt. Ltd. Vs. C.C.E. & S.T. - Vadodara-I - 2019 (7) TMI 459 - CESTAT AHMEDABAD
- CCE, Chandigarh Vs. Raja Forgings & Gears Ltd. - 2009 (233) ELT 404 (Tri. - Del.)  
Affirmed by Hon'ble Supreme Court in order reported at 2016 (337) ELT A42 (SC)
- M/s. Novel Digital Electronics v. the Commissioner of Customs (Imports), Customs House, 2015 (4) TMI 347 - MADRAS HIGH COURT

5. As regard the judgments relied upon by the Learned AR, ongoing through the same, we find that as regard decision of Dharampal Premchand Ltd, the same is not directly applicable, on the issue involved in the present case and the fact of the said case is altogether different from the fact of this case.

5.1 As regard the decision in the case of Parveen Tobacco Co. (P) LTD (supra), we find that in this case the fact is that unmanufactured tobacco purchased in bulk and thereafter converted in small pouch by mixing it with

lime tube. Therefore, it was held that the process is deemed manufacture of retailing pouch in view of Chapter Note 3 of Chapter 24 of Central Excise Tariff Act, 1984. Moreover, in the present case there is no dispute about the manufacture under Central Excise in view of Chapter Note 3 of Chapter 24, however since in the present case the unmanufactured tobacco was repacked without any further process or without adding anything unlike lime added in the case of Parveen Tobacco Co. (P) LTD the fact of the present case is different from the fact of the Parveen Tobacco Co. (P) LTD. Accordingly, the decision of Parveen Tobacco Co. (P) LTD is clearly distinguished.

6. As per our above discussion and finding, the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.

*(Pronounced in the open court on 15.05.2024)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Raksha