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

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 11102 of 2017 – DB

(Arising out of OIA-AHM-EXCUS-002-APP-087 to 090-16-17 dated 17/02/2017 passed by the Commissioner (Appeals-II), Central Excise-AHMEDABAD)

COMMISSIONER OF CGST & CENTRAL EXCISE –
CGST & Central Excise Ahmedabad North **........Respondent**
CGST and Central Excise Commissionerate Ahmedabad North,
1st Floor Custom House, Narangpura,
Ahmedabad-380009

VERSUS

Vishnu Pouch Packaging Pvt Ltd (Unit-I) **......Respondent**
49 & 50,Mahagujarat Industrial Estate, Sarkhej Bavla,
N.h.8a, Moraiya, Taluka: Sanand
AHMEDABAD, GUJARAT

APPEARANCE:
Shri NeilPrakash G Makwana, Superintendent (AR) appeared for the appellant
Shri N. K. Tiwari, Consultant appeared for the respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10627/2025

DATE OF HEARING: 28.07.2025
DATE OF DECISION: 06.08.2025

SATENDRA VIKRAM SINGH

1. The present appeal bearing No.11102/2017 has been filed by the Department against Order-in-Appeal No.AHM-EXCUS-002-APP-087 to 090-16-17 dated 21.02.2017 passed by the Commissioner (Appeals-II), Central Excise, Ahmedabad.

1.1 The issue in brief is that M/s. Vishnu Pouch Packaging P. Ltd. had filed following four refund claims with the office of the Assistant Commissioner, Central Excise Division-IV, Ahmedabad-II Commissionerate :-

(a) Refund claim dated 13.05.2016 by unit 8 for Rs.59,16,516/-,

(b) Refund claim dated 10.05.2016 by unit 1 for Rs.5,66,00,903/-,

(c) Refund claim dated 10.05.2016 by unit 7 for Rs. 48,09,935/-

(d) Refund claim dated 13.05.2016 by unit 9 for Rs.20,08,645/-. After considering the matter, the Assistant Commissioner rejected all the four refund claims vide Order No.55-58/refund/2016 all dated 08.09.2016. Against the said rejection orders, M/s. Vishnu Pouch Packaging Pvt. Ltd. filed appeal with the Commissioner (Appeals) office who vide impugned order dated 21.02.2017 set aside the rejection orders passed by the Assistant Commissioner and allowed the appeals. It is against these impugned orders the Department had filed four appeals bearing Appeal No. E/11102/2017 involving refund of Rs.5,66,00,903/-, Appeal No. E/11103/2017 involving refund of Rs.20,08,645/-, Appeal No. E/11104/2017 involving refund of Rs.59,16,516/- and Appeal No. E/11105/2017 involving refund of Rs. 48,09,935/- before this Tribunal. Subsequently, the department withdrew Appeal Nos. E/11103 & 11105/2017 on the ground of low monetary value, which was allowed by this Bench vide Order No. A/11694-11695/2019 dated 05.09.2019. The appeal No. E/11104/2017 was allowed to be withdrawn vide order No. A/13122/2024 dated 20.12.2024 and now only, the appeal No. E/11102/2017 is before us.

2. In the appeals, the Department has taken the following grounds: -

- The Commissioner (Appeal) has wrongly relied on the decision of the Tribunal in the case of M/s. Dhariwal Industries Limited Vs. CCE & ST, Vadodara-I reported at 2015 (330) ELT 639 (Tri-Ahmedabad) and M/s. Rajat Industries Pvt. Ltd. Vs. CCE, Mumbai-VI reported at 2012 (284) ELT 581 (Tri-Delhi).
- In the case of Dhariwal Industries Limited, Tribunal had held that the expression, "a manufacturer permanently ceases to work in respect of all the machines installed in the factory" in Rule 16 has a wide amplitude. It held that this Rule should be read with broad and comprehensive meaning to cover a situation for non-production of goods

for temporary period. Therefore, this Rule would apply in a case where a manufacturer closes down all the machines installed in the factory.

- The words "Permanently ceases" have been incorrectly interpreted by the Tribunal in above judgments. The words "Permanently ceases" means – (I) The manufacturer should cease the operation permanently, (II) The manufacturer should surrender the registration certificate. The case of M/s. Vishnu Pouch Packaging Pvt. Ltd. does not fall in either of these categories and therefore, reliance by Commissioner (Appeal) is not correct.
- In case of Dhariwal Industries Limited, refund for six days arose as the assessee had paid duty for the full month but they had to close the factory for six days on account of prohibition on use of plastics, whereas, in the present case, respondent did not opt for closure of manufacture of notified goods but all PPMs were seized and sealed by the DGCEI Officers as they were being prevented from verification of the machines.
- The case of Rajat Industries Private Limited cited (supra) is also different than the present case as decision in this case was regarding calculation of Excise duty on proportionate basis where a new manufacturer commences production of notified goods in a particular month. In the present case, assessee is already manufacturing notified goods and the refund has arisen due to non-production of notified goods as all the installed PPMs were seized and sealed by the DGCEI (now DGCI) Officers.
- As per proviso to Section 3 A of the Central Excise Act, 1944 and Rule 10 of the Pan Masala Packing Machines (capacity determination & collection of duty) Rules, 2008, it is clear that where factory producing a notified goods did not produce the notified goods during any continuous period of 15(Fifteen) days or more, the duty calculated on proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

This means that duty abatement is not available if non-production of notified goods is for a period less than 15 days.

- The Commissioner (Appeals) has erred in applying Rule 16 of the PMPM Rules, 2008 which is applicable only in case of permanent closure of the unit. There is no provision in the said rules for refund of duty arising due to sealing of PPMs by the DGCEI or any departmental Officers as part of investigation.

3. During the arguments, learned AR mentioned that there was no production of Pan-Masala in the units of the respondent from 7:30 PM of 18.05.2015 to 00:15 AM of 24.05.2015. As non-production of notified goods was for a continuous period of less than 15 days, no abatement was admissible to them. The production was halted by the respondent on their own on visit by the DGCEI Officers in their units. He further argued that the machines put under seizure can be said to be under the possession of the Government at the time when Suparatnama was given on 18.05.2015 and given back to the possession of the appellant when Panchnama lifting seizure was concluded. Since, production was halted by the appellant on their own volition and by their own pre-decided scheme with sole aim to evade payment of duty, refund or abatement of duty is not permissible to them. He therefore prayed for allowing the Department’s appeal.

4. The learned Consultant on behalf of the respondent argued that they paid duty of Rs.28,16,82,000/- on 25 pouch packaging machines (PPMs) for the month of May, 2015. They subsequently filed another declaration intending to operate two PPMs from 13.05.2015 for manufacture of Pan Masala having RSP of Rs.2.00/- and paid duty of Rs.65,92,387/- calculated on proportionate basis. On 18.05.2015, the DGCEI officers, conducted verification of all 27 PPMs and sealed and seized all of them under panchnama dated 18.05.2015. All the machines were de-sealed under panchnama dated 24.05.2015. As there was no production of notified goods in the factory of the respondent continuously

for six days from 18.05.2015 to 23.05.2015 for situations beyond their control, no duty is payable by them. Therefore, refund of duty for this closure period (from 18.05.2015 to 23.05.2015) in respect of unit-1, 7, 8 & 9 has rightly been allowed by the Commissioner (Appeals). He therefore, prayed for dis-allowing appeal of the Department which has come up before the Tribunal against the Order of the Commissioner (Appeals). Learned Consultant relied on the judgment of the Tribunal in the case of Dhariwal Industries Ltd. and Rajat Industries Pvt. Ltd. (cited supra). In addition, he relied on the decision of Hon'ble Punjab & Haryana High Court in the case of Godwin Steels (P) Ltd. Vs. CCE, Chandigarh reported at 2010 (254) E.L.T. 202 and orders of the Govt. of India in the case of Maral Overseas Ltd. reported at 2012 (277) E.L.T. 412 (G.O.I) and Duke Consumer Care Ltd. reported at 2012 (285) E.L.T. 475 (G.O.I). Relying on these decisions, he prayed for disallowing the appeal of the Department.

5. We have heard the rival submissions. We find that M/s. Vishnu Pouch Packaging Pvt. Ltd. were operating pouch packing machines for manufacture of Pan-Masala. For the month of May, 2015, the respondent initially declared operation of 25 PPMs and paid the Central Excise duty of Rs.28,16,82,000/- on 05.05.2015. Subsequently, they added two more machines w.e.f.13.05.2015 by declaring new RSP of Rs.2.00/- per pouch and accordingly paid duty of Rs.65,92,387/- on proportionate basis. It is on record that the DGCEI Officers visited the units of the respondent on 18.05.2015 to verify speed of pouch packing machines which was one of the criteria for determining production capacity of the factory which in turn had bearing on total duty payable by the respondent.

5.1 The department alleges that when officers entered the factory premises, the respondent had switched off the power. Therefore, they seized all the pouch packaging machines and subsequently, sealed them under panchnama dated 18.05.2015. De-sealing of all 27 machines was done under Panchnama dated 24.05.2015. Therefore, it is clear that all 27 PPMs actually did not produce any notified goods during the period from 18.05.2015 to 23.05.2015. It is also not in dispute that the respondent paid excise duty for the period of six days from 18.05.2015 to 23.05.2015. We also have no doubt that non-production of notified goods in unit-1 of the respondent was not on their account as seizure and sealing and de-sealing of the PPMs was not within the control of the respondent. The said action i.e. sealing of PPMs was taken by the DGCEI Officers.

5.2 We find that Rule 10 and Rule 16 of Pan-Masala Packaging Machines (capacity determination and collection of duty) Rules, 2008 deal with abatement in case of non-production of notified goods. Rule 10 covers a situation where a manufacturer has planned temporary closure of the unit. Here, apart from other conditions such as 3 days prior intimation to the department, the main condition is that the factory should not produce notified goods during continuous period of 15 days or more. Rule 16 of the said Rules covers the situation where manufacturer permanently ceases to work in respect of all the machines installed in the factory. We however find that the situation in the present case is not covered under Rule 10 of the said Rules. The situation has arisen because of seizure and subsequently, sealing of PPMs by the DGCEI Officers. Thus, it is not the manufacturer who has planned/ chosen to stop manufacture of notified goods but the department has forced him to stop the production of notified goods. Therefore, demanding Central Excise duty for this period even if it is for a period less than 15 days, is not legally tenable. We find that this Tribunal has already delivered a decision in the case of M/s. Dhariwal Industries Limited (cited supra) dealing with similar extra ordinary situation wherein, factory was to be closed because of a notification dated 04.02.2011 issued by the Ministry of Environment and Forest banning use of plastic pouches in packaging of Pan-Masala and Gutka with immediate effect. The operation of this notification was later shifted to

01.03.2011 by Hon'ble Supreme Court vide order dated 17.02.2011 and thereafter, production of notified goods again resumed w.e.f 17.02.2011. The factory was closed for 6 days and the Tribunal allowed refund of excise duty for the period of non-production. Para 13 & 14 of the said order is reproduced below:-

> ***"13.*** *In the present case, it is revealed from the letter dated 8-2-2011 of the appellant, as referred above, that the appellants had given intimation to the Assistant Commissioner of Central Excise that they closed down their factory due to the notification issued by the Ministry of Environment & Forest, Government of India, banning the use of plastic pouches with immediate effect. There is no dispute that the Superintendent of Central Excise was acted upon on the basis of intimation by letter dated 8-2-2011 and sealed the machine on 10-2-2011. Thus, on 10-2-2011, the appellant closed down their factory. The intimation given by the appellant to the Assistant Commissioner of Central Excise by letter dated 8-12-2011 would show that the appellant permanently ceases to work in respect of all the machines installed in the factory and it would be followed for surrender of registration. Incidentally, by order dated 17-2-2011, the Hon'ble Supreme Court directed that the ban will be effective from 1-3-2011. As per the direction of Hon'ble Supreme Court, the appellant reopened the factory on 17-2-2011. The jurisdictional Superintendent of Central Excise, de-sealed the machines. In such a peculiar facts and circumstances of the case, in our considered view, the refund claim filed by the Appellant would come within the purview of Rule 16 of Rules 2008.*
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> ***14.*** *The learned Authorised Representative for the Revenue, during the course of hearing, submitted that the appellant reopened the factory on 17-2-2011 and therefore, it can not be treated as "permanently ceases to work". They have also not surrendered registration. It is difficult to accept the contention of the learned Authorised Representative for the Revenue, as the appellant reopened the factory and therefore, they are not eligible for refund of duty. There is no provision in Rules 2008 that after declaring "permanently ceases to work", the manufacturer would not be entitled to reopen his factory. Rule 16 would cover the situation, where a manufacturer filed an intimation to the Deputy Commissioner of Central Excise intimating permanently ceases to work for surrender of registration. There is no bar on reopening of the factory in Rules 2008, which is a subsequent event. Further, the appellant in its letter dated 8-2-2011 categorically stated that they were giving intimation of closure of the factory-as required under the Rules, would be implied surrender of registration. It is already observed that in the present case, taking into account of order of Hon'ble Supreme Court, notification of Ministry of Environment and Forest, and the letter dated 8-2-2011 of the appellant to close down their factory and further consequence of surrender of registration may not be followed due to subsequent order dated 17-2-2011 of Hon'ble Supreme Court, the appellant should not be penalized by rejecting the refund claims, for the reason, they had re-opened the factory and such reading of the said provision, would be totally unjust, improper and against all cannons of natural justice and fair play. So, in such peculiar facts and circumstances of the case, we hold that the appellant is entitled to refund of the duty for closing down of their factory."*

6. Agreeing with the above findings of the Tribunal, we hold that the respondent is entitled to refund of excise duty for the period when they could not produce notified goods due to sealing of all the PPMs by the DGCEI officers.

Accordingly, the appeal filed by the department does not survive and therefore, the same is rejected/ disallowed.

7. The Department's appeal is dismissed.

(Pronounced in the open court on 06.08.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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