CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)

Excise Miscellaneous Application No.70222 of 2019
With
Excise Miscellaneous Application No.70110 & 70192 of 2024
(On behalf of appellant)
IN Excise Appeal No.70166 of 2018

(Arising out of Order-in-Appeal No.507/CE/Alld/2017 dated 21/12/2017 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

Mr. Dinesh Jaiswal, **.....Appellant**
(138, Madhoganj, Pratapgarh)

VERSUS

Commissioner of Central Excise
& Service Tax, Allahabad **....Respondent**
(38-MG Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Pal Singh Yadav, Advocate &
Shri Sanjay Kumar, Proxy Counsel for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

MISCELLANEOUS ORDER NOs.70221-70223/2025 IN
FINAL ORDER NO.70596/2025

DATE OF HEARING : 24 April, 2025
DATE OF PRONOUNCEMENT : 19 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.507/CE/A1ld/2017 dated 21.12.2017 of the Commissioner (Appeal) CGST & Central Excise Allahabad. By the impugned order, Order-in-Original No. 15/ CEX/DIV II of 2016-17 dated 31.01.2017 holding as follows has been upheld:

ORDER

(i) I hereby order to confiscate the unaccounted seized finished goods 19657 packed pouches of "Dinesh Pilli Patti" valued at Rs.39,314/- under Rule 18 of the Chewing Tobacco anc Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with Rule 25 of the Central Excise Rules, 2002 which are kept in the supurdagi of the party. However, ' give an option to the party to get the same released on payment of Redemption t fine of Rs. 20,000/-. he same may be cleared subject to quantification of duty under Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 under verification of the Jurisdictional Range Superintendent and if the same is found fit for human consumption.

(ii) I also impose a penalty of Rs. 20,000/- upon the party under Rule 18 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with Rule 25 of the Central Excise Rules, 2002.

(iii) Rest of the seized goods i.e. raw material and FFS pouch packing machine, which are also in the supurdagi of the party, are hereby released to the party with the direction that the FFS pouch packing machine will remained sealed and cannot be operated or removed without the permission of the department as per provisions of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 and verification of Jurisdictional Range Superintendent.

2.1 During the course of search of undeclared factory premisesof the appellant conducted by the Officers of Directorate General of Central Excise Intelligence, Lucknow (DGCEI, on 08.07.2015, it was found that the appellant were engaged in manufacture of branded chewing tobacco in pouches with the help of 01 Form, Fill & Seal (FFS) pouch packing machine, without paying Central Excise duty under Chewing Tobacco and

Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.

2.2 After conducting physical stock taking, the clandestinely manufactured finished goods and unaccounted for raw material, valued at Rs.3,38,882/-, and 01 pouch packing machine valued at Rs.12,000/-, were seized and the entire search proceedings we rerecorded in the Panchnama dated 08.07.2015 drawn on the spot. In his statements dated08.07.2015 and 09.07.2015 recorded under Section 14 of the Central Excise Act, 1944(hereinafter referred to as "the Act"), the appellant admitted he was the Proprietor of M/s Himanchal Zarda Bhandar, Madhoganj, Pratapgarh and had been engaged in the manufacture and sale of branded chewing tobacco with the help of FFS in his hidden factory premises, w.e.f. April, 2012.

2.3 A show Cause Notice dated 07.01.2016 was issued to the appellant, asking him to show cause as to why:

(i) The unaccounted seized stock of raw materials, finished excisable goods, three FFS Machines valued at Rs.3,38,882/- should not be confiscated under Rule 18 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with rule 25 of the Central Excise Rules, 2002;

(ii) Penalty should not be imposed on him under Rule 18 of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with Rule 25 of the Central Excise Rules, 2002;

(iii) Penalty should not be imposed on him under Rule 26 of the Central Excise Rules, 2002 for his active involvement in unaccounted procurement and storage of finished goods and packing materials seized at Madhoganj, Pratapgarh, of M/s Himanchal Zarda Bhandar Madhoganj, Pratapgarh;

2.4 The show cause notice has been adjudicated as per the order in original referred in para 1 above.

2.5 Aggrieved appellant filed appeal before Commissioner (Appeal), which has been dismissed as per the impugned order.

2.6 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Pal Singh Yadav, Advocate for the appellant and Shri A. K Choudhary, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that

- appellant had obtained Central Excise registration for manufacturing peeli patti tobacco using hand operated machine;
- erroneously in the registration certificate the address of premises was wrongly mentioned as "221" instead of "281". In fact he never was in possession of the premises "221" which belonged to one "Kallu Bania".
- he had purchased an old FFS machine from the kabari market and was in process of repairing the same when his premises was searched;
- at the time of search he had under pressure from the DGCEI officers operated the said machine on 08.07.2015 and manufactured some pouches using the same;
- officers arrested him and the entire Panchnama dated 08.07.2015 was, in fact, prepared at the Kanpur office of the DGCEI, after obtaining his signatures and the signatures of the witnesses, by creating terror;
- the entire case against him is manipulated one.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records the findings as follows:

> *"4.1 I have gone through the facts of the case, averments made at the time of personal hearing and all other material/ documents on record. It is observed from the Panchanama dated 08.07.2015 that the search of the factory premises was started at 6.00 A.M. in the morning and was completed by 7.00 P.M. in the evening, in the presence of two independent witnesses, the appellant, Shri Avneesh Mourya employee of the appellant, police officers*

and jurisdictional Range & Sector Officers. From this Panchnama it is evident that the appellant was manufacturing 'Dinesh Peeli Patti' brand chewing tobacco using the FFS machine found installed in the premises, w.e.f. April, 2012, without informing their jurisdictional Central Excise Officers. Further, the sock of raw materials and finished goods recorded in the Panchanama, was also recovered from the premises of the appellant and even samples of the chewing tobacco were drawn. Thus, I find that the submission of the appellant that the Panchnama was prepared at the Kanpur office of the DGCEI, after obtaining his signatures and the signatures of the witnesses, by creating terror. is entirely baseless

4.2 I have also gone through the statements dated 08.07.2015 & 09.07.2015 of the appellant. These statements are in question & answer forms wherein the appellant had admitted to have been manufacturing branded chewing tobacco using the said FFS machine installed in his premises, w.e.f. April, 2012. Thus, I find that the statements of the appellant are corroborated with the Panchnama dated 08.07.2015.

4.3 Thus, I hold that the Adjudicating Authority has rightly confiscated the seized finished goods and given option to the appellant to redeem these finished goods on payment of redemption fine. Further, he has also rightly imposed penalty upon the appellant under Rule 18 of the Rules read with Rule 25 of the Central Excise Rules, 2002."

4.3 Order in original records the facts of case by stating as follows:

I have carefully gone through the case records, SN & corrigendum to the SCN dated 05.09.16 and the submissions made by the party in their written defence reply and at the time of personal hearing. The firm M/s Himanchal Zarda Bhandar was registered with Central Excise Deptt. having Central Excise Registration No:

AABFH8958FXMO01. Shri Dinesh Jaiswal is the proprietor of the aforesaid firm. During Checking by the officers of DGCEI Lucknow Zonal unit the party has been found engaged in the manufacture of "Dinesh Peeli Patti" brand chewing tobacco in. pouches (without lime-tube/ lime Pouches) with the help of one Form Fill &.Seal /(FFS) pouch packing machine in an unregistered premises, Madhoganj, Mahuli, Pratapgarh (U.P)., in contravention of Chewing Tobacco and unmanufactured tobacco packing Machines (Capacity Determination and Collection of dutv) Rules. 2010, issued vide Notification No: 11/2010-CE(NT) dated 27.2.2010 as amended (hereinafter referred to as "Applicable Rules"). The party has manufactured the said "Dinesh Peeli Patti" brand chewing tobacco in pouches, with the help FFS pouch packing machine without of appropriate Central Excise duty as per applicable Rules, under compounding levy scheme. intimation to this Department and also cleared goods manufactured clandestinely without payment Therefore, the unaccounted raw material & finished goods valued Rs. 3,38,882/- (as detailed below and One FFS Pouch Packing machine valued RS. 12000/- total RS. 3,50,000/-, being liable for confiscation under Rule 18 of the Chewing Tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 read with Rule 25 of the Central Excise Rules, 2002.' were seized by the officers of DGCEI, Lucknow and Central Excise Officer of Range Rural-1 Division II, Allahabad on the spot on 08.07.15.

SL. No	Description of goods	Quantity	Rate	Value of goods (in Rs.)
A (1to3)	Dinesh brand chewing Tobacco (in Pouches)	19657 Pouches	MRP of Pouch (Rs.2/-per pouch)	39,314
B(1)	Cut Raw Tobacco	153 Bags (each bags containing 35 Kgs Tobacco)	Rs.30.97 per kg.	1,65,844
B(2)	Unfiltered Loose Peeli Patti Tobacco	60 Bags(each 35 Kg)	Rs.52.50 per kg.	1, 10,250

B(3)	Filtered Tobacco Mixture	03 Bags (each 35 Kg)	Rs.52.50 per kg.	5,513
B[4)	Unfiltered Tobacco Mixture	07 Bags each 35 Kg)	Rs.52.50 per kg.	12,863
B(5)	Bale Powder	03 Bags (each 35 Kg)	Rs.52.50 per kg.	3,098
C(1)	Packaging material	10 Kg	Rs.200 Per Kg	2,000
		Total		3,38,882

4.4 From the facts as noted above by the adjudicating authority it is undisputedly admitted that appellant was registered with the Central Excise for manufacture and clearance of Dinesh Peeli Patti brand chewing Tobacco (in Pouches) by hand operated machines. At the time of search of the premises of the appellant, on power operated Form Fill and Seal (FFS) Pouch packing machine was also found in the premises of the appellant which appellant claimed to be purchased by him from Kabadi market and was in process of repairing and maintaining the same. However case of the department against the appellant is that appellant has packed the Dinesh brand chewing Tobacco (in Pouches), found in his premises using the power operated FFS Packing Machine without informing the department about the same and thus have contravened the provisions of Chewing Tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. The total number of the pouches alleged to have been packed using the said FFS machine is 19657.

4.5 I find that the Chewing Tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, itself prescribe the monthly production capacity of FFS Pouch Packing Machine, for the pouch with MRP of Rs 2 to be 20,21,760. Thus if it is taken that the machine is operated all thirty days in a month then the daily production would be around 67,392 pouches. At the time of search inspection only 19,657 pouches were found. Even if all what has been alleged is admitted then also the total number of pouches found is less than one day production (say about a quarter day production) as per the said rules itself. I also find that the panchnama dated 08.07.2015 records as follows:

> *"श्री सुधीर कुमार I.O. लगभग 13.30 बजे परिसर से चले गए तथा लगभग 14.00 बजे श्री उमेश कुमार शुक्ला वरिष्ठ आसूचना अधिकारी व श्री प्रमोद कुमार वर्मा, आसूचना अधिकारी, तथा 14.10 बजे श्री एस एन मेहरोत्रा, अधीक्षक तथा श्री संदीप पांडेय निरीक्षक रेंज रूरल -I C.Ex Div - II, इलाहाबाद आए । श्री एस एन मेहरोत्रा तथा श्री संदीप पांडेय ने बताया कि उनके पास मे हिमाचल जर्दा भंडार में मशीन लगी होने की कोई सुचना नहीं है । तत्पश्चात रेंज अधिकारीयों ने मशीन को सील करने की कार्यवाही की ।मशीन को सील करने के पूर्व अधिकारीयों ने हम पंचों व श्री जायसवाल की उपस्थिति में परिसर में चल रही एक FFS Pouch Packing Machine की प्रति मिनट Pouch बनाने की Speed जांची तथा तीन बार जांचने के बाद प्रत्येक बार मशीन की स्पीड 85 Pouch प्रति मिनट पाई गयी ।"*

Impugned order is in respect of these 19,657 pouches. Going by the speed of the machine as determined as per the Panchnama by the offices 19,657 pouches would be packed on the machine found in the premises in 232 (19657/85) minutes or 3 hours and 52 minutes. Panchnama also records that the search operation in the premises started at around 6 AM and when the officers entered the premises the machine was operational. It also records that the machine was sealed by the range officers who came at around 1410 Hrs. Thus it is fair presumption that the machine was operational from the time when the officers entered to the time when the same was sealed by the range officers i.e. during the period when the officers were present in the premises. The number of hours of such operation come to 8 Hrs and 10 minutes. The total production in the presence of officers would be twice the number of pouches in respect of which the present case is. Appellant has from beginning taken the stand that when officers visited the premises they forced him to operate the machine and pack the pouches on the said machine. From the facts as recorded in the Panchnama, I find force in the stand taken by the appellant. The submissions of the appellant before the adjudicating authority to this effect are reproduced below:

"मेसर्स हिमांचल जर्दा भंडार के प्रोपराइटर दिनेश कुमार जायसवाल पुत्र श्री श्याम सुन्दर दास जायसवाल निवासी 186, महोली माधेगंज कोतवाली नगर जिला प्रतापगढ का निवासी है। उपरोक्त विषय संबन्धी नोटिश की आपत्ति प्रस्तरवार निम्नलिखित है :-

1. *यह कि प्रस्तर -2 में वर्णित कथन असत्य एवं इंकार है क्योंकि प्रथी का पंजीकरण नम्बर सेंटल एक्साइज संख्या AABFH8958FXMO01 हस्त चालित मशीन से उत्पाद किये जाने से सम्बन्धित दिनेश पीली पत्ती ब्राण्ड खाने वाली तम्बाकू बिना चूना मिश्रित के उत्पादन का अधिकत उत्पादक फर्म है जो कि हस्त चालित मशीन से उत्पाद कर अपना व्यापार संचालित करता था। दिनांक 08.07.2015 ये तीन दिवस पूर्व प्रार्थी द्वारा विद्युत चालित मशीन FFS मशीन पुरानी कबाड से खरीदकर लाई गई थी जिसको प्रार्थी मरम्मत ही कर रहा था कि विभागीय अधिकारी गण दिनांक 08.07.2015 को प्रार्थी के आवास पर आकर जबरजस्ती मशीन का संचालन करवाकर माल तैयार करवाकर पैक करवाया गया था।*

2. *यह कि प्रस्तर २ सें वर्णित कथन असत्य एवं निराधार है क्योंकि प्रार्थी ने विद्युत चालित मशीन से कोई भी उत्पादन करना प्रारंभ नहीं किया था। जबकि सेन्ट्ल एक्साइज अधिनियम 1944 के अनुसार विद्युत' चालित मशीन को स्थापित करने के उपरांत 20 दिवस के अन्तराल में विभाग को उत्पाद किये जाने हेतु सूचना दिया जाना निहित है।*

3. *यह कि प्रस्तर 4 में वर्णित कथन विभागीय स्वीकृति एवं अधिकारिता से संबन्धित है जिसके संबन्ध गें प्रथीं को कोई भी प्रपत्र वर्तमान समय तक उपलब्ध नहीं कराया गया है।*

4. *यह कि प्रस्तर 5 में वर्णित कथन असत्य एवं इनकार है क्योंकि विभागीय अधिकारियों द्वारा दिनांक 08.07.2015 को सुबह 5 बजे से लेकर रात 8 वजे तक विद्युत चालित मशीन FFS को संचालित करवाकर प्रार्थी से जबरन पैकिंग करवाई एवं उसके प्रति पाउच की कीमत स्वयं आंकलित की जिसके संबन्ध में कोई भी मूल्यांकन से संबन्धित अधिकृत फर्म की आख्या प्रथीं को उपलब्ध नहीं कराई।"*

4.6 The number of pouches found in the premises of the appellant itself is enough to determine that the case against the appellant has no legs to stand upon. No authority has even tried to establish the merits of the case by looking into the quantum pouches seized and confiscated.

4.7 I do not find any merits in the impugned order.

5.1 Appeal is allowed. Miscellaneous Applications also stand dispose off.

(Order pronounced in open court on-19 August, 2025)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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