CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

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

Excise Miscellaneous Application No.70402 of 2019
With
Excise Miscellaneous Application No.70111 & 70193 of 2024
(On behalf of appellant)
IN Excise Appeal No.70165 of 2018

(Arising out of Order-in-Appeal No.508/CE/Alld/2017 dated 21/12/2017 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

Mr. Rajesh Jaiswal, **.....Appellant**
(186, Maholi, Madhoganj,
Kotwali Nagar, Pratapgarh)

VERSUS

Commissioner of Central Excise

& Service Tax, Allahabad **....Respondent**

(38-MG Marg, Civil Lines, Allahabad)

<u>APPEARANCE:</u>

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.70218-70220/2025 IN
FINAL ORDER NO.70606/2025

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

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.508/CE/A1ld/2017 dated 21.12.2017 of the Commissioner (Appeal) CGST & Central Excise Allahabad. By the impugned order, Order-in-Original No. 22/ CEX/DIV II of 2016-17 dated 27.03.2017 holding as follows has been upheld:

ORDER :

(i) I hereby order to confiscate the unaccounted seized finished goods 1,10,250 pouches of "Rajesh Pradhan" brand chewing tobacco, each 10 gms, kept in 147 bags valued at Rs.3,30,750.00 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, which are kept in the supurdagi of the party. However, I give an option to the party to get the same released on payment of Redemption fine of Rs.1,00,000/-. The 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. 1,00,000/- 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 three FFS pouch packing machines, which are also in the supurdagi of the party, are hereby released to the party with the direction that all the three FFS pouch packing machines 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 premises of 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 (packing) of branded chewing tobacco in pouches with the help of two 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. It was also noticed that out of three FFS machines installed in the premises, one FFS machine was under repair.

2.2 After conducting physical stock taking, the clandestinely manufactured finished goods and unaccounted for raw material, valued at Rs.9,90,058/-, and three pouch packing machine valued at Rs.40,000/-, were seized and the entire search proceedings we rerecorded in the Panchnama dated 08.07.2015 drawn on the spot. In his statements dated 08.07.2015 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 Pradhan Trading Company, R/o 281-A & C (281 ka & Ga) Madhoganj, Pratapgarh and had been engaged in the clandestine manufacture and sale of unmanufactured natural tobacco with the help of 03 FFS machines, 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.10,30,058/- 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 281-C (281-ग) 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 excisable goods using hand operated machine;
- he had purchased an old FFS machines 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,

employees of the appellant, police officers and jurisdictional Range & Sector Officers had also joined the search proceedings. From this Panchnama it is evident that the appellant was manufacturing (packing) brand chewing tobacco using the FFS machine found installed in the premises, without informing their jurisdictional Central Excise Officers. Further, the stock 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 findings as follows:

19 I have carefully gone through the case records, & the SCN dated 07.01.16 and the submissions made by the party in their written defence reply and at the time of personal hearing. The firm M/S Pradhan Trading Co. 221, Mahuli Pratapgarh was registered with Central Excise Deptt., having Central Excise Registration No:

ABWPJ2878AEM001. Shri Rajesh Jaiswal is the proprietor of the aforesaid firm. During Checking by the officers Of DGCEI Lucknow Zonal unit, Lucknow at the unregistered premises 281-C (281-ग) Madhoganj, Pratapgarh the party has been found engaged in the manufacture of "Rajesh Pradhan" brand chewing tobacco in pouches (without lime tube/ lime Pouches) with the help of three installed Form Fill & Seal (FFS) pouch packing machine in an unregistered premises 281-C (281-ग), Madhoganj, Mahuli, Pratapgarh (U.P)., in contravention of Chewing Tobacco and unmanufactured tobacco packing Machines (Capacity Determination and Collection of duty) Rules, 2010, issued vide Notification No: 11/2010-CE(NT) dated 27.2.2010 as amended. (hereinafter referred to as the "Applicable Rules"). The party had manufactured the said "Rajesh Pradhan brand unmanufactured tobacco in pouches, with the help three FFS pouch packing machine without intimation to this Department and also cleared goods manufactured clandestinely without payment of appropriate Central Excise duty payable thereon as per applicable Rules, under compounding levy scheme. Therefore the unaccounted raw material & finished goods valued RS. 9,90,058/- (as detailed below and three FFS Pouch Packing machines valued Rs. 40,000/- total valued RS. 10,30,058/-, 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 08.07.2015

SL. NO	Description of goods	Quantity	Rate	Value of goods (in Rs.)
(1)	Rajesh brand chewing Tobacco (in Pouches)	147 bags (each bag contains 750 pouches)	MRP of Pouch (Rs.3/- per pouch	3,30,750.00
(2)	Unmanufactured Tobacco	1046 Bags each bags containing20	Rs.28.35 per kg.	5,93,082

		Kgs Tobacco)		
(3)	Packing Material (Printed Paper Pouch)	07 Bags (each40 Kg)	Rs.229.95 per kg.	64,386.00
(4)	Outer Packing Material	10 Kg	Rs.180 per kg.	1800
(5)	Khusaboo (Perfume)	1/2 Kg	Rs.80 Per Kg	40
(6)	FFS Pouch Packing Machines	Three	12000/- ,13000/-& 15000/-	40,000/-
		Total		**10,30,058/-**

20 I find that all the goods mentioned above were recovered from party's unregistered premises and party was found engaged in manufacturing of "Rajesh Pradhan" brand chewing tobacco in pouches (without lime tube/ lime Pouches) with the help of three Form Fill & Seal (FFS) pouch packing machine in an unregistered premises at 281-C (281-ग) Madhoganj, Mahuli, Pratapgarh (U.P.). From the Panchanama /recovery memo dated 08.07.2015, records resumed and statement of Shri Rajesh Jaiswal, proprietor recorded on Spot on 08.07.2015 and also from the subsequent statement dated 09,07,2015, it is evident that the party were engaged in manufacture/packing of branded Chewing Tobacco of "Rajesh Pradhan" brand with the help of three FFS pouch Packing machine, in an unregistered premises since long. It is also evident that the party was engaged in illicit manufacture/ packing of branded Chewing Tobacco "Rajesh Pradhan" with the help of three FFS Pouch Packing machines for clandestine removal of the same without payment of duty. From the details of goods seized, I further find that the officers found 147 Bags each bags containing 750 pouches total 1,10,250 pouches of 10 gm each "Rajesh Pradhan" brand chewing tobacco in fully packed condition packed with the help of three FFS pouch packing machines, which was installed in an unregistered premises of the party. Recovery of repacked pouches in 147 bags and also the recovery of huge quantity of different raw material found there, as well as running conditions of the pouch packing machine clearly establish that the party was engaged in illicit manufacture of the said Rajesh Pradhan brand

chewing tobacco in pouches with the help of pouch packing machine since long As regard running condition of the machine the party himself admitted the same by stating 'कि विभागीय अधिकारी गण दिनांक 08.07.2015 को प्रार्थी के आवास पर आकर जबरदस्ती मशीन का संचालन करवाकर माल तैयार करवाकर पैक करवाया गया था।'

4.4 Appellant has claimed that he has obtained registration for the premises at 281-C (281-ग) Madhoganj, Mahuli, Pratapgarh (U.P.) which was in his possession. However due the mistake, committed at the time of application for registration, the address of the premises was mentioned as 221 Madhoganj, Mahuli, Pratapgarh (U.P.). This premises was never in his possession and he had never intended to undertake any business from the said premises which was owned and possessed by one 'Kalu Bania'. Vide Miscellaneous Application E/Misc/70193/2204 SM filed on 11.07.2024, filed relevant documents with regards to the ownership of the said properties at 281-C (281-ग) Madhoganj, Mahuli, Pratapgarh (U.P.) and 221 Madhoganj, Mahuli, Pratapgarh (U.P.) and asked for the verification of the same. By the order dated 12.09.2024, following was observed:

"All the documents filed with IA's with regards to the address of premises where production activities were undertaken by the Appellant should be got verified from the jurisdictional officers.

2. Learned Authorized Representative is directed to do the needful and provide the verification report on the next date of hearing. List on 03rd October, 2024."

4.5 As per the direction given, the verification report of the premises has been filed by the authorized representative which is reproduced below:

GOVERNMENT OF INDIA
OFFICE OF THE ASSISTANT COMMISSIONER,
CGST & CENTRAL EXCISE DIVISION, JAUNPUR

C. No.V(30)/Adj/Misc/72/2023/Pt

Date: - 16/10/2024

To,

The Assistant Commissioner (Review),
CGST & Central Excise Commissionerate,
Allahabad.

Sir,

Subject: Submission of verification report with reference to the Excise Appeal No. E/70165-70166/2018 in the matter of Rajesh Jaiswal & Dinesh Jaiswal V/s CGST & CE, Allahabad –Reg.

Please refer to the letter C.No. E/7o165-70166/2018 dt. 16.07.2024 issued from Office of The Commissioner (A.R.), CESTAT 38, MG Marg, Civil Lines Allahabad on the above subject.

2. In pursuance to the observation of the Hon'ble CESTAT, Allahabad as communicated by Commissioner (A.R.) office, the range inspector has visited the premises mentioned in the said letter as well as in the documents attached with the said letter. The verification report of the premises is produced as under;

(a) **Field visit report in r/o House No. 221, Mahuli, Madhoganj, Pratapgarh.**- During the Visit of the said premises it was found that the said premises is owned by the family of Late Kallu Baniya and they are living in the premises since long. At present one retail shop ' Basant Kirana Store' is doing business in the said building (detail report of the Inspector and Nagar Palika receipt is attached).

(b) **Field visit report in r/o House No. 281, Mahuli, Madhoganj, Pratapgarh.**- The owner of residence/plot No. 281 was father of Shri Rajesh Jaiswal, Proprietor of M/s Pradhan Trading Company which has been later on divided among Shri Ganga Prasad s/o Shri Rama Deen (one part), Smt Manju Devi w/o Shri Sunil Kumar Jaiswal (one part), Smt Sita Devis w/o Shri Raj Kumar Jaiswal (one part) and Smt Panni Devi w/o Shri Mathura Prasad Verma (one part). On verification from the local residents, it has been noticed that Smt Manju Devi w/o Shri Sunil Kumar Jaiswal who is cousin of Shri Rajesh Jaiswal, Proprietor of M/s Pradhan Trading Company is presently living in the said premises (detail report of the Inspector is attached).

(c) **Field visit report in r/o House No. 205, Mahuli, Madhoganj, Pratapgarh.**- The said residence/ plot has also been divided among Smt Savitri Devi w/o Shri Radhe Shyam, Smt Manju Jaiswal w/o Shri Dwarika Prasad Jaiswal, Smt Sushila Devi w/o Late Shyam Sundar Jaiswal and Shri Ram Sundar. In the said premises Shri Dinesh Kumar Jaiswal s/o Late Shaym Sundar Jaiswal is running the business in the name of M/s Himanchal Jarda Bhandar and Shri Rajesh Kumar Jaiswal s/o Late Shaym Sundar Jaiswal is running the business in the name of M/s Pradhan Trading Co. and have signed the field visit Form (copy is attached).

Submitted for information and necessary action.

Encl as above:

Yours faithfully,

Assistant Commissioner
CGST & Central Excise, Division- Jaunpur

4.6 From the perusal of the above report I find that appellant is correct in claiming that he was never in possession of the premises which has been erroneously mentioned in the registration certificate issued to him. The report clearly states that the said premises was owned by family of Late Kallu Bania, and one Basant Kirana Store is doing its business from there. Thus I find force in the submission made by the appellant in this regard to the effect that erroneously on the registration certificate, the address of the premises was shown as 221 Madhoganj, Mahuli, Pratapgarh (U.P.) instead of 281-C (281-ग) Madhoganj, Mahuli, Pratapgarh (U.P.).

4.7 The entire proceedings have been initiated against the appellant on the basis of the wrong address which was mentioned in the application for registration and the registration certificate of the appellant.

4.8 At the time of search of the premises of the appellant, three power operated Form Fill and Seal (FFS) Pouch packing machine were 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 "Rajesh Pradhan" brand chewing tobacco in pouches (without lime tube/ lime Pouches) with the help of three Form Fill & Seal (FFS) pouch packing machine, 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 1,10,250.

4.9 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 3 to be 20,21,760 per machine. 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 1,10,250 pouches were found and two machines were found operational. Thus total daily production on two machines would be 1,34,784. Even if all what has been alleged is admitted then also the total number of pouches found is less than one day production as per the said rules itself. I also find that the show cause notice records as follows:

> *"During the course of search proceeding in the undeclared factory premises of Ms Pradhan Trading Company, three Form, Fill & Seal (FFS) Pouch packing Machines were found.* ***Out of these three FFS pouch packing machines, two FFS pouch packing machines were found in running condition and were engaged in manufacturing (Packing) of unmanuactured tobacco without lime tube/pouch bearing the brand name (Rajesh Pradhan) having retail sale Price Rs.3/- per pouch.*** *The third FFS Pouch packing machine was found to be under repair. On examination -of finished goods ie. Pouches packed with the help of (FFS) pouch packing machines, it was found that the following description was mentioned on the face of each pouch. "(Raiesh Pradhan) Licence user & repacked by PRADHAN TRADING COMPANY, Madhoganj. Pratapgarh(U.P.)_100%_ unmanufactured Natural Tobacco, M.R.P._Rs.3.00/inclusive of Taxes), Net weight 10 arams (when Packed)"*
>
> *6. The stock of clandestinely manufactured finished goods and unrecorded procured raw materials to be used for clandestine manufacture of unmanufactured tobacco without lime tube/pouch was physically verified by the officers. The entire proceeding was recorded on spot in the Panchnama dated 08.07.2015 (RUD-1). The finished goods 110250 pouches (147 borax750 pouches) of Rajesh Brand Unmanufactured natural Tobacco having MRP of Rs.3/- each pouch [detailed at S.No.1 of Annexure-A to the Panchnama dated 08.07.2015 drawn on spot(RUD-1)]*

were seized on reasonable belief that these goods were manufactured clandestinely and subject to excise duty in contravention of applicable Rules. Further unrecorded procured raw materials[detailed at S.No. 2 to 5 in Annexure-A to the Panchnama dated 08.07.2015 drawn on spot (RUD-1)] were seized with a reason to belief that same were to be used for clandestine manufacture of unmanufactured natural tobacco through three FFS Pouch packing machines in contravention of applicable Rules. As. all the three Form, Fill and seal (FFS) Pouch packing machines were installed in the factory premises without filing any declaration and fulfilling any condition in of Rule 6 of the applicable Rules, these three (FFS) Pouch Packing machines were also seized [detailed at S.No.6 in Annexure-A to the Panchnama dated 08.07.2015 drawn on spot (RUD-1)]. Since these three (FFS) Pouch Packing machines were operating by Shri Rajesh Jaiswal in a secret. unregistered premises in contravention of applicable Rules without intimation to the jurisdiction Range Officer, these three (FFS) Pouch Packing machines were also sealed by the Jurisdictionai Range officer through a separate panchnama dated 08.07.2015 (RUD-2).The goods which were Seized were given to the Proprietor, present on the date of search, for its safe custody under supurdanama dated 08.07.2015 (RUD-3)

8. In compliance to the summons dated 08.07.2015, Shri Rajesh Kumar Jaiswal, Proprietor of M/s Pradhan Trading Company tendered his statement on the spot and also appeared in the office of the DGCEI LZU CAMP office at Kanpur on 09/07/2015 and his statement was recorded under Section 14 of the Central Excise Act, 1944. In his statement dated 08/07/20015 and 09/07/2015 (RUD-6& 8), he admitted that his qualification is M.A., and he is proprietor of M/s Pradhan Trading Company, 221, Madhoganj, Pratapgarh, and engaged in manufacture and *sale of unmanufactured natural tobacco. His trade mark "Rajesh Pradhan" is registered with registration No.1916361. He further stated that he took Central Excise Registration No. ABWPJ2878AEM001, (mentioned on face of each pouch) for the premises 221,. Madhoganj, Mahuli, Pratapgarh, which is used as only office premises of his firm namely M/s Rajesh Pradhan Trading Company. No work related to manufacturing or storage of raw material is under taken at that premises. His firm is engaged in manufacturing of unmanufactured natural tobacco with the help of three FFS (Pouch) packing machines installed secretly in the residential premises 281-C* (281-ग) *Madhoganj, Mahuli, Pratapgarh, (U.P.) since August 2012 owned by his brother's wife smt. Manju Jaiswal. He used the Central Excise Registration No. issued to his firm by the department, on face of each pouches of unmanufactured natural tobacco manufactured with the help of (FFS) Pouch Packing machines so that no one can doubt that Central Excise duty on the pouches of unmanufactured natural tobacco has not been paid. He further accepted that he knew the duty liability on the unmanufactured natural tobacco packed with the help of (FFS) pouch packing machines under the compound levy scheme."*

4.10 Impugned order is in respect of these 1,10,250 pouches. Show cause notice records that when the officers entered the premises the machine was operational. It also records that two machines were operational. 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 प्रधान ट्रेडिंग कंपनी के प्रोपराइटर राजेश कुमार जायसवाल पुत्र श्री श्याम सुन्दर दास जायसवाल निवासी 221, 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 ABWPJ2878AEM001 हस्त चालित मशीन से उत्पाद किये जाने से सम्बन्धित राजेश प्रधान 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 प्राथीं 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 प्रथी 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 प्रार्थी 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 ।*

4.11 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.

4.12 I also find that appellant had also claimed that he had procured the three FFS Machines from the Kabad Market only three days before. The invoices/ bills for the same has also been produced. But the fact that these machines were procured on 02.07.2015 and 05.07.2015 from Bhagya Laxmi Traders has been totally ignored. Further if it was case of the department that the appellant was clandestinely manufacturing (packing) unmanuactured tobacco without lime tube/pouch bearing the brand name (Rajesh Pradhan) having retail sale Price Rs.3/- per pouch from August 2012, then the demand should have been made from the appellant, in terms of the said rules from August 2012 in terms of Chewing Tobacco and unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. It is interesting to records the observations of the Special Chief Judicial Magistrate in his order dated 11.09.2015:

> "अभियोजन द्वारा ऐसा कोई प्राविधान विशेष अधिनियम के अन्तर्गत न्यायालय समक्ष प्रस्तुत नही किया गया है जिससे यह विदित हो कि किसी भी अभियुत्तगण को धारा 167 (2) जा० फौ ० के परन्तुक में प्राविधानित निर्धारित अवधि से अधिक न्यायिक अभिरक्षा नें रखा जा सकता है इसके विपरीत अभियोजन द्वारा स्वयं धारा 167 जा०फो० का उल्लेख न्यायालय के समक्ष किया गया है तथा जिसके साथ यह कथन किया गया है कि उक्त प्राविधान के अन्तर्गत आरोप पत्र समय अवधि में प्रस्तुत न किये जाने पर न्यायालय अभियुक्तगण जमानत पर रिहा किये जाने हेतु बाध्यकारी नहीं है।
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> प्रस्तुत प्रकर अभियक्तगण पर9 (1) (बी) (बी.बी) (बी.बी. बी) के अन्तर्गत अभियोग पंजीकत किया गया है जो कि सात वर्ष तक की सजा के कारावास से दंडनीय है। धारा 167- (2) ए जा०फो० के अन्तर्गत जहॉ अन्वेषण कि सो अपराध जो कि मृत्यु, 'आजीवन कारावास अथवा 10 वर्ष से अन्यून की अंवधि के कारावास से' दंडित न होतो उपरोक्त प्राविधान, में मजिस्ट्रेट अभियुक्त व्यक्ति को 60 दिन के अवधि के समाप्त होने पर 'यदि अभियुक्त व्यक्ति जमानत देने को तैयार है तो अभिय्क्त व्यक्ति को अभिरक्षा में निरूद्द नही कर सकता है उपरोक्त परन्तुक में 'SHALL' शब्द का प्रयोग किया गया है जो आज्ञाप्क है। प्रसत्तुत प्रकरण मे अनियुक्न गण

की न्यायिक अभिरक्षा सर्वप्रथम दिनांक 10-7-2015 कोली गई थी तथा 60 दिन व्यतोत हो जानेके पशचात भी विवेचनाधिकारी द्वारा आरोप पत्र प्रेषित नही किया गया है। अमियुक्त जमानत देने को तैयार है।

यहाँ यह उल्लेख किया जाना आवश्यक है कि विवेचनाधिकारी जो न्यायालय के समक्ष उपस्थित हैं सो विवेचना एवं आरोप पत्र प्रेषित किये जा ने की निर्धारित अवधि इत्यादि के संबध में पूछे जाने पर उनके द्वारा किसी भी प्रकार का उत्तर नहीं दिया जा सकता हैं विवेचनाधिकारी की लापरवाही एवं शिशिलता के कारण आरोप पत्र निर्धारित समयावधि में प्रस्तुत न किये जाने के कारण अभियुक्तगण को जमानत का आधार प्राप्त हुआ है जो कि अत्यंत ही आपत्तिजनक हैं। अतः विवेचनाधिकारी के विरुद्ध डायरेक्टर जनरल सेन्ट्रल एक्साइज लखनऊ जोनल यूनिट को विवेचनाधिकारी के विरुद्ध डायरेक्टर जनरल से सेन्ट्रल एक्साइज लखनऊ जोनल यूनिट को विवेचनाभिकारी के विरुद्ध उचित कार्यवाही किये जाने हेतु पत्र प्रेषित दिया जाये ।

अतः उपरोक्त चर्चित विधिक प्राविधान के अंतर्गत उक्त विवेचना के पश्चात न्यायलय में मत में अभियुक्तगया को सशर्त जमानत पर रिहा किये जाने पर्याप्त आधार प्रतीत होता हे।"

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

5.1 Appeal is allowed. Miscellaneous Application also stand disposed off.

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

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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