# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## ALLAHABAD

REGIONAL BENCH - COURT NO.II

**Excise Appeal No.70400 of 2020**

(Arising out of Order in Appeal - GZB-EXCUS-000-APPL-MRT-35-to-36-2020-21, dated -10/06/2020 passed by Commissioner (Appeals) CGST, Meerut)

**Commissioner, CGST, Ghaziabad** **.....Appellant**
(Ghaziabad)

*VERSUS*

**M/s Salasaar Exim** **....Respondent**

(Village Ganoli, Ghaziabad, Uttar Pradesh 201102)

**APPEARANCE:**

Shri A. K. Choudhary, Authorised Representative for the Appellant
Absent on call for the Respondent

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

**FINAL ORDER NO.70786/2025**

DATE OF HEARING : 15.07.2025
DATE OF DECISION : 13.11.2025

**SANJIV SRIVASTAVA:**

This appeal filed by the Revenue is directed against the Order in Appeal - GZB-EXCUS-000-APPL-MRT-35-to-36-2020-21, dated -10/06/2020 passed by Commissioner (Appeals) CGST, Meerut. By the impugned order Commissioner (Appeals) has held as under:-

> *"7.5 Under the circumstances, I hold that the demand of differential duty and classification of the impugned goods as ordered vide OIO dated 30.04.2019 passed by the Deputy Commissioner is not sustainable. As the demand of duty is not sustainable, the penalty imposed on the appellant party is also not sustainable. I also find that the Additional Commissioner has*

*rightly dropped the demand for the subsequent period vide OIO dated 23.09.2019 which is sustainable.*

*8. In view of the above discussion and findings, the OIO dated 30.04.2019is set aside, and the appeal bearing No. 38-CE/APPL-MRT/GZB/2019-20 dated 27.06.2019 filed by M/s. Salasar Exim, Village Ganoli, Post Chicora, Ghaziabad, Uttar Pradesh, is allowed. Further, the appeal bearing No. 91-CE/APPL-MRT/GZB/2019-20 dated 23.12.2019, filed by the Deputy Commissioner, Central GST, Division-IV, Ghaziabad, is rejected."*

1.2 By the Order-In-Original No. 01/DC/CGST/DIV-IV/GZB/2019-20 dated 30.04.2019 following has been held:-

***ORDER***

*I. I order for classification of the goods i.e. Paper Biri under CETH 24022040.*

*II. I confirm the demand of Rs. 1,94,619/- (One Lac Ninety four thousand six hundred and nineteen only) upon the party under Section 11A(1) of the Central Excise Act, 1944*

*III. I also confirm the demand of Interest at the appropriate rate under Section 11-AA of the Central Excise Act, 1944 on the amount confirmed above.*

*IV. I impose penalty of Rs. 1,94,619/- (One Lac Ninety four thousand six hundred and nineteen only) under Rule 25 of Central Excise Rule 2002 read with section 11AC of the Central Excise Act 1944.*

1.3 By the Order-In-Original No. 06/ADC/C.Ex./GZB/2019-20 dated 23.09.2019 following has been held:-

***ORDER***

*"The goods viz Paper Biri is classifiable under CETH 2403 19 29, therefore the Statement of Demand No 05/ADC/CEX/GZB/2018-19 dated11.07.2018 is dropped."*

2.1 The Appellant is having Central Excise Registration No. ADBFS8523LEM001 and is engaged in the manufacture of Paper Biri falling under Chapter Sub-heading No.24031929 of the Central Excise Tariff Act, 1985. The unit was manufacturing and clearing alleged Paper Biri with the Brand name of Square Biri.

2.2 On inquiry conducted with regards to classification of the product being cleared as Paper Biri, it was found that the Appellant was manufacturing and clearing cigarette falling under Sub Heading No.24022040 of the Central Excise Tariff Act in the guise of Paper Biri (24031929). The rate of duty on cigarette is higher than the rate of duty applicable to Paper Biri.

2.3 During September 2016 the Appellant had cleared and short paid the duty as indicated in the table below:-

| **Period** | **Quantity Cleared** | **Central Excise Duty. payable per thousand (BED @ 1740/- + NCCD @ 260/- + AED @ 260/- Total Rs. 2260/-)** | **Central Excise Duty paid per thousand (BED @ 21/- + NCCD 140/-)** | **Short Paid** |
|---|---|---|---|---|
| Sept'16 | 87000 | 196620 | 2001 | 194619 |

2.4 During the period from October 2016 to June 2017 Appellant has short paid duty as indicated in the Table below:-

| **DETAILS OF CLEARENCES MADE AND DUTY PAID BY THE PARTY FROM OCT' 2016 TO JAN' 2017 (ONLY BASIC DUTY @ 21 PER '000 PCS & Rs 2/- Per '000 NCCD)** | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **SIZES** | **Qty cleared** | **Duty payable Basic** | **Duty payable Additional** | **Duty payable NCCD** | **Duty** | **paid by party** | **Differentia duty payable** | **Differentia duty payable** | **Differentia duty payable** | **Differentia duty payable** |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| | | Basic Rs.1280 per'000 | Additional Rs. 215 per'000 | NCCD Rs. 215 per'000 | Basic @ 21'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Additional Duty | NCCD I | Basic +Addl. +NCCD |
| Plain 60mm | 470250 | 601923 | 101104 | 101104 | 9876 | 941 | 592047 | 101103 | 101163 | 793313 |
| | | Basic Rs. 1280 per'000 | Additional Rs. 215 per'000 | NCCD Rs. 215 per'000 | Basic @ 21 per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Additional Duty | NCCD I | Basic +Addl.- +NCCD |
| 60mm filter | 492000 | 629760 | 105780 | 105780 | 10332 | 984 | 619428 | 105780 | 104796 | 830004 |
| | | Basic Rs. 1740 per'000 | Additional Rs. 260 per'000 | NCCD Rs. 260 per'000 | Basic @ 21 'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Addition al Duty | NCCD I | Basic +Addl. +NCCD |
| 69 mm filter | 36000 | 62640 | 9360 | 9360 | 756 | 72 | 61884 | 9360 | 9288 | 80532 |
| | | Basic Rs. 3375 per'000 | Additional NIL | NCCD Rs. 190 per'000 | Basic @ 21'per 000 | NCCD @Rs.2 per 000 | Basic Duty | Addition al Duty | NCCD I | Basic +Addl. +NCCD |
| 84mm filter | 46000 | 155250 | 0 | 8740 | 966 | 92 | 154284 | 0 | 8648 | 162932 |
| | | 1449573 | 216244 | 224984 | 21930 | 2089 | 1427643 | 216243 | 222395 | 1866781 |
| **DETAILS OF CLEARENCES MADE AND DUTY PAID BY THE PARTY FROM FEB' 2016 TO MAY' 2017 (ONLY BASIC DUTY @ 28 PER '000 PCS & Rs.2/- PER '000 NCCD)** | | | | | | | | | | |
| **SIZES** | **Qty** | **Duty** | **Duty** | **Duty** | **Duty** | **paid by** | **Differentia** | **Differentia** | **Different** | **Different** |

| | cleared | payable Basic | payable Additional | payable NCCD | party | | duty payable | duty payable | ia duty payable | ia duty payable |
|---|---|---|---|---|---|---|---|---|---|---|
| **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10** | **11** |
| | | Basic Rs. 1280 per'000 | Additional Rs. 215 per'000 | NCCD Rs. 215 per'000 | Basic @ 28'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Additional Duty | NCCD | Basic +Addl. +NCCD |
| Plain 60mm | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | Basic Rs. 1280 per'000 | Additional Rs. 311 per'000 | NCCD Rs. 215 per'000 | Basic @ 28'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Addition al Duty | NCCD | Basic +Addl. +NCCD |
| 60mm filter | 714552 | 914626 | 222225 | 153628 | 20020 | 1430 | 894506 | 222225 | 152198 | 1269029 |
| | | Basic Rs. 1280 per'000 | Additional Rs. 311 per'000 | NCCD Rs. 215 per'000 | Basic @ 28'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Addition al Duty | NCCD | Basic +Addl. +NCCD |
| 69mm filter | 1503286 | 2615725 | 580268 | 390854 | 42092 | 3007 | 2573633 | 580268 | 387848 | 3541749 |
| | | Basic Rs. 3375 per'000 | Additional 1 NIL | NCCD Rs. 190 per'000 | Basic @ 28'per 000 | NCCD @ Rs. 2 per 000 | Basic Duty | Addition al Duty | NCCD I | Basic +Addl. +NCCD |
| 84mm filter | 698841 | 2358588 | 0 | 132780 | 19568 | 1398 | 2339016 | 0 | 131382 | 2470398 |
| | | 5888939 | | | | | | | | |
| | | | 802493 | 977262 | 81680 | 5834 | 5807255 | 802493 | 671428 | 7281176 |
| | | | | | | | **GRAND TOTAL** | | | **9147957** |

2.5 The Show Cause Notice dated 07.06.2017 was issued to the Appellant asking them to show cause as to why:-

i. *The goods i.e. Paper Biri should not be classified under CETH 24022040 as Cigarettes and Central Excise duty demanded accordingly;*
ii. *Short paid duty of 1,94,619/- (One Lac Ninety four thousand six hundred and nineteen only) should not be demanded and recovered from them under Section 11A(1) of the Central Excise Act, 1944*
iii. *Interest at the appropriate rate should not be recovered from them under Section 11-AA of the Central Excise Act, 1944.*
iv. *Penalty should not be imposed upon them under Rule 25 of Central Excise Rule 2002 read with section 11AC of the Central Excise Act 1944 for contravening the provisions of Rule 4,5, 6 and 8 of the Central Excise Rules 2002.*

2.6 A Statement of Demand dated 11.07.2018 was issued to the Appellant asking them to show cause as to why:-

> *"Duty short paid amount to Rs 91,47,957/- (Rupees Ninety One Lacs forty Seven Thousand Nine Hundred and Fifty Seven only) during the period Oct. 2016 to May 2017 should not be recovered in the manner as provided in the earlier show cause notice C. No*

*V(15)Tech./Adj./D-II/GZB/Salasaar/176/16-17 dtd. 7.6.2017 issued on the same set of facts and evidences read with section 11A of the (7A) of Central Excise Act 1944 along with interest and penalty, The statement of demand is issued on the basis of facts and evidences discussed in earlier Show cause notice."*

2.7 The Show Cause Notice dated 07.06.2017 was adjudicated by the Order-In-Original dated 30.04.2019 referred in Para 1.2 above and the Statement of Demand dated 11.07.2018 was adjudicated as per Order-In-Original dated 23.09.2019 referred in Para 1.3 above.

2.8 Against the Order-In-Original dated 30.04.2019 Respondent filed appeal before the Commissioner (Appeals) and against the Order dated 23.09.2019 Revenue filed appeal before the Commissioner (Appeals).

2.9 By the impugned order appeal filed by the Revenue has been dismissed and the appeal filed by the Appellant has been allowed.

2.10 Revenue has filed this appeal stating as follows:-

*"2. The Commissioner (Appeals) in his subject Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/35to36/2020-21 dated 10.06.2020 has wrongfully held that the subject product ie. 'Paper Biri' was classifiable under Chapter Subheading No. 24031929 of CETA. The Commissioner (Appeals) wrongfully held the subject goods i.e. 'Paper Biri' as classifiable under CETSH No. 24031929 by arbitrarily interalia holding (i) that, the condition "to be manufactured without the aid of machine" was fulfilled in this case as the said party was using 'wooded jigs' which were manually operated to roll the raw material without the aid of electricity; (ii) that, the relevant Chapter 24 of the CETA nowhere defined the shape and size of Paper Biri nor it provided any restriction on the size of the biri as also on its packing; (iii) that, no market enquiry was conducted by the Department to establish that the impugned goods were not*

*bought and sold as Paper Biri and instead were known as Cigarettes and factually, the said party sold the said product as Paper Biri and did not portray and market it as Cigarette; and (iv) that, the report of the CRCL cannot be taken as a conclusive evidence and the classification of the impugned goods needs to be done in confirmation with the CETA.*

*3. The Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/35to36/2020-21 dated 10.06.2020 of the Commissioner (Appeals), Central Goods and Services Tax (Appeals), Meerut, Camp Office at Ghaziabad has been passed in complete disregard of the law laid down by the Hon'ble Courts with respect to classification of products. In this regard, reliance is placed on the pronouncement made in the following cases:*

*(i) Commissioner of Central Excise, New Delhi Vs Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)]:*

*(ii) Paper Co. [1988 (37) E.L.T. 480 (S.C.)]:*

*(iii) Akbar Badruddin Jiwani Vs Collector of Customs [1990 (47) E.L.T. 161 (S.C.)]:*

4. As is apparent, the Commissioner (Appeals) has superficially acknowledged the vital parameters and facts of the case; as reproduced hereunder for kind referential ease; but have totally discarded the same while passing the concluding order that the subject goods were 'Paper Biri' classifiable under Chapter Subheading No. 24031929 of CETA. The facts worth mentioning are:

> *(i) That, on perusal of the goods received by the said party vides invoices Nos. 4621074 dated 23.07.16, 230001 dated 23.07.16, 230002 dated 03.09.16, 1609 dated 23.07.16, 1635 dated 23.08.16 & 2228 dated 23.08.16 from M/s Golden Tobacco Ltd, Vadodara, it becomes apparent that they had also received cut/*

*processed tobacco on payment of Central Excise duty. Further, Supplementary Notes of Chapter 24 of Central Excise Tariff defines 'Cut Tobacco' as ::*

*"Cut tobacco means the prepared or processed cut -to-size tobacco which is generally blended or moisturized to a desired extent for use in the manufacturing of machine rolled Cigarettes"*

*From the above definition of 'Cut tobacco', it is apparent that the same is used only for the manufacture of cigarettes. Further, since the party was using cut tobacco for the manufacture of the said 'Paper Biri' and was also using filter plug with paper for 10's 69mm along with foil and BOPP in it, the product appeared to be Filter Cigarettes of length exceeding 65mm but not exceeding 70mm classifiable under CETH No. 24022040 attracting Central Excise Duty of Rs.1741/- per thousand (BED) along with AED and NCCD as applicable. It may here be stated that the said purchase and use of cut tobacco as entailed in the said SCN/SOD and OIOs, so defined in the CETA as of use in making machine rolled cigarettes, as above, had never been refuted/contested by the said party.*

*(H) That, the process of manufacturing, as submitted by the said party vide the Flow Chart was that they roll the product with the help of 'Wooden jigs manually. The 'Wooden Jigs' though works without the aid of electricity but it can be termed as machines as they were being used to roll the raw material (tobacco, filter, paper) into the said Paper Biri". Even if the contention of the Commissioner (Appeals) that the said 'Wooden Jigs were manually operated and not electricity driven be considered for the sake of discussion, even then it may here be submitted that in this regard the tariff nowhere mandates/categorises use of only electricity driven*

*machines. The machine in common trade parlance have vide connotations and certainly also includes manually driven machines.*

*(iii) That, as per flow chart submitted by the party, the product was being packed in shells & slides of 10's packing with aluminium foil inserted into box, covered with BOPP, with the help of power operated machine. This packing was identical to the packing normally made in the case of Cigarettes. The Shape and Size of the products were also very much similar to that of Cigarettes. In the light of above facts, it became apparent that the products being manufactured by the party was filter Cigarettes of length 65 mm but not exceeding 70mm classifiable under CETH No. 24022040.*

*(iv) That, as per the facts of the case, the nature and style of 'Paper Biri' was also enquired from the market and it was seen that the packing of these Paper Biri was different from the packing of 'Paper Biri' being manufactured by M/s Salaasar Exim. The snaps of Paper Biri of brand 'Ajanta Sada Biri' were procured, as available in the market, and from the snaps it was observed that the 'Paper Biri' of the above said Brand had simply been wrapped in paper without any filter and the same could be easily distinguished from the packing of Cigarettes, whereas the packing of the said 'Paper Biri' carried out by M/s Salaasar Exim was similar to the packing of Cigarettes. The selling price of the product manufactured by M/s Salaasar Exim was also abnormally high compared to the other Paper Biri brands being sold in the market.*

*(v) That, moreover, the party was clearly mentioning the size of their product i.e. 69mm (applicable to Cigarette) and this fact alone establishes that the product i.e. the said Paper Biri manufactured by the said party with length*

*69mm was being marketed by the Party as Cigarette. It would also be not out of place to mention that in common Trade parlance and in general market terminology "Biri" is defined as*

*"Biris are either conical or cylindrical in shape and only consist of biri tobacco mixture and the wrapper leaves to hold the contents"*

*5. The Commissioner (Appeals) appears to have also erred by arbitrarily and wrongfully holding that "the report of the CRCL cannot be taken as a conchesive evidence and for classification of the impugned goods needs to be done in confirmation with the CETA". It may here be submitted that in the subject case in order to further ascertain the nature of the product being manufactured by the said party and for soliciting independent expert opinion, the sample of the said product i.e. "Paper Biri' was drawn and was sealed in the presence of the Partner of the unit and two independent witnesses and was sent to CRCL, New Delhi and the report of the Chief Examiner, CRCL, so received vide letter bearing C. No. 35-CUS/CRCL/2017/532&533-CEX/29.3.17 dated 12.04.2017 stated that "The Sample /r satisfies the description of Cigarette mentioned in COPTA 2003". In light of the said facts, the findings of the Commissioner (Appeals) are in complete disregard to the established tenets of Central Excise law and the pronouncements of the Hon'ble Courts. In this regard reliance is placed upon the following pronouncements of the Hon'ble Apex Court.*

*(i) Polyglass Acrylic Mfg. Co. Ltd. Vs Commissioner of Customs, Vishakhapatnam [2003 (153) E.L.T. 276 (S.C.)]: Held: Samples Test report Evidentiary value Report obtained at the instance of the*

*Department itself had great force and it should have not been ignored.*

*(ii) Reliance Cellulose Products Ltd. Vs Collector of Central Excise, Hyderabad [1997 (93) E.L.T. 646 (S.C.)]: Held: Samples -Test report of Chemical Examiner and Chief Chemist of the Government, unless demonstrated to be erroneous, cannot be lightly brushed aside on the basis of opinion of some private persons obtained by assessee.*

*(D) In view of the foregoing facts and grounds of appeal, the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/35to36/2020-21 dated 10.06.2020 passed by the Commissioner (Appeals), Central Goods and Services Tax (Appeals), Meerut, Camp Office at Ghaziabad in the case of M/s Salaasar Exim, Village-Ganoli, Distt. Ghaziabad (U.P.); so passed in respect of the said party's Appeal No. 38-CE/APPL/MRT/GZB/2019-20 dated 27.06.2019 filed against Order-in-Original No. 01/DC/CGST//Div-IV/GZB/2019-20 dated 30.04.2019 and Department's Appeal No.91-CE/APPL-MRT/GZB/2019-20 dated 23.12.2019 against Order-in-Original No. 06/ADC/C. Ex/GZB/2019-20 dated 23.09.2019; does not appear to be legal and proper, in the eyes of law, and hence the demand in the subject case, so raised vide Show Cause Notice No.04/AC/CEX/D-11/GZB/17-18 dated 07.06.2017, so bearing C. No. V (15)Tech./Adj./D-II/GZB/Salaasar/176/16-17/1111-13 dated 07.06.2017, and Statement of Demand No. 05/ADC/CEX/GZB/2018-19 dated 11.07.2018, 50 bearing No. V(15)Adj/SCN/GZB/Salasar Exim/24/2017/2070-2073 dated 11.07.2018, is liable to be confirmed and upheld and penalties, as proposed, have to be imposed. C.*

*(E) Therefore, the Hon'ble Tribunal is prayed that the order under challenge may be stayed. The Hon'ble*

*Tribunal is further prayed to quash the impugned Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/35to36/2020-21 dated 10.06.2020 and uphold the demand and penalties, as submitted above, and/or pass any other order as deemed fit and proper, under the circumstances of the case, in furtherance of the objectives of judicial discipline and serving the principle of natural justice.*

*(F) Therefore, in exercise of the powers vested under Sub-section (2) of Section 35B of the Central Excise Act, 1944, read with Section 174(2)(f) of the Central Goods and Service Tax Act, 2017 and "The Taxation And Other Laws (Relaxation Of Certain Provisions) Ordinance, 2020" [No. 2 of 2020] published by the Ministry of Law & Justice (Chapter V thereof), as amended vide Notification No. G.S.R. 418(E) dated 27.06.2020, the Committee hereby authorises the Joint Commissioner (in-situ)/Deputy Commissioner/Assistant Commissioner, Central Goods & Services Tax, Division-IV, Ghaziabad and directs him to file an appeal on its behalf before the Customs, Excise & Service Tax Appellate Tribunal (Regional Bench), Old Red Building, M.G. Road, Allahabad-211001 against the aforesaid Order-In-Appeal."*

3.1 We have heard Shri A.K. Choudhary, Authorized Representative for the Revenue. Respondent is absent on call.

3.2 Learned Authorized Representative for the Revenue reiterates the grounds taken in the appeal.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of arguments.

4.2. The impugned order records as follows:-

*"7. I have carefully gone through the facts and records of the case and submissions made by the appellant party, and respondent in Appeal No. 91 and the appellant*

*department. I find that as per the relevant Chapter 24 of the CETA and supplementary notes given therein, the goods paper rolled biris are classifiable under Chapter Sub-heading No. 24031929 of CETA under the residual category which distinguishes the same from the ordinary tendu leaf biri, in as much as paper is used for wrapping the paper biri. However, a condition "to be manufactured without the aid of machine" is inherent therein. In the present case it was an undisputed fact that appellant party was using "wooden jigs" which were manually operated to roll the raw material (tobacco, filter, paper) to produce the impugned goods, without the aid of electricity. Thus, the condition mentioned above was fulfilled, In this regard, I find that as per Merriam Webster dictionary Machine' is "a mechanically, electrically, or electronically operated device for performing a fask". Further, as per Cambridge Dictionary the definition of "Machine' is "a piece of equipment with several moving parts that uses power to do a particular type of work". Therefore, the wooden jigs cannot be termed as machine and just because these wooden jigs were used for rolling cut tobacco in paper cannot be construed that the appellant party was manufacturing cigarette. The contention of the appellant department regarding use of machine by the appellant party was, therefore, not tenable, and its related contention that the appellant party was manufacturing cigarettes with the use of machines was, therefore also not tenable. I further find that the grounds of appeal in the departmental appeal consist more of surmises as is evident from the use of words like 'appears/ appeared which make it evident that the department is not sure of its stand regarding classification of the goods. It is settled law that the classification of goods is a matter relating to chargeability and burden of proof is squarely upon the department, if department intends to classify a goods under a particular heading or sub-heading different from what is claimed by the manufacturer. I find that the department has*

*not put forth any evidence to infer as to why the impugned goods were not paper biri as claimed and declared by the appellant party. Only after establishing that the impugned goods were not paper biri, the department could have gone for and proposed their classification under a different heading/sub-heading of CETA. In the absence of any such evidence the contention of the appellant department that the goods resembled cigarette was not sufficient to re-classify them as cigarettes and reject the classification of the impugned goods as paper biri. The Hon'ble Supreme Court in case of H.P.L. Chemicals Limited Versus CCE, Chandigarh [2006 (197) ELT 324 (SC)] has inter-alia observed that "Classification of goods is a matter relating to chargeability and burden of proof is squarely upon Revenue - If Department intends to classify goods under a particular heading or sub-heading different from claimed by assessee, Department has to adduce proper evidence and discharge burden of proof. (para 29]*

*7.1 Further, referring the definition of cut tobacco as stipulated under supplementary notes of Chapter 24 of the CETA, the appellant department has contended that the appellant party was using cut tobacco as raw material, which can only be used for the manufacture of cigarette. In this regard, I find that there are no restrictions in said supplementary notes or any other provision which restrict the use of cut tobacco for manufacturing paper biri. The appellant department has not pleaded its case in this regard with any sustainable piece of evidence or reasoning. The procurement of cut tobacco from M/s Golden Tobacco Limited, Vadodara does not form the basis for the conclusions and contentions of the appellant department regarding manufacture of cigarettes by the appellant party. In this regard the appellant party had submitted that he wanted to manufacture good quality paper biri with intent to*

*create a niche in the market and tempt cigarette smokers to switch over to paper biri.*

*7.2. Regarding contention of the appellant department that the impugned goods resembled with cigarette by its shape, size and filter plug and the same were packed in shells & slides with aluminum foil and covered with BOPP, with the help of power operated machine and such packing was identical to the packing normally made for cigarette, I find that the relevant Chapter 24 of the CETA nowhere defined the shape and size of paper biri nor it provided any restriction on the size of the biri. In this regard the appellant party has contended that Chapter 24 of the CETA does not put any restriction on the manufacturer in improvising the packaging of paper biri for sale of product in the competitive market. The Hon'ble CESTAT, Chennai in case of King Bidi Company Versus CCE, Tirunelveli, while deciding the issue of packing of biri in aluminium foil with the aid of power, has held as "Manufacture-Packing of biris in aluminium foil with aid of power being post-manufacturing activity does not amount to manufacture - Duty not demandable at higher rate Sections 2(f) and 11A of Central Excise Act, 1944, [para 5]*

*7.3 I also find that no market enquiry has been conducted by the appellant department to establish that the impugned goods were not bought and sold as paper biri instead these were known as cigarettes in common trade parlance. In contrast it was evident from the RUD-XVII, RUD-XVIII, RUD-XXIII, submitted by the appellant party, that the impugned goods were cleared and sold as "BIDI" as mentioned on its packing. The contention of the appellant department that the impugned goods manufactured by the appellant party were different from the other brands of paper biri available in the market, and were similar to the packing of cigarette and their sale price was also abnormally higher as compared to others cannot be a valid ground for*

*disputing/ rejecting the classification of the impugned goods as paper biri and it can certainly not be a ground for classifying the same as cigarette. There was nothing to dispute the claim and contention of the appellant party that the description of the impugned goods was evidently and undeniably printed as "BIDI" on the packing itself and not as "cigarette" and he had neither attempted to portray his product as a cigarette nor marketed it as such. There was nothing to infer that the impugned goods were known as cigarette, in common trade partance. The Hon'ble Supreme Court in the case of Dunlop India Limited and Madras Rubber Factory Limited Versus Union of India and Others [1983 (13) ELT 1566 (SC)] have held that "Classification of goods-Article should be classified on the basis of popular sense and not in scientific and technical sense. Further, in the case of Commissioner of Trade Tax, Uttar Pradesh Versus Kartos International and Others [2011(268) ELT 289 (SC)], the Hon'ble Supreme Court also held that "classification of commodity cannot be made on its scientific and technical meaning. It is only common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability."*

*7.4 I find that the test reports of Chemical Examiner, CRCL, New Delhi which has been made a basis for the classification of the impugned goods by the Deputy Commissioner and has also been referred to by the appellant department only mentions that "the sample ur satisfies the description of cigarette mentioned under COPTA 2003". In this regard, I find that the CRCL's test report is based on the definition of cigarettes provided in Section 3(b) of COPTA, 2003 from where it can be inferred that even paper bidi can be termed as cigarette. However, CETA makes a clear distinction between paper biri and cigarettes and which are classifiable under separate tariff sub-headings. The test report of the CRCL, therefore,*

*cannot be taken a conclusive evidence for the classification of the impugned goods which needs to be done in conformity with the description and other related Section/ Chapter/Supplementary notes of the CETA. The Hon'ble Supreme Court in case of Puma Ayurvedic Harbal Private Limited Versus CCE, Nagpur [2006 (196) ELT 3 (SC)] has observed that "Classification of Goods Expert's Opinion Opinion of Chief Chemist has no relevance for determining classification of products - Role of Chief Chemist is only to supply analytical data".*

4.3 The basic issue that needs to be determined in the present case is whether goods have been cleared by the Appellant merit to be classified as paper biri under Sub-heading No.24031929 of the Central Excise Tariff Act, 1985 or as Cigarette under Sub-heading No.24022040 of Central Excise Tariff Act, 1985. The impugned order after discussing the manufacturing process and the equipment used for manufacture of the same have concluded that the Appellant was not using power operated machines for the manufacture of the cigarette. Revenue Authority have failed to establish any use of such machinery thereafter relying upon the supplementary notes in Chapter 24 of the Central Excise Tariff Act concluded that the classification of the impugned goods as claimed by the parties has not been disputed with by the Revenue with tenable evidences. Reliance has been placed on the decision of the Hon’ble Supreme Court in the case of H.P.L. Chemicals Ltd. V/s CCE, Chandigarh [2006 (197) ELT 324 (SC)].

4.4 Learned Commissioner (Appeals) has also observed that no market inquiry has been conducted by the Revenue to establish that in common trade parlance the said goods were not biri but cigarette. The impugned order also observes that description of the impugned goods undeniably printed as bidi not cigarette and the said product was not marketed as cigarette. The impugned order also observes that in terms of the Chemical Examiner Report the goods have been held to be covered by the definition of cigarette as per Section 3(b) of COPTA, 2003.

4.5 Revenue in their appeal have contested the findings and conclusion arrived at by the learned Commissioner (Appeals) by stating that even wooden zigs which manufactures without the aid of electricity are machines and machines in common trade parlance have vide connotations and certainly also includes manually driven machines. The manner of packing also confirms to the manner in which the cigarettes are being normally packed. Further, the impugned goods also carries filter plugs which is normally associated with cigarettes and not with biri. The manner in which the Appellant was clearly mentioning the size of their product i.e. 69 mm (applicable to cigarette) and this is enough to establish that in common trade parlance the product is marketed by the Appellant as cigarette. In common trade parlance and in general market terminology 'Biri' is defined as either conical or cylindrical in shape and only consist of biri tobacoo mixture and the wrapper leaves to hold the contents.

4.6 The Order-In-Original dated 23.09.2019 observes as follows:-

> *"5.8 Before proceedings I go through the relevant portion of the Central Excise Tariff for better understanding of the present matter-*
>
> ***SUPPLEMENTRY NOTES***
>
> *For the purposes of this Chapter:*
> *(1) "tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.*
>
> *(2) "cut-tobacco" means the prepared or processed cut-to-size tobacco which is generally blended or moisturized to a desired extent for* ***use in the manufacture of machine rolled cigarettes.***

*(3) "Smoking mixtures for pipes and cigarettes" of sub-heading 240310 does not cover "Gudaku".*

| Heading/Sub-Heading | DESCRIPTION | Rate of duty |
|---|---|---|
| 2401 | UNMANUFACTURED TOBACCO; TOBACCO REFUSE | |
| 24011050 | Tobacco for manufacture of biris, not stemmed | 64% |
| 2402 | CIGARETTES, CIGARS, CHEROOTS, CIGARILLOS OF TOBACCO OR OF TOBACCO SUBSTI AND TUTES | |
| 24022040 | Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) exceeding 65 millimetres but not exceeding 70 millimetres | Rs.1,740/- per thousand |
| 2403 OTHER MANUFACTURED TOBACCO ANUFACTURED TOBACCO "HOMOGENISED" OR "RECONSTITUTED" TOBACCO EXTRACTS AND ESSENCES Tobacco, Whether Or Not Containing Substitute In Any Proportion; AND SUBSTITUTES; TOBACCO; - Smoking Tobacco | | |
| 24031921 | Other than paper rolled biris, manufactured without the aid of machine | Rs. 12 per thousand |
| 24031929 | Other | Rs. 80 per thousand |

*As per the above description the paper rolled biris are classifiable under 2403 19:29 of CETA 1985 under the residual category. As the name itself suggeм that it is in biri form but instead of tendu leaf to wrap tobacco, paper is to be used for wrapping In this regard I have noted that the party in their reply dated 27.06.2010, referring to the supplementary notes of chapter 24 of CETA 1985, have stated that there are no restrictions in any law which bars them from using cut tobacco for making paper biris'. I have noted that the department has relied upon the said supplementary notes and invoice no 2228 dated 23.08.2016, issued by the Golden Tobacco Limited, Vadodara regarding purchase of cut tobacco to allege that the party had indulged in manufacture of cigarettes in the garb of manufacture of "Paper Biri, but these evidences do*

*not establish that the party used such cut tobacco and manufactured cigarettes from it. The supplementary notes have not restricted the use of cut tobacco in manufacture of Cigarettes only nor does the Central Excise Tariff Act 1985 provide such power Further there is no evidence to suggest that the party continuously purchased and used only cut tobacco in manufacture of their product. The above evidences relied upon by the department do not establish anything as alleged in the SCN.*

*5.9 I have noted that the department has observed that using filter plug with paper for 10's 69mm along with foil and BOPP in it, the product appears to be filter Cigarette of length exceeding 65 mm but not exceeding 70mm classifiable under CETH No. 2402 20 40 attracting Central Excise Duty of Rs 1741/- per thousand (BED) along with AED and NCCD as applicable. The department has also observed that as per flow chart submitted by the party the products were being packed in shells & slides 10's packing with aluminum foil inserted into box, covered with BOPP, with the help of power operated machine and this packing was identical to the packing normally made in the case of Cigarettes. On that basis the department alleged that the Shape and Size of the products were also very much similar to that of Cigarettes and the products being manufactured by the party were filter Cigarettes of length 65 mm but not exceeding 70mm classiflable under CETH No. 2402 20 40. Further the department conducted market enquiry in respect of "Paper Biri" and alleged that the packing of 'Ajanta SadaBiri Paper biri were different from the packing of Paper biri being manufactured by M/s Salaasar Exim. The relied upon photographs show that paper biri of brand 'Ajanta SadaBiri, procured as available in the market has simply been wrapped in paper without any filter and can be easily distinguished from the packing of Cigarettes, whereas*

*the packing of alleged Paper Biri carried out by the party was similar to the packing of Cigarette.*

*I have observed that the SCN has relied upon certain photographs of the party's product to establish their allegation. However the photographic evidences show a part of cigarettes look alike with brand name "Square" and "Bidi" is written on top of the brand name The photographs of packing cartons also carry word Bidi over the brand name Square. Mere resemblance of the party's product/its packing to cigarettes itself is not sufficient to set aside the fact that the party was writing word 'Bidi" just above its brand name both on their product as well as packing. The most important evidence in the matter is whether the party marketed its product as cigarettes and whether such product was perceived in the common trade parlance as cigarettes. My these observations are based on the Allahabad High Court's judgment in the case of HAMDARD (WAKF) LABORATORIES Versus COMMERCIAL TAXES reported in 2019 (20) G.S.T.L. 46 (All.), (relevant para COMMISSIONER OF reproduced as under). I have found that there is no evidence like marketing material, procurement order wherein the party might have marketed such goods as cigarettes, has been cited by the department nor any statement of the stockiest, dealer or retailer, who dealt in the goods of the party, has been relied upon to establish that the party marketed their goods as well as it was known in the common trade pariances as cigarettes.*

*In this regard the hon'ble Allahabad High Court in the case of HAMDARD (WAKF) LABORATORIES Versus COMMISSIONER OF COMMERCIAL TAXES reported in 2019 (20) G.S.T.L. 46 (All), while deciding the classification Lastue of "RoohAfza have held as under:-*

***24.*** *In the case of Commissioner of Trade Tax, U.P. v. Kartos International and others, 2011 (6) SCC 705 = 2011 (268) E.L.T. 289 (S.C.), Hon'ble Supreme Court held that classification of commodity cannot be made on its scientific and technical meaning. It is only common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability. Application of common parlance test for interpretation of a commodity in Taxing Statute has always been recognized by Hon'ble Supreme Court as aforenoted. Reference in this regard may also be had to the judgments of Hon'ble Supreme Court in the case of Commissioner of Central Excise v. Shree Baidyanath Ayurved Bhawan Ltd., 2009 (12) SCC 419 = 2009 (237) E.L.T. 225 (S.C.), B.O.C. India Ltd. v. State of Jharkhand, 2009 (15) SCC 590 = 2009 (237) E.L.T. 7 (S.C.) (Pararaph-24), Godrej Industries Ltd. v. CCE, 2008 (8) SCC 600 = 2008 (228) E.L.T. 321 (S.C.), Ponds India Ltd. v. Commissioner of Trade Tax, 2008 (8) SCC 369 = 2008 (227) E.L.T. 497 (S.C.), U.P. State Agro Industrial Corporation Ltd. v. Kisan Upbhokta Parishad, 2007 (13) SCC 246, Trutuf Safety Coal Industries v. CST, 2007 (7) SCC 242 (paragraph 13) = 2007 (215) E.L.T. 14 (S.C.), Craft Interiors (P) Ltd. v. CCE, 2006 (12) SCC 250 = 2006 (203) E.L.T. 529 (S.C.) (paragraph 18 and 20), Parley Biscuits Pvt. Ltd. v. State of Bihar, 2005 (9) SCC 669 = 2005 (192) E.L.T. 23 (S.C.), Associated Cement Company Ltd. v. State of M.P., 2004 (9) SCC 72, Alpine Industries v. CCE, 2003 (3) SCC 111 = 2003 (152) E.L.T. 16 (S.C.), S. Samuel MD, Harrisons Malyalam v. Union of India, 2004 (1) SCC 256 (Paragraph 13), Union of India v. Harjeet Singh Sandhu, 2001 (5) SCC 593, Collector of Custom and Central Excise v. Surendra Cotton Oil Mill Company, 2001 (1) SCC 578 = 2001 (127) E.L.T. 3 (S.C.), Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P., 1998 (7) SCC 228 = 2004 (178) E.L.T. 48 (S.C.), Metagraphs (P) Ltd. v. CCE, 1997 (1) SCC 262 = 1996 (88) E.L.T. 630 (S.C.), Purewal Associate*

*Ltd. v. CCE, 1996 (10) SCC 752 = 1996 (87) E.L.T. 321 (S.C.), Indian Cable Co. Ltd. v. CCE, 1994 (6) SCC 610 = 1994 (74) E.L.T. 22 (S.C.), Novapan India Ltd. v. CCE, 1994 (Suppl.) (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.), CCE v. Ballarpur Industries Ltd., 1989 (4) SCC 566 = 1989 (43) E.L.T. 804 (S.C.), CCE v. Krishna Carbon Paper Company, 1989 (1) SCC 150 = 1988 (37) E.L.T. 480 (S.C.), Filterco v. CST, 1986 (2) SCC 103 = 1986 (24) E.L.T. 180 (S.C.), Chiranjeet Lai Upendra v. State of Assam, 1985 (Suppl.) SCC 392, Indo International Industries v. CST, 1981 (2) SCC 528 = 1981 (8) E.L.T. 325 (S.C.) (Paragraphs 4 and 5 ), Union of India v. Gujrat Woolen Felt Mills, 1977 (2) SCC 870 = 1977 (1) E.L.T. J24 (SC), State of U.P. v. Indian Hume Pipe Co. Ltd., 1977 (2) SCC 724, Dunlop India Ltd. v. Union of India, 1976 (2) SCC 241 = 1983 (13) E.L.T. 1566, Ganesh Trading Company v. State of Haryana, 1974 (3) SCC 620 and in CST v. Jaswant Singh Charan Singh and Ram Avtar Budhai Prasad v. Assistant STO, AIR 1961 SC 1325.*

***25.*** *Thus the application of common parlance test is an extension of general principles of interpretation of Statute for deciphering the mind of the law-maker. In the absence of a statutory definition in precise term; words, entries and items in physical Statute must be construed in terms of their commercial or trade understanding or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject matter of the Statute would attribute to it. Resort to rigid interpretation in terms of artificial and technical meaning should be avoided in such circumstances. However, this rule shall not be applicable when the Legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then interpretation ought to be in accordance with scientific and*

*technical meaning and not according to common parlance understanding. A sales Tax statute being one levying tax on sales of goods must, in absence of technical term or a terms of science or art, shall be presumed to have been used in ordinary sense or common parlance. Technical and scientific tests offer guidance only within limits where a word has a scientific and technical meaning and also an ordinary meaning according to common parlance, it is the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. If in respect of a particular item an artificial meaning is attached to particular words in the taxing statute then the ordinary sense or dictionary meaning would not be applicable but meaning of that type of goods dealt with in that type of market should be searched. The process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal statute. What is more important is whether the broad description of the article fits in with the expression used in the Tariff.... Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance. A residuary entry can be taken refuge of only in the absence of a specific entry. The word "Fruit drink" and "Fruit Juice" used in Entry 103 of Part A of the IInd Schedule to the U.P. VAT Act has neither been defined under the Act nor it has been used in technical sense. If a person asks for fruit Juice or fruit drink, he will not be given "Sharbat Rooh Afza" and vice versa. Therefore, the Tribunal has neither committed any error of law to apply common parlance test nor committed any error to record the findings of fact that "Sharbat Rooh Afza" is not a fruit drink.*

*I have noted that no evidence has been relied upon to establish that the product manufactured by the party was known in common trade parlances as cigarettes or it was peddled as cigarettes. No such evidences has been relied upon to level such allegations.*

*5.10 It is clear from Party's purchase order that they have received 100 "wooden jigs from M/s Golden Tobacco Itd. Vadora. I agree that making cigarettes can also be done by "wooden jigs", because Wooden jigs is also a machine as it simplifies the human efforts, However, the manufacturing of cigarettes is a high end industry which requires large amount of capital as well as electric operated machines, no such machines have been found in the factory nor any evidence have been relied upon to establish such activity. Mere presence of wooden jigs itself does not eatablish that the product manufactured by the party using such wooden jigs were cigarettes. The SCN has relied upon certain photographs of the factory during the manufacturing of the party's product The photographs of the factory enclosed as evidence, show that wooden jigs are being used for the manufacture and it supports the flow chart of manufacture aubmitted by the party. The flow chart submitted by the party regarding manufacture of their product using wooden jigs and raw material tobacco, filter, paper)has also not be contested on the basis of evidences. Just because these wooden jigs are being used for rolling cut tobacco in paper cannot be construed that the party was manufacturing cigarettes. The SCN has not relied upon any evidence or the statement of the owner of the factory / production manager of the party / any responsible authorized person of the party, wherein act of manufacture of cigarettes have been accepted. Further no technical literature or the statement of the supplier of wooden jigs Le. M/s Golden Tobacco ltd. Vadora has been relied upon which can establish that such wooden jigs can be used in manufacture of cigarettes.*

*Therefore such evidence does not prove that the party manufactured cigarettes."*

4.7 From the perusal of the above it is quite evident that Appellant on packing have clearly mentioned word 'bidi' on the top of the brand name. The photograph of packing cartons also carry word Bidi over the brand name Square.

4.8 From the above, evidences point to the fact that the Appellant was positioning the product cleared by it as bidi and not as cigarette. It is cleared from the above that Appellant never intended to reach to those consumers who have opted for cigarettes and was approaching only the customers who would have preferred smoking bidis. Hon'ble Allahabad High Court in the case of Hamdard (Wakf) Laboratories (supra) had laid down real test for determining the real nature of the product. The relevant paragraphs of the said decision has been reproduced in the Order-In-Original referred above.

4.9 Further, it is observed that also considered the argument to the effect that wooden jigs could be considered as machine but just presence of such wooden jigs is not enough to establish that the impugned goods were cigarettes. Revenue has emphasizes in their appeal on the report of CRCL which after examination of the samples have stated that samples specifies description of Cigarette under COPTA 2003. However, the said report of CRCL do not specify sample to be classified as cigarette as per the definition contained in the Central Excise Tariff Act, 1985. As COPTA defines cigarette to be included any role of tobacco wrapped in paper or in any other substances not containing tobacco. The product in terms of COPTA would be defined as cigarette. However the definition as per the COPTA cannot be the basis for determination of classification under Central Excise Tariff Act, 1985.

4.10 Hon'ble Supreme Court has in the case Universal Ferro & Allied Chemicals Ltd. [2020 (372) E.L.T. 14 (S.C.)] held as follows:

*"21. In this respect, it will be apposite to refer to the judgment of this Court in the case of Commissioner of Central Excise, New Delhi vs. Connaught Plaza Restaurant Private Limited, New Delhi [(2012) 13 SCC 639] wherein this Court observed thus:*

> *"46. We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of excise duty, thereby causing a loss of revenue. [See Medley Pharmaceuticals Ltd. v. CCE and Customs [(2011) 2 SCC 601] (SCC p. 614, para 31) and CCE v. Shree Baidyanath Ayurved Bhavan Ltd. [(2009) 12 SCC 419]. The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream" and thus, may require different standards for a good to be marketed as "ice-cream". These provisions are for ensuring quality control and have nothing to do with the class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the purpose and object of which is completely different."*

*22. This Court has held, that it is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. It has further been held, that the conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute."*

Thus we do not find any merits in the ground taken in appeal that classification of the products should be done as cigarette following the observations made in the chemical examiner report.

4.11 In case of Pleasantime Products [2009 (243) E.L.T. 641 (S.C.)], Hon'ble Supreme Court has observed as follows:

> ***17.*** *In the case of The Dy. Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. M/s. G.S. Pai and Company - AIR 1980 SC page 611, this Court held that while interpreting the entries in Sales-tax Legislation, it should borne in mind that the words used in the entries must be construed not in any technical sense but as understood in common parlance. Courts must give the words, used by the legislature, their popular-sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it". The word in the entry must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with the commodity would ascribe to it.*

4.12 In case of Western Agencies Pvt. Ltd. [2011 (22) S.T.R. 305 (Tri. - LB)] a larger bench of CESTAT observed as follows:

> ***"9.5*** *Statutes having common object may provide aid to each other. But different statutes seeking to achieve different objects rule out interpretation of expressions used in one statute with reference to their use in another statute and decisions rendered with reference to construction of one Act cannot be applied with reference to the provisions of another Act, when the two Acts are not in pari materia (ref. Ram Narayan v. U.P. - AIR 1957 SC 18, P.23). It cannot be presumed that the Legislature while enacting a statute intended to import meaning from other statute for interpretation of provisions of the former statute unless otherwise stated in the former statute. When there is no ambiguity in interpreting object of a*

*statute it is not permissible to refer for the purpose of its construction, provisions of any other legislation. An effort to construe legislation on one subject with the help of other legislation on different subject is to defeat the purport of the former statute unless both the statute serves the common object. Only by incorporation or adoption of provisions of a statute for the construction of other, no aid is permissible. Rule of construction suggests that when two statutes remain different and distinct and each is to be judged with reference to their object, there is no scope for adoption of provisions of one statute by the other. The object of each enactment play dominant role in rule of construction. The 1994 Act, is a piece of fiscal legislation serving its purpose of gathering Revenue for union. While the 1963 Act and the 1908 Act are enacted to set up ports and administer such ports, the 1994 Act, is a self contained code and has made provisions to prescribe incidence of service tax on any service provided by a port or other port or persons authorised by such port while such service relate to vessels or goods. A clear mandate of 1994 Act no way disturbs to understand the object of gathering Revenue, using the words "any service" provided by a port or other port. Thus by necessary implication nothing can be gathered from any of the port laws except to the extent of adoption to mean the term "port" or "other port" from the 1953 Act or 1908 Act as the case may be. Service provided by port relating to vessel or goods submit for classification under the category of "port service" for levy of service tax. Unambiguously provisions of the 1994 Act in no uncertain terms intend to tax anything not authorised by law. The exhaustive definition of the term "port service" limits the scope to take assistance of either 1963 Act or 1908 Act except to the extent expressly permitted by the 1994 Act."*

4.13 If the observations made in the Chemical Examination reports are discarded then there is no evidence produced by way of market enquiry etc. to show that the goods being manufactured by the appellant were other than "paper biri". On the contrary respondent has clearly printed on the packages and wrappers declaring their product as "paper biri" as noted in the order of the lower authorities.

4.14 In view of the above findings, we are of the view that the impugned order holding that the product being cleared by the Appellant is 'paper biri' classifiable under Chapter Sub Heading No.24031929 cannot be faulted with.

5.1 We do not find any merits in the appeal filed by the Revenue. Appeal is dismissed.

(Pronounced in open court on 13.11.2025)

**Sd/-**
**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

**Sd/-**
**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

*Nihal*