CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70670 of 2019

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-119-19-20, dated - 08/05/2019 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

Commissioner, CGST, Noida **.....Appellant**
(Division II, C-56/42, Sector-62, Noida)

VERSUS

Som Pan Product Pvt. Ltd. **....Respondent**
(H-209, Sector-62, Noida, Uttar Pradesh 201301)

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Appellant
Dr. Seema Jain, Advocate the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.-70102/2026

DATE OF HEARING : 12.03.2026
DATE OF DECISION : 15.04.2026

P. ANJANI KUMAR:

M/s Som Pan Products, the Appellants, are registered for manufacture of chewing tobacco/unmanufactured tobacco/Zarda. Show Cause Notice dated 04.05.2016 was issued to the Appellants proposing to recover duty of Rs.56,12,275/- from the Appellants on the ground that Appellants himself classified Zarda Scented Tobacco as chewing tobacco. The Adjudicating Authority vide Order dated 16.03.2017 confirmed the demand along with equal penalty. On an appeal filed by the Appellant, this Bench Vide Final Order No.72313-72317/2018 dated 25.09.2018 allowed the appeal. Accordingly, the Appellants filed a refund claim for the duty of Rs.5,01,96,143/- paid by them. The Assistant Commissioner vide the impugned order dated 14.11.2018 sanctioned refund of Rs.4,99,30,330/- and rejected refund of Rs.2,65,813/-. The Appellants preferred an appeal before the learned Commissioner (Appeals) on the grounds that the impugned order sanctioned refund but interest was not paid; the Appellants are entitled for refund of interest as the said amount was deposited under protest and did not take the colour of duty; the Appellants did not indicate the same to be duty in the ER1 Returns and therefore, the amount paid by the Appellant was only a Revenue deposit and is not governed by Section 11B. Learned Commissioner (Appeals) vide the Order dated 08.05.2019, has allowed the appeal with consequent relief. Revenue is in appeal against the order of the Commissioner (Appeals) on the grounds that: -

- Learned Commissioner (Appeals) erred in holding that the amount paid by the Respondents is only a deposit.
- The learned Commissioner (Appeals)'s finding that the Respondents started manufacturing of chewing tobacco w.e.f. 01.05.2015 is without any evidence and no evidence have been recorded in this regard. The learned Commissioner (Appeals) erred in finding that the Respondents paid the duty as ordered by the Department but never agreed to the determination of duty as done by the Order dated 05.05.2015.
- The leaned Commissioner (Appeals) failed to appreciate that chewing tobacco manufactured by the Appellants was classifiable by the Appellants under CETSH 240399.10; however, Revenue disputed the classification holding that the correct classification is under CETSH 240399.30; Revenue filed an appeal before the Hon'ble Supreme Court against the Final Order passed by the Tribunal on 25.09.2018 regarding the classification of the impugned goods.

2. Shri Santosh Kumar, Authorized Representative appearing on behalf of the Appellant-Revenue reiterates the grounds of appeal.

3. Dr. Seema Jain, Advocate appearing on behalf of the Respondent submits that: -

- The declaration filed by the Respondent manufacturer was under Rule 6(1) of the Chewing Tobacco Packing Rules; the determination of duty is beyond the scope of capacity determination order as held by the Tribunal in the case of **Godfrey Phillips India Ltd. V/s CCE & ST, Ghaziabad 2017 (352) E. L.T. 232.**
- The amount deposited by the Respondent under protest was not towards payment of duty as the amount was not paid in compliance of capacity determination under Rule 7 and Rule 9 of the Chewing Tobacco Capacity Determination Rules. The Appellants themselves have to determine the duty and pay; in the instant case the amount was deposited by the Appellants under protest at the insistence of the Department. The initial Show Cause Notice dated 04.05.2016 was issued proposing appropriation of the amount deposited under protest. It was held in the following cases that the interest is payable on the refund of deposit made during the investigation: -

    - Parle Agro Pvt Ltd vs Commissioner CGST, Noida 2022 (380) E.L.T. 219
    - CC E, Chennai-II Versus Ucal Fuel Systems Ltd. 2014 (306) E.L.T. 26 (Mad.)
    - Amidhara Texturising (P) Ltd vs CCE Surat 2012 (278) E.L.T. 257
    - Toyota Kirloskar Auto Parts Pvt. Ltd. Vs CCus., Bangalore 2009 (240) E.L.T. 124

- The Hon'ble Supreme Court dismissed the Revenue's appeal against the Order of this Bench dated 25.09.2018 and thus the goods manufactured by the Respondent are Chewing tobacco as claimed by them and not Zarda Scented Tobacco as confirmed by the Revenue.

4. Heard both the sides and perused the records of the case.

5. On going through the grounds of appeal we find that it is not clear from the grounds of appeal as to whether the Department is disputing the payment of interest to the Appellants on the amount deposited by them or they are agitating against the issue of classification of tobacco on merits. We find that at B4 of the grounds of appeal, Revenue states that the Department has gone into an appeal before the Hon'ble Supreme Court against the Final Order passed by this Bench on 25.09.2018 in respect of the classification of goods manufactured by the Respondent.

6. It has been brought to our notice by the Learned Counsel of the Respondent that the Hon'ble Supreme Court has since dismissed the appeal filed by the Department and as such the issue of classification is no longer *res integra*. To that extent we find that there is no force in the grounds of the appeal filed by the Appellant. On going through the records of the case, it appears, that the Respondent have never accepted the classification arrived at by the Revenue and have been agitating the same. Under the circumstances the amount was deposited by them under protest. A Show Cause Notice was issued to the Respondents proposing appropriation of the amount paid by them. The proceedings initiated by the said Show Cause Notice have culminated by the issue of the Order by this Bench dated 25.09.2018. The appeal against the same stands dismissed by the Hon'ble Supreme Court.

7. It is not brought on record that the Respondent have paid the duty on zarda scented tobacco and have filed a claim for the same under the circumstances. The contention of the Department that the Appellants paid duty and sought refund of the same is not well founded. The very Show Cause Notice which was issued to appropriate the amount deposited by the Appellants has been set aside by this Bench and therefore, the fact that the appellants deposited an amount, and not duty, is settled.

8. We find that the Order dated 14.11.2018 of the Assistant Commissioner clearly records that the Respondents are eligible to get the refund for an amount and not as duty. We find that the said findings of the Assistant Commissioner are not challenged by the Revenue. It is not open for the Revenue to dispute that amount before this Bench at this juncture. Therefore, we are of the considered opinion that the amount paid by the Appellants is only Revenue deposit and as such the jurisprudence evolved in relation to the to the grant of refund of deposit and interest are squarely applicable. Accordingly, we are of the considered opinion that Revenue has not made out any case against the impugned order dated 08.05.2019 passed by the Commissioner (Appeals).

9. In result, appeal filed by the Revenue is dismissed with consequential relief, if any, as per law to the Respondent.

(Pronounced in open court on 15.04.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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