CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 55215 of 2014

[Arising out of Order-in-Original No. 36/CE/CHD-II/2014 dated 02.07.2014 passed by the Commissioner, Central Excise & ST, Commissionerate Chandigarh-II]

Commissioner of Central Excise and Service Tax, Chandigarh II ......**Appellant**
Central Revenue building, Plot No. 19
Sector 17-C, Chandigarh 160017

VERSUS

M/s Tej Ram Dharam Paul ......**Respondent**
Factory Road, Mayr Mandi, Bathinda
Punjab 151509

WITH

Excise Appeal No. 55753 of 2014

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Commissioner of Central Excise and Service Tax, Chandigarh II ......**Appellant**
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VERSUS

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Factory Road, Mayr Mandi, Bathinda
Punjab 151509

APPEARANCE:

Shri Goverdhan Dass Bansal, Authorized Representative for the Appellant

Shri Ashwani Sharma, Advocate for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60139-60140/2026

DATE OF HEARING: 09.10.2025
DATE OF DECISION:12.02.2026

S.S.GARG:

The Revenue has filed these two appeals against the common impugned order dated 02.07.2014 passed by the Commissioner of Central Excise, Chandigarh vide which the learned Commissioner has dropped the proceedings initiated against the respondent vide two separate show cause notices dated 07.02.2011 and 10.03.2011, as the issue in both the appeals is identical, therefore, both the appeals are taken up for discussion and decisions, for the sake of convenience, we may take the facts of appeal No. E/55215/2014.

2. Briefly the facts of the present case are that the respondent is registered with the department and were engaged in the manufacture of branded Chewing Tobacco falling under tariff item No.24039910 and paying Central Excise duty in terms of Section 3A of the Central Excise Act, 1944 in respect of 7 Single Track Form, Fill and Seal (FFS) Machines on the basis of annual capacity determined by the Deputy Commissioner, Central Excise Sangrur under the Chewing Tobacco & Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 for the period 08.03.2010 to 31.03.2010 and 01.04.2010 to 31.03.2011. In the capacity determination Order, the Deputy Commissioner has not taken filter pillow sachet making machines under Section 3A of the Act

confirming that these were not subjected to compounded levy. He had also clarified this issue vide his letter dated 07.04.2010.

2.1 The Central Excise Hqrs. Officers searched the premises of the respondent on 16-6-2010 and the manufacturing process employed by them was ascertained as under:

Nine Form Fill and Pack Machines were found installed and working with the aid of power. Paper Rolls are put on the said machine; tobacco is put into the hoppers fitted on the machines. The machines automatically form the filter pouches or sachets, fill these with chewing tobacco and seal them. The sachets at this stage are without any marks or numbers and do not contain any details of manufacturer, product, health hazards or MRP etc. Then 10 such sachets are manually filled by the labour into Pouches which contain the requisite details of the product, brand, name of the manufacturer, health warning, MRP etc. The Pouches purchased from the market are pre-zipped and pre-sealed from three side (upper side also pre-zipped). Then the pouches containing 10 filter sachets are sealed by the labour with the aid of Continuous Band Sealing Machines which are run on electricity. The process was verified and samples of the filter khaini sachet, sealed pouches containing filter sachets and empty pouches were drawn under Panchnama dated 16-6-2010 Shri Sandeep Kumar son of Shri Ramesh Kumar. authorized signatory of the party in his statement dated 16-6-2010 recorded on the spot admitted the process of manufacture as detailed above.

2.2 The respondent sought clarification vide letter dated 15.03.2010 and 07.4. 2010 from the Deputy Commissioner, Central Excise Division, Sangrur regarding packing of mini filter pouches and for installation of above mentioned machines for the manufacture of filter tobacco pillow pouches. In the said letter dated 07.04.2010 the respondent referred to Board's letters F. No. 341/49/2008-TRU(Pt-1) dated 04.08.2008 and the clarification given by the Assistant Commissioner of Central Excise Kundli Division (Distt Sonipat) That the small pouches would be packed in a big pouch manually and duty would be paid as leviable under Section 3 & 4 of the Act.

2.3 The Deputy Commissioner, Division Sangrur vide his letter dated 07.04.2010 clarified the issue raised by the respondent, therefore, the clarification dated 07.04.2010 of the Deputy Commissioner was examined by the Commissioner, Central Excise Commissionerate, Chandigarh-II, it was reviewed under Review Order dated 02.07.2010 and an appeal was filed before the Commissioner (Appeals), Central Excise, Chandigarh against the said order/clarification dated 07.04.2010; therefore, in view of the above review order/appeal, a show cause notice was issued to the respondent alleging that the process of putting filter pillow sachets into pouches manually at the intermediate stage does not render the goods as being not notified under section 3A of the Act. The explanation to notification 10/2010-C.E.(N.T.) mentioned that "packing machine" includes all types of packing machines; and after putting the filter pillows into the said Pouches, the pouches are sealed by the labour on the continuous band sealer machines which are run with the aid of electricity. That Board's letter F.No.341/24/2010-TRU dated 05.03.2010 does not cover the situation where the filter pouches containing khaini are manufactured with the aid of packing machines. That this clarification does not envisage the situation where small sachets are formed with the help of filling/packing machines and then put manually in another pouch and sealed with help of electricity aided band sealer machines. That as per the Explanation 5 to the Notification 16/2010-CE dated 27.02.2010 inserted vide Notification No. 19/2010-C.E. dated 13.04.2010 the words 'with the aid of packing machine" are to be read with the words 'chewing tobacco' which is packed in sachets of filter paper or fabric' and not otherwise. That the Notification no.19/2010-C.E. dated 13.04.2010 being an amending notification cannot be read in isolation but has to read along with the provisions contained in Notification No. 10/2010-C.E(N.T) dated 27.02.2010 and 16/2010-CE dated 27.02.2010. After following the due process, the adjudicating authority dropped the proceedings initiated vide show cause notice dated 10.03.2011 observing that the said show cause notice was issued as an offshoot of the impugned order dated 07.04.2010 of the Deputy Commissioner, Central Excise, Sangrur which was upheld by the Hon'ble CESTAT. Further, the Hon'ble CESTAT order dated 17.06.2013 had since been accepted by the department during the review proceedings and held that in these circumstances, the show cause notice issued to the respondent holds no grounds and is thus liable to be dropped. Hence, the present appeal filed by the Revenue.

3. Heard both the parties and perused the material on record.

4. Learned authorized representative for the Revenue submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law and the relevant notifications. He further submits that the definition of "packing machine" includes all types of FFS machines and Profile Pouch Making Machine, for packing of pouches of notified goods. He further submits that inclusive definition covers all types of packing machines. Thus, the 'Continuous Band Sealer machine, used by the respondent in packing of Pouches, is covered under the above mentioned definition of packing machine. He further submits that respondent's claim that in view of the Explanation 5 to the Notfn. No.16/2010-C.E. dated 27.02.2010, (as amended) they did not attract levy under Compounded Levy scheme made applicable under Section 3A of the Act has no substance.

4.1 Learned authorized representative for the Revenue also refer to the Board's letter F.No.341/24/2010-TRU dated 05.03.2010 which covers the processes where the filter pillow sachets are filled into the said Pouches, and then the pouches are also packed and sealed manually whereas as per the process undertaken by the respondent, the pouches though filled manually by the labour are sealed with the help of continuous band sealer machines which are run with the aid of electricity. He further submits that the Board's clarification does not cover the case of the respondent.

5. On the other hand, learned counsel for the respondent reiterated the findings of the impugned order passed by the Commissioner. He further submits that this issue is no more *res*

integra and the Commissioner (Appeals) in their own case for the earlier period vide its order dated 21.04.2011 has allowed the appeal of the respondent and set aside the demand. The said order was challenged by the Revenue before the CESTAT and CESTAT vide its order dated 17.06.2013 dismissed the appeal of the Revenue and the same is reported in ***2013 (297) E.L.T. 125 (Tri. – Del.)*** in the appellant's own case of ***Commissioner of C.Ex. Chandigarh Vs. Tej Ram Dharam Paul***. He further submits that the appeal of the Revenue should be dismissed by following the ratio of the CESTAT decision (cited supra) which has been subsequently accepted by the Revenue and has not appealed against.

6. We have considered the submissions of both the parties and perused the material on record and the judgment of this Tribunal dated 17.06.2013 vide which the Tribunal has dismissed the appeal of the Revenue on identical issue; in this regard, it is relevant to reproduce the relevant findings recorded in the following paras:

> *"9. After hearing both the sides we find that the issue required to be decided in the present appeal is as to whether the filter khaini pouches manufactured by the respondents with the help of pecking machines are required to be considered as notified goods in terms of Notification No. 10/2010-C.E (NT), dated 27-2-2010 and whether the same are required to be taken into consideration while determining the annual capacity of production and collection of duty. We note that there is not much dispute on the facts of filter khaini pouches admittedly being manufactured with the aid of the packing machine which operate with the aid of power Ten of such filter khaini pouches are further packed in packed plastic pouches manually and without any packing machine.*

10. We note that Commissioner (Appeals) has taken into consideration the Capacity Determining Rule 2010 along with various notifications issued in terms of the said Rules He has considered the explanation (5) inserted by Notification No. 26/2010 by way of amendment vide Notification No. 19/2016-C.E dated 13.04.2010. The siad explanation reads as under:-

"For the purpose of this Notification, "filter khaini" means Chewing tobacco which packed in sachets of filter paper of fabric before being packed in pouches with the aid of a packing machine."

11. The Commissioner (Appeals) has further observed as under:-

" I find that the explanation 5 inserted vide the Notification No. 19/2010 is of clarifactory nature as the same defines the meaning of filter khaini, for the purpose of original Notification No. 16/2010, dated 27.02.2010. In my opinion the need to define arose due to disputes as to the meaning of 'filter Khaini', being a new product/form of chewing tobacco, developed by the manufacturers for the safety of the consumers as it avoids a direct contact of tobacco leaves with the mouth, thereby reducing the hazardous effects, thereof.

True purpose of Explanation 5 of the Notification to 16/2010 inserted vide notification the 19/2010 can be understood in proper perspective on the following way. The Notification reads as:

- *filter khani means chewing tobacco which is packed in sachets of filter paper of fabric*

- *before*

- *being packed in pouches with the act of Packing Machine*

> *The first part of Explanation explains what a 'filter khaini' that is why the expression used is filter khaini means …… Filter Khaini is nothing but chewing tobacco packet in filter paper/fabric*

It is the second part of the explanation which reveals the intent of the scheme. It is the activity of packing of sachets into pouches with the aid of packing machines which will bring the product into purview of compounded levy scheme.

Since earlier notifications. Notification Nos 10/2010 11/2010 16/2010 did not mention filter Khaini, there arose the need for addition of explanation 5 to notification No. 16/2010.

Filter khaini is called filter khaini precisely due to the fact that chewing tobacco is packed in a fitter paper, meaning till the time, tobacco is packed in filter paper/fabric, it remains chewing tobacco, it is called filter khaini only after the same is packed in filter paper/fabric. So packing of tobacco into filter paper is actually a processing stage, and packing stage is arrived only when the same are put in plastic pouches."

12. The reasoning adopted by the appellate authority for grants of relief to the respondent is as under:

> *"I find that the department, in the grounds of appeal, has driven a different meaning to the simple words of the explanation, by stating that "The words with the aid of packing machine are to be read with the words chowing tobacco which is packed in sachets of filter paper or fabric and not otherwise I do not agree with the contention and feel that the twist of the words would affect the very essence of the explanation and the resultant law that has been intended to be framed by the legislature. Had the intention been there to read*

the words with the aid of packing machine with the words "chewing tobacco' the word 'with the aid of packing machine would have been used next to the words which is packed in sachets of filter paper or fabric. The activity of packing of chewing tobacco in sachets/filter paper has not been qualified with the words with the aid of packing machine The word 'with the aid of packing machine is used the activity of further packing in pouches. The said clarification clear ambiguity or doubt, if any, on the applicability of Section 3A of Central Excise, which is intended to charge duty on compounded basis on pouches, packed with the aid of packing machines. But that being not so, the intention is clear from the words that only the pouches that are packed with the aid of packing machine would mean 'filter-khaini for the purpose of Section 3A and not otherwise. The wordings of the notification cannot be customized in order to give it a different meaning, I place reliance upon the Apex Court's decision in the case of Rukmani Packkwell Traders-2004 11651LE LT 481 (S.C.), in this regard. Even if the plea taken by the Department in grounds of appeal is taken into consideration, consideration, though the same is not admitted, then both the activities ce packing of chewing tobacco in sachets/filter paper and their further packing into pouches should be done with the end of packing machine. But, it is admitted fact that the activity of packing of sachets/pillow, in pouches is done manually by the respondent. Therefore, it does not fall in the purview of compounded levy scheme as per Section IA of the Central Excise Act by virtue of Explanation 5 of Notification No. 19/2010, read

> *with C.B.E.C letter dated 5-3-2010. Appellant has referred to Explanation of Notification No. 16/2010 inserted Notification No 19/2010 as well as Board's letter dated 5-3-2010 in their appeal but the inference sought to be drawn from them are erroneous and not biome out borne out of the wording of the Explanation and clarification as above."*

13. He has also referred to the Board's letter No. 341/24/2010/TRU, dated 53-2010 which reads as under:

> *"I am directed to say that certain issues have been raised by field formations as well as trade regarding implementation of compounded levy scheme for chewing tobacco and branded unmanufactured tobacce with effed from 1-2010. These issues have been examined and the following instructions are being issued in terms of Rule 19 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 mad with Rule 31 of Central Excise Rules, 2002:-*
>
> *(1) .....*
>
> *(2) ......*
>
> *(3) Requests have also been received to clarify whether manual packing of pouches of notified goods and their further sealing with the help of heat sealers/band sealers/candies/hot iron would come within the purview of compounded levy scheme or not. The scheme covers the said notified goods manufactured with the aid of packing machine However, there is no intention to levy duty on compounding basis on pouches*

> *which have not been packed with the aid of packing machines but are packed manually with the help of hand operated filters or spoons or a similar manually operated device and sealed with heat sealers/band sealers/candles/hot iron and the like. These would be leviable to duty in terms of Section 3 of the Central Farm Act, 1944 It is also clarified that the manufacturer would also be allowed to keep packing material required for packing of such manually packed pouches in his factory premises."*

14. After taking into consideration the entire facts ne has held that in terms of Explanation 5 and the clarification given by the board he came to conclusion that Section 3A covers only pouches packed with the aid of packing machine and not the pouches that are packed manually. Inasmuch as the plastic pouches, in the present case, are pre-sealed and zipped from one side and the sachets are put in manually and the pouch is sealed with the help of not iron/band sealer, it cannot be said that the plastic pouches are packed with the help of packing machine.

15. We note that the filter khaini, pillows/sachets packed with the aid of packing machine da not bear machine arty brand name, MRP, warnings as to health hazards and manufacturer's particulars, as required under the Capacity Rules, it cannot be held that the same are notified goods in terms of the compounded levy rules The same are more or less like the Tea bags, which are without any brand, name or carrying any other requisite information and which are ultimately packed in the final containers carrying various requisite information only the final container, which can be held to be as the final product. The Tea bags cannot be held to be the product which is marketable in that condition inasmuch as not even the manufacturers name is described *on the same. As such, even if the Tea packs are manufactured with the aid of power, they cannot be considered to be notified goods in terms of the Capacity Determination Rules. As such, we agree with the lower authorities that the packing machine used for packing of filter khaini pouches/pillows/sachets cannot be considered to be notified item arid the goods manufactured with the aid of packing machine would not be covered under the compounded love rules They are required to discharge duty not in terms under the said Rule, but in terms of us l provisions of law. For the similar reason in the pillow packing machine for the manufacture of the sets would not be taken into consideration for determining the annual capacity of production and collection of duty*

16. In view of the forgoing we find no ground to interfere in the impugned order of authorities below The Revenue's appeals are accordingly rejected.

8. By following the ratio of the decisions (cited supra), we are of considered opinion that there is no infirmity in the order passed by the Commissioner and we uphold the same by dismissing both the appeal of the Revenue.

(Order pronounced in the open court on 12.02.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash