

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 1871 of 2012**

[Arising out of Order-in-Appeal No. 129-137/BK/PKL/2012 dated 30.03.2012  
passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

**M/s Shiva Tobacco Co.**  
Novelty Road, Ambala

**.....Appellant**

*VERSUS*

**Commissioner of Central Excise,  
Delhi-III**  
Plot No.36-37, Sector-32, Gurgaon,  
Haryana-122021

**.....Respondent**

**WITH**

- 2. EXCISE APPEAL NO. 1872 OF 2012 [Shiva Tobacco Co.]**
- 3. EXCISE APPEAL NO. 1873 OF 2012 [Shiva Tobacco Co.]**
- 4. EXCISE APPEAL NO. 1874 OF 2012 [Shiva Tobacco Co.]**
- 5. EXCISE APPEAL NO. 1875 OF 2012 [Jagan Nath Om Prakash]**
- 6. EXCISE APPEAL NO. 1876 OF 2012 [Jagan Nath Om Prakash]**
- 7. EXCISE APPEAL NO. 1877 OF 2012 [Sudarshan Tobacco Pvt. Ltd.]**
- 8. EXCISE APPEAL NO. 1878 OF 2012 [Sudarshan Tobacco Pvt. Ltd.]**
- 9. EXCISE APPEAL NO. 1879 OF 2012 [Sudarshan Tobacco Pvt. Ltd.]**

[All Arising out of Order-in-Appeal No. 129-137/BK/PKL/2012 dated 30.03.2012  
passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon]

**APPEARANCE:**

Shri Naveen Bindal, Advocate for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60291-60299/2026**

DATE OF HEARING: 20.03.2026

DATE OF DECISION: 08.04.2026

**P. ANJANI KUMAR:**

The present appeals are directed against the impugned order dated 30.03.2012 passed by the Commissioner of Central Excise, Delhi-III, Gurgaon. The details are as follows:

Appeal No.	Appellant	Period	Duty/penalty demanded
E/1871/2012	Shiva Tobacco Co.	01/2009 - 03/2009	26,104
E/1872/2012	-do-	05/2006 to 03/2008	67,280
E/1873/2012	-do-	2009-10	6200
E/1874/2012	-do-	03/2003 to 02/2004	1,12,722
E/1875/2012	Jagan Nath Om Prakash	03/ 2003 to 12/2003	4,51,104
E/1876/2012	-do-	12/2004 to 03/2007	2,55,714
E/1877/2012	Sudarshan Tobacco Pvt. Ltd.	05/2006 to 03/2007	5249
E/1878/2012	-do-	2009-10	1,06,457
E/1879/2012	-do-	03/2003 - 02/2004	3,64,710

2. Brief facts of the case are that the appellants were engaged in manufacture of branded chewing tobacco falling under Central Excise Tariff Heading 2404.41 (now 2403.99.10) after certain time, the appellants started manufacturing a variety of tobacco known as spit tobacco classifying the same under 2404.49 (now 2403.99.90). Revenue, on conduct of an investigation against the appellants, was of the opinion that the impugned goods i.e spit tobacco was classifiable under 2404.41 and 2404.49 as classified by the appellants and that the product manufacture by the appellants was

chargeable to central excise duty in terms of Section 4A and not Section 4 w.e.f. 01.03.2003. Various show cause notices were issued to the appellants. The original authority, in the first round of litigation, concluded that the appellants have classified the goods correctly as spit tobacco; Commissioner (Appeals) upheld the order. On an appeal filed by Revenue, this Bench vide order dated 28.10.2009 remanded the case back to the original authority for fresh adjudication. In pursuance of the directions given by this Bench, samples of impugned goods i.e branded spit tobacco were drawn on 20.04.2010 and were sent to the Chemical Examiner, CRCL, New Delhi, who vide reports dated 02.06.2010 & 28.07.2010 opined that the product was manufactured tobacco and as per the classification given on the website of National Institute of Dental & Craniofacial Research (NIDCR). Accordingly, the original authority confirmed the duty demanded in the show cause notices along with equal penalty. Commissioner (Appeals) vide the impugned order dated 30.03.2012 upheld the original orders. Hence, these appeals.

3. Shri Naveen Bindal, learned counsel for the appellants submits that the impugned product cannot be covered under the definition of chewing tobacco as the same is not chewed but spit out after keeping some time in the mouth; the ingredients and the process of manufacture are different; reliance on NIDCR is not relevant as they place snuff, chewing tobacco and smokeless tobacco in the same category whereas as per the tariff snuff falls under 2403.99.60 and chewing tobacco under 2403.99.10. The impugned product is further processed after dipping the chewing tobacco in different flavours. He submits that the burden of proving the classification is on the

Department as held in Garware Nylon – 1996 (87) ELT 12 (SC) and Megha Plastics Ltd. – (2023) 3 CENTAX 238 (Cal.). He submits that penalty cannot be imposed in an issue involving classification as held in Chakkiath Brothers – (2014) 3 KLT 222 and J K Synthetics – (1994) 4 SCC 276.

4. Learned counsel further submits that the issue of classification in the impugned case is of only academic importance. He submits that the Revenue proposes to levy duty under Section 4A of the Central Excise Act, 1944. The impugned product i.e. spit tobacco is packed in small pouches of 5 gm and 9 gm in any case less than 10 gm; therefore, the same is entitled to exemption under Rule 34 (1) (b) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977; it was held in Loknath Prasad Gupta – 2006 (204) ELT 412 that 25 pouches of Khaini, each containing 5 gm/ 9 gm do not attract the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

5. Shri S.K. Meena, learned Authorized Representative for the Department reiterates the findings of the impugned order.

6. Heard both sides and perused the records of the case. We find that though the Revenue has gone into the issue of classification, we find force in the argument of the learned counsel for the appellants that the decision on classification will have no bearing on the outcome of the case as the crux of the issue is whether the 4gm/ 09 gm pouches are chargeable to duty under Section 4A. We find that Rule 34 (1) (b) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 exempts the packages

containing 4 gm/ 9 gm from the purview of the Act and Rules. We find that CBEC Circular No.492/58/99-CX confirmed the same. The Circular clarifies that:

Rule 6 of the aforesaid rules requires declarations of certain particulars to be made on every package intended for retail sale. Retail sale price of the package is one such detail to be declared by a manufacturer/packer. Further Rule 17(1) provides for declaration of certain additional details in respect of multi-piece packages such as sale price of the multi-piece package and the number of individual pieces of the commodity contained in such packages. However under Rule 34 exemption in respect of certain packages have been provided. In particular sub-rule (b) to Rule 34 provides that the MRP provisions do not apply to a package containing a commodity if the net weight or measure of a commodity is 10 grams or 10 ml or less, if sold by weight or measure. Some manufacturers have claimed that the multi-piece package containing individual pieces of less than 10 grams or 10 ml or less, even though the net quantity of such multi-piece package exceeds 10 grams or 10 ml would be covered by the above exemption. Hence they would not required to be assessed to excise duty on the MRP prices under Section 4A of Central Excise Act, 1944.

7. In view of the above, we find that the Revenue has not made out any case to demand duty on the 04gm/ 09 gm pouches manufactured by the appellants. Though, the Revenue alleges that the appellants have manufactured and cleared 15gm pouches, no evidence, to that effect, have been produced; in fact, Assistant Commissioner vide letter dated 17.12.2025 addressed to the Additional Commissioner (Review) informed that there is no pouch-wise breakup; though Shri Raghubir Kaushal, Manager of M/s Sudharshan Tobacco stated on 04.02.2004 that the unit was packing 15gm pouches, no quantity-wise details were available; they are

unable to calculate the duty liability on the 15gm pouches in the absence of record of duty payment. Therefore, we find that other than making an allegation, Revenue did not provide any quantifiable data of 15gm pouches manufactured/ cleared by the appellants and the applicable duty on the same. The same was also not given in the show cause notice. Under the circumstances, there are no reasons to disbelieve the version of the appellants. Moreover, the benefit of doubt, if any, should always go to the appellants.

8. In view of the same, we are of the considered opinion that the issue of classification need not be gone into in the impugned case as the duty demand was on the basis of Section 4A and due to the fact that, Department did not allege any under-valuation per se. We are also of the considered opinion that the 4gm/ 9gm pouches manufactured and cleared by the appellants do not attract the provisions of Rule 34 (1) (b) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and hence, the provisions of Section 4A of Central Excise Act are not attracted. In view of the same, all the appeals are allowed.

(Order pronounced in the open court on 08/04/2026)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**