

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

REGIONAL BENCH – (E-HEARING)

EXCISE APPEAL No. 60336 of 2021

(Arising out of Order-in-Original No. 27/CE/COMMR/VMJ/RTK/21-22 dated 18.3.2021 passed by COMMISSIONER OF CENTRAL GOODS & SERVICE TAX-Rohtak)

M/s. Tej Ram Dharam Paul

Village Nathupur,
Sonapat, Haryana 131029

...Appellant

Versus

**Commissioner of Central Goods,
And Service Tax, Rohtak**

2nd Floor, Pacific Centre,
Opposite Shangrila Hotel,
Near Jat Bhawan, Delhi Bypass,
Rohtak Haryana

....Respondent

APPEARANCE:

Sh. Vivek Kohli & Sh. Ashwani Sharma, Advocates for the Appellant
Sh. Rajeev Gupta, Ms. Swati Chopra & Sh. Munish Arya, Authorised
Representative for the Respondent

**CORAM : HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: **4.7.2022**

Date of Decision: **8.8.2022**

FINAL ORDER No.: 60075/2022

AJAY SHARMA

This appeal has been filed impugning the Order-in-Original dated 18.3.2022 passed by the Commissioner, Central Tax (GST & CE), Rohtak by which the learned Commissioner confirmed the Central Excise duty along with interest and penalty as demanded in the show cause notice.

2. The issue involved in this appeal relates to classification of the goods manufactured by the appellants as to

whether that product is chewing tobacco classifiable under heading 24039910 as claimed by the appellants or its jarda scented tobacco classifiable under heading 24039930 as claimed by the revenue?

3. The appellant submitted duly filled Form-I on 5.3.2015 w.e.f. 10.3.2015 declaring that one number of single track FFS pouch packing machine (purchased on 9.3.2015) installed in the factory will be used for production of '*Maha Pasand Jarda Scented Tobacco*' (without lime tubes) and paid duty for the period 10.3.2015 to 31.3.2015 as per Form-2 dated 17.3.2015. The department drew samples of *Maha Pasand Jarda Scented Tobacco* (without lime tube) vide panchnama dated 13.3.2015 from the appellant's premises and forwarded the same to Central Revenues Control Laboratory (CRCL), New Delhi for testing and vide communication dated 27.4.2015 informed the appellants that as per the report of CRCL dated 23.3.2015 "*the sample is in the form of brown coloured dried cut pieces of vegetable matter. It is a preparation containing tobacco, lime and flavoring agents. It is other than Jarda Scented Tobacco. It has the characteristic of Khaini*" and therefore the product is classifiable under chapter sub-heading 24039910 as *Chewing Tobacco (other than filter khaini)* and not under CESTH 24039930. The aforesaid report of CRCL as well as the direction of the department in its communication dated 27.4.2015 was accepted by the Appellant and they communicated the same to the department vide their letter dated 15.6.2015 and accordingly

they filed challan dated 12.6.2015 for the differential duty alongwith interest on *Maha Pasand Chewing Tobacco*.

4. Although as per the direction of department the appellant started classifying the product as *Chewing Tobacco (without lime tube)* under CETH 24039910, but again sample of *Mahapasand Chewing Tobacco* (without lime tube) was drawn by department from the premises of appellant on 29.5.2015 and sent for testing to CRCL on 3.6.2015 and the CRCL vide its report issued through communication dated 20.7.2015 intimated that the sample is in the form of brownish cut pieces of leaves and it is mainly composed of Tobacco and Lime and it has the characteristics of *chewing tobacco*. This time the department went a step ahead and even asked the CRCL about the exact commodity / product and its classification. To which Dr. Purnima Mishra, Chemical Examiner Grade-II, CRCL replied vide communication dated 27.7.2015 by referring to para 70(B) and (C) of manual of the Revenue Laboratories stating that "assessing offices at various levels should not ask the Deputy Chief Chemist/Chemical Examiner to give the tariff classification."

5. Thereafter again various samples were drawn by the department in the month of December, 2015 of Premium Maha Pasand Chewing Tobacco (with lime tube) from the premises of the appellant and sent the same to CRCL and this time they asked the CRCL to confirm whether the appellants have correctly classified their product or the product is appropriately classified under CETSH 24039930 (Jarda Scented Tobacco) and this time

CRCL vide Test Memo Nos. 16/2015, 17/2015 & 18/2015 all dated 14.12.2015, mainly on the basis of content of calcium which was 0.17%, concluded that the sample has the characteristics of *Jarda Scented Tobacco*. Accordingly the department issued Capacity determination order dated 18.12.2015 and calculated the annual capacity of production of the appellants w.e.f. 23.5.2015 as 8,36,65,000 pouches for the financial year 2015-16 in terms of Rule 6 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 and vide letter dated 21.12.2015 the Appellant was directed to deposit the differential duty between *Chewing Tobacco* and *Jarda Scented Tobacco* alongwith interest till date. Although the appellants requested for show cause notice, but substantial amount was also deposited by the Appellants 'under protest' in order to avoid further financial hardships in the meantime.

6. Thereafter a show cause notice dated 1.7.2016 was issued by the department as to why:-

- i) Central Excise duty amounting to Rs. 4,47,72,842/- (Rupees Four crore, Forty Seven lacs, seventy two thousand eight hundred and forty two only) should not be determined, demanded and recovered from them by invoking the extended period of five years under the provisions of Section 11A of the Central Excise Act, 1944 read with Rules 7, 8, 9 and 19 of Chewing Tobacco and un manufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.
- ii) Central Excise Duty amounting to Rs. 1,86,64,055/- deposited by the party under protest, as informed by the party to the Assistant Commissioner, Kundli vide their letter dated nil received in Kundli Division on 20.01.2016 and also informed by Shri Ram Gopal Yadav in his statement dated

27.01.2016 should not be appropriated against the duty proposed to be demanded above.

iii) Interest at appropriate rate should not be demanded and recovered from them on the proposed demand of duty mentioned at (i) above by invoking the extended period of five years under Section 11AA of the Central Excise Act, 1944; and

iv) Penalty under Section 11 AC of Central Excise Act, 1944 and Rule 25 of Central Excise Rules, 2002 read with Rule 18 of the Chewing Tobacco and un manufactured Tobacco Packing machines (Capacity Determination and Collection of Duty) Rules, 2010 should not be imposed upon the party for contravention of Rules 6, 7, 8, and 9 of the Chewing Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (as amended).

7. The Adjudicating Authority vide impugned order dated 18.3.2021 confirmed the demand of Central Excise duty of Rs.4,47,72,842/- alongwith interest and equal amount of penalty and ordered for appropriation of the amount of Rs.1,86,64,055/- deposited by the appellants. And also imposed a penalty of Rs. 25 lakhs on Sh. Nutesh Kumar Singla, Partner and of Rs. 1 lakh on Shri Ram Gopal Yadav.

8. Learned senior counsel appearing for the appellant submits that the appellant has classified its product as 'Chewing tobacco' as per the instruction of department as contained in communication dated 27.4.2015 which is as under:-

"..the product being manufactured by you is other than Jarda Scented Tobacco having characteristics of khaini which is form of Chewing Tobacco. Hence the product being manufactured by you is classifiable under Chapter sub-heading 24039910 as Chewing tobacco (other than Filter Khani)"

And only pursuant to the aforesaid direction of the department, the appellants filed the declaration for the subsequent months by classifying its product as 'Chewing tobacco' and discharged the

duty liability during the disputed period. Learned counsel also submits that initially the appellants declared their product as Jarda Tobacco classified under heading 24039930 but then the department after getting the testing done insisted the appellant to change the classification as 24039910- Chewing Tobacco as at that time the duty on chewing tobacco was more as compared to Jarda tobacco and the appellant changed the classification and paid the differential duty, but thereafter, later at some point of time rate of duty on tobacco product increases and that of chewing tobacco reduced, the department is now asking the appellant for changing the classification to 24039930-Jarda Tobacco and to pay differential duty on it w.e.f May, 2015 to December, 2015. He further submits that the CRCL's last test report, which has been relied upon by the department, based only on the test of calcium and concluded that the sample has the characteristics of Jarda Scented Tobacco and there is no indication in the test report as to what is the definition of jarda scented tobacco and chewing tobacco and under which parameter test of sample conducted viz. moisture content, Nicotine, Ash etc. as provided in the Bureau of Indian Standards (BIS) specifications. According to learned counsel the Chemical Examiner failed to provide the parameter/standards set out for Jarda Scented Tobacco during her cross-examination. Learned counsel also submits that the respondents have proceeded only on assumptions and presumptions and failed to produced any evidence in support of their classification, whereas it is settled principle that the classification has to be proved by the

department with evidences only and not merely on the basis of statements without any corroborative evidence. According to learned counsel Additive Mixture (Kimam) and Perfumery compound is not a scent and the same has been held to be chewing tobacco or preparation for chewing tobacco by the Hon'ble Supreme Court in the matter of **Gopal Zarda Udyog vs. CCE, New Delhi; 2005(188) ELT 251 (SC)** and also in **Dharam Pal Satyapal vs. CCE, New Delhi; 2005 (183) ELT 241 (SC)**. He further submits that the product in issue is known as chewing tobacco in Trade Parlance and the respondent has altered the classification only due to imposition of higher amount of duty on *jarda scented tobacco* as compare to *chewing tobacco* w.e.f. May, 2015 under compound levy scheme. The calculation of Central Excise duty has also been disputed by the learned counsel and he submits that the respondent has calculated the duty for full months on the assumption that during the disputed period the packing machines operated for full month whereas the fact is that except for August and December, 2015 the packing machines never operated for full months in any other month as from time to time the department kept on sealing and de-sealing the machines. According to learned counsel the duty paid by the appellant under protest is liable to be refunded to them and that no penalty can be imposed on any of the appellants. Per contra learned Authorised representative appearing for the respondent supported the order passed by the Adjudicating Authority and prayed for dismissal of the appeal. According to learned Authorised Representative the product has been rightly classified

as jarda scented tobacco classifiable under heading 24039930 and in support of his contentions learned Authorised Representative mainly relied upon the test report of the samples and the statement of Chemical Examiner Dr.(Ms.) Purnima Mishra. It has also been submitted on behalf of revenue that use of perfumes in manufacturing the product has been admitted by the Authorised signatory as well as the commercial manager of the appellants in their respective statements. Further it has been argued that chewing tobacco consists of various forms including jarda and khaini and classified under Tariff item 24039910 but the moment 'scent' is added to jarda, the product is classified as jarda scented tobacco Tariff item 24039930. The CRCL report also mentions presence of 'pleasant odour' which is nothing but scent used in the manufacture. In support of his submissions learned Authorised representative placed reliance on the decisions of the Tribunal in the matter of **Flakes-N-Flavours vs. CCE; 2015(327) ELT 435(T), Urmin Products vs. CCE; 2010(26) ELT 597(T) and Som Products(P) Ltd. Vs. C&ST; 2019(368) ELT 150 (T)**. He further submits that the presence of 'pleasant odour' as certified by the chemical examiner coupled with the statements of the authorised signatories of the appellant clearly establishes the product to be *jarda scented tobacco*. He also submits that when the product can be classified as per the contents there is no need to resort to common parlance test. On the issue of wrong calculation of duty learned authorised representative submits that the duty has been rightly calculated as in terms of Rules 7,8,9 & 10 of the *Chewing*

Tobacco and Unmanufactured tobacco Packaging Maching (Capacity Determination and Collection of Duty) Rules, 2010, the central excise duty on all the machines, including the machines which were put into operation even for a day during a particular month, is required to be paid for full month. Learned authorised representative also submits that no case is made out by the appellant for setting aside penalty as the appellants had deliberately mis-declared their product in order to avoid higher amount of duty. He accordingly prayed for dismissal of the appeal.

9. We have heard learned Senior counsel for the appellants and learned Authorised Representative for the Revenue and perused the case records including the case laws and the written submissions/additional written submissions submitted by the respective sides. Admittedly Chapter 24 of the Central Excise Tariff which relates 'Tobacco and Manufactured Tobacco substitutes has not defined Chewing Tobacco and Jarda Scented Tobacco. In the same way section / chapter heading notes in chapter 24 of HSN are silent on this issue. The department rests its case only on the basis of Test Reports under Test Memo No.16-18 dated 14.12.2015 of CRCL. The said test reports are as under:-

"(1) Sample is in the form of yellowish brown coloured cut-pieces of leaves having pleasant odour packed in unit packing having printed description "Premium Maha Pasand Chewing Tobacco."

It is a preparation containing small bit of processed tobacco leaves with flavouring agent, it does not contain added slacked lime.

Analytical finding of sample are as below:

<i>Avg. Wt. of Pouch with Sample</i>	<i>=1.59 gms</i>
<i>Avg. Wt. of Sample per Pouch</i>	<i>=1.10 gms</i>
<i>Avg. Wt. of packing material per pouch</i>	<i>=0.50 gms</i>
<i>Content of Calcium</i>	<i>= 0.17% by wt.</i>

*Sample has the characteristics of Jarda Scented Tobacco.
Sealed remnant sample returned."*

"(2) Sample is in the form of yellowish brown coloured cut-pieces of leaves having pleasant odour packed in unit packing having printed description "Premium Maha Pasand Chewing Tobacco."

It is a preparation containing small bit of processed tobacco leaves with flavoring agent, it does not contain added slacked lime.

Analytical finding of sample are as below:

<i>Avg. Wt. of Pouch with Sample</i>	<i>=1.59 gms</i>
<i>Avg. Wt. of Sample per Pouch</i>	<i>=1.10 gms</i>
<i>Avg. Wt. of packing material per pouch</i>	<i>=0.50 gms</i>
<i>Content of Calcium</i>	<i>= 0.13% by wt.</i>

*Sample has the characteristics of Jarda Scented Tobacco.
Sealed remnant sample returned."*

"(3) Sample is in the form of yellowish brown coloured cut-pieces of leaves having pleasant odour packed in loose packing.

It is a preparation containing small bit of processed tobacco leaves with flavoring agent, it does not contain added slacked lime.

Analytical finding of sample are as below:

<i>Content of Calcium</i>	<i>= 0.17% by wt.</i>
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*Sample has the characteristics of Jarda Scented Tobacco.
Sealed remnant sample returned."*

The test report seems to be based upon the content of calcium as except calcium content no other compound has been mentioned in the analytical finding of sample. The Adjudicating Authority also arrived at the conclusion that the product in issue is jarda scented tobacco classifiable under Tariff Item

No.24039930 mainly on the basis of test report and statement the chemical examiner. We have gone through the statement of Chemical Examiner Dr. (Ms.) Purnima Mishra and in her cross-examination she has stated that the samples were tested as IS 5643 of 1999 and when she was asked 'In IS 5643 of 1999 is there any parameter / standard set out for zarda scented tobacco', she replied that there is no direct standard set out under IS 5643. She further stated that the definition given under IS 2344 of 1994 were also referred to at the time of report given. She had also referred to the characteristics given in Table-1 of *Flake type chewing tobacco (Zarda)-specification IS 2344 of 1944*, for flake type chewing tobacco zarda, however when she was categorically asked "Did you test the sample for these four characteristics given in Table-1 at serial no. 1 to 4", she replied that "whatever has been tested has been written in the report." But the three reports (supra) nowhere refer to four characteristics as given in Bureau of Indian Standards (BIS) specification, which are *Moisture Content-27, Nicotine-8, Total Ash-25 and Acid insoluble Ash-5*. Although as per BIS these are the four mandatory characteristics of jarda tobacco, but none of these characteristics have been referred to or dealt with by the Chemical Examiner, CRCL in her report although she had referred to the characteristics given in the Table given in BIS specification in her statement. The only content dealt with in the report is 'calcium' which as per BIS specification, is of no relevance in order to determine whether a product is Chewing tobacco or not. There is also no indication in the test report as to

what is the definition of *jarda scented tobacco* and *chewing tobacco* and under which parameter test of sample conducted viz. Moisture content, Nicotine, Ash etc. as provided in the BIS specification. The BIS specifications for chewing tobacco and zarda scented tobacco are as under and the same has also been taken note of by the Tribunal in the matter of *Kaipan Pan Masala Pvt. Ltd. vs. CCE, Bhopal; 2020 (372) ELT 145 (T):-*

S.No.	Criteria	Chewing Tobacco	Zarda scented Tobacco
1.	Moisture content	27	15
2.	Nicotine	8	4
3.	Total Ash	25	28
4.	Acid Insoluble ash	5	5

10. Therefore in our view the conclusion arrived at by the Chemical Examiner, CRCL that ‘sample has the characteristics of *Jarda Scented Tobacco*’ in the test reports (supra) is without any basis and since the CRCL report which has been relied upon by the revenue for changing the classification is not as per the BIS specification, the reliance placed on it by revenue as well as by the adjudicating authority for changing the classification is totally misplaced.

11. Another interesting aspect of the matter regarding the Test Reports is that initially Chemical Examiner, CRCL vide Test Report dated 13.7.2015 concluded that ‘*the sample is in the form of brownish cut pieces of leaves. It is mainly composed of tobacco and lime.*’ There was no reference to ‘pleasant odour’. However, as rightly contended by learned senior counsel, since the revenue did not find the Test Report in their favour, they again requested CRCL for the exact commodity/product and

classification of sample drawn and the exact words were *"kindly confirm whether the party has correctly classified their product, if not intimate correct classification of the product."*. In our view the department should not have asked the CRCL about the classification of the goods as this is not the duty/job of CRCL to classify the goods. The CRCL also vide communication dated 27.7.2015 responded as under:-

"In this regard, it is to inform that the test report issued earlier that the sample is composed tobacco and lime and it has the characteristics of chewing tobacco,.....that assessing officers at the various levels should not ask the Deputy Chief Chemist/Chemical Examiner to give the tariff classification."

The department did not stop here and they keep on sending the samples to CRCL and ultimately in the month of December, 2015 when the samples were sent to CRCL, and this time they asked the CRCL to confirm whether the appellants have correctly classified their product or the product is appropriately classified under CETSH 24039930 (Jarda Scented Tobacco) and ultimately CRCL vide Test Memo Nos. 16/2015, 17/2015 & 18/2015 all dated 4.12.2015 concluded that the sample has the characteristics of *Jarda Scented Tobacco*. The aforesaid events put the entire action of the department as well as CRCL in serious doubt. The chemical examiner has failed to provide the parameters set out for jarda scented tobacco during her cross-examination. Apart from the test report, the revenue has not adduced any evidence to support its proposal to classify the impugned product as jarda scented tobacco and not chewing tobacco.

12. The learned commissioner in the impugned order while taking note of the statements of authorised signatory and also of the commercial manager of the appellants observed that the appellant were using 'scent' as an ingredient while manufacturing their product and since scent is an essential ingredient of jarda, therefore, the product in question is 'jarda scented tobacco' classifiable under tariff item no. 24039930. But in our view the learned commissioner while observing as above, lost sight of the fact that additive mixture (kimam) and perfumery compound is not 'scent' and the same has been held as chewing tobacco or preparation for chewing tobacco by the Hon'ble Supreme Court in the matter of **Gopal Zarda Udyog (supra)** and also in the matter of **Dharam Pal Satyapal (supra)**. From the facts and records of the case we are of the view that the department has failed to discharge its burden of proof and mere presence of scent or pleasant odour in the product without any other supporting evidence that 'jarda scent' has been used in the product as an ingredient, cannot be said to be sufficient for classifying the product as 'jarda scented tobacco'. The learned commissioner has erred in holding that 'scent' is the only ingredient which differentiates chewing tobacco from jarda scented tobacco in addition to fitness of the tobacco leaves as scent is not used in chewing tobacco. The learned commissioner failed to appreciate that 'scent' is different from 'jarda scent'. 'Jarda scent' is available in market and therefore it means that 'jarda scent' is used for manufacturing the jarda scented tobacco and the same has been held by the

Tribunal in the matter of **Urmin Products Pvt. Ltd. (supra)**.

The relevant paragraph of the same is reproduced as under:-

"16.....The appellant never used the Zarda Scent. He drew our attention to the price list of M/s. Gupta & Co. (P) Ltd. submitted by them in their appeal paper book from where it can be seen that zarda scent as such is available in the market and therefore the product zarda scented tobacco would mean that the zarda scent has been used in the manufacture of the same. Since the appellants have never used the zarda scent, the product cannot be classified as zarda scented tobacco."

13. In the present case neither in the show cause notice nor before the adjudicating authority or before us it is the case that the appellant have used 'jarda scent' in their product. Even the statements relied upon by the department nowhere mention that 'jarda scent' has been used by the appellant in their product. The learned commissioner mistook the pleasant odour as mentioned in CRCL test report as scent which is totally different from 'jarda scent', an essential ingredient for manufacturing *jarda scented tobacco*.

14. For the purpose of Central Excise Tariff, jarda scented tobacco and chewing tobacco are different products as they have been specifically covered under two separate sub-headings viz. 24039910 (chewing tobacco) and 24039930 (jarda scented tobacco). Further, the glossary of the terms for tobacco and tobacco products (Third revision of IS 10335) ICS 65.160 for BIS use in para 2.185 defines the term 'Zarda' as a "chewing tobacco product made of highly scented and flavours tobacco flakes, chewing along with betel nuts & pan (betel leaf)". Thus, the BIS defines zarda as a chewing tobacco product which would only mean '*a product containing chewing tobacco*' and not

chewing tobacco per se. If both the products are treated as *jarda scented tobacco* then the same would make the heading 24039910 as redundant. Neither *jarda scented tobacco* nor chewing tobacco have been defined in the Central Excise Act and therefore in order to find out whether the product of the appellant is *jarda scented tobacco* or chewing tobacco, the department ought to have conducted market enquiries with the persons in this trade in order to find out how this product is treated in the market or we can say *Trade Parlance test*. The Hon'ble Supreme Court also in the matter of **Indian Aluminium Cables Ltd. vs. UOI & Ors.; (1985) 3 SCC 284** has laid down that in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expression should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and it is the sense in which they understand it which constitutes the definitive index of the legislative intention. Similarly in the matter of **Reliance Cellulose Products Ltd. vs. CCE, Hyderabad; (1997) 6 SCC 464** the Hon'ble Supreme Court has laid down that if word used in a fiscal statute is understood in common parlance or in the commercial word in a particular sense, it must be taken that the Excise Act has used the word in the commonly understood sense. The sense cannot be taken away by attributing a technical meaning to the word. But if the legislature itself has adopted a technical term, then that technical term has

to be understood in the technical sense. In other words, if in the fiscal statute, the article in question falls within the ambit of a technical term used under a particular entry, then that article cannot be taken away from that entry and placed under the residuary entry on the pretext that the article, even though it comes within the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance. However, in the present case, revenue has not brought on record any evidence in the form of market enquiries to support its case for classification under jarda scented tobacco. The learned commissioner in the impugned order has referred the definition of the expression 'zarda' as defined under BIS specification (*para 2.185 of glossary*) and the same is reproduced hereunder:

"29.3..... zarda (jarda) is a variety of chewing tobacco. In Urdu, it is called zarda. Ordinarily, it is chewed with pan whereas chewing tobacco is consumed with lime in its powder form by rubbing it on the palm with the thumb. The former is a more refined form of chewing tobacco. Further, the glossary of the terms for tobacco and tobacco products (Third revision of IS 10335) ICS 65.160 for BIS use at para 2.185 term Zarda as chewing tobacco product made of highly scented and flavours tobacco flakes, chewed along with betel nuts &, paan (betel leaf)."

We are not able to find anything on record by the revenue in the show cause notice regarding the pattern of consumption of the product of the appellant in issue. Therefore the learned commissioner has erred in not resorting to the *Trade Parlance Test* in the facts of the present case by erroneously observing that as the product can be classified as per the contents, there is

no need to resort to the parlance test. In Trade parlance i.e. from packaging and presentation, sales and distribution and till its consumption by the ultimate consumer the product in issue is known as chewing tobacco only. The learned commissioner has also overlooked that the contents of the product in dispute have been prescribed under the Tariff and therefore the classification cannot be based on contents.

15. Admittedly the pouches of the products in including presentation, sales, distribution and usage issue described the product as '*chewing tobacco*' and in Trade Parlance it is known as 'Chewing Tobacco' only. The manufacturer, distributor and the consumer, everyone understands and consume the product as chewing tobacco only. The Tribunal in the matter of *Flakes-N-Flavours (supra)* has held that in the absence of anything to the contrary, the product in question has to be treated as per the description given by the manufacturer on outer cover of pouch, common parlance and established practice as the *chewing tobacco* or *zarda scented tobacco* have not been defined in the tariff. The relevant para of the said decision is reproduced as under:

"48. In the Tariff the expression chewing tobacco and zarda scented tobacco are not defined as the product has to be classified based upon the description of the product given by the manufacturer on the pouch as well as on the basis of common parlance and established practice. In the present case, as the product in question as per the description of the product is flavor chewing tobacco and it is bought and sold in the market as chewing tobacco. Further the appellant from the beginning classifying the same as chewing tobacco and after the period in dispute also classified the same as chewing tobacco. Hence, I find

merit in the contention of the appellant that the product in question is chewing tobacco and classifiable under heading 24039910 of the Tariff."

16. The similar view has been by the Tribunal in the matter of *Kaipan Pan Masala Pvt. Ltd. (supra)*. The finding by the learned commissioner is totally misplaced that this Tribunal in the matter of *Flakes-N-Flavour (supra)* has observed that jarda scented tobacco was different from chewing tobacco on the ground that it contains 'scent' which is not there in chewing tobacco and that since the assessee therein was not using perfume/scent during manufacturing therefore it was held to be chewing tobacco. While recording the finding the learned commissioner completely overlooked para 8 of the order which reproduced the manufacturing process adopted by the assessee therein. The same is reproduced as under:-

"8. The manufacturing process stand given by the appellants and reproduced in the impugned order. The same is as under:-

"Raw tobacco received from the market is sieved and mixed with 'Additive Mixture' and Glyceerin. The Additive Mixture is of a great significance, which is manufactured by mixing perfumery compounds, received from the Noticee's Delhi unit, as per their formula. To this perfumery mix they further add sada-kiwam, spices and aromatic chemicals, in a mixer to form 'in-house kiwam'. To this in-house kiwam they further add some perfumeries, spices etc. based on the additive mixture to be made for making various types of tobacco to be manufactured. In deluxe varieties silver leave are mixed. After mixing, the manufactured product is packed in various sizes of packing in pouches/tin/jars." **(emphasis supplied)**

17. Therefore in view of the discussions and findings recorded in the preceding paragraphs we are of the considered

opinion in view of the facts of this case the classification given by the appellant is proper and hence the impugned order is set aside and the appeal filed by the appellant is accordingly allowed with consequential relief, if any, as per law.

(order pronounced in the open court on 8.8.2022)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Bhanu