

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 53421 OF 2018

[Arising out of Order-in-Original No.16/COMMR/CEX/BPL-I/2018 dated 16.07.2018 passed by the Commissioner, CGST & Central Excise, Bhopal]

M/s.Kaipan Pan Masala Pvt. Ltd.,
10-A, Sector-D, Industrial Area, Govindpura,
Bhopal (M.P.).

....APPELLANT

Versus

**Commissioner of CGST &
Central Excise,**
35-C, GST Bhawan, Arera Hills,
Jail Road, Bhopal-462 001 (M.P.).

.....RESPONDENT

Appearance:

Present for the Appellant : Shri Aditya Kumar and Ms. Ila Nath, Advocates
Present for the Respondent: Shri Rakesh Agarwal, Authorised Representative

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R.PRIYA, MEMBER (TECHNICAL)

Final Order No.50496/2025

Date of Hearing : 21.03.2025

Date of Decision: 17.04.2025

BINU TAMTA:

1. M/s Kaipan Pan Masala Pvt. Ltd.¹ has challenged the impugned order
- ²whereby the Commissioner has decided the issue of classification of the goods manufactured by the appellant being classifiable as Jarda Scented Tobacco³ covered by Tariff Entry 2403 9930 instead of as Chewing Tobacco⁴ covered by Tariff Entry 2403 9910.

¹ The Appellant

² Order-in-Original No.16/COMMR/CEX/BPL-I/2018 dated 16.07.2018

³ JST

⁴ CT

2. The issue is no longer *res integra* and has been decided by the Apex Court by a recent decision in **Commissioner of Central Excise, Ahmedabad versus Urmin Products P. Ltd & Ors.**⁵, where the Apex Court considered the issue with reference to seven separate appellants and the appeal filed by the revenue against the appellant was considered at Sl. No.3. In the said decision, the Apex Court concluded that the assessee had mis-classified the goods from JST to CT for evading payment of higher duty. The issue was, therefore, decided against the appellant and in favour of the Revenue. The relevant observations of the Apex Court as rendered in the lead matter of **Urmin Products** and which has been held to be squarely applicable to the facts of the present appellant is quoted below:-

"47. At the cost of repetition it requires to be noticed that the Notification No. 2 of 2006 dated 01.03.2006 was issued in supersession of Notification 13 of 2002 dated 01.03.2002 specifying the goods covered under [Section 4A](#) of the CE Act, for MRP based assessment. The said notification did not specify the goods falling under CET SH 2403 9930, i.e., 'zarda/jarda scented tobacco', but it covers the goods falling under CET SH 2403 9910 i.e., 'chewing tobacco'. Thus zarda/jarda scented tobacco not having been specified under MRP- based assessment under [Section 4A](#) of the CE Act, the goods had to be necessarily assessed under [Section 4](#) of the CE Act. The assessee being aware that there being no change in the nature of the products, its ingredients and also the manufacturing process had changed and misclassified the product as 'chewing tobacco' from 'zarda/jarda scented' tobacco. Had the assessee continued its classification as 'zarda/jarda scented tobacco', the duty payable as per transaction value under [Section 4](#) of the CE Act would have been much more than the determination under [Section 4A](#) of CE Act after 50 % abatement. It is for this precise reason for avoiding and evading payment of the higher duty, the classification was deliberately changed from 'zarda/jarda scented tobacco' to 'chewing tobacco'.

⁵ (2024) 133 GSTR 77

86. Hence, the assessee who had taken a stand by its communication dated 18.03.2015 was manufacturing 'zarda/jarda scented tobacco' changed its version and started contending the product manufactured by it is 'chewing tobacco'. The assessee was changing the classification of its product, as the central excise duty on 'zarda/jarda scented tobacco' and 'chewing tobacco' was changing. The view taken by adjudicating authority is based on factual evaluation which derives its support from the CRCL Report which confirmed that the samples drawn has the same ingredients as that of 'zarda/jarda scented tobacco' and thereby rightly confirmed the duty demanded under the Show Cause Notice. **The findings recorded by us in Group No. 1 in matter of M/s Urmin Products with regard to classification would squarely be applicable to the facts on hand and as such both these appeals deserved to be allowed by setting aside the impugned order of the Tribunal."**

3. The learned counsel for the appellant submits that the decision of the Apex Court in **Urmin Products** is not applicable to the present appeal as the appeal before the Apex Court had arisen from the order of the Tribunal dated November 14, 2018, whereby the order passed by the Commissioner (Appeals) was set aside, where the challenge was to the order passed by the Assistant Commissioner dated August 28, 2015 for the period, June 2015 to August 2015, whereas the present appeal arises out of the order dated July 16, 2018 passed by the Adjudicating Authority. We do not find any merits in the submissions of the learned Counsel, for the simple reason that the issue decided by the Adjudicating Authority in the present case is whether the appellant misclassified and mis-declared their manufactured goods as 'Chewing Tobacco' instead of 'Zarda Scented Tobacco' and recorded its findings as under: -

"39. From the outcome of the test report of Chemical Examiner vide letter dated 03.06.2015 in respect of sample taken, it can be safely concluded that all the samples were having the same ingredients and, therefore,

were showing the identical characteristics i.e. it is containing mainly 'tobacco and flavouring agent. It does not contain added lime. Here, this fact becomes obvious that all the samples were of identical items and by the very existence of flavouring agent in them, the impugned manufactured item is nothing but Jarda Scented Tobacco.

40. It, therefore, makes amply clear that the noticee were manufacturing only scented jarda tobacco. The manufacturing process, they informed was actually of scented jarda tobacco only. But they were mis-leading the Department by purportedly classifying it under 'Chewing Tobacco or Scented Jarda Tobacco' whichever have lower rate of Central Excise Duty as per the statute, for the purpose of evading central excise duty."

4. In this context, it is also necessary to refer to the facts as noted in **Urmin Products** by the Apex Court in the case of the appellant:-

"76. The assessee vide communication dated 28.05.2015 intimated to the department that with effect from 01.06.2015, they would be manufacturing 'chewing tobacco' falling under CET SH 2403 9910 instead of 'scented zarda/jarda tobacco' falling under CET SH 2403 9930 and accordingly submitted a revised form to the competent officer. In the background of frequent changes made in the classification by the assessee and in order to ascertain the proper classification of goods, the officers of the department drew the samples of the products under panchnama dated 01.06.2015 and forwarded the same to the chemical examiner, CRCL, New Delhi and received the test report on 03.06.2015. It was found that the 'chewing tobacco' contains identical ingredients that are contained in 'scented zarda/jarda tobacco.' It was also noticed by the department that assessee through communication and declaration form filed prior to 28.05.2015 had mentioned their product as Pan masala and "scented zarda/jarda tobacco". Thus, having found that the product manufactured by the assessee namely, contains the same ingredients as 'chewing tobacco' and 'scented zarda/jarda tobacco' and involves the same manufacturing process which was confirmed by the CRCL Report vide dated 03.06.2015 and the assessee had attempted to change their stand by filing convenient declarations, the claim of the assessee was not accepted. It appeared that the assessee deliberately and intentionally mis-declared and misclassified their products with an intention to evade central excise duty. Hence an order dated 28.08.2015

came to be passed which covered the period of June 2015 to August 2015. In continuation of the same, four more orders for the period November 2015; December 2015; January 2016, and February 2016 came to be passed vide order dated 30.10.2015; 27.11.2015; 31.12.2015, and 29.01.2016 respectively demanding the amounts indicated therein. Being aggrieved by the said orders, the assessee preferred appeal Nos. 338 of 2015, 53 of 2016, 52 of 2016, 209 of 2016 and 210 of 2016 before the Commissioner (Appeals), which came to be disposed of by order dated 23.10.2017 on the ground that a notice under [Section 11A](#) of the CE Act, has already been issued for determination and confirmation of the duty payable, the assessee has liberty to raise all grounds before the authority adjudicating in the proceedings initiated vide the show cause notice issued on 02.02.2016 and accordingly, the appeals came to be disposed of vide order dated 23.10.2017.

77. The show cause notice dated 02.02.2016 came to be adjudicated vide order dated 16.07.2018 whereunder demand of duty amount of Rs.7,47,66,000/- along with interest and penalty came to be passed. Being aggrieved by the said order, the assessee has filed an Appeal No. E/53421/2018-EX(DB) before CESTAT, New Delhi which is pending; however, the assessee has simultaneously proceeded to challenge the order dated 23.10.2017 passed by the Commissioner (Appeals) before the tribunal in Appeal No. E/50468, 50469, 50470, 50471, and 50472 of 2018 which came to be allowed vide order 14.11.2018. Hence, the Revenue is in appeal in Civil Appeal Diary No. 6888 of 2020 against the said order the order dated 14.11.2018 passed by the CESTAT."

5. The issue of classification of the goods being Zarda Scented Tobacco and not Chewing Tobacco as decided by the the Apex Court in **Urmin Products** is squarely applicable in the facts of the present case and there is no reason for us to differ from the view taken by the Apex Court, which is the law of the land and is binding on all the Courts/Tribunals. Moreover, the decision specifically deals with the case of the appellant for the period in dispute. Infact the appeal before the Apex Court and the present appeal precisely arise from the same set of facts.

6. Before parting with the said order, we feel that it is relevant to take note of the written submissions made by the appellant, *interalia* stating that the show cause notice dated February 2, 2016 as well as the impugned order dated July 16, 2018, was a sequitur to the order dated August 28, 2015 passed by the Assistant Commissioner, Central Excise, Division-1, Bhopal, whereby in the guise of determining the production capacity of the appellant in terms of Rule 6(2) of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 decided the issue of classification by holding that the appellant was manufacturing JST and not CT and also demanded the differential duty. The Asstt. Commissioner had passed four other orders in this respect, which were challenged by the appellant before the Commissioner (Appeals). The appeals were disposed of vide order dated October 23, 2017 by observing that the orders passed by the Asstt. Commissioner were merely administrative orders and the show cause notice dated February 2, 2016 has already been issued. The Order dated October 23, 2017 passed by the Commissioner (Appeals) in respect of all the five appeals was challenged before this Tribunal by filing Appeal No. E/5046A – 50472/2018 and Appeal No. E/50472/2018 covered the same period as the impugned order. The Tribunal vide Final Order dated November 14, 2018 was pleased to allow the appeals following the decision in the case of **Urmin Products P Ltd versus CCE** ⁶. To complete the further facts, the order passed by the Tribunal has been set aside by the Apex Court in **Urmin Products**.

⁶ 2015 (256) ELT 597 (Tri.)

7. We would also like to clarify that the present proceedings have arisen out of the SCN dated February 2, 2016, which on adjudication have confirmed the duty demand while holding that the goods manufactured by the appellant are classifiable as JST and, therefore, the duty liability as determined has to be fastened on the appellant in the present appeal. Further, Final Order dated November 14, 2018 has been set aside by the Apex Court and as a result, the order of the Commissioner (Appeals) dated October 23, 2017 stands, which categorically noted that the second portion of the order of the Assistant Commissioner calculating the duty liability under Rule 7 is not maintainable. The process of adjudication is set in motion by issuance of the show cause notice under Section 11A for determination and confirmation of the duty payable. Accordingly, liberty was granted to the appellant to raise all the grounds before the Adjudicating Authority in the proceedings initiated by the SCN dated February 2, 2016 and which has now been done by the impugned order.

8. The appellant having failed to discharge the duty liability on the goods manufactured by them as JST, they are liable to pay interest on the duty amount, which is automatically leviable. As noted by the Adjudicating Authority, the decision of the Apex Court in **Pratibha Processors versus Union of India**⁷, that interest is compensatory in character and is imposed on an assessee who was withheld payment of any tax as and when it is due and payable, and that the levy of interest is in accordance with the actual amount of tax withheld.

⁷ 1996 (88) ELT 12 (SC)

9. The Apex Court in **Urmin Products** has also noted the conduct of the appellant in suppressing the facts from the Department by mis-declaring and mis-classifying their goods from time to time was with intent to evade payment of central excise duty. In view thereof, the Adjudicating Authority has rightly confirmed the penalty of equivalent amount under the provisions of Rule 18 of Unmanufactured Tobacco Packing Machines (Capacity Determination & Collection of Duty) Rules, 2010, read with section 11AC of the Act and rule 25 of Central Excise Rules, 2002.

10. The impugned order being in conformity with the decision of the Apex Court in **Urmin Products** deserves to be upheld. We therefore, affirm the impugned order passed by the Adjudicating Authority confirming the duty demand along with the consequential liability of penalty. The appeal is, accordingly dismissed.

[Order pronounced on 17th April, 2025]

(Binu Tamta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

Ckp.