CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51771 of 2022

[Arising out of Order-in-Original No. 09/Commr/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

Shri Sandeep Matta **...Appellant**
S/o Gurnomal Matta,
402, Sukhdham Palace, Manik Bagh Road,
Behind Jagrati Sweets, Indore,
Madhya Pradesh - 452007

VERSUS

Commissioner of CGST & Central Excise – Indore **...Respondent**
Post Box No. 10, Manik Bagh Road,
Manik Bagh Palace, Indore,
Madhya Pradesh - 452001

WITH

Excise Appeal No. 50223 of 2020

[Arising out of Order-in-Original No. 09/Commr/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

Shri Gurnomal Matta **...Appellant**
Proprietor of M/s. Hariom Traders,
18/1-Khandelwal Market, Ware House Road, Siyaganj, Indore,
Madhya Pradesh - 452007

VERSUS

Commissioner of CGST & Central Excise – Indore **...Respondent**
Post Box No. 10, Manik Bagh Road,
Manik Bagh Palace, Indore,
Madhya Pradesh - 452001

AND

Excise Appeal No. 50222 of 2020

[Arising out of Order-in-Original No. 09/Commr/CEX/IND/2019 dated 31.05.2019 passed by the Commissioner of CGST & Central Excise, Indore]

Shri Sanjay Matta **...Appellant**
S/o Gurnomal Matta,
402, Sukhdham Palace, Manik Bagh Road,
Behind Jagrati Sweets, Indore,
Madhya Pradesh - 452007

VERSUS

Commissioner of CGST & Central Excise – Indore **...Respondent**
Post Box No. 10, Manik Bagh Road,
Manik Bagh Palace, Indore,
Madhya Pradesh - 452001

APPEARANCE:
None for the Appellant
Shri M.K. Chawda, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 23.01.2025
DATE OF DECISION: **15.05.2025**

FINAL ORDER No. 50685-50687/2025

DR. RACHNA GUPTA

Present order disposes of three appeals arising out of one common Order-in-Original No. 09/2019 dated 31.05.2019. Vide order dated 23.01.2025 liberty was given to the appellants to place on record the written submissions within two weeks. But nothing has been filed. The facts in brief which have culminated into the said order are as follows:

1.1 Three of the appellants are engaged in manufacture of Pan Masala/Gutkha/Chewing Tobacco of various popular brands. Intelligence was developed by the Officers of Central Excise, Indore about Shri Gurnomal Matta along with his sons namely Shri Sanjay Matta and Shri Sandeep Matta to have been clearing the manufactured Pan Masala/Gutkha clandestinely without obtaining central excise registration and without payment of central excuse duty. The said manufactured product was transferred and cleared clandestinely from appellants' godown and their shop. Based on the said intelligence that the several premises (shop, godown, residence, factory etc.) of three of the appellants were searched simultaneously on 13.07.2015. Incriminating documents were recovered. Finished goods, raw material, Pan Masala packing machine, Supari cutter machine, Lamination machine, Mixer grinder etc. were detained and seized from those premises under the respective Panchanama dated 13.07.2015. Shri Gurnomal Matta in his statement deposed that the entire stock of Pan Masala lying in the premises was received without bills and the said goods were also sold without bills, hence they were not maintaining any stock register. On the reasonable belief that the goods were sold without payment of central excise duty that the goods found in the premises of the appellants i.e. the Pan Masala of different brands like RMD, Pan Bahar, Pan Parag, Vimal, Rajnigandha, Rajshree etc. were initially detained on 13.07.2015 and were got seized. The details of the seized goods/cash at various premises are summarized below:

S.No.	**Place of Seizure**	**Value of Seizure in Rs.**
1.	M/s. Hariom Traders, 18/1, Warehouse Road, Siyaganj, Indore	4,08,320/-
2.	Godown – M/s. Hariom Traders situated at behind Mutton Market, Before mandi gate, Kallali Mohalla, Chhawani, Indore	11,00,752/-
3.	Godown (second) – M/s. Hariom Traders situated at 4/1, Kallali Mohalla, Behind Mutton Market, Chhawani, Indore	1,50,968/-
4.	58/1, Udyog Nagar, Nemawar Main Road, Indore	5,96,650/-
5.	Factory – Kumudini, Behind Bharat Petrol, Pump, Ganesh Tolkata Wali Gali, Udyog Nagar, Palda, Indore	3,28,400/-
	Total Seizure Value	**25,85,090/-**
1.	Cash Seized at M/s.	6,76,000/-

	Hariom Traders, 18/1, Warehouse Road, Siyaganj, Indore	

1.2 After recording the statements of the appellants and the owners of the premises searched, the Show Cause Notice No. 15-01/15-16 dated 07.01.2016 was served upon three of the appellants proposing that the raw material/packing material/finished goods/machines etc. valued at Rs.25,85,090/- seized from the various premises of three of the appellants including the packing material, the value of which could not be ascertained were proposed to be confiscated under Rule 25 of the Central Excise Act, 1944. The Indian currency in cash valued at Rs.6,76,000/- was also proposed to be confiscated under Section 121 of the Customs Act, 1962. Penalty was also proposed to be imposed under the provisions of Rule 25 of the Central Excise Rules, 2002. The said proposal has been confirmed vide the Order-in-Original/order under challenge except that the option was given to get reading the machines on payment of redemption fine of Rs.20,000/-. Being aggrieved of the said order, the present appeals were filed on 16.09.2019.

1.3 It is observed that after filing the present appeal, the appellant has never appeared before this Tribunal. There were 4 defects noticed in the appeal but the appellant did not remove any of those defects. Despite the warning of the last opportunity vide Order dated 28.01.2022 again the appellant was observed to had failed to reconcile the appeal paper book and to get three of these appeal tagged after removing the noticed defects. Hence, another warning of last opportunity was served upon the appellant to cure those defects within the period of 4 weeks. It is on 28.02.2022 that the appellant for the first time marked his presence through his authorized counsel, Shri S.Sunil. On 25.07.2022 three of these appeals got tagged together. Since then till date also there either has been a request for adjournment on behalf of the appellant or his authorized counsel or there has been a complete absence. Several number of opportunities were given to the appellants to make the final submissions. Vide order dated 08.06.2023 last opportunity was warned for the purpose. Several other numbers of adjournments were still granted to the appellant. The appellant was even allowed to make his submissions virtually on his own request for the purpose, still the appellant failed to make the submissions. I hold that more than required opportunities have already been given to the appellant to mark his presence. Today again when appellant has not appeared either in person or through his authorized counsel, I find no reason to adjourn the matter any further, hence I proceed to dispose the same on merits in terms of the directions of the Hon'ble Supreme Court in the case of **M/s. Jai Balaji Industries Vs. D.K. Mohanty & Another in Civil Appeal No. 5899 of 2021 decided on 01.10.2021.**

2. Arguments on behalf of the department heard. Learned Departmental Representative foremost has reiterated the findings arrived at by the adjudicating authority in the impugned order. It is submitted that the adjudicating authority after relying upon the statements of the appellants and all concerned, examining them in

chief and allowing those witnesses to be cross-examined by the appellants has concluded the following:

> *(i) Noticee No. 1 alongwith Noticee No. 2 and 3 was engaged in the manufacturing of Pan Masala, Gutkha and re-packing of chewing tobacco (which amounts to manufacture) of different brands falling under chapter subheading 2106 90 20, 2403 99 90 and 24039910 of the Central Excise Tariff Act, 1985 (5 of 1986) respectively.*
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> *(ii) The Noticee No. 1 accepted in his statement dated 13.07.2015 and 14.07.2015 that he had been manufacturing Pan Masala/ Gutkha since last one year at 318, Bholaram Compound, Palda, Near Nippon Paint, Udyog Nagar, Palda, Indore which was taken on rent by Noticee No. 2 and which was vacated on 11.07.2015. All the machines installed therein alongwith all materials required for the manufacture of Pan Masala/Gutkha were shifted in the Factory at Kumudini, Behind Bharat Petrol Pump, Ganesh TolkatawaliGali, Udyog Nagar, Palda, Indore whose owner he is himself.*
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> *(iii) The Noticee No.2 is the Proprietor of M/s. Hariom Traders, Siyaganj, Indore from where all the three Noticees had been carrying out their business activities.*
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> *(iv) Noticee No. 3 i.e: Shri Sanjay Matta was witness of the rent agreement of factory situated at Khasra No. 318, Bnolaram Compound, Palda, Near Nippon Paint, Udyog Nagar, Palda, Indore and therefore he had the knowledge of the activities being carried out there. The rent agreement of premises - 58/1, Udyog Nagar, Nemawar Main Road, Indore Near Shiv Mandir was made in the name of Noticee No. 3. where the Raw Materials, different brand of Rolls of Packing Materials and finished goods such as Pan masala of different brands were stored and were seized.*

(v) Noticee No.3 i.e. Shri Sanjay Matta has accepted that the seized amount of Rs. 6,76,000/- was the collection against the 6-7 days sale of Pan Masala, Biri, Cigarette. It appears that the said cash was the sale proceeds of the Pan Masala/Gutkha manufactured by the Noticee No. 1 to 3 without obtaining registration and which were cleared clandestinely without payment of Central Excise duty.

Impressing upon no infirmity in those findings and the conclusion drawn the impugned order dated 31.05.2019, based thereupon, the present appeals are prayed to be dismissed.

3. Having heard the department and perusing the record of this appeal, I observe that three of the appellants had submitted their reply to show cause notice on 08.12.2016. Their request for cross-examining the Chartered Engineer who examined the seized machineries of Shri Girish Khandelwal and Shri Kailash Sahun the owner of the premises of the appellant was allowed. It is also observed that their request for getting the copies of all relied upon documents including the CDs recovered at the time of searches were duly accepted and those were supplied to three of the appellants by hand through Shri Sandeep Matta under acknowledgment. The said CD was containing the photographs of the machines as were taken by the Chartered Engineer during verification of those machines.

3.1 The adjudicating authority is observed to have been meticulous while providing every possible opportunity of hearing to the appellants who simultaneously have been observed to have an attitude to scutte the process of adjudication. As despite residing in the same house and having the relationship of a close family, the letters/documents/CDs despite being received by one of them under acknowledgment but were not being communicated to the other appellants and the adjudicating authority was left with no option but to close any further opportunity to the appellants to make the personal hearing or to cross-examine the witnesses.

3.2 From the various Panchnamas, it is clear that no stock register was being recovered from any of the appellants' premises. The appellant Shri Gurnomal Matta, in his statement has admitted about purchase and sale of the impugned goods without any bills. The recovery of cash from the shop of the appellants corroborate the fact that they were dealing in sale on cash without any bills. The owners of the premises in their statements have admitted appellants to have taken their premises for manufacture of supari kind of items. The goods recovered included such machines namely Pouch packing machine, Raw material packing machine, Lamination machine etc. which are the sufficient evidence to show that the premises searched were actually the manufacturing places. The raw material recovered were also like Kachhi supari, lime, katha, magnesium powder and essence. Appellant Shri Sandeep Matta in his statement has accepted those to be the ingredients for manufacture of Pan Masala. The raw material is stated to have been supplied by one supplier Shri Sameer.

3.3 Admittedly, appellants had no brand of their own. They have admitted to have manufactured Pan Masala and Gutkha that too for the last one year of the impugned investigation. There has been the admission of three of the appellants that they were manufacturing Pan Masala and Gutkha of different brands like Vimal, Tulsi, RMD, Rajshree etc. and that they were not authorized by any of these companies to manufacture the said products and to sale the same in their brand name. Appellants have failed to place on record any permission/authorization from any of those companies. The recoveries effected during the search corroborate the admissions made by the appellants. Otherwise also admissions need no further proof. In the presence case, appellants have opted to not to come forward to raise any response/plea in their defence. The cross examination has not revealed anything to their support.

4. In the light of these observations, I do not find any reason to differ with the findings arrived at by the adjudicating authority below. Resultantly, the order is hereby upheld. Consequent thereto, three of these appeals are dismissed.

[Order pronounced in the open court on **15.05.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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