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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3192/2009-3193/2009 - EX[DB] WITH E/CO/72/2010-EX Date **09/04/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

M/S PARVEEN TOBACCO CO. PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/416-417/ **2012 EX[DB]** dated 29-3-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S PARVEEN TOBACCO CO. PVT. LTD.
A-60, GTK ROAD, INDL. AREA,
DELHI-110002.

2. Adv. / Consult SH. J. P. KAUSHIK, ADV.,
A-14/3, SAKET, N. DELHI-17

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. SH. RAJENDER KUMAR, DIRECTOR.
M/S PARVEEN TOBACCO CO. PVT. LTD.,
A-60, GTK ROAD, INDL. AREA, DELHI-110002.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 29.03.2012

For approval and signature:

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 3192 of 2009 & C.O. No. 72 0f 2010

(Arising out of common order in appeal No.192-93/CE/DLH/2009 dated 24.09.2009 passed by the Commissioner (Appeals) Central Excise, Delhi-I).

CCE, Delhi Appellant

Vs.

M/s Parveen Tobacco Co. (P) Ltd. Respondent

AND

Excise Appeal No. 3193 of 2009

CCE, Delhi Appellant

Vs.

Sh. Rajender Kumar, Director of
M/s Parveen Tobacco Co. (P) Ltd. Respondent

Present Shri Nagesh Pathak, AR for the appellant
Present Sh. J.P. Kaushik, Advocate present for the respondent.

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. A/416-417/2012-EX (BR)

Per: Justice Ajit Bharihoke:

This appeal of the Department is directed against the impugned order dated 24.09.2009 of Commissioner (Appeals) whereby while agreeing with the finding of the adjudicating authority that the tobacco pouches marketed by the assessee were covered by classification only No. 24039910 Section V Chapter 24 and set aside the order of the adjudicating authority confirming the demand, interest and penalty on the ground that the demand raised by the department was barred by limitation.

2. The respondent has also filed a Cross Objection wherein he has challenged the classification of the goods marked by him under Chapter 24. According to the respondent the goods marketed by him ought to have been classified under entry No. 24012090 Section V Chapter 24.

3. Briefly put facts relevant for disposal of appeal and cross objection are that the respondent M/s Parveen Tobacco Co. (P) Ltd. is engaged in manufacture of small pouches of unbranded chewing tobacco and marketing it. Earlier the company was paying central excise duty on the pouches marketed by them @ 67.98% on the assumption that the goods fall under classification 24039910. Section V Chapter 24 subsequently, vide a letter which was received in the office of Assistant Commissioner, Central Excise, Division-I Karampura, New Delhi the respondent applied for addition in his central excise registration certificate informing the department that they are going to start packing of unmanufactured branded tobacco falling under

chapter 24 entry 24012090. Alongwith letter the appellant annexed enclosures indicating the list of raw material for production of the unmanufactured branded tobacco pouches and also the manufacturing process. The flow chart annexed to the letter indicated that the respondent would be purchasing raw un-manufactured chewing tobacco and packing material from the market then fill the raw tobacco alongwith lime tube in small pouches for marketing the same. The request of the respondent was accepted and registration as prayed for granted to him. Thereafter, the appellant started paying excise duty @ 47.58% on the tobacco pouches marketed by him on the premise that it was un-manufactured branded tobacco falling within the classification under Chapter 24 entry No. 24012090.

4. Later, on inspection, the department found that product being manufactured and marketed by the respondent was the same on which the respondent was earlier paying duty @ 67.98%. Thus, on the premise that it was covered under tariff entry 24039910 in dispute 24, a show cause notice raising excise duty demand was issued to the respondent on 19.12.2008. Respondent contested the show cause notice and took the plea that the demand under the show cause notice was time barred and also that the tobacco pouches marketed by him were covered under classification only 24012090 Chapter 24. The adjudicating authority after giving due hearing to the respondent rejected his plea and confirmed the demand to the extent of Rs.10,59,966/- and interest besides that he also imposed penalty. Penalty of Rs. 50,000/- was imposed on the Director of the Company. The excise duty and interest were recovered and appropriated against the demand.

5. Feeling aggrieved by the adjudicating order, respondent preferred an appeal before Commissioner (Appeals). The Commissioner (Appeals) vide impugned order agreed that the view of the adjudicating authority that the tobacco pouches marketed by the respondent were covered under Chapter 24 entry No. 2403 9910. The appellate authority however, found that the demand was time barred. Accordingly, he set aside the order of adjudicating authority.

6. Being aggrieved of the aforesaid order of the Commissioner (Appeals), the Department has preferred this appeal.

7. Respondent has also filed Cross-Objection challenging the classification of the goods under entry 2403 9910, Chapter 24.

8. As regards the appeal, Shri Nagesh Pathak, ld. AR for the appellant has submitted that the impugned order holding that the demand is time barred, is not sustainable in law. It is submitted that this is a clear case of suppression and mis-statement of fact and the Commissioner (Appeals) has failed to appreciate that the respondent deceived the department by writing a mis-leading letter for addition of packing of unmanufactured tobacco alongwith the lime tube in pouches whereas even after the addition was allowed. The respondent continued to produce the same product on which he was earlier paying excise duty as per classification entry 2403 9910 in Chapter 24.

9. Ld. Counsel for the respondent refuting the argument submitted that there is no misrepresentation on the part of the respondent as the letter addressed to the Assistant Commissioner, Central Excise, Division-II, New Delhi. The respondent has clearly mentioned the raw material used by him for manufacturing small pouches of unbranded tobacco and he even disclosed tobacco and he even disclosed the process for manufacturing the pouches. Thus, it is contended that everything was honestly disclosed to the department, as such the Commissioner (Appeals) has rightly held that this is not a case of suppression of facts, concealment or mis-representation which is justified the extension of period of limitation under Section 11A from one year to five years.

10. The respondent has placed on record photocopy of his letter dated 25.5.2007 addressed to the Assistant Commissioner, Central Excise, Division-II New Delhi which was received on the same day vide which he sought addition in central excise registration certificate. With the said letter he had annexed ten documents including the list of raw material and the process. Perusal of photocopy of the list of raw material and the process would show that raw material used in the pouches is disclosed as loose unmanufactured tobacco, packing material and lime tube and the flow chart would show that the process of producing the small pouches comprised of filling the bulk raw unmanufactured tobacco in small pouches alongwith lime tube and those pouches after packing were to be sold in wholesale packet. From this, it is apparent that nothing was concealed by the appellant and he had disclosed the entire process of manufacturing the small pouches chewing tobacco to the department. Thus, in our considered view

the Commissioner (Appeals) has rightly concluded that limitation for raising the demand in this case under Section 11A of Central Excise Act, is one year and since the show cause notice was issued after a lapse of one year from the date of clearance of the goods the demand is time barred. Thus, under the circumstances, we do not find any merit in the appeal.

11. Coming to the Cross-Objection filed by the respondent, grievance of the respondent is that the Commissioner (Appeals) has committed an error by agreeing with the adjudicating authority that tobacco pouches manufactured and marketed by the respondent fall within classification entry No. 2403 9910 in Chapter 24. It is contended by the ld. Counsel for the respondent that Commissioner (Appeals) has misinterpreted Chapter 24 and he ought to have classified the product in question under Entry No. 24012090 of Chapter 24.

12. Shri Nagesh Pathak, ld. AR for the appellant on the contrary has reiterated the order of the adjudicating authority and the Commissioner (Appeals) in this regard.

13. In order to appreciate the contention of ld. Counsel for the respondent it would be helpful to have a look on the relevant entries in Chapter 24 as also the chapter notes.

14. Entry No. 2401 2090 falls in Chapter 24 under the heading unmanufactured tobacco; tobacco refuse and it deal with categories other than the categories classified under this heading relating to unmanufactured tobacco or tobacco refuse.

15. Entry 2403 9910 falls under the heading other manufactured tobacco and manufactured tobacco substitutes; "Homogenised" or "Reconstituted" tobacco; tobacco extracts and essences smoking tobacco, whether or not containing tobacco substitute in any proportion. This entry also deals with the items other than the items detailed under the aforesaid sub-heading.

16. Now the question arises whether unmanufactured tobacco purchased in bulk and thereafter converted into small pouches by mixing it with a lime tube would amount to manufacture as defined under Section 2F of the Central Excise Act. To find an answer to this question, it would be helpful to refer to Chapter Note 3 of Chapter 24 which provide thus:-

> "3. In relation to products of heading 2401 or 2402 or 2403, labeling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'.

17. On plane reading of chapter note 3 of Chapter 24, it is clear that repacking of raw tobacco from bulk packs to retail packs amounts to manufacture. Admittedly, the appellants were purchasing bulk tobacco from the market and repacking the same into small pouches alongwith lime tube. This process obviously amounts to deemed manufacture of retail pouches in view of chapter note 3 of Chapter 24. Once it is concluded that production of retail packs pouches amounts to manufacture the pouches produced and marketed by the respondent would fall under the sub-heading 2403 of Chapter 24 ,which relates to other manufactured tobacco, and particularly classification entry No. 2403 9910. Thus, we do no find any infirmity in the impugned order of Commissioner (Appeals) classifying the product in question under entry No. 2403 9910.

18. Result of above discussion is that there is no merit in the appeal filed by the department as well as Cross-Objection filed by the respondent.

19. Appeal as well as Cross-Objection are dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant