

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

Excise Appeal No. 50596 of 2025

(Arising out of Order-in-Original No. DL/GST/WEST/COM/PK/06-07/2024-25 dated 23.12.2024 passed by the Commissioner of CGST, Delhi West Commissionerate, New Delhi)

**M/s Ashok & Company Pan
Bahar Limited**

Unit-IV, 49A, Rama Road Industrial Area,
New Delhi-110015

....

Appellant

Versus

**Commissioner of CGST,
Delhi West Commissionerate,
New Delhi**

Engineers India Limited, Annexe Building,
Bhikaji Kama Place, R.K. Puram,
New Delhi-110066.

... Respondent

Appearance:

Present for the Appellant: Shri Anurag Mishra, Advocate,
Ms. Sanya Bhatia, Chartered Accountant & Shri Naveen
Rohila, Advocate

Present for the Respondent: Shri S.K. Ray, Authorized
Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

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

Date of Hearing: 03/09/2025

Date of Decision: 18/09/2025

Final Order No. 51333/2025

P. Dinesha

The Appellant, M/s Ashok & Company Pan Bahar
Limited, Unit-IV, 49A, Rama Road Industrial Area, New

Delhi- 110015 and Unit-VIII, Plot 13, Rama Road Industrial Area, New Delhi- 110015 are manufacturing Pan Masala and Chewing Tobacco in their two units. The Appellant is operating under the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 (Chewing Tobacco Rules) notified by virtue of Section 3A of the Central Excise Act, 1944 and was paying duty on the aforesaid final products.

2. Facts in brief that are relevant for our consideration as could be gathered from the impugned order and the documents placed on record, are that the Appellant upon issuance of Notification No. 05/2015-CE dated 01.03.2015 through their revised declaration dated 02.03.2015 declared that they are going to manufacture '**Zarda/Jarda Scented Tobacco**' ('**JST**' for short) w.e.f. 01.03.2015. Again, *vide* declaration dated 27.05.2015, the Appellant declared that they are going to manufacture 'Branded Chewing Tobacco' ('**BCT**' for short) w.e.f. 01.06.2015 after the issuance of Notification No. 25/2015-CE dated 30.04.2015. The Department appears to have regularly obtained samples of the product manufactured by the Appellant which were sent for testing at CRCL. Regular Capacity Determination Orders were passed by the Ld. Assistant Commissioner determining the duty liability based on production capacity.

3. It appears that the Appellant was served with following SCNs –

1. SCN dated 08.06.2016 in C.No. CE-20/Div-III/R-12/D-I/36/15-16 for the **period 2015-16** in relation to Unit-IV for demand of Duty amounting to Rs.14,34,51,000/- along with interest and penalty;
2. SCN dated 09.09.2016 in C.No. CE-20/Div-III/R-12/D-I/30/16-17 for the **period 17.08.2015 to 31.08.2015** and **16.02.2016 to 29.02.2016** in relation to Unit-VIII for demand of Duty amounting to Rs.42,01,939/- along with interest and penalty.

4. It is the case of the Revenue, through the aforesaid SCNs, that due to change in the duty structure which were introduced *vide* Notification No. 05/2015-CE dated 01.03.2015, the Appellant in order to pay the lesser duty declared their product as JST; and further amendment introduced *vide* Notification No. 25/2015-CE dated 30.04.2015 when the duty was reduced on BCT, the Appellant started classifying the product as 'BCT'. It is alleged in the SCN that the test reports show that 'Lime' is not present in the product manufactured by the Appellant and therefore, same should have been appropriately classified as 'JST' and not 'BCT'. Accordingly, demand was made from the Appellant in both the SCNs along with interest and penalty. It appears

from the record that the Appellant before the issuance of the SCNs deposited the entire duty of Rs.14,76,52,939/- along with an interest of Rs.78,99,302/-. It also appears from the record that the Appellant filed its detailed replies to the SCNs and thereafter, the Ld. Commissioner-Adjudicating Authority having confirmed the proposed demands along with interest and penalty *vide* Order-In-Original dated 23.12.2024, the same has been assailed in this Appeal by the Appellant.

5. Heard Shri Anurag Mishra, Ld. Advocate assisted by CA Ms. Sanya Bhatia, for the Appellant. It is their submission, at the outset, that the expressions 'chewing tobacco' and 'zarda/jarda scented tobacco' are nowhere defined under the Central Excise Act, 1944 or Central Excise Tariff Act, 1985; CETA initially covered 'tobacco' in item No. 9 to the Schedule. Entry 9(II) referred to country tobacco and sub-clause (2) thereof read "*if intended for sale as chewing tobacco, whether manufactured or merely cured.*" The other submissions of the Id. Advocate are summarized as under:

5.1 In 1983, 'tobacco' was covered under Item 4 of the Schedule of the CE Act. The relevant entry being Entry 4-II(5) which covered 'chewing tobacco'.

5.2 In 1985, the CETA was enacted and 'Chewing tobacco' was shown under Entry 4-II(4).

5.3 The Finance Act, 1987, inserted “CET SH 2404.39” with effect from 1-3-1987. The heading included the following:

“Chewing tobacco including preparations commonly known as Khara Masala, Kiwam, Dokta, Zarda, Sukha and Surti”.

Thus, for the first time ‘Zarda’ was recognized separately as preparation.

5.4 Prior to the introduction of the 8-digit tariff classification, ‘chewing tobacco’ was reflected under Chapter 24, under specific Entry ‘2404.41’ of the six-digit Central Excise Tariff classification. Subsequently, the new 8-digit Central Excise Tariff classification was introduced vide Circular No. 808/05/2005-CX, dated 25-2-2005, Chapter 24 of the Central Excise Tariff came to be amended and Heading ‘2403’ was introduced which reads:

“2403 - Other manufactured tobacco and manufactured tobacco substitutes; ‘Homogenised’ or ‘Reconstituted’ tobacco; Tobacco extracts and essences”

5.5 The Central Excise Tariff Heading ‘2403’ now includes the following sub-headings:

2403 OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; “HOMOGENISED” OR “RECONSTRUCTED” TOBACCO; TOBACCO EXTRACTS AND ESSENCES
– Smoking tobacco, whether or not containing tobacco substitute in any proportion;

2403 99 10	Chewing Tobacco
2403 99 30	Jarda Scented Tobacco

5.6 Thus, the Central Excise Tariff classifies 'JST' and 'BCT' as 2 different products but makes no reference to the characteristics of 'Jarda-Scented Tobacco'.

5.7 The Appellant was initially manufacturing 'Branded Chewing Tobacco' (BCT) and after the amendment made by Notification No. 05/2015-CE dated 01.03.2015, they have filed a revised declaration dated 02.03.2015 intimating the Department that they are going to start with manufacturing of 'Jarda Scented Tobacco' (JST) w.e.f. 01.03.2015 and accordingly, some of the machines on which they were manufacturing BCT were sealed by the Department and rest of the machines were used for the manufacturing of JST. Subsequently, further amendment was made by virtue of Notification No. 25/2015-CE dated 30.04.2015 and the Appellant w.e.f. 01.06.2015 started manufacturing of 'BCT'.

5.8 They further submitted in their declaration dated 27.05.2015 that they are converting some of their machines into Chewing Tobacco and 1 new machine was purchased by them for manufacturing of BCT. The Ld. Counsel contended that the conversion of machines and introduction of new machines clearly established that BCT could not be manufactured using the machines

which were used for manufacturing JST. The samples were regularly drawn by the Department but the test reports were issued in a prototype manner and the said reports were not as per the standards prescribed by "Glossary of Terms for Tobacco and Tobacco Products" (2nd and 3rd Revision) issued by the Bureau of Indian Standards i.e. ('**BIS**'). The reports do not show the ingredients of the product which has to be testified by the Chemical Examiner.

5.9 It was also pointed out by Mr. Ashok, Id. counsel, that the Test Memo on the basis of which the samples were sent were not as per the standards and the Department should not mention the classification in the Test Memo. This, according to him, induced the report of the Chemical Examiner and the said report cannot be said to be a correct and fair report, as per BIS Standards the Tobacco should have been tested on the following parameters –

- A. Moisture content
- B. Nicotine content in Jarda or chewing Tobacco
- C. Total Ash content
- D. Insoluble Ash content

6. None of the test reports has testified the product on such standards and mere mentioning that the product '*does not contain lime*' is not sufficient to hold that the product manufactured by the Appellant is 'JST'. They

have also drawn our attention to the judgement of Hon'ble Apex Court in the case of **CGST, C.C.E & ST., Rohtak Vs M/s. Som Flavour Masala Pvt. Ltd.** reported in 2023 (385) E.L.T. 101 (S.C.) / (2023) 6 Centax 4 (S.C.) wherein, the Hon'ble Apex Court while affirming the judgement of the Tribunal, has affirmed that if the moisture content is more than 15%, then the tobacco shall be considered as 'BCT'. In one of the test reports dated 26.08.2015 the Chemical Examiner affirmed that the product contains moisture content of 19.7% which automatically proves that the product manufactured by the Appellant is 'BCT' and not 'JST'. Regular purchases of lime and their use in the manufacture of BCT which is recorded in Form IV Register shows that the Appellant is using lime in the manufacture of the said product and therefore, the product cannot be classified as 'JST'.

7. Ld. Advocate has also referred to the statement of the Appellant's Director Akhil Jain recorded on 15.10.2015 wherein he has confirmed the process of manufacturing of BCT and JST and specifically mentioned that lime is being added for manufacturing of BCT along with other ingredients, which is not added in the manufacture of JST. Similar facts were affirmed by one Janak Raj Sharma, the Appellant's wholesale dealer. The samples were also tested by one of the reputed laboratories namely Delhi Test House, New Delhi wherein

the presence of lime was also shown as per the BIS Standards. Even during the cross-examination, the Chemical Examiner who has tested the samples was unable to provide the details of ingredients and the standards on the basis of which tests were done. Reliance in this regard has been placed on a judgment of the Hon'ble Punjab and Haryana High Court in case of **Commissioner of Central Excise, Delhi Vs Exportec India Exports** [2015 (323) E.L.T. 131 (P&H)] wherein the Hon'ble High Court has held that non-adherence to procedure for testing and non-following the procedures and protocols for testing would only make the test report redundant and unacceptable. Further, the entire basis of the case is on the test reports which are absolutely vague and cannot be accepted in absence of non-adherence of protocols and procedures defined for testing of tobacco.

8. It was also contended that out of two units on which the demand of duty has been made, samples were obtained only from one unit and on the basis of same duty has been fastened upon both the units.

9. They further submitted that it is wrong to contend that considering the lower rate of duty, the Appellant kept changing their classification of the product to pay lesser duty on the same product. The Appellant even after introduction of lower rate of duty on BCT w.e.f.

01.05.2015, has not changed the classification and chose to pay higher duty on JST from 01.05.2015 to 31.05.2015. It is an admitted fact that the Appellant has sealed machines which were used for manufacturing of JST during the period of dispute and BCT was manufactured on separate machines.

10. They submitted that w.e.f. 01.06.2015 they have started manufacturing of chewing tobacco and accordingly, the declaration dated 27.05.2015 was filed to this effect. In the said declaration, it is admitted that going forward JST would not be manufactured; rather 1 machine currently used for JST would be converted for production of BCT and 1 new machine would also be purchased for BCT. Therefore, 3 machines would be working in June i.e. 2 for BCT and 1 for Pan Masala. The Ld. Assistant Commissioner despite having previous reports of JST from CRCL kept on assessing the duty as per BCT and even after the report from CRCL that the product manufactured by the Appellant is having characteristic of JST, the Ld. Assistant Commissioner passed various capacity determination orders confirming the product as 'BCT' and accordingly, directed the Appellant to pay the duty. The present demand was issued by the Ld. Commissioner without challenging those final capacity determination orders and the present demand is reassessment of the assessed duty. In this connection, the Ld. Counsel submitted that such

reassessment is not permissible under the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. The Ld. Counsel in their support have cited **M/s. Miraj Products Pvt. Ltd. Vs Commissioner, Central Goods & Service Tax** in Excise Appeal No. 51730 of 2019 and **Vikas Steel vs. Commissioner of Central Excise, Jamshedpur** [2001 taxmann.com 1488 (CEGAT- Kolkata)].

11. With regard to interest and penalty, Id. counsel submitted that the Appellant has paid the duty according to the assessment orders and the product manufactured by them is BCT and therefore, present demand which is based on vague CRCL reports cannot be sustained. Similarly, penalty under Section 11AC and interest under Section 11AB which are wrongly confirmed by the Ld. Commissioner cannot also sustain. They submitted that the present demand has been issued without invoking the extended period of limitation whereas penalty under Section 11AC has been imposed by alleging suppression of facts; it is a well-known fact that all the material facts were within the knowledge of the Department and assessment orders were being regularly passed by the Ld. Assistant Commissioner. Therefore, penalty under Section 11AC cannot be imposed against the Appellant. They have prayed for setting aside the demand, penalty and interest against the Appellant and

requested for refund of duty and interest which was paid under protest by the Appellant.

12. *Per contra*, Ld. D.R Shri S.K. Ray vehemently supported the findings of the Ld. Commissioner as regards the classification of the product and confirmation of demand, interest and penalty are concerned. He submitted that due to change in the duty structure, the Appellant kept on changing the product's classification whereas they are manufacturing only one product i.e., JST. He submitted that in the revised declaration filed by them on 02.03.2015, they clearly mentioned that the product manufactured by them shall be 'JST' which is consumed along with Pan Masala. When the duty has become higher on JST, the Appellant changed their classification to BCT whereas the product and process of manufacture remain the same. He further submitted that the reports of CRCL clearly indicated that the product manufactured by the Appellant does not contain lime which automatically means that they are not manufacturing BCT but actually manufacturing JST. He submitted that the CRCL reports were not challenged by the Appellant for retesting of the product and therefore, same cannot be challenged by the Appellant at this stage. He submitted that during the cross-examination the Chemical Examiner has clearly mentioned that they consulted Book of Vogel for chemical test, BIS

Standards, Wealth of India and other books during the time of testing and therefore, the contention of the Appellant that the standards were not followed and the test reports are incomplete, is mis-conceived and misplaced. He further submitted that the moisture content alone is not sufficient to hold that the product is BCT or JST. The presence of moisture content in one of the test reports is not sufficient to hold that the product manufactured by the Appellant is BCT. To support that the product should be appropriately classified as 'JST', he cited the judgment of Hon'ble Apex Court in case of **C. Ex. Ahmedabad Vs Urmin Products Pvt. Ltd.** [2024(388) E.L.T. 418 (SC)]. He further submitted that the process of manufacturing of BCT and JST are very much different and the presence of lime in BCT is a necessary ingredient which is missing in the Appellant's case as per the test report and therefore, the product manufactured by the Appellant is correctly classified by the Ld. Commissioner as 'JST' under Chapter Heading 24039930.

13. Ld. D.R would further submit that the assessment order/s passed by the Ld. Assistant Commissioner was in respect of determination of annual capacity and in the said order, it is clearly mentioned that the samples were sent for testing and the report/s from CRCL was pending. Therefore, the said assessment order shall not be deemed to be a final assessment order and the Ld.

Commissioner has correctly passed the impugned OIO for appropriate classification of the product and demand of duty.

14. Insofar as interest and penalty are concerned, Ld. D.R submitted that as per the provisions of Rule 19 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, all the provisions of Central Excise Act and Rules are made applicable to the said Rules and therefore, the Ld. Commissioner has rightly confirmed the demand of duty under Section 11A, interest under Section 11AB and penalty under Section 11AC.

15. Heard both sides and carefully considered the verbal and written submissions made by them; we have also considered the documents filed in support which are placed on record.

16. Having heard both sides, we find that the core issue involved in this Appeal is, "whether product manufactured by the Appellant is to be classified as 'JST' under Tariff Heading No. 24039930 or 'BCT' under Tariff Heading No. 24039910".

17. It is a fact borne on record that prior to 01.03.2015, the Appellant was manufacturing BCT which

is also apparent from their initial declaration filed by them to the Ld. Assistant Commissioner on 02.03.2015. It is through their revised declaration that they have informed the Department regarding the manufacturing of JST w.e.f. 01.03.2015. It is also an undisputed fact that even after the higher duty being introduced on JST on 01.05.2015, the Appellant kept paying the duty at higher rate on JST. Therefore, the submission of the Department that the Appellant was changing the classification according to the duty structure is without any basis and hence, incorrect. It is a fact on record that w.e.f. 01.06.2015, the Appellant started manufacturing BCT in order to cater to the market demand which was gradually shifted to BCT. Therefore, we find that there is no basis to contend, as done by the Ld. Commissioner, that due to changed duty structure, the Appellant has started manufacturing BCT.

18. There is no dispute that the expressions 'chewing tobacco' and 'zarda/jarda scented tobacco' are nowhere defined under the Central Excise Act, 1944 or Central Excise Tariff Act, 1985. CETA, initially covered 'tobacco' in item No. 9 to the Schedule. Entry 9(II) refers to country tobacco and sub-clause (2) thereof read "*if intended for sale as chewing tobacco, whether manufactured or merely cured.*" In 1983, 'tobacco' was

covered under Item 4 of the Schedule to the Central Excise Act, the relevant entry being Entry 4-II(5) which covered 'chewing tobacco'. In 1985, the CETA was enacted and 'Chewing tobacco' was shown under Entry 4-II(4). The Finance Act, 1987, inserted "CET SH 2404.39" with effect from 1-3-1987. The heading included the following:

"Chewing tobacco including preparations commonly known as Khara Masala, Kiwam, Dokta, Zarda, Sukha and Surti".

Thus, for the first time 'Zarda' was recognized separately as a preparation. Prior to the introduction of the 8-digit tariff classification, 'chewing tobacco' was reflected under Chapter 24, under specific Entry '2404.41' of the six-digit Central Excise Tariff classification. Subsequently the new 8-digit Central Excise Tariff classification was introduced, as explained by Circular No.808/05/2005-CX, dated 25-2-2005, as per which Chapter 24 of the Central Excise Tariff came to be amended and Heading '2403' was introduced which read as under:

"2403 - Other manufactured tobacco and manufactured tobacco substitutes; 'Homogenised' or 'Reconstituted' tobacco; Tobacco extracts and essences"

19. The Central Excise Tariff Heading '2403' now includes the following sub-headings:

2403 OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; “HOMOGENISED” OR “RECONSTRUCTED” TOBACCO; TOBACCO EXTRACTS AND ESSENCES – Smoking tobacco, whether or not containing tobacco substitute in any proportion;	
2403 99 10	Chewing Tobacco
2403 99 30	Jarda Scented Tobacco

Thus, the Central Excise Tariff classifies 'JST' and 'BCT' as 2 different products but makes no reference to the characteristics of JST or BCT. The Chapter Note of the Tariff item is also silent as regards the difference between the two products and their classification is concerned.

20. It is an admitted fact that the samples were obtained from the Appellant’s premises on various occasions and sent to CRCL for testing, there is also no denial by the Revenue on the contention of Appellant that *out of two units on which the demand of duty has been made, samples were obtained only from one unit and on the basis of same duty has been fastened upon both the units*. Natural justice and Fair play demands

that such samples should be sent requesting for chemical analysis and a report thereon. Hence, we agree with the contention of the Ld. Counsel that the test samples should have been sent without specifying any classification since CRCL is not the expert for commenting on the Chapter Headings. In all the test memos the Ld. Assistant Commissioner however has clearly mentioned the Chapter Heading of the products and in our opinion, this is to only lead the examiner and thus influence the report as well, of the CRCL. The samples should have been sent by the Assistant Commissioner without mentioning any Chapter Headings, which would be the appropriate way for sending the samples for testing. The various test reports which are placed on record simply indicate that the product does not contain lime and ironically, the Ld. Commissioner has confirmed the demand on the sole basis of these test reports from CRCL.

21. This apart, the CRCL reports do not show as to the methods adopted/applied for testing the samples and nor do they disclose the basic composition or the essential ingredients of 'BCT' or 'JST'. Chapter Note and Tariff Heading being silent as regards the discrimination between these two products is concerned, the testing should have been done as per the BIS Standards or

other prescribed standards which are made applicable for the said products. It thus boils down to the fact that the test reports have been issued in a mechanical/informal manner without mentioning the methods applied for testing and also without disclosing the composition; as the opinion of an expert plays an important role in determining the correct classification. But here, the same has been reduced to a formality, lacking any credence thus rendering it a futile exercise. The Hon'ble Punjab and Haryana High Court in case of **Commissioner of Central Excise, Delhi Vs Exportec India Exports** [2015 (323) E.L.T. 131 (P&H)] has clearly held that non-adherence of procedure for testing and non-following the procedures and protocols for testing would make the test report redundant and unacceptable. In fact, in the SLP filed before the Apex court against the judgment of High court in **Exportec** [*supra*], the Hon'ble Apex dismissed the same with the observation that 'setting aside of demand by Tribunal on these finding of facts is not required to be disturbed' [see **2015 (323) ELT A27**]. Even during the cross-examination, the Chemical Examiner was unable to explain the detailed methods which were adopted for testing of the samples and nor did he provide the composition of the samples. Merely disclosing that the reference has been taken from various literatures without mentioning the methodology in test reports and composition of the product would not lead

anyone anywhere; nor does it give any weight worth mentioning as the same are not beyond any suspicion. It is the duty of an expert like CRCL which goes by the chemical analysis, to indicate in clear and categorical terms the composition as well as the method adopted for testing in their report, failure to do so would not only make the report questionable but also would render the same non-reliable and unacceptable. It is not as though there is no method prescribed for testing the products in question, the BIS, as seriously contended by the Id. Counsel, lays down the ways and methods to carry out tests and issuance of report thereon, but we are constrained, due to above cited reasons, to hold that the CRCL authorities have ignored every such prescriptions and composed a very short and non-descriptive report which could never have been issued by an expert in the field. No doubt we are not the experts and nor is the Revenue and hence, the responsibility was seriously high on the expert when called in. However, the reports relied upon by the Revenue do not inspire any confidence. We are therefore of the view that such reports, not being beyond doubt, cannot be the sole basis, in the facts and circumstances of the present case, to decide the classification.

22. Further, the said reports are incomplete and cannot be relied upon for arriving at the correct classification of the product in question. Further, it is admitted by the Chemical Examiner that he did not examine the samples but the same has been done by his juniors and he just signed these reports. We are of the considered opinion that the impugned test reports being incomplete, vague, and not conforming to any standards, cannot be accepted and relied upon as evidence. Therefore, Ld. Commissioner's reliance on such reports for arriving at the classification lacks merit.

23. We have also perused one of the test reports dated 26.08.2015 wherein the moisture content was shown as 19.7%. This appears to us that said test report was tested for moisture content apart from other composition and the moisture content in the said sample was found to be 19.7%; since all the other test reports are silent about the composition and if the said report is considered, then as per BIS standard, when moisture content in tobacco is found to be more than 15%, then the product should be classified as BCT. We draw support from judgment of **M/s Som Flavour Masala Pvt. Ltd. vs CGST, CCE & ST, Rohtak** reported in 2023 (6) Centax 1 (Tri-Chan) wherein, the co-ordinate Chandigarh Bench has held that if the moisture content in Jarda is

equal to or less than 15% and the Nicotine percentage is less than or equal to 4%, then the product is 'Jarda Tobacco', whereas, if moisture content is more than 15% and up to 27% and Nicotine content is more than 4% and less than or equal to 8% then the said product will be called 'Chewing Tobacco'. The said judgment of the Tribunal has since been affirmed by the Hon'ble Apex Court [see **2023 (385) E.L.T. 101 (S.C.)**]. We have found that the other compositions are not disclosed in the test reports and therefore, in view of the Hon'ble Supreme Court judgment as regards the moisture content, we are of the considered view that the product manufactured should be appropriately classifiable under Tariff Heading No. 24039910 as 'BCT'. We also take support from the documentary evidence placed on record to establish that the Appellant was regularly purchasing lime on invoices and Form IV Register showing consumption of lime in the manufacturing of BCT which would support its claim that the Appellant is using lime in their product and the presence of lime would also be the deciding factor of the product under dispute as 'BCT'.

24. It is the established position in law that when the Revenue disputes the declared classification, the onus to prove the correct classification always and absolutely lies on the Department and such vague, inconclusive and

unreliable reports which have been relied upon by the Ld. Commissioner *per se* is not sufficient to dislodge the classification of the product under Chapter Heading declared by the Appellant. We take support in this regard from the judgement of Hon'ble Apex Court in case of **H.P.L. Chemicals Ltd. Vs. C.C.E. Chandigarh** [2006 (197) E.L.T. 324 (S.C.)] and **Union of India Vs. Garware Nylons Limited** [1996 (87) E.L.T. 12 (S.C.)]. Accordingly, we hold that the product under dispute was rightly and should be classified as 'BCT' as declared by the Appellant, under Chapter Heading 24039910 and therefore, we set aside the impugned order and the demands therein.

25. This apart, we have also pursued the Capacity Determination Assessment Order passed under Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. We find that all the Assessment Orders came to be passed determining the duty as 'BCT' after the CRCL test reports showing the product as 'JST'. The Assistant Commissioner should have passed the provisional Assessment Orders for Capacity Determination if the test reports were awaited from CRCL. But in the present case, during the pendency as well as after the receipt of the test reports, none of the orders was passed for provisional assessment for capacity determination.

Moreover, the said final orders of the Assistant Commissioner were not at all challenged by the Revenue by way of filing Appeal. That only indicates that the department has accepted the stand of the Assessee. Therefore, we find force in the contention of the Ld. Counsel that the present SCNs and the Impugned Order demanding the duty and penalty amounts to re-assessment which is not permissible under the provisions of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010. We take support of judgements in case of **M/s. Miraj Products Pvt. Ltd. vs. Commissioner, Central Goods & Service Tax**, [Excise Appeal No. 51730 of 2019] and **Vikas Steel vs Commissioner of Central Excise, Jamshedpur** [2001 taxmann.com 1488 (CEGAT- Kolkata)].

26. We also find that the present demand was issued under Section 11A without invoking extended period of limitation whereas, the penalty has been imposed against the Appellant under Section 11AC alleging the charges of suppression. When the Revenue doesn't dispute the fact of the Appellant regularly filing the declaration and the assessment order being passed by the Assistant Commissioner on time-to-time basis and samples were regularly collected, then penalty cannot be

imposed by invoking the provisions of Section 11AC. This is also impermissible in law as the Revenue cannot adopt double standards, one for the demand and another for penalty. In any case, we have already set aside the demand of duty, we therefore do not see any reason to sustain penalty and interest against the Appellant and hence, the same being liable to be set aside, we order accordingly.

27. In view of the above discussions, we set aside the impugned Order and allow the appeal with consequential relief if any, as per law.

(order pronounced in the open court on 18.09.2025)

(P. DINESHA)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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