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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/2061/2005 & E/2456/2005-EX[DB]

Dated: **16/07/2012**

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

MILAP ZARDA UDYOG
Chintaman Ka Madra Nathdwara Distt-
Rajsamand Rajasthan

MILAP ZARDA UDYOG (Appellant)

VS

C.C.E. JAIPUR I (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/812-813/2012-EX[DB]** dated **10/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. JAIPUR I
N.C.R.Building, Statue Circle, "C"
Scheme, jaipur 302005.

2. **Advocate(s) / Consultant(s):** SH. B.L. NARSIMAHAN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

3. **C.D.R**

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

14. M/S. NIRMAL PRODUCTS,
MALI COLONY, NATHDWARA,
DISTT. RAJSAMAND

15. SH. MAYANK GARG, ADV.,
B-1/1289-A, VASANT KUNJ, N. DELHI-70

Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI.

Date of Hearing/ Decision: 10.07.2012

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 Appeals No.E/2061 of 2005

(Arising out of order-in-appeal No. 162(RM)CE/JPR-II/2005 dated 28.03.2005 passed by the Commissioner (Appeals)-II, Central Excise, Jaipur).

M/s. Milap Zarda Udyog ...Appellants

Vs.

CCE, Jaipur-I ...Respondent

AND

Excise Appeal No. 2456 of 2005

(Arising out of order-in-appeal No. 210(RM)CE/JPR-II/2005 dated 21.04.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur).

M/s. Nirmal Products ...Appellant

Vs.

CCE, Jaipur-I ...Respondent

Appearance:
Shri B.L. Narsimahan, Advocate in M/s. Milap Zarda Udyog
And Shri Mayank Garg, Advocate in M/s.Nirmal Products
Shri I. Beg & Shri R.K. Verma, ARs for the respondents.

Coram: Hon'ble Justice Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No..A/ 812-813/2012-EX (BR)

Justice Ajit Bharihoke:

By this order we proposed to dispose above noted two appeals involving similar question of law and facts.

2. The appellants are engaged in manufacture of chewing tobacco which is soled through various dealers. The appellants are clearing the chewing tobacco in pouches of less than 10 gms, which are further packed into larger packets containing more than one pouch. The appellants during the relevant period detailed in respect of show cause notices cleared those pouches further packed in larger packets on payment of central excise duty based on the transaction value as per Section 4 of the Central Excise Act. Show cause notices were issued to the appellants on the ground that as the appellants had cleared the pouches of chewing tobacco in polypacks containing more than one smaller pouches. The excise duty was required to be paid on the basis of valuation under section 4A of the Central Excise Act. The adjudicating authority confirmed the demand after assessing the goods in question under section 4A of the Central Excise Act against respective appellants and also imposed penalty. The appeals filed against the respective order-in-original were dismissed by the impugned orders in respective appeals.

2. Shri B.L. Narsimhan, appearing for M/s Milap Zarda Udyog and Shri Mayank Garg, Advocate appearing for M/s Nirmal Products have argued on the same lines. They have submitted that they were marketing single unit pouches containing less than 10 gms. of chewing tobacco, as such, they were not covered under the "Package Commodity Rules" in view of Rule 34(b). It was also submitted that since the appellants were not covered under the Package Commodity Rules, they have rightly paid the excise duty as per transaction value in terms of Section 4 of the Central Excise Act and that the Commissioners (Appeals) concerned were not right in holding that for the purpose of valuation, Section 4 A of the Central Excise Act would be applicable. In support of their contention, ld. Counsels appearing for the appellants have relied upon the judgement of Supreme Court in the matter of **CCE, Vapi Vs. Kraftech Products – 2008 (224) ELT 504 (SC)** as also the judgement of Supreme Court in the matter of **CCE, Rajkot, Gujarat Vs. Makson Confectionery Pvt. Ltd. - 2010 (259) ELT 5 (SC)** and various other judgements of the Coordinate Benches of this Tribunal.

3. Shri I. Beg and Shri R.K. Verma, Departmental Representatives in respective appeals on the contrary have argued in support of the impugned orders. They have submitted that although the chewing tobacco was packed in single unit pack of less than 10 gms., those were marketed for retail sale in multi packs containing more than one pouches. Thus, in view of Rule 6 and Rule 17 of the "Package Commodity Rules", total weight of multi pack containing more than one single unit is to be taken into account for the purpose of applicability of rules and total weight of multi-unit package

being more than 10 gms., Rule 4 A of the Central Excise Act is applicable and the Commissioner (Appeals) has rightly assessed and confirmed duty demand as per Rule 4 A of the Central Excise Act. It is further contended that chewing tobacco pouches as per the market practice are not sold by weight but by numbers therefore also, Rule 34(b) of the Package Commodity Rules would not come to the aid of the appellants.

4. We have considered the rival contentions and perused the record.

5. The issue raised in these appeals is no more res integra. Similar issue on facts and law came up before the Hon'ble Supreme Court for consideration in the matter of **CCE, Vapi Vs. Kraftech Products – 2008 (224) ELT 504 (SC),** wherein the Supreme Court after considering the relevant provisions of Excise Act and Package Commodity Rules decided the issue against the Revenue. Relevant observation of the Supreme Court are reproduced thus:-

> *"18. Rule 34 contains an exemption clause. The exemption clause would apply if the commodity is sold by weight or measure, subject of course to the condition that the net weight of the commodity is 10 gms. or less. This legal requirement in this case also stands complied with. Once it is held that the Rules have no application in respect of the commodity as marketed and sold by the respondent, Section 4A of the Act will have no application. The appellate authority as also the Tribunal, in our opinion, therefore, were right in their decisions.*
>
> *23. We have noticed hereinbefore that each package offered to sell to the customer contains three sachets. Net weight of all the three sachets are stated thereon. It is a "multi-piece package" which is capable of being offered to sell as such only because a package is a "multi-piece package", the same cannot be taken out of the umbrage of exemption clause contained in Rule 34 of the Rules. Why the commodity cannot independently be sold either by*

weight or measure is beyond our comprehension particularly when Rule 12(2) permits the same. The illustration appended to Rule 2(j) bring out a clearer picture. It states that the combined net weight shall be taken into consideration for the purposes mentioned therein. After combined weight is taken into consideration for the purpose of applicability of the Rules, there is no reason as to why the said purpose shall not be considered to be a relevant factor for applying the exemption provision. Assuming Rule 2(j) was otherwise vague or unambiguous, illustration appended thereto brings out the true meaning and purport thereof. The reasoning adopted by the Madras High Court in Varnica Herbs (supra) does not appeal to us.

It was rendered per incuriam. It was held to be so in Urison Cosmetics Ltd. (supra) by a Larger Bench of the Customs, Excise and Service Tax Appellate Tribunal. We agree with the said opinion of the Tribunal."

6. The aforesaid view was reiterated by the Supreme Court in the matter of Commissioner of Central Excise Vs. Makson Confectionery Pvt. Ltd.

7. In view of the law enunciated by the Supreme Court in the above referred judgement, we find it difficult to sustain the impugned orders confirming the duty demand based upon the assessment done as per Section 4A of the Central Excise Act. Appeals are, therefore, allowed and the impugned orders are set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)