

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. III

**Excise Cross Objection No. 50855 of 2025
in
Excise Appeal No. 50605 of 2025**

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-254-255-2024-2025 dated 27.12.2024 passed by the Commissioner (Appeals), CGST & Central Excise, Indore.)

The Commissioner, CGST & Central Excise, Indore, M.P. Appellant

Versus

M/s Bhailal Bhai Zaver Bhai Patel Respondent
299, Dhar road, Sirpur,
Indore (M.P.)

APPEARANCE:

Mr. Vikram Singh, Authorised Representative of the Department
Mr. P. Motlan, Chartered Accountant and Mr. Ashutosh Upadhyay,
Advocate for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 02.09.2026

FINAL ORDER NO. 51429/2026

ASHOK JINDAL:

Revenue has filed this appeal against the impugned order and respondent has also filed the cross-objection to appeal filed by the Revenue. The facts of the case are as under:

2.1 The facts of the case are that the respondent is alleged clearance of tobacco products falling under Chapter 24. During the course of scrutiny/data analysis of the return filed by the respondent, it was observed that the respondent was not paying National Calamity

Contingent duty (NCCD) in terms of 7 Schedule of Finance Act, 2001 as amended. An inquiry was, therefore, initiated against the respondent. The respondent was classifying the goods during the period July 2017 under CTH 2403 9910 of Central Excise Tariff Act, 1985 as chewing tobacco. A summon dated 17.07.2009 was issued to the respondent to tender the statement and to provide the sale and purchase ledger which did not evoke any response. Another summon dated 25.11.2019 was issued to the respondent also asking to provide invoices and samples alongwith wrappers/boxes. The respondent did not bother to respond to the summon at that time also, therefore a summon was again issued in 26.06.2020. The respondent finally appeared on 09.03.2021 and contended his statement through Shri Gaurav Patel. Shri Gaurav Patel oppose that the purchasing tobacco from Gujarat which is then sold to the local indoor market and also in the border of Madhya Pradesh and Maharashtra. He further explained that tobacco so purchased in bags from Gujarat and repacked in different sizes bearing 3 patti brand and clarified that no cutting it cleaning tobacco so received from Gujarat by them and merely packing is done. On being asked to specify the use of tobacco, he stated that tobacco is used for consumption of pan masala. People also consume it after adding lime use as manjan and also use as tobacco in cigarette. On being asked to specify the HSN of the branded and unbranded tobacco cleared by them, he stated that branded tobacco sold as unmanufactured tobacco without lime dupe falling under HSN 2401 on which 28% GST and 71% compensation cess were paid by them. As regard to unbranded tobacco, the same has been classified as them other smoking tobacco not bearing brand under HSN

24031990 on which GST @ 28% and a compensation cess @ 11% was paid on being asked as to why they have changed the classification with effect from 01.07.2017 chewing tobacco on which they were paying NCCD to other smoking tobacco not bearing brand under HSN 24031990, therefore, replied that they were selling unbranded tobacco only which could not be chewed, thereafter no samples were drawn under Panchnama dated 01.06.2022 and the chemical examiner submitted the test report dated 20.06.2022. on the basis of test report and other analysis of the statements recorded during the course of investigation, a show cause notice was issued to the appellant on 08.08.2022 by invoking extended period of limitation to classify the said goods under CTH 24039910 as chewing tobacco and to demand NCCD amounting to Rs. 74,77,171/- for the period July 2017 to March 2022 and demand of excise duty of Rs. 1,25,306/- for the period 06.07.2019 to 31.03.2022 alongwith interest and imposition of penalties. The matter was adjudicated and the classification was held that the subject goods is chewing tobacco falling under CTH 24039910 and NCCD and central excise duty were also demanded. Penalty was also imposed. The said order was also challenged before the learned Commissioner (Appeals) who set aside the adjudication order relying on the decision of this Tribunal in the case of Suresh Tobacco Company vs. Commissioner of Central Excise, Service Tax and CGST and Central Excise, Vadodara-I vide final order no. 11060/2024 dated 15.05.2024. The said order challenged by the Revenue on the ground that in the case of Suresh Tobacco Company, the Final order has been accepted by the Revenue on monetary limits. The said decision of this Tribunal has no precedent value, therefore, the said decision cannot be

relied upon by the learned Commissioner (Appeals). In view of this, impugned order is to be set aside.

3. On the other hand, learned counsel for the respondent filed cross objections and prayed that impugned order is to be upheld.

4. Heard the parties.

5. Considering the fact that the revenue has accepted the order of this Tribunal in the case of Suresh Tobacco Company (Supra) and in this case, the revenue is stating that the said decision has no precedent value which is not acceptable by us as any decision of this Tribunal is to be accepted by revenue or having a right to challenge the said order before the higher forum which Revenue has failed to do so.

6. Therefore, the decision in the case of Suresh Tobacco Company (Supra) is acceptable and having a precedent value. Therefore, we do not find any merit in the appeal filed by the Revenue, the same is dismissed. Cross-objections are also disposed of in above terms.

(Order pronounced in the Open Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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