CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51953 of 2017

(Arising out of Order-in-Original No. ALW-EXCUS-000-COM-014-17-18 dated 27.09.2017 passed by the Commissioner of Central Excise & Service Tax, Alwar)

DATE OF HEARING : 28.03.2018
DATE OF DECISION : 28.03.2018

M/s Tara Chand Naresh Chand ….. Appellants
(Rep. by Sh. A.R. Madhav Rao, Adv)

VERSUS

CCE&ST, Alwar ..… Respondent
(Rep by Sh. R.K. Mishra, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51125/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. ALW-EXCUS-000-COM-014-17-18 dated 27.09.2017 passed by the Commissioner of Central Excise & Service Tax, Alwar.

2. The brief facts of the case are that, the asseessee-Appellants were engaged in the manufacture of "Jayanti Jarda

brand Chewing Tobacco" during the period March, 2015 to February, 2016.

3. The dispute in the present appeal is pertaining to the classification of 'Scent'. The assessee-Appellants want to bring the product under the Central Excise Tariff Heading 24039910 which deals with Chewing Tobacco, but the Department wants to bring the same under Heading 24039930 which deals with the Zarda Scented Tobacco.

4. During the course of arguments, Shri A.R. Madhav Rao, learned counsel, submits that, for the earlier period, the Department has accepted the classification declared by the assessee-Appellants where the product was considered as 'Chewing Tobacco' and not as 'Zarda Scented Tobacco'. The learned counsel also submits that the raw material was purchased from M/s Gupta & Company Pvt. Ltd. which was declared under Heading 3302.9011 and 3302.9012, which is not attracting the 'Zarda Scented Tobacco'. It is the submission of the learned counsel that the Tribunal in the case of **Urmin Products Pvt. Ltd. vs CCE, Ahmedabad,** 2010 (256) ELT 597 (T-Ahd.), has observed that :

> **"16........The appellant never used the Zarda Scent. He drew our attention to the price list of M/s. Gupta & Co. (P) Ltd. submitted by them in their appeal paper book from where it can be seen that the Zarda Scent as such is available in the market and therefore the product Zarda Scented Tobacco would mean that the Zarda**

> **Scent has been used in the manufacture of the same. Since the appellants have never used the Zarda Scent, the product cannot be classified as Zarda Scented Tobacco."**

He further submits that the Tariff Heading No. 24039910 is dealing with 'Chewing Tobacco', but the Tariff Heading No. 24039930 is dealing with 'Zarda Scented Tobacco' which is not applicable in the assessee-Appellants' case. To support his contention, he relied upon the ratio laid down in the case of **Flakes-N-Flavourz vs CCE, Chandigarh,** 2015 (327) ELT 435 (T-Del.), wherein it was observed that :

> **"48. In the Tariff the expression chewing tobacco and zarda scented tobacco are no defined as the product has to be classified based upon the description of the product given by the manufacturer on the pouch as well as on the basis of common parlance and established practice. In the present case, as the product in question as per the description of the product is flavour chewing tobacco and it is bought and sold in the market as chewing tobacco. Further the appellant from the beginning classifying the same as chewing tobacco and after the period in dispute also classified the same as chewing tobacco. Hence I find merit in the contention of the appellant that the product in question is chewing tobacco and classifiable under Heading 24039910 of the Tariff."**

5. On the other hand, Shri R.K. Mishra, learned DR, justified the impugned order.

6. After hearing both sides and on perusal of the record, it appears that the Superintendent vide letter dated 04.03.2015

has rejected the prayer of the assessee-Appellants to classify the product as 'Zarda Scented Tobacco' by observing as under :

> **"As regards the assessee's letter dated 02.03.2015 regarding amendment in their Registration by changing the CETSH of their final product from 24039910 (Chewing Tobacco) to 24039930 (Jarda Scented Tobacco), it is submitted that looking to the production process/ingredients the product is already correctly classified under CETSH 24039910 and does not merit classification under the CETSH 24039930, as claimed by the assessee."**

7. By following Tribunal's order (supra) and the above mentioned letter as well as the earlier decision of the Commissioner in the assessee-Appellants' case, we are of the view that the impugned order cannot be sustained and the same is hereby set aside by classifying the product 'Chewing Tobacco' under Tariff Heading No. 24039910.

8. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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