IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77832 of 2018

(Arising out of Order-in-Original No. 31/Commr.Audit/CEX/BBSR/2017-18 dated 28.03.2018 passed by the Commissioner (Audit), G.S.T. and Central Excise, Bhubaneswar, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

Commissioner, Central G.S.T. and Central Excise **: Appellant**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

VERSUS

M/s. Meena Zarda Udyog (P) Limited **: Respondent**
Plot No. B-10, Mancheswar Industrial Estate,
Bhubaneswar – 751 010 (Odisha)

APPEARANCE:

Shri S. Chitkara, Authorized Representative,
Shri D. Chatterjee, Authorized Representative,
For the Appellant

Shri K.K. Acharya, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76173 / 2026

DATE OF HEARING: 01.09.2026

DATE OF DECISION: 18.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by the Revenue assailing the Order-in-Original No. 31/Commr.Audit/C/Ex/BBSR/2017-18 dated 28.03.2018, passed by the learned Commissioner of Central Excise, Audit, wherein the demand of Central Excise duty amounting to Rs.97,20,38,438/- for the period from February, 2010 to January, 2013, together with the consequential liability towards interest and penalty, proposed against the respondent-assessee, M/s. Meena Zarda Udyog (P) Ltd. [hereinafter referred to as the respondent / assessee], computed in terms of the the seventh proviso to Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter, "the Rules"), came to be dropped.

2. The facts of the case are that the respondent-assessee was engaged in the manufacture of notified goods under the compounded levy scheme governed by the Rules. In terms of Rule 9 of the Rules, the monthly duty payable on the notified goods was required to be discharged by the 5th day of the same month, and an intimation in Form-II was required to be furnished before the jurisdictional Superintendent of Central Excise by the 10th day of the same month. The second proviso to Rule 9 further contemplated that, in the event of failure on the part of the manufacturer to discharge the duty by the prescribed due date, the outstanding amount would be payable together with interest at the rate specified by the Central Government from time to time.

3. The seventh proviso to Rule 9, which was inserted vide Notification No. 08/2010-C.E. (N.T.) dated 27.02.2010, further provided for a specific consequence in cases where a manufacturer, having failed to discharge the duty payable by the due date, continued to operate any packing machine. In such circumstances, and for so long as the default continued, the monthly duty was required to be determined on the basis of the number of operating packing machines declared in the month for which

duty was last paid by the manufacturer or the total number of packing machines found available in his premises at any time thereafter, whichever was higher. It was the Revenue's case that the said provision is attracted in the respondent's case from February, 2010 onwards.

4. During the course of scrutiny of the accounts and statutory records of the respondent, it was alleged by the Department that, commencing from February, 2010, the respondent had failed to discharge, within the stipulated time, the total monthly duty liability as fixed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Division, i.e. by the 5th day of the concerned month, while nevertheless continuing its manufacturing operations. Upon scrutiny of the ER-1 returns, Forms-I and II and other records pertaining to the respondent, the Department took the view that the default commencing in February, 2010 attracted the operation of the seventh proviso to Rule 9 and that such default continued through the subsequent months up to January, 2013.

4.1. It was further alleged that, during the material period, the respondent had declared and continued to have available in its factory premises a total of 22 single-track packing machines. Rule 6 of the Rules required a manufacturer of notified goods to furnish, in the prescribed Form-I, a declaration, inter alia, specifying the number of single-track packing machines available in the factory, the number thereof installed in the factory and the number of such installed machines which the manufacturer intended to operate for production of notified goods. According to the Revenue, the declarations furnished by the respondent disclosed that 22 single-track packing machines were available in its factory premises and that the said figure of 22 continued to be reflected in the subsequent declarations during the material period.

5. The Department accordingly proceeded on the premise that, by the time Notification No. 08/2010-C.E. (N.T.) dated 27.02.2010 came into force, 22 single-track packing machines were available in the respondent’s factory and that the same number continued to remain available during the relevant period. According to the Department, the expression “total number of packing machines found available in his premises at any time thereafter” occurring in the seventh proviso to Rule 9 was sufficiently wide to encompass the 22 machines available in the factory. Accordingly, the Revenue proceeded to consider the number of machines as 22 for the purposes of the seventh proviso to Rule 9 and consequently constituted the basis upon which the monthly duty liability was liable to be computed.

5.1. On the aforesaid basis, the Department adopted the rate of duty of Rs.12.50 lakh per packing machine, as prescribed under Notification No. 42/2008-C.E. dated 01.07.2008, and accordingly worked out the monthly duty liability on 22 machines at Rs.2,75,00,000/- (22 × Rs.12.50 lakh) during the applicable period. It was further noticed that the rate of duty was enhanced to Rs.19.00 lakh per machine with effect from 17.03.2012 vide Notification No. 13/2012-C.E. dated 17.03.2012. Upon applying the aforesaid rates and taking into account the number of packing machines which, according to the Department, were available in the respondent’s factory premises, the total duty liability for the period from February, 2010 to January, 2013 was calculated at Rs.113,99,19,354/-. Against the said liability, the respondent had discharged duty amounting to Rs.16,78,80,916/-, calculated on the basis of the number of packing machines actually in operation. The Department accordingly alleged a short-payment of Central Excise duty amounting to Rs.97,20,38,438/-.

5.2. The Department also noted that, consequent upon the ban imposed by the Government of Odisha vide Notification No. 367/H dated 03.01.2013 upon the manufacture, storage, sale and distribution of Gutkha and Pan Masala containing tobacco and nicotine, the respondent, vide its letter dated 19.01.2013, sought permission to uninstall and seal the four packing machines which were then in operation. According to the Department, the subsequent cessation of manufacture did not detract from the fact that 22 packing machines had remained available in the factory premises during the material period and, therefore, did not affect the computation contemplated under the seventh proviso to Rule 9.

6. After discontinuation of manufacture of the notified goods, the jurisdictional Range Officer undertook verification of the duty liability on the basis of the facts and figures available on record and formed the view that the respondent had not determined the defaulted duty liability in accordance with the mode prescribed under the seventh proviso to Rule 9. The Department accordingly alleged that the respondent had incorrectly determined its liability and had thereby understated the amount of duty payable under the statutory scheme.

7. It was accordingly alleged that the respondent had deliberately suppressed the actual extent of its duty liability and had wilfully determined the defaulted duty in a manner contrary to the statutory prescription, with intent to evade payment of the duty legally due.

8. Thereafter, on the basis that the respondent's liability was required to be determined in terms of the seventh proviso to Rule 9 of the Rules on the basis of 22 packing machines available in its factory premises, a Demand cum Show Cause Notice came to be issued on 05.04.2014 proposing recovery of the aforesaid amount of Rs.97,20,38,438/- for the period from February, 2010 to January, 2013, being the duty liability allegedly payable by the respondent during the said period, together with interest, invoking the applicable provisions of the Central Excise Act, 1944, including the extended period of limitation under the then applicable provisions of Section 11A, read with the relevant provisions of the Rules. In the said notice, it was further alleged that the notified goods manufactured by the respondent during the period of contravention were liable to confiscation under Rule 17 of the Rules and that the respondent was liable to penal consequences under Rule 17(1) thereof read with Section 11AC of the Central Excise Act, 1944, on the allegation of misstatement and suppression of the actual duty liability with intent to evade payment of Central Excise duty.

8.1. The respondent contested the allegations contained in the Show Cause Notice and maintained, in substance, inter alia, that there had been no irregular manner of payment of duty so as to invoke the seventh proviso to Rule 9. The respondent's stand was that the statutory expression had to be understood in the context of machines available for production and not machines which were physically present but sealed and rendered inoperative. The respondent accordingly contended that the Department could not disregard its contemporaneous declarations and mechanically adopt the figure of 22 for the purpose of determining the duty liability.

8.2. The matter thereafter came to be adjudicated by the Ld. Commissioner (Audit), G.S.T. and Central Excise, Bhubaneswar, who, upon consideration of the material available on record and the rival contentions, passed the Order-in-Original No. 31/Commr.Audit/C/Ex/BBSR/2017-18 dated 28.03.2018, dropping the demand of Rs.97,20,38,438/- proposed for the period from February, 2010 to January, 2013, together with the consequential interest and penalty. The ld. adjudicating authority accepted the respondent's contention as regards the applicability and operation of the relevant provisos to Rule 9 and did not uphold the Department's basis for fastening the differential duty liability upon the respondent.

9. The Revenue, being aggrieved by the aforesaid order whereby the entire demand was dropped, has preferred the present appeal.

10. The Ld. Authorized Representative of the Revenue relied upon the grounds of appeal, which are inter alia set out below: -

(i) The adjudicating authority has passed the said order without appreciating the material facts of the case and legal provisions of the case.

(ii) The adjudicating authority at Para 5.6 of OIO has discussed the provisions of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, and observed that the packing machines which are uninstalled and sealed by the department should be regarded as deemed removal. The machines which are inoperable /sealed and kept separately would tantamount to removal. Therefore, the machines which have been removed by following the procedure of Rule 13 ibid, cannot be said to be available. The above interpretation of the adjudicating authority is not at all correct. The Noticee from time to time during the material period vide letters dated 28.01.2011 and 24.01.2012 had submitted Form- I under Rule 6 and declared to the Jurisdictional Assistant Commissioner that there were 22 numbe of Packing Machines available in the factory. The adjudicating authority has never analysed or taken note of the declaration given by the Noticee in the mandatory form submitted to the Divisional Assistant Commissioner. The adjudicating authority in his Order has observed that 18 machines were in sealed condition, but the same is not supported by any evidence/corroborative facts. Therefore, the adjudicating authority's finding that the uninstalled and sealed machines are to be treated as deemed removal and cannot be held to be found available in the factory, is not at all justified.

(iii) The adjudicating authority at Paras 5.7 & 5.8 of the OIO has categorically mentioned /accepted that the Noticee has paid the duty during the period February, 2010 to January, 2013 belatedly and as such it cannot be treated as non-payment of duty. Therefore, the proviso 2 to Rule 9 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, should be made applicable in the case and Proviso 7 to rule 9 of the said Rules will not be applicable in the instant case. The adjudicating authority has however failed to appreciate that intention made in the statute by inserting Proviso 7 to Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. In the proviso, it is mentioned that if the manufacturer does not pay the duty payable by the due date and continues to operate any packing machine, then duty will be leviable on the total number of packing machines found available in his premises. In the said proviso, it was not mentioned regarding belated payment or default payment. The concept of belated payment/default payment is only the thought of the adjudicating authority, which is not therein in the provisions of Rule 9 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. Under Rule 9 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, it is mandatory that the monthly duty payable on notified goods should be paid by the 5th of the same month, which has not been followed in the instant case by the Noticee. Therefore, automatically the provisions of proviso 7 to Rule 9 come in to play. Hence, the observation/findings of the adjudicating authority that duty will not be charged on the number of packing machines available in the factory premises does not hold good. Accordingly, the duty liability rests upon the manufacturer on the basis of number of packing machines available in the premises.

(iv) The adjudicating authority at Paras 5.12 to 5.14 of the OIO after discussing the provisions of proviso 2 to Rule 9 and proviso 7 to Rule 9 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, has observed that proviso 2 to Rule 9 is applicable in the instant case and not proviso 7 to Rule 9. Further, he has observed that proviso 2 does not specify any time-limit for payment of default amount. But the adjudicating authority has failed to take note of the vital points mentioned for invoking proviso 7 to Rule 9. Under proviso 7, it is clearly mentioned that in case a manufacturer does not pay the duty by due date and continue to operate any packing machine (which is not there in proviso 2), then duty shall be paid on the basis of no of machines available in the factory premises. The adjudicating authority has accepted that the Noticee has not discharged its duty liability by due date but has paid the duty belatedly. Even though the Noticee has not discharged its duty liability, he continued to operate the packing machines. The adjudicating authority at Para 3.5 of the OIO has clearly brought out the number of packing machines used by the Noticee from February, 2010 to January, 2013. The adjudicating authority has clearly mentioned that the Noticee during the impugned period has not paid duty by due date, but operated the packing machines installed in the factory premises. Therefore , the provisions of proviso 7 to Rule 9 are liable to invoked in the instant case and duty has to be calculate accordingly. Therefore, the observations of the adjudicating authority that proviso 2 to Rule 9 will be applicable in the instant case is not legal, proper and correct.

(v) Thus, the adjudicating authority's findings that proviso 2 to Rule 9 will be applicable in the instant case, does not appear to be legal, proper and correct. In this regard, the Revenue places reliance on the decision in the case of *Bansal Wire Industries Ltd Vs. State of UP as reported in 2011 (269) ELT-145(S.C.).*

(vi) Similar view has also been reiterated by the Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Basant Agrotech (India) Ltd. as reported in 2014(302) ELT-3(S.C.),* while referring to interpretation of statute in fiscal matters, has held that it is to be determined by strict letters of law and not merely on spirit of statutes or substance of law-presumptions and assumptions are entirely out of place. No tax can be imposed by inference or by analogy or by trying to probe intention of legislature and by considering what substance of the matter was.

(vii) Further, the adjudicating authority has erred in dropping the demand by relying on decision of Hon'ble Tribunal in the case of *Goyal Tobacco Co. Pvt. Ltd. Vs. CCE & ST, Jaipur-I, as reported in 2017(348) ELT-720(Tri-Del)*, without taking the cognisance of fact that the Department did not accept the said Tribunal Order and appeal was preferred before the Hon'ble High Court of Rajasthan (Jaipur) in D.B. C.E. Appeal No.69/2017, but the same was dismissed by Hon'ble High Court vide its Order dated 19.09.2017. The Department has not accepted the said Hon'ble High Court Order and filed an SLP before the Hon'ble Supreme Court, New Delhi (Ref. Diary No.6512/2018), which is pending decision. Thus, when the relied upon Tribunal order has not become final and when an appeal is pending before the Apex court, the adjudicating authority has erred in deciding the case relying on the ratio of the said Tribunal order, which is not correct.

(viii) In this connection, it is also worth mentioning here that the case of *Goyal Tobacco Co. Pvt. Ltd.* relates to manufacture of "Chewing Tobacco" and is governed by Chewing Tobacco Unmanufactured Tobacco Packing Machines Rules, 2010, whereas the instant case relates to "Pan Masala", which is governed by Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. Therefore, the ratio of Tribunal decision in the case of *Goyal Tobacco Co. Pvt. Ltd., (supra)* cited by the adjudicating authority at Para 5.10 of the OIO is not applicable to the facts of the instant case.

(ix) The ratio of Hon'ble High Court judgement in the case of *CCE, Jaipur-II Vs, Jupiter Industries*, as reported in 2006(206) ELT-1195(Raj.) cited by the adjudicating authority applicable to the instant case, is also not manufacturing of Stainless Steel Patta falling under Chapter 72 of as the same relates the Central Excise Tariff Act. Similarly, the case law of *M/s. Acme Industries Vs CCE, Jaipur-ll as reported in 2011(269)ELT-523(Tri-Del.)* is also not applicable in the instant case, as the same also relates to manufacturing of Stainless Steel Patta under Chapter 72 of the Central Excise Tariff Act. Thus, the adjudicating authority has erred in dropping the demand by relying on the said case laws, while the instant case relates to manufacture of Pan Masala/Mawa Masala containing tobacco, and in the instant case duty is payable under Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008. Hence, the subject Order-In-Original, is not legally sustainable to the extent mentioned above, and hence requires to be reviewed in terms of Section 35E of the Central Excise Act, 1944.

10.1. In view of the submissions hereinabove, the Revenue prays for setting aside the impugned order and allowing the instant appeal.

11. The Ld. Counsel appearing on behalf of the Respondent, opposing the appeal, inter alia, made the following submissions:

(i) The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 were framed under Section 3A of the Central Excise Act, 1944 for levy and collection of duty on notified goods under the compounded levy scheme. It was submitted that the second and seventh provisos to Rule 9 operate in materially different fields: while the second proviso contemplates a mere default in payment of the duty by the prescribed date and fastens liability towards the outstanding duty together with interest, the seventh proviso is attracted only where, notwithstanding such default, the manufacturer continues to operate packing machines in circumstances warranting determination of duty on the higher number contemplated therein.

(ii) It was contended that the seventh proviso cannot be invoked merely because there has been a delay or default in payment of duty. According to the learned Counsel, its invocation presupposes a situation where the manufacturer is found to be operating a number of packing machines higher than the number declared or otherwise determined for the month in which duty was last paid. In the absence of any mis-declaration or contravention with respect to the number of machines installed and actually operated by the Respondent, the essential condition for invoking the seventh proviso remains unfulfilled.

(iii) It was specifically submitted that there is no allegation in the present proceedings that the Respondent had mis-declared the number of packing machines installed or operated in its factory. The Respondent had consistently discharged duty on the basis of the machines actually in operation and, consequently, any delayed payment could, at the highest, attract the statutory consequence contemplated under the second proviso to Rule 9, namely, payment of interest on the outstanding duty. It was further submitted that the requisite duty along with applicable interest had already been discharged by the Respondent.

(iv) In support of the aforesaid proposition, reliance was placed upon the decision of the Tribunal in *Sanket Food Products (P) Ltd. v. CCE, Aurangabad, reported in 2015 (316) E.L.T. 501 (Tri.),* particularly paragraphs 29 and 30 thereof, wherein, according to the learned Counsel, the scope and applicability of the seventh proviso to Rule 9 had been considered.

(v) It is further submitted that even the Department's own understanding regarding the treatment of the 18 sealed packing machines was not free from ambiguity, which was evident from the discussion contained in paragraph 5.1 of the impugned order itself. It was contended that mere physical presence of a sealed machine within the factory premises could not, by itself, render such machine "available" for the purposes of the seventh proviso.

(vi) Further, that the precise controversy as to whether sealed and inoperative packing machines could be regarded as machines “found available” had subsequently been clarified by the Ministry in 2010. According to the said clarification, the expression “total number of packing machines found available” was required to be understood as referring to packing machines found available for production, and machines sealed by the Department could not consequently be regarded as machines available in the factory for the purpose of payment of duty. The learned Counsel relied upon the said clarification as also having been noticed in the decision of the Tribunal in *CCE, Bangalore v. Trishul Arecanut Granules Pvt. Ltd., reported in 2023 (6) TMI 235 (CESTAT-Bangalore).*

11.1. On the strength of the aforesaid submissions, it is argued by the Ld. Counsel for the respondent that the impugned order has correctly appreciated the scope of Rule 9 and therefore the same does not warrant interference. It is thus the respondent's prayer that the Revenue's appeal be rejected and the impugned order dated 28.03.2018 be sustained.

12. Heard both the sides and perused the records of the case.

13. Having considered the rival contentions, we find that the short question which falls for our consideration in the present appeal is whether the respondent herein was liable to discharge Central Excise duty in terms of the seventh proviso to Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (hereinafter, “the Pan Masala Rules”), as contended by the Revenue, or whether the duty liability arising on account of delayed payment stood governed by the

second proviso to Rule 9 ibid., as contended by the Respondent and accepted by the lower adjudicating authority.

14. At the outset, it would be apposite to notice the factual position emerging from the record. The Respondent has consistently maintained that, during the material period, it had duly furnished the requisite declarations in Form-I under Rule 6 of the Pan Masala Rules, specifying, inter alia, the number of packing machines available in the factory, the number thereof installed therein and the number which it intended to operate for production of the notified goods. It is the specific submission of the Respondent that, although 22 packing machines were physically present in the factory premises, only four (04) machines were operational during the period under reference. The declaration in respect of the operating machines was duly communicated to the jurisdictional authorities and was acted upon by the proper officer, who determined the corresponding monthly duty liability on the basis of four operating machines. The Respondent thereafter discharged the duty, albeit belatedly, together with the applicable interest in terms of the Second Proviso to Rule 9. The dispute, therefore, essentially concerns the remaining eighteen (18) machines, which, according to the Respondent, were sealed/uninstalled and were not available for production, but which have nevertheless been reckoned by the Revenue for the purpose of invoking the seventh proviso to Rule 9 ibid.

15. In this backdrop, the competing statutory provisions assume significance. The second and seventh provisos to Rule 9 of the Pan Masala Rules are reproduced below for facility of reference: -

Second proviso:

> *"Provided further that if the manufacturer fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with the interest at the rate specified by the Central Government vide Notification under Section 11AB (substituted by Section 11AA by Notification 11/2012-CE (N.T.), dated 17.03.2012) of the Act on outstanding amount, for the period starting with the first date after due date till the date of actual payment of the outstanding amount"*

Seventh proviso:

> *"Provided also that in case a manufacturer does not pay the duty payable by the due date, and continues to operate any packing machine, then till the time such non-compliance continues, he shall be liable to pay the monthly duty based on the number of operating packing machines declared in the month for which duty was last paid by him or the total number of packing machines found available in his premises at any time thereafter, whichever is higher."*

16. A plain but purposive reading of the aforesaid provisions makes it manifest that the two provisos operate in distinct fields. The second proviso is attracted upon a failure to discharge the duty determined for the month within the prescribed due date and, as a consequence thereof, fastens upon the manufacturer the liability to discharge the outstanding duty together with interest for the period commencing from the day following the due date until the date of actual payment. The said provision thus specifically contemplates the contingency of delayed payment and prescribes the statutory consequence thereof.

17. The seventh proviso, on the other hand, cannot be read in isolation from the condition expressly engrafted therein, namely, that the manufacturer, despite having failed to pay the duty by the due date, continues to operate any packing machine. The latter proviso contemplates a situation where, during the continuance of such non-payment, the manufacturer continues to operate packing machines, and expressly provides that the enhanced monthly duty liability shall subsist "till the time such non-payment continues". The liability contemplated thereunder is, therefore, not merely a consequence of default in payment; rather, the statutory mechanism is predicated upon the continued operation of packing machines during the subsistence of such non-payment, with the monthly duty thereafter being reckoned on the higher of the number of operating packing machines declared in the month for which duty was last paid or the total number of packing machines found available in the premises at any time thereafter.

18. In our considered view, the mere circumstance that a manufacturer has failed to discharge the determined duty liability within the prescribed time cannot, by itself, operate as an automatic trigger for the seventh proviso. Such an interpretation would effectively render the second proviso otiose in every case where there is a default in payment. If every instance of delayed payment were necessarily to invite computation of duty on the basis contemplated under the seventh proviso, there would remain little, if any, field of operation for the second proviso, which expressly provides for the very contingency of non-payment by the due date and prescribes payment of the outstanding duty together with interest. Such an interpretation, leading to substantial overlap and

redundancy between two distinct statutory provisions, cannot be construed to be the legislative intent.

18.1. The statutory scheme must, therefore, be understood in a manner which gives meaningful operation to both provisions. The second proviso addresses the consequence of default in payment, whereas the seventh proviso contemplates the materially different situation where such default co-exists with the continued operation of packing machines so as to attract the higher-duty mechanism stipulated therein. The presence of the expression "continues to operate" is not a mere surplusage; it constitutes a substantive condition governing the operation of the latter provision. The provision cannot be subjected to a rigidly literal construction which divorces this condition from the remaining statutory scheme. Rather, the legislative intent has to be gathered from the provision read as a whole and in the context of the Rules, so as to avoid an interpretation which renders any part thereof redundant or nugatory.

19. Weighed against the above, the factual position obtaining in the present case assumes considerable significance. The respondent has stated that, during the material period, it had declared to the jurisdictional authorities that only four packing machines were in operation. The declaration was not clandestine or withheld from the Department; on the contrary, the same was made contemporaneously before the competent authority and the duty liability was thereafter determined on that basis. The respondent has produced the intimation dated 01.02.2010 received from the proper officer, whereby the duty liability with effect from 01.02.2010 was

intimated/fixed in response to the declaration dated 28.01.2010 submitted by it, wherein the number of operating machines had been declared as four. For better appreciation of the facts, the said communication is reproduced below: -

GOVT. OF INDIA
OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE, CUSTOMS & SERVICE TAX,
BHUBANESWAR DIVISION: PO-PATIA: BHUBANESWAR-751031.
Ph.No. (0674) 2740991, Fax No.(0674) 2743317, e-mail id cexd2606@excise.nic.in

C.NO.IV(15)15/PM-CLS/BBSR/2008/613 Date : 01.02.2010.

To

M/s Meena Zarda Udyog Private Limited (R.C. No. AACCM 4841L XM002)
Plot No. B-10, Mancheswar Industrial Estate
Bhubaneswar-751010.

Sub: *Fixation of capacity and Determination of duty under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules,2008 – Regarding.*

Dear Sirs,

Please refer to your declaration dated 28.01.2010, received in this Office on 28.01.2010.

Your declaration of 4 (Four) No. of operating Packing Machines, under Rule 6 (1) of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules,2008, (hereinafter referred to as "the said Rules") for manufacture of Pan Masala containing Tobacco, commonly known as Gutkha/ Mawa Masala, falling under Tariff item 2403 99 90 of Central Excise Tariff Act,1985 (hereinafter referred to as specified goods/ notified goods), per month, has been accepted and accordingly the Annual capacity of production of your unit is deemed to be 37,44,000 No. of pouches per operating machine per month, w.e.f. 1st February, 2010.

The notified goods manufactured with the aid of Packing Machines and packed in products having retail sale price as specified in Column 2 of Table appended below, on which the duty has been determined as indicated in Column 5 of corresponding entry, under Rule 9 of the said Rules, read with

1

Notification No.42/2008-CE dated 01.07.2008, at the rate specified in Column 3 of the said Table.

TABLE

Sl. No.	Retail sale price per pouch.	Rate of duty per packing machine per month (Rs. in Lakhs) Pan Masala containing tobacco	No. of operating packing machine	Duty determin-ed per month (Rs. in Lakhs).
01	02	03	04	05
1	Upto Rs.1.00	12.50	4	50.00

Duty determined per month = Rs. 50,00,000/- (Rupees fifty lakhs) only.

The duty liability for the month of February, 2010, should be discharged by 5th of February, 2010 and from March, 2010 onwards, by 5th of the same month.

You are hereby informed to strictly adhere to the terms and conditions, specified in Notification No.30/2008-CE (NT) dated 01.07.08.

Yours faithfully,

(VISHNU KUMAR) 04/02/10.
ASSISTANT COMMISSIONER
CENTRAL EXCISE, CUSTOMS & SERVICE TAX
BHUBANESWAR DIVISION
BHUBANESWAR-31.

19.1. The above correspondence reveals that the number of machines actually proposed to be operated was disclosed to and acted upon by the Department itself. There is nothing on record to suggest that the respondent had, during the material period, represented before the Department that all 22 machines were operational and thereafter sought to suppress their operation. Nor has the Revenue brought on record any cogent material demonstrating that the Respondent had, notwithstanding its declarations, actually operated eighteen additional packing machines and thereby misrepresented the number of machines in production. In such circumstances, the foundational premise for invoking the seventh proviso remains unsubstantiated.

20. We are also unable to accept the proposition that the expression “found available in his premises” occurring in the seventh proviso can be construed merely by reference to the physical presence of a machine within the four walls of the factory, irrespective of whether the machine was capable of, or actually being used for, production. Such an interpretation would render the expression “continues to operate any packing machine” largely meaningless. A packing machine may physically remain within a factory but, if it has been sealed, removed from installation or otherwise rendered incapable of operation, its mere physical presence cannot, without more, establish that it was a machine available for production so as to attract the higher duty contemplated under the seventh proviso. The Revenue has not demonstrated, by independent and reliable evidence, that the said eighteen machines were in fact operated for manufacture of the notified goods during the period in question. The mere fact that the machines continued to remain physically present in the factory premises cannot, in our view, be elevated into proof of their operation.

20.1. We also take note of the clarification issued by the CBEC vide F. No. 81/17/2007-CX-3 dated 20.04.2010, wherein the expression relating to the total number of packing machines found available was clarified to mean packing machines found available for production, and it was specifically clarified that machines sealed by the Department would not be considered as machines available in the factory for the purpose of payment of duty. For ready reference, the said clarification is reproduced below: -

"F.No.81/17/2007-CX-3

Government of India
Ministry of finance
Department of Revenue
Central Board of Excise and Customs

To The Chief Commissioner of Central Excise,

Bangalore

Subject: Clarification regarding manner of payment of duty under the Pan Masala Packing Machine Rules, 2008.

Sir,

Kindly refer to your letter C. No. IV/16/319/07.CC (Ex.) BZ dated 03.11.2009 on the above subject seeking clarification in respect of functioning of compounded levy scheme for Gutkha and Pan Masala units. Issues raised in your letter have been examined and following clarification issued with reference to the provision as existed prior to amendment made in Rules in the Budget 2010.

2. Issue: In case of default during any month of the Financial Year, whether monthly duty in all the remaining month of the Financial Year would be computed based on the number of operating machines declared in the month previous to the month of default or machine's sound available at any time thereafter, whichever is higher under the proviso 7 of Rule 9 of Pan Masala Packing Machine Rules, 2008.

Clarification:

Reading of Proviso 7 of Pan Masala Packing Machine Rules, 2008 makes it clear that the default for payment of duty for one month would not be treated as default for all the remaining part of the full Financial Year. However, the default would continue till the duty for the said month is paid. Therefore, clarification given by both vide letter dated 27.07.2009 would be applicable for the illustration given in your letter.

3. Issue: Under Proviso 7 of Rule 9 of Pan Masala Packing Machine Rules, 2008 whether total number of Packing Machines found available in the premises would also include machines which have been sealed by the Officer in the said premises.

Total number of Packing Machines found available has to be interpreted as to mean Packing Machines found available for production. Therefore, the machines which have been sealed by the Department would not be considered as the machine available in the factory for the purpose of payment of duty.

Clarification:

4. Trade and Industry may be informed."

21. In fact, an identical issue had come up for consideration before this Tribunal in the case of *Sanket Food Products (P) Ltd. v. Commissioner of Central Excise & Customs, Aurangabad, reported in 2015 (316) E.L.T. 501 (Tri.-Mumbai),* wherein the scope and applicability of the Seventh Proviso to Rule 9 of the Pan Masala Rules came to be considered. The relevant portion of the said order reads as under: -

"25. The Revenue confirmed the demand in view of the proviso to proviso 7 to Rule 9 of the Rules. The admitted facts of the case are that the appellants were in default in making payment of duty as per the order of the proper officer in pursuance the declaration filed by the appellant under Rule 6 of the Rules. The appellant filed a fresh declaration in the month of April, 2011 declaring the number of packing machines intended to be used for the manufacture of pan masala. After due verification, the declaration was accepted and the annual capacity of the machine was fixed and the appellants were liable to pay duty at Rs. 6,36,50,000/- per

month with effect from April, 2011. As the appellants were in default the Revenue's contention is that the appellants are liable to pay duty at this rate during the period of default in view of 7th proviso to Rule 9 of the Rules.

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29. In the present case, if the contention of the Revenue is accepted then a person who had not filed a declaration regarding number of packing machines as required under Rule 6 of the Rules and the Revenue found that the manufacturer is using higher number of packing machines than declared and a manufacturer who declared the exact number of packing machines intended to be used by filing declaration under Rule 6 of the Rules are to be treated on the same footing. A manufacturer who was found to be declared less than the number of machines and a person who filed a declaration regarding the number of packing machines to be used cannot be treated on the same footing. The 7th proviso to Rule 9 of the Rules cannot be read in a manner to say that a manufacturer who declared the number of machines by filing necessary declaration and a manufacturer who misdeclared the number of machines are liable for same treatment.

30. In the present case, as the appellant filed declaration in April, 2011 regarding change of number of packing machines and the declaration was accepted by the proper officer and fixed the monthly liability. There is no evidence on record to show that prior to filing declaration in April, 2011 appellants were manufacturing goods with higher number of machines than declared. As there is no misdeclaration found by Revenue on the part of appellant regarding number of machines used for manufacture of Pan Masala, I agree with the view taken by learned Member (Judicial) holding that the demand by invoking the proviso 7 to Rule 9 of Rules is not sustainable. The appellants are liable to pay duty with interest as per the proviso 2 to Rule 9 of Rules."

[Emphasis supplied]

21.1. The ratio emerging from the aforesaid decision, when considered alongside the statutory scheme noticed hereinabove, further fortifies the conclusion that mere delayed discharge of the duty determined by the competent authority cannot, in the absence of the circumstances contemplated under the Seventh Proviso, ipso facto transform the liability into one to be computed on the basis of all machines physically present in the factory.

22. It follows, therefore, that the Respondent's liability for the delayed payment is appropriately governed by the Second Proviso to Rule 9. In the present case, the Respondent had disclosed the number of machines which it intended to operate; the competent authority had proceeded upon such declaration and determined the corresponding duty liability; and the Respondent subsequently discharged the duty liability, together with the applicable interest, albeit beyond the prescribed due date. The fact that such payment was made belatedly does not, in the circumstances of the present case, by itself attract the machinery of the seventh proviso. The Revenue therefore has no case to invoke the Seventh Proviso principally by treating all 22 machines physically present in the premises as the relevant number for computation of duty. We accordingly find that the respondent had discharged the duty liability relatable to the packing machines actually declared and operated during the material period, together with the applicable interest arising from the delay in payment. There was, consequently, no warrant for re-computing the duty liability by reckoning eighteen additional machines which had not been established to be in operation.

23. We are, therefore, of the considered view that the adjudicating authority was justified in dropping the demand proposed under the Seventh Proviso to Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. The impugned order, having correctly appreciated the distinction between the statutory consequences flowing from the Second and Seventh Provisos and having found the Respondent's liability to be governed by the former, calls for no interference.

24. In the result, the appeal filed by the Revenue is devoid of merit and is accordingly dismissed. The impugned Order-in-Original No. 31/Commr.Audit/C.Ex/BBSR/2017-18 dated 28.03.2018 is upheld.

(Order pronounced in the open court on **18.09.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd