CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 89865 of 2013

(Arising out of Order-in-Original No. PUN-EXCUS-003-APP-272/13-14 dated 24.09.2013 passed by the Commissioner of Central Excise (Appeals), Pune-III, Pune.)

Godfrey Phillips India Limited **.... Appellants**
Plot No. A-1/1, MIDC Industrial Area
Baramati,
Pune – 413 102.

VERSUS

Commissioner, Central Excise & Customs **.... Respondent**
Pune-III Commissionerate
GST Bhavan, 41-A Sasoon Road
Opp to Wadia College,
Pune – 411 001.

APPEARANCE:

Shri Rajesh Ostwal along with Shri Gajendra Jain, Advocates for the Appellants

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ 87648/2024

Date of Hearing: 05.12.2024
Date of Decision: 05.12.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Godfrey Phillips Limited, Baramati, Pune (herein after referred to, as 'the appellants', for short) assailing the Order-in-Appeal No. PUN-EXCUS-003-APP-272/13-14 dated 24.09.2013 (referred to, as 'the impugned order') passed by the Commissioner of Central Excise (Appeals), Pune-III, Pune.

2.1 Briefly stated, the facts of the case are that the appellants are registered with Central Excise department for manufacture of 'Pan Masala' (Pan Vilas) falling under Central Excise tariff item 2106 9020 of the Central Excise Tariff Act, 1985, by holding Central Excise Registration No. AABCG4768KXM002. The appellants discharge Central Excise duty liability as determined on the said manufacture of Pan Masala, based on the capacity of production and the same is governed by the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.

2.2 Government of Maharashtra, through its Food Safety Commissioner, Food and Drugs Administration, in exercise of the powers conferred upon it under clause (a) of sub-section (2) of Section 30 of the Food Safety and Standards Act, 2006, in the interest of public health, prohibited the manufacture, storage, distribution or sale of Pan Masala, containing either tobacco and/or nicotine or Magnesium Carbonate as ingredients by issue of an Order No. FSSA/Notification 686-2012/7 w.e.f. from 19.07.2012. A large number of petitions were filed before the Hon'ble High Court of Bombay against the said order of the Government of Maharashtra dated 19.07.2012, which was disposed of by the Hon'ble High Court vide its judgement dated 23.08.2012 in W.P. No.3884 of 2012 by upholding the action of the Government of Maharashtra, on the ground that 98% of the sample Pan Masalas are found to be having Magnesium Carbonate which is found to be injurious to health, and in holding that the authorities would be justified in imposing a general ban on manufacture, sale of Pan Masala. Consequent to this, the appellants had decided to discontinue the production of pan masala with immediate effect from 10.09.2012 in their factory, and submitted necessary intimation to the jurisdictional Assistant Commissioner of Central Excise in Form No.1 indicating the six specific Pan Masala packing machines viz., machine Nos. 2, 3, 4, 5, 6, 7 which are required to be un-installed and sealed on immediate basis. Earlier, on 06.09.2012, as required under Rule 9 of Rules of 2008, the appellants had paid the central excise duty for the month of September, 2012 for an amount of Rs.1,20,00,000/- on 06.09.2012 and intimated the same in Form No.2 to the jurisdictional central excise authorities.

2.3 Consequent to the decision of the Hon'ble High Court, as the appellants had decided to discontinue the manufacturing operations indefinitely on account of general ban by the State Government, they had applied to the jurisdictional Central Excise authorities for re-determination of the central excise duty liability based on the revised number of Pan Masala packaging machines available in their factory. Accordingly, the Assistant Commissioner of Central Excise had determined the monthly duty liability under Rule 7 of the Rules of 2008, as Rs.1744.64 lakhs for the period 01.09.2012 to 12.09.2012; Rs.1308.48 lakhs for the period w.e.f.

24.09.2012; and Rs. 351.00 lakhs for the period w.e.f. 23.11.2012 vide Order-in-Original dated 20.12.2012. Feeling aggrieved with the said order of the original authority, the appellants have filed an appeal before the learned Commissioner (Appeal) who re-determined the duty liability of the packing machines for pan masala by modifying the order of the original authority vide Order-in-Appeal dated 18.09.2013, which is also mentioned at paragraph 8 of the impugned order.

2.4 In compliance with the provisions of sub-rule (6) of Rule 6 of the Rules of 2008, the appellants had filed letter dated 10.09.2012 before the jurisdictional Central Excise authorities for un-installation and sealing of the packaging machines. On the above basis and in terms of provisions of sub-rule (2) read with sub-rule (5) of Rule 6 of the Rules of 2008, the jurisdictional Range Superintendent along with his officers had visited the factory premises of the appellants on 12.09.2012, and caused un-installing of six numbers of specified packing machines used for manufacture of Pan Masala and sealed the same, along with other two machines which were already uninstalled and sealed, under panchanama proceedings drawn on 12.09.2012 along with Annexure recording the reasons why the packing machines could not be removed away from the factory premises.

2.5 As the appellants had decided to discontinue the manufacturing operations indefinitely on account of general ban by the State Government, and that they had already paid prior hand the central excise for the period upto 15.09.2012, though all the packing machines were stopped for use in manufacturing/packing of pan masala w.e.f. 10.09.2012 and these were then sealed, the appellants had filed a refund application claiming refund/ abatement of Rs.40,00,000/- attributable to the central excise duty relating to the period 11.09.2012 to 15.09.2012 vide their letter dated 22.10.2012 before the jurisdictional Assisitant Commissioner of Central Excise. In this regard, a Show Cause Notice (SCN) dated 21.12.2012 was issued to the appellants informing them that central excise duty already determined by the department under the Rules 2008 being higher than the amount paid by them, seeking their response why the refund claimed by them should not be rejected. Upon examination of the issue of refund/abatement of central excise duty, the jurisdictional Assistant Commissioner had held that the monthly duty liability determined under Rule 7 of the Rules of 2008 effective from 31.08.2012 at Rs.17,44,64,000/- is higher than the duty actually paid by them at Rs.1,20,00,000/-, and therefore rejected the claim of refund/rebate under Rules 9 and 10 ibid by issue of Order-in-Original dated 21.02.2013. Being aggrieved with the said order, the appellants had filed an appeal which was disposed of by learned Commissioner (Appeals), vide impugned order dated 24.09.2013, in allowing the abatement for the period 11.09.2012 to 15.09.2012, but determined that duty paid by them at Rs.1,20,00,00/- is shorter than the duty payable at Rs.1,39,36,000/- on the basis of his earlier order dated 18.09.2013. Therefore, he rejected the appeal filed by the appellants in upholding the order of the original authority. Feeling aggrieved with the impugned order of the learned Commissioner (Appeals) dated 24.09.2013, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants, submitted that the appellants have in total the following eight packing machines which were put to use for manufacture of pan masala in terms of the Rules of 2008.

Details of machine	**Identification No.**	**Grammage**	**RSP/ MRP of packages**
Machine No.1 - Volpak S.A.U.	4GM SL110S, L2	4 grams	Rs.6.00
Machine No.2 - Topak Co. Ltd.	R-52 G/1	2 grams	Rs.3.00
Machine No.3 - Topak Co. Ltd.	R-52 G/2	2 grams	Rs.3.00
Machine No.4 - Topak Co. Ltd.	R-52 G/3	2 grams	Rs.3.00
Machine No.5 - Topak Co. Ltd.	R-52 G/4	2 grams	Rs.3.00
Machine No.6 - Topak Co. Ltd.	R-52 G/5	2 grams	Rs.3.00
Machine No.7 - Topak Co. Ltd.	R-52 G/6	2 grams	Rs.3.00
Machine No.8 - Topak Co. Ltd.	R-52 G/7	4 grams	Rs.8.00

The appellants by duly informing the jurisdictional Central Excise authorities had permanently discontinued the packing machine No.1 w.e.f. 04.05.2012 and similarly the packing machine No.8 w.e.f. 01.09.2012. These have been finally stood approved in terms of Rule 6(2) ibid. Therefore, he stated that the impugned order by relying Commissioner (Appeal)'s earlier order dated 18.09.2013, which re-determined the central excise duty liability with out taking into account these factual position, is incorrect and contrary to the factual position. Further, he stated that on the above basis rejection of the refund claim by the learned Commissioner (Appeals) in the impugned order dated 24.09.2013, claiming that the duty payable was higher than the duty actually paid is also incorrect and to this extent the impugned order is liable to be set aside.

3.2 Learned Advocate submitted that as per the requirements of sub-rule (1) of Rule 6 of the Rules of 2010, the appellants had filed the declaration before the Jurisdictional Range Office, intimating the details which were to be furnished as per the said Rule. Pursuant to the declaration filed by the appellants, the Central Excise authorities had inquired into the contents in the declaration and order was accordingly passed in approving such declaration. Thus, he submitted that the requirements of Rules 2008, have been duly complied with by the appellants. Learned Advocate further submitted that the issue arising out of the present dispute is no more *res integra*, in view of the order No. A/86341/2023 dated 06.09.2023 (Excise Appeal No.88061 of 2013) passed by this Tribunal in the case of the appellants themselves for the product chewing tobacco.

3.3 Learned Advocate further submitted that in view of stoppage of production of Pan Masala w.e.f. 11.09.2012 by the appellants in all their packing machines, and as this period is more than 15 days in the month of September, 2012, for which they had already paid the duty, they are eligible for abatement of central excise duty in terms of Rule 10 of the Rules of 2008.

4. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned orders.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions made in the form of paper book submitted by both sides.

6. The issues for consideration before the Tribunal in this appeal are as follows;

(i) whether the annual production capacity of eight packing machines / FFS machines for the period from 01.09.2012 to 11.09.2012 is correctly determined for calculating the amount of refund by the learned Commissioner (Appeals) in terms of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 or not?

(ii) Whether the rejection of refund/rebate of central excise duty claimed by the appellants, on account of closure or un-installation and sealing of the packing machines for more than 15 days, as upheld by the learned Commissioner (Appeals) in the impugned order dated 24.09.2013 is legally sustainable or otherwise, in terms of Rules of 2008?

7. We find that the first issue arising out of the present dispute at paragraph 6(i) above was dealt with by the Co-ordinate Bench of this Tribunal in the case of self-same appellants vide Final Order No. A/87634-87635/2024 dated 05.12.2024. In the orders dated 06.09.2023 & 05.12.2024 (supra), it was held by the Tribunal that the requirements of the Capacity Determination and Collection of Duty Rules were duly complied with by the appellants and as such, additional duty demand cannot be fastened against them and the capacity of the machines used for manufacture of notified products cannot be enhanced.

8.1 We find that the authorities below have determined the annual capacity of production for the appellants solely based on the fact that the machines were not removed outside the factory and were also in operation. The said facts are contrary to the proviso clause appended to sub-rule (5) of Rule 6 of the Rules of 2008, inasmuch as it has been specifically provided that in case, it is not feasible to remove such packing machine out of the factory premises, then it shall be un-installed and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated. We find that no adverse report was submitted by the jurisdictional Range Superintendent that the machines, though were sealed under his presence, but the same were in operation. Furthermore, the manufacture, storage, distribution and sale of pan masala was prohibited by the State Government of Maharashtra w.e.f. 19.07.2012 which was also given the seal of approval in the order 07.09.2012 passed by the Hon'ble High Court of Bombay.

8.2 On the factual matrix of the case, the panchanama proceedings drawn at the factory premises of the appellants on 12.09.2012 by the Superintendent of Central Excise, Baramati Range clearly indicate that out of the total eight packing machines, two machines were already lying in sealed condition and the balance six machines were uninstalled and sealed by the Central Excise authorities before the panchas/witnesses. Further, in Annexure-A to the panchanama dated 12.09.2012 the reasons for why the packing machines could not be removed out of the factory premises for keeping outside the factory were also recorded. The relevant extract of the said panchanama is quoted below:

> *"The Superintendent shoed his Identity Card. He also showed fax copy of letter issued under F. No. IV/Godfrey/Misc/P-IX/11 dated 11.09.2012, by Deputy Commissioner, Central Excise, Pune IX Division, Pune*

directing him to cause un-installation and sealing of Machines nos.2 to 7 under panchanama and report compliance……We, the Panchas, the Superintendent, the Inspector and Shri Pandit entered in the said Pan Masala Packing Hall. The work of manufacture of Pan Masala was stopped. We observed that there are eight Pan Masala Packing Machines installed in the said Hall as per the Ground Plan shown to us, which were have verified and signed. Shri. Pandit showed us Pan Masala Packing Machine No.2, 3, 4, 5, 6 and 7 lying installed in the said Hall along with other such Machines. The said Machine No. 2 to 7 were having Identification Marks as under:

Sl. No.	***Machine No.***	***Machine Identification No.***
1	*2*	*R-52 G/1*
2	*3*	*R-52 G/2*
3	*4*	*R-52 G/3*
4	*5*	*R-52 G/4*
5	*6*	*R-52 G/5*
6	*7*	*R-52 G/6*

Shri Pandit stated that he is not in a position to remove the said Machines from the factory premises. Also not in a position to move the machine to another room in a sealed condition and was also not in a position to detach sealant portion of the Machine and keep it in sealed condition. He insisted that the Machine should remain on the same place where it is installed. Therefore, the said six Machines were sealed in-situ by way of:……

Thus the Machine Nos. 2 to 7 where sealed in the presence of we panchas. Shri Pandit, the Inspector and the Superintendent at about 19.00 hours on 12.09.2012.

The position of other Machines in the said Hall is as under:

Sl. No.	***Machine No.***	***Machine Identification No.***	***Position***
1	*1*	*VOLPAK SL 110 VPM 002*	*Lying sealed.*
2	*8*	*TOPACK R-52 G/7*	*Lying sealed.*

Nothing was taken over by the Superintendent…..”

8.3 On careful perusal of the panchanama proceedings, it transpires that there were total of eight Pan Masala packing machines/FFS machines available in the appellant’s factory premises; out of which two machines viz., VOLPAK SL 110 VPM 002 which is meant for packing 4 grams packets having MRP/RSP of Rs.6.00 and TOPACK R-52 G/7 for 4 grams packets having MRP/RSP of Rs.8.00 were already lying in a sealed condition; and the rest of the six machines of identification Marks/No. R-52 G/1, R-52 G/2, R-52 G/3, R-52 G/4, R-52 G/5 and R-52 G/6 meant for packing upto 2 grams packets having MRP/RSP of Rs.3.00 where sealed in the presence of witnesses by the jurisdictional Central Excise officers. From the above factual matrix of the case, in could be concluded that from 01.09.2012 to

10.09.2012, as evidenced during the visit on 12.09.2012, only six packing machines of packings upto 2 grams alone were operational. Therefore, for determination of the annual capacity of production of pan masala these facts should have been taken into consideration.

8.4 Therefore, we are of the considered view that the learned Commissioner (Appeals) is arriving at the refundable amount, since based to the extent of his determination of the production capacity for machine no. 1 and machine no. 8 viz., VOLPAK SL 110 VPM 002 for packing 4 grams packets having MRP/RSP of Rs.6.00 and TOPACK R-52 G/7 for 4 grams packets having MRP/RSP of Rs.8.00, respectively, for the period 01.09.2012 to 10.09.2012, such conclusion is contrary to the factual position evidenced by Panchnama proceedings dated 12.09.2012, Therefore, to this extent the impugned order rejecting the refund is contrary to the factual position of the case. However, he had correctly stated the fact that from 11.09.2012 onwards, there were no packing machines were under operation as the number of machines stands reduced to zero, and the annual production capacity has become 'zero' from 11.09.2012.

9.1 In the impugned order dated 24.09.2013, learned Commissioner (Appeals) has arrived at the central excise duty payable by the appellants based on the annual production capacity arrived at by him in his earlier order dated 18.09.2013. The extract of the calculation given by him in the impugned order is extracted and given below:

8…….. According to the said Order-in-Appeal, the annual production capacity of the Appellant has been determined as under:

Sr. No.	*Retail Sale Price (per pouch)*	*No. of pouches per operating packing machine per month*	*Annual Production Capacity*	*Number of Packing Machines*
01	*Exceeding Rs.2.00 but not exceeding Rs.3.00*	*53,35,200*	*6,40,22,400*	*6*
02	*Exceeding Rs.5.00 but not exceeding Rs.6.00*	*51,66,720*	*6,20,00,640*	*1*
03	*Above Rs.6.00 (i.e. Rs.8.00)*	*50,54,400*	*6,06,52,800*	*1*

As per the above annual production capacity the duty liability of the Appellant for the month of September 2012 comes to Rs.418.08 lakhs as under:

Sr. No.	*Retail Sale Price (per pouch)*	*No. of Packing machines installed*	*Rate of duty per packing machine per month (Rs.in lakhs)*	*Monthly duty payable (Rs. in Lakhs)*

01	*Exceeding Rs.2.00 but not exceeding Rs.3.00*	*6*	*40 X 6*	*240*
02	*Exceeding Rs.5.00 but not exceeding Rs.6.00*	*1*	*77 X 1*	*77*
03	*Above Rs.6.00 (i.e. Rs.8.00)*	*1*	*76+12.54 X (P-6) 76+12.54 X 2= 101.08 101.08 X 1*	*101.08*

*Regarding the claim of the Appellant for abatement of duty for the period 11.09.2012 onwards, I find that the said period is more than 15 days in the said calendar month and therefore they are eligible for the said abatement in view of the stoppage of production of notified goods w.e.f. 11.09.2012, as concluded in the above-mentioned Order-in-Appeal No. PUN-EXCUS-003-APP-267/13-14 dated 18.09.2013. Thus, I hold that Appellant were not required to pay duty for the period 11.09.2012 onwards and abatement for the same is admissible to them under Rule 10 of the PMPM Rules. Further, on calculating the duty liability on proportionate basis for the period 01.09.2012 to 10.09.2012, the same comes to Rs.418.08 lakhs * 10/30 = Rs.139.36 lakhs. As the Appellant have paid only Rs.1,20,00,000/- it is found that there is a short payment of duty and therefore it is proved that the rejection of the present refund claimed by the Ld. Adjudicating Authority is legal and proper."*

9.2 As discussed in the preceding paragraphs at 8.2 to 8.4, since the machine at Sl. No. 2 & 3 in the second table above at are not operational, and having been lying sealed already, these machines were not in operation for the period 01.09.2012 to 10.09.2012. It is a fact on record that no central excise duty on pan masala is liable to be paid after 10.09.2012 i.e., from 11.09.2012 and that the appellants are eligible for claiming abatement of central excise duty in case of non-production of notified goods for a period of more than 15 days in a month. Thus, the appellants are eligible for abatement of duty for the period 11.09.2012 to 30.09.2012. Therefore, the amount of central excise duty payable shall be re-determined as Rs.240 lakhs * 10/30 = Rs.80 lakhs. Thus, it would be evident that as against the duty initially paid in the beginning of the month for Rs.120 lakhs, after adjusting the duty liability of Rs.80 lakhs for the period from 01.09.2012 to 10.09.2012, the appellants are eligible for refund/abatement of duty to the extent of Rs.40 lakhs.

10. On the basis of the above discussion and analysis, we are of the considered view that the impugned order dated 24.09.2013 is incorrect to the extent it had denied refund/abatement of Central Excise duty for an amount of Rs.40,00,000/- which is over and above the duty liability for the period 01.09.2012 to 10.09.2012 for the six machines that were in operation at the appellants' factory premises. Therefore, the impugned

order dated 24.09.2013 in rejection of the refund /rebate of duty claim made by the appellants is liable to set aside.

11. In view of above, the impugned order is set aside and the appeal is allowed in favour of the appellants, with consequential relief, as per law.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM