



**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT TAX No. - 891 of 2026**

M/S Well Fragrances Private Limited

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

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Counsel for Petitioner(s) : Nishant Mishra, Vedika Nath  
Counsel for Respondent(s) : A.S.G.I., Dhananjay Awasthi

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**Court No. - 3**

**HON'BLE SAUMITRA DAYAL SINGH, J.**

**HON'BLE INDRAJEET SHUKLA, J.**

1. Heard Sri Naveen Sinha learned Senior Counsel assisted by Sri Nishant Mishra and Sri Amit Awasthi learned counsel for the petitioner and Sri Dhananjay Awasthi learned counsel for the revenue.

2. Vires of Rule 16 and 22(3) of Chewing Tobacco, Jarda Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection of Duty) Rules, 2026 (hereinafter referred to as 'the Rules') has been assailed being *ultra vires* Section 3A of the Central Excise Act 1944. For ready reference, Section 3A reads as below:

***"3A. Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods.—***

*(1) Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.*

*(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,—*

*(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or*

*(b)(i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and*

*(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:*

*Provided that where a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:*

*Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.*

*(3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:*

*Provided that where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfills such conditions as may be prescribed.*

*(4) The provisions of this section shall not apply to goods produced or manufactured, by a hundred per cent export-oriented undertaking and brought to any other place in India.*

*Explanation 1.— For the removal of doubts, it is hereby clarified that for the purposes of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the [Fourth Schedule], read with any notification for the time being in force.*

*Explanation 2.— For the purposes of this section, the expression “hundred per cent export-oriented undertaking” shall have the meaning assigned to it in Section 3.*

*[Explanation 3.— For the purposes of sub-sections (2) and (3), the word “factor” includes “factors”.]*

3. Also, provisions of Rule 16 and 22(3) read as below:

**"16. Installation of Closed-Circuit Television System.** (1) Every manufacturer operating packing machines for the manufacture of the notified goods shall install a functional Closed-Circuit Television (CCTV) surveillance system covering all areas where packing machines are

*installed in the premises.*

*(2) All recorded footage shall be preserved for a minimum period of forty-eight months from the date of recording.*

*(3) The manufacturer shall, on written requisition, furnish the recorded CCTV footage to the Additional Commissioner of Central Excise or the Joint Commissioner of Central Excise, as the case may be, or any officer authorised by him, within forty-eight hours of the receipt of such requisition.*

**22. Penalty for contraventions, etc.**

*(1)...*

*(2) ...*

*(3) If the manufacturer fails to furnish recorded CCTV footage to the jurisdictional Additional Commissioner of Central Excise or Joint Commissioner of Central Excise as the case may be, within forty-eight hours, the manufacturer shall be liable to a penalty as per provisions of the Act."*

4. Submission is, no delegation exists with the Central Government to frame any rules requiring installation of CCTV cameras. In absence of any legislative competence, that mandate of the rule stands in violation of Part-III of the Constitution.

5. Petitioners are engaged in lawful business which is subject to regulatory laws of the State. To the extent, the Rules do not involve levy and collection of duty, same are beyond the legislative competence and the delegation made in favour of the Central Government.

6. Matter requires serious consideration.

7. All respondents are represented. They pray and are granted four weeks time to file Counter Affidavit. Petitioner shall have two weeks thereafter to file Rejoinder Affidavit.

8. List thereafter.

9. Till the next date of listing, no coercive measures may be adopted against the petitioner on account of non-compliance of the Rule 16 & Rule 22(3) of the said Rules.

**(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)**

**February 4, 2026**

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