

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 86026 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**M/s Zemini Marketing Company**

Situated at 205/206, VIP View, VIP Road,  
Karelibaug, Vadodara - 18

.... **Appellant**

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur**

4<sup>th</sup> Floor, Vasant Plaza, Commercial Complex,  
Rajaram Road, Bagal Chowk, Kolhapur - 416 001.

.... **Respondent**

**WITH**

**Excise Appeal No. 86030 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**M/s S.K. Star Forwarding Agency**

133/484, 'O' Block, Subji Mandi,  
Kidwai Nagar, Kanpur - 208 023.

.... **Appellant**

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur**

4<sup>th</sup> Floor, Vasant Plaza, Commercial Complex,  
Rajaram Road, Bagal Chowk, Kolhapur - 416 001.

.... **Respondent**

**APPEARANCE:**

Shri A.B. Nawal, Cost Accountant for the Appellant  
Shri Shambhoo Nath, Special Counsel for the Revenue

**AND**

**Excise Appeal No. 86031 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**Shri Rajendra Babulal Malu**

MD of Shree Venkateshwara Pan Masala Industries Pvt. Ltd, 237, Chandan Bungalow, Azad Road,  
8<sup>th</sup> Lane, Jaysingpur, Kolhapur - 416 001.

.... **Appellant**

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur**

4<sup>th</sup> Floor, Vasant Plaza, Commercial Complex,  
Rajaram Road, Bagal Chowk, Kolhapur - 416 001.

.... **Respondent**

**APPEARANCE:**

Shri J.C. Patel, Advocate for the Appellant  
Shri Shambhoo Nath, Special Counsel for the Revenue

**AND****Excise Appeal No. 86032 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**Shri Pravin Shriniwas Bhattad** .... **Appellant**

Room no. 222, 3<sup>rd</sup> Lane, Indraswaroop Building,  
Jaysingpur, Kolhapur – 416 001.

Versus

**Commissioner of Central Goods and Service Tax, Kolhapur** .... **Respondent**

4<sup>th</sup> Floor, Vasant Plaza, Commercial Complex,  
Rajaram Road, Bagal Chownk, Kolhapur – 416 001.

**AND****Excise Appeal No. 86033 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**M/s Maruti Tobacco Products Pvt. Ltd.** .... **Appellant**

Survey No. 446, Vasana, (Tal. Borsad),  
Dist. Anand, Gujarat – 388 504

Versus

**Commissioner of Central Goods and Service Tax, Kolhapur** .... **Respondent**

4<sup>th</sup> Floor, Vasant Plaza, Commercial Complex,  
Rajaram Road, Bagal Chownk, Kolhapur – 416 001.

**AND****Excise Appeal No. 86036 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**M/s Lalji Mulji Transport Company** .... **Appellant**

17, Mehta Chambers, 127-A, Kalyan Street,  
Dana Bunder, Masjid (E), Mumbai – 400 009.

Versus

**Commissioner of Central Goods and Service Tax, Kolhapur** .... **Respondent**

Vasant Plaza, Commercial Complex, Rajaram Road,  
Bagal Chownk, Kolhapur – 416 001.

**AND****Excise Appeal No. 86037 of 2013**

(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 passed by Commissioner of Central Excise and Service Tax, Kolhapur)

**Shri Sunil Shrinivas Bhattad** .... **Appellant**

Proprietor of Maruti Trading Co.,  
Shop no. 03, 1<sup>st</sup> Lane, Podar Complex,  
Jaysingpur, Kolhapur – 416 003.

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur****.... Respondent**Vasant Plaza, Commercial Complex, Rajaram Road,  
Bagal Chownk, Kolhapur – 416 001.**AND****Excise Appeal No. 86038 of 2013**(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012  
passed by Commissioner of Central Excise and Service Tax, Kolhapur)**M/s E. C. Packaging****.... Appellant**Shop no. 130/37-D, Bagahi, Baba Kutli, T.P. Nagar,  
(Near Virendra Singh Market), Kanpur – 208 023.

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur****.... Respondent**Vasant Plaza, Commercial Complex, Rajaram Road,  
Bagal Chownk, Kolhapur – 416 001.**APPEARANCE:**

Shri A.B. Nawal, Cost Accountant for the Appellant

Shri Shambhoo Nath, Special Counsel for the Revenue

**AND****Excise Appeal No. 86039 of 2013**(Arising out of Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012  
passed by Commissioner of Central Excise and Service Tax, Kolhapur)**M/s. Shree Venkateshwara Pan Masala Industries Pvt. Ltd.** **.... Appellant**335/336, Sangali-Kolhapur Bypass Road,  
AP Dharangutti, Tal. Shirol, Dist. Kolhapur – 416 103.

Versus

**Commissioner of Central Goods and Service  
Tax, Kolhapur****.... Respondent**Vasant Plaza, Commercial Complex, Rajaram Road,  
Bagal Chownk, Kolhapur – 416 001.**APPEARANCE:**

Shri J.C. Patel, Advocate for the Appellant

Shri Shambhoo Nath, Special Counsel for the Respondent

**CORAM:****HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85407-85415/2026**

Date of Hearing: 14.11.2025

Date of Decision: 13.02.2026

**PER: S.K. MOHANTY**

These appeals are directed against the Order-in-Original No. 28/CEX/COMMR/KOP/2012 dated 26.11.2012 (for short, referred to as 'the impugned order'), passed by the Learned Commissioner of Central Excise, Kolhapur. Vide the said impugned order dated 26.11.2012, Central Excise duty demand of Rs. 8,75,00,000/- was confirmed under Section 11A(2) of the Central Excise Act, 1944 (for short, 'the Act of 1944') read with Rules 7, 17(2) and 18 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (for short, 'the Rules of 2008'), along with interest under Section 11AB/11AA of the Act of 1994, read with second proviso to Rule 9 of the Rules of 2008, on the appellant Shri Rajendra Babulal Malu, Managing Director of M/s Shree Venkateshwara Pan Masala Industries Pvt. Ltd. (SVPMIPL). Besides, an equal amount of penalty was also imposed on him under Rule 25(1) of the Central Excise Rules, 2002 (for short, 'the Rules of 2002') read with Rule 18 of the Rules of 2008. The connected appeals were filed by the other appellants viz., M/s SVPMIPL, M/s Maruti Tobacco Products Pvt. Ltd., M/s E.C. Packaging, M/s S.K. Star Forwarding Agency, M/s Lalji Mulji Transport Company, M/s Zemini Marketing Company, Shri Parvin Shrinivas Bhattad and Shri Sunil Shrinivas Bhattad, against whom the impugned order has imposed penalties under Rule 26 of the Rules of 2002.

2. Brief facts of the case, leading to these appeals are summarized herein below:

2.1 The officers of the Central Excise department had visited the farm house situated at Kolhapur on 19.05.2011, based on the intelligence that Shri Rajendra Babulal Malu, Managing Director of M/s SVPMIPL is engaged in illicit manufacture of 'Pan Masala', containing Tobacco in such premises. It was noticed that two rooms in such premises were locked and construction activity of bungalow was found to be going on. On verification, it was found out that in one room, five numbers of pouch packing machines were installed with printed laminated rolls loaded on them, pre-mix of gutka, pouch box, some filled pouches and filled loose pouches of 'Zee' Gutka were available. In the

other room, finished gutka, empty sealed pouches, pre-mix of gutka, printed laminated rolls of 'Zee Gutka', showing name of manufacturer as M/s Maruti Tobacco Products Pvt. Ltd., with its Vasna, Gujarat address were found. The officers also visited the factory premises of M/s SVPMIPL at Kolhapur. Stock of tobacco was found, to which the employee Shri Koli replied that they are engaged in processing of Tobacco on job work basis. Four laminated rolls of 'SPEED' gutka and 45 empty carton boxes of 'SPEED' Gutka with pre-printed details "manufactured by Maruti Tobacco Products Pvt. Ltd. 466, Vasna – 388540", four woven sacks of 'Speed' brand gutka, five woven sacks of Zee brand gutka and 27 cartons of Zee brand Pan masala were also found therein.

2.2 During the course of search at residence of one Shri Pravin Shrinivas Bhattad, eight bags containing 'Speed' gutka were seized, in reference to which Shri Bhattad stated that two months ago he had purchased the same from Shri Rajendra Malu. During search at M/s Maruti Trading Company, belonging to Shri Sunil Shrinivas Bhattad, seven packets each containing 55 pouches of Zee Gutka and 35 packets containing 65 pouches each of Speed brand Gutka were found. Shri Sunil Bhattad in his statement had stated that he was acting as agent of M/s SVPMIPL and the goods were sent to him by Shri Rajendra Malu and he did not receive any bill/invoice/ cash memo with the goods.

2.3 Statement of Shri Rajendra Malu was recorded on 26.05.2011, wherein he had stated that seized five pouch packing machines, pre-mix of gutka, printed laminated rolls were purchased recently and were installed as they intended to manufacture Gutka. He further stated that M/s SVPMIPL is engaged in manufacture of both exempted and dutiable goods; since Gutka is liable for central excise duty, and as he wanted to keep dutiable and exempted goods separately, the machines meant for manufacture of gutka were brought at the farmhouse. The five pouch packing machines were purchased from Kanpur in the name of M/s SVPMIPL and were put to use on trial basis and to substantiate such fact, he had produced the purchase bill No. 26 dated 11.05.2011 issued by M/s E. C. Packaging, Kanpur, lorry receipt No. 2418 dated 11.05.2011 of M/s S.K. Star Forwarding Agency, issued for transport of machines and related documents; that pre-mix of gutka and laminated rolls were procured from M/s MTPPL for trial run; the finished gutka found from farm house is manufactured in farm house by using said five machines during the course of trial run of machines; that the central excise registration was not obtained as he was not sure of getting Gutka manufacturing license from

FDA department of Govt. of Maharashtra. In his statement dated 27.05.2011, he had stated that Zee brand Gutka seized from factory premises of M/s SVPMIPL was purchased from M/s Zemini Marketing Co., Vadodara under Bill No. 80 dated 14.05.2011 and was transported by M/s Lalji Mulji Company vide L.R. No. 1381984 dated 14.05.2011. Shri Rajendra Malu had also refused to have sold gutka to Shri Pravin Shrinivas Bhattad and Shri Sunil Shrinivas Bhattad; in response to question regarding Lot No. S/2 appearing on packets in which gutka pouches were packed and date of manufacture appearing as of Feb, 2011, 03/2011 besides May' 2011, he had stated that the above details are not appearing on Gutka pouches, but the same are appearing on packing material received from M/s MTPPL, which were used by him on packing machines in trial run; that empty pouches of speed gutka seized from farm house were meant for trial production of empty pouches to check the sealing of the pouches on packing machines.

2.4 Statement of Shri Mahadeo Bapuso Lokare, the electrician who installed the electrical connection and boards for running of machines was recorded on 07.06.2011, wherein he had stated that the electrical boards for machines were installed on 16.05.2011. Statement of Shri Narendra Kumar Shrivastav, authorized signatory of M/s E.C. Packaging, Kanpur was recorded, wherein he had confirmed sale of five pouch packing machines vide bill No. 26 dated 11.05.2011. Statement of Shri Shivbalak Rajender Kumar, driver of vehicle, who had transported machines from E.C Packaging, Kanpur to Kolhapur was recorded on 06.08.2011, wherein he had accepted transportation of pouch packing machines on 11.05.2011 and unloading of the same at farmhouse on 16.05.2011. Statement of Shri Mahendrakumar of M/s New S.K. Star Forwarding, who had transported the machines was recorded on 10.06.2011, wherein he had stated that he has transported machines from Kidwai Nagar, Kanpur to Kolhapur through 'DCM Toyota' vehicle being UP 78 AM 6797, loaded on 11.05.2011. On 04.07.2011, his another statement was recorded, wherein he had stated that the vehicle number was wrongly mentioned as 'UP 78 AM 6797', whereas the correct number of vehicle is 'UP 78 AN 6797'. Statement of Shri Amarsingh Mohabat Singh, Proprietor of M/s Zemini Marketing, who was engaged in marketing of Gutka, Pan masala, sweetened supari etc., was recorded on 08.06.2011, wherein it has been stated that they were purchasing Gutka and Pan masala from M/s Maruti Tobacco Products Pvt. Ltd, Vasna Gujarat (MTPPL) and selling it to customers and they had sold one consignment of Zee brand Gutka and Pan Masala to M/s SVPMIPL through

invoice no. 80 dated 14.05.2011, which was transported through M/s Lalji Mulji Transport Co., Vadodara under L.R. No. 27366079 dated 14.05.2011. Shri Rajendra Babulal Malu had placed order in the name of M/s SVPMIPL for 20 cartons of Zee brand Gutka and 30 cartons of Pan Masala, which were supplied by them and bills were raised in the name of M/s SVPMIPL. After 01.03.2011, as a consequence of the decision of the Hon'ble Supreme Court, the nature of packing of Gutka had been changed from gunny bags to cartons; the authenticated check post copy of Form No. 402 under Gujarat VAT might be available with the transporter or Consignee; in which the details of their name, registration number and address are available and that after downloading the said form, the details of consignee, nature of transaction, value of consignment etc., are written by them. They have received the payment in respect of goods sold by them from M/s SVPMIPL and he produced the ledger copy for the same. Statement of Shri Bipinkumar Rameschandra Bhat, authorized signatory and accountant of M/s Maruti Tobacco Products Pvt. Ltd. was recorded on 05.07.2011, wherein he had stated that they have supplied gutka pre-mix on 13.05.2011 and printed laminated roll to M/s SVPMIPL through Challan No.1 dated 13.05.2011 through Lalji Mulji Transport Co., Vadodara along with Loose ready masala.

3.1 Based on above investigation, a Show Cause Notice (SCN) dated 31.10.2011 was issued, alleging that the documents provided by Shri Rajendra Malu are not genuine, as in case of transportation of five pouch packing machines through the said vehicle from Kanpur to farm house of Shri Rajendra Malu, the authenticated copy of bilty of check posts was not produced and that managers of toll plaza at Khed Shivapur and Anawadi at Pune-Kolhapur road have denied any entry regarding the vehicle having been made in their records. Shri Rajendra Malu has stated that though he had purchased new machines, but M/s E.C Packaging were not engaged in supply of 'new machines' pre-mix of Gutka and in case of printed laminated roll said to be procured from M/s Maruti Tobacco Products Pvt. Ltd. (MTPPL), the copy of Form No. 402 was not authenticated by the check post officer. In case of gutka found at farm house, shown to be procured from Zemini Marketing Vadodara, the Form No. 402 was not authenticated by the officer at check post. The show cause notice also relied upon the statement of Shri Sunil Shrinivas Bhattad, owner of M/s Maruti Trading Company and Shri Pravin Shrinivas Bhattad, that they had received 'Zee' and 'Speed' brand Gutka from Shri Rajendra Malu, without any documents and the same was purchased in

February, 2011. That 'Speed' gutka seized from Shri Pravin Shrinivas Bhattad, bears the date of manufacture as 02/2011 with Lot No. printed as 'S2'. Some of the seized gutka pouches at farm house bear printed date of manufacture of February, March and May' 2011. As per statement dated 05.07.2011 of Shri Bipin Kumar Rameschandra Bhatt of M/s MTPPL, they had supplied Gutka Pre-mix and laminated roll to Shri Malu, which is not true as Shri Bhatt in his statement has also stated that due to ban on plastic pouches for packing of Gutka, M/s MTPPL have destroyed all the packing materials available in the factory and hence the supply of packets bearing date of Feb' 2011 does not arise. That though Shri Malu had stated that he has received pre-printed packing material with date of manufacture and lot no. from Gujarat factory, which were used in his farm for packing of gutka manufactured at farm house, but it has been observed that some of the seized gutka manufactured at his farm house does not have date of manufacture and lot no. on it. Thus, his contention that he had received the pre-printed packing material is false. As per statement of Shri Bhatt, they have manufactured only one consignment of Speed Gutka which was exported; which shows that the Speed brand gutka found and seized from the premises of M/s SVPMIPL and shop and residence of Bhattad brothers was manufactured by Shri Rajendra Malu. The Zee brand Gutka seized from the farmhouse of Shri Malu bear Lot number as S2. Similarly, finished Speed brand Gutka seized from the premises of both the Bhattad brothers bear Lot No. S2. M/s MTPPL has never manufactured either 'Zee' brand Gutka bearing Lot No. Z2 or 'Speed' brand Gutka with Lot No. S2. Therefore, the question of procuring empty packets with the above Lot number on it by Shri Rajendra Malu does not arise. This shows that the documents provided by Shri Rajendra Malu in connection with purchase and procurement of five machines, pre-mix of Gutka, printed laminated rolls and finished gutka are not genuine but fabricated and that the machines were available with him from the month of February, 2011.

3.2 The SCN has stated that in terms of Rule 17 (2) of the Rules of 2008, the machines shall be deemed to be in operation since the first day of April of the financial year in which the unit was not found to be registered and shall be construed as operation packing machine for the purpose of Rule 7. As per the provisions under Rule 17(2) *ibid*, the central excise duty liability arises from the period from 01.04.2010 to 19.05.2011, which works out to be Rs.12,50,000/- per machine per month and the total liability works out during the disputed period is to the tune of Rs. 8,75,00,000/-. Accordingly, the SCN

had proposed for confirmation of the duty demands along with interest and for imposition of penalties on the appellants.

4. The matter arising out of the SCN dated 31.10.2011 was adjudicated by the Learned Commissioner of Central Excise and the impugned order dated 26.11.2012 was passed in confirming the proposals made therein. While passing the impugned order, the learned adjudicating authority has denied cross examination of Shri Pravin Bhattad and Sunil Bhattad, holding that it is not an absolute right and accordingly, taken cognizance of those statements recorded on 19.05.2011, to hold that five pouch packing machines were installed by Shri Rajendra Malu in February, 2011 in their farm house. Further, he has also relied upon and referred to various documents/ records viz., bilty in respect of transport of machines, toll plaza records, statements of various persons concerned with the case etc., for arriving at a conclusion that the said five packaging machines were available and were in operation with Shri Rajendra Malu, at least from February, 2011 i.e., before May, 2011.

5. Shri J.C. Patel, learned Advocate appearing for the appellants Shri Rajendra Malu and M/s SVPMIPL, has made the following submissions:

5.1 That the demand of Central Excise duty has been wrongly made from the appellant Shri Rajendra Babulal Malu and penalty has been imposed upon him in spite of the fact that the machines were owned and all materials were purchased by M/s SVPMIPL. M/s SVPMIPL during relevant period was engaged in the manufacture of Sweetened (sugandhi) Supari, Mouth freshener and Saunf at its factory at 335/336, Sangli-Kolhapur Bypass Road, Dharangutti-416103, Tal-Shirol, District-Kolhapur. Shri Rajendra Babulal Malu was Managing Director of SVPMIPL. The demand from appellant Rajendra Babulal Malu is untenable in law, since it is apparent from the evidences on record that the premises were taken on lease by appellant-SVPMIPL and machines were purchased and installed by them; that merely because the appellant-Rajendra Babulal Malu is the Director of SVPMIL, he does not become the manufacturer since the company SVPMIL is a separate legal entity, which is distinct and different from its Director. Hence no duty can be demanded from Shri Rajendra Malu and no penalty can be imposed upon him and M/s SVPMIPL.

5.2 That the adjudicating authority has not discussed even a single evidence on record and has not negated the fact that the five Pouch Making Machines

were purchased and installed by the appellant M/s SVPMIPL on 16.05.2011 and operated on trial basis only for three days i.e. 16.05.2011 to 18.05.2011. The statement dated 07.06.2011 of Shri Mahadeo Bapuso Lokare, Electrician, who had carried out the work of wiring, fixing Boards and providing the electric points of single-phase connection in the premises in question for installation of the said five Pouch Making machines is part of the RUDs, but this fact has been completely and deliberately ignored in the SCN. Even, the adjudicating authority has not negated his statement, which is evident for the reason that the said statement clearly establishes that the five machines were installed only after 15.05.2011 and therefore, completely demolishes the department's case of manufacture having taken place prior to 16.05.2011 and the demands confirmed for the period from April, 2010 to 15.05.2011 are unsustainable in law. In the statement dated 07.06.2011, Shri Mahadeo Bapuso Lokare has stated that on 13.05.2011 and 14.05.2011, he carried out the work of providing/ fixing five electric points of single-phase connection in the said premises for installation of the said five machines and the said work of wiring, fixing Boards and providing electric supply to the five points was completed on 14.05.2011. He has categorically stated that no machines were installed or available in the said room prior to fixing of the said five electrical points. He has stated that prior to fixing the said five electrical points, the said room was vacant and no machines were available therein. It is unequivocally established from his statement that the five machines, which were found during search on 19.05.2011, were installed only after 14.05.2011. Consequently, the demand for duty, if any, cannot be made for the period prior to 16.05.2011. The demand for duty commencing from April 2010 has no basis. That when the said Statement dated 07.06.2011 of the Electrician is read with the following evidences, it would establish the correct position that the five machines were purchased only in May, 2011 and installed on 16-5-2011:

- (i) Appellant, Rajendra Babulal Malu in his statement had stated that the five number of machines were recently purchased from E. C. Packaging, Kanpur under their Invoice No.26 dated 11.05.2011 and the same were transported under Lorry Receipt No.2418 dated 11.05.2011 of New S. K. Star Forwarding Agency.
- (ii) His statement is corroborated by statement dated 10.06.2011 of Narendra Kumar Shrivastava, authorized signatory of E. C. Packaging, in which he had confirmed the fact regarding sale of five numbers of pouch making machines to SVPMIPL under their Invoice

No. 26 dated 11.05.2021. The payment for the said Machines was made by M/s SVPMIPL to E.C. Packaging by Cheque.

- (iii) The above statement of Shri Rajendra Babulal Malu is also corroborated by statement dated 04.07.2011 of Shri Mahendra, authorized signatory of the transporter, M/s New S. K. Star Forwarding Agency, Kanpur and Statement dated 06.08.2011 of Driver, Shivabalak Rajendra Kumar employed by the said Transporter, in which they have stated that the correct number of the Truck by which the said five machines were transported is UP 78 AN 6797 and that the five machines had been transported under Lorry Receipt (Bilty) dated 11.05.2011 from Kanpur to Nandani, Kolhapur. Further, the said Driver also submitted to the Central Excise department, his affidavit dated 18.08.2011 affirming that he had transported the said five machines from Kanpur to Kolhapur.
- (iv) Further the said vehicle transporting pouch packing machine transited through Sangli on 15.05.2011 before reaching Kolhapur, as is evident from the Transit Receipt issued by Sangli Miraj and Kupwad City Municipal Corporation for immediate export out of Sangli.

5.3 That from above evidences, it is established that the five Machines were purchased only on 11.05.2011 and were dispatched from Kanpur on 11.05.2011 and transited Sangli on 15.05.2011 to reach Kolhapur and therefore could have been installed only on 16.05.2011. Therefore, at the highest, the same were run on trial basis only for three days i.e. 16.05.2011, 17.05.2011 and 18.05.2011. There is no contrary evidence cited in the Show cause Notice to establish the purchase and installation of the machines prior to 16.05.2011. Therefore, he pleaded that the demand for duty for the period April 2010 to 15.05.2011 is clearly untenable in law.

5.4 In terms of Rule 17 (2) of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, if it is found that goods have been manufactured in or cleared from a unit which is not registered with Central Excise, then, the machines found available in the premises of the unit shall be deemed to have been in operation since the 1<sup>st</sup> day of April of the financial year in which unit was found to be not registered, unless evidence to the contrary is provided. In the present case, the unit was found to be not registered in the financial year commencing from April 2011 and therefore the machines are deemed to be in operation since April 2011. However, this is

subject to evidence to the contrary. In the present case, the evidence on record clearly shows that the machines were purchased on 11.05.2011 and transported from Kanpur on 11-5-2011 and transited Sangli on 15.05.2011 and were accordingly installed only on 16-5-2011 and thereafter seized on 19-5-2011. Therefore, it can at the best be concluded that the machines were operated only from 16.05.2011 to 18.05.2011 and the demand towards duty, if any, can only be restricted for these three days.

5.5 As regards demand for duty from 01.04.2010 to 18.05.2011 based on Statements of Pravin Shrinivas Bhattad and Sunil Shrinivas Bhattad, he submitted that demand for duty based on the said Statements is ex-facie untenable in law. Shri Rajendra Babulal Malu has specifically denied having supplied Gutkha to said Pravin Shrinivas Bhattad and to Sunil Shrinivas Bhattad and has disagreed with their statements. Secondly, no reliance can be placed on the said Statements of Pravin and Sunil, as they have not been examined in the adjudication proceedings as required by Section 9D of the Central Excise Act, 1944 and no opportunity was given to the appellants to cross-examine them, though specifically requested by the appellant by letter dated 06.11.2012. Learned Advocate had relied upon the following judgments to submit that no reliance can be placed on the statements, where requirements of Section 9D *ibid* have not been complied with:

- (i) Junaid Kudia Vs. CC – (2024) 16 Centax 503 (Tri.-Bom.), upheld by Hon'ble Supreme Court - 2024 (388) ELT 529 (SC)
- (ii) Additional Director General (Adjudication) Vs. Its My name P. Ltd – 2021(375) ELT 545 (Del)
- (iii) Surya Wires P. Ltd Vs. Principal Commissioner-2025 (4) TMI 441-CESTAT-NEW DELHI
- (iv) CCE Vs. Paradise Steels – 2025 (6) TMI 1961-CESTAT-NEW DELHI
- (v) Ashfaq Baig Vs. CC – 2025 (6) TMI 692-CESTAT- NEW DELHI.

The refusal of the Learned adjudicating authority to grant opportunity to the appellant to cross-examine the said Pravin and Sunil, on whose statements, reliance has been placed, is plainly contrary to the provisions of Section 9D *ibid* as held by the judicial forums as referred above. Learned Advocate submitted that in any event, the said Pravin and Sunil have merely stated having purchased Gutkha from the appellant in March and February 2011, but have nowhere stated that the same was manufactured by the appellant-Rajendra Babulal Malu in the premises in question. Rule 17 (2) *ibid*

is attracted, only where goods are manufactured in or cleared from a unit not registered with Central Excise. There is no mention in the said statements regarding manufacture by the appellant-Rajendra Babulal Malu or clearance from the premises in question. Mere alleged sale by appellant-Rajendra Babulal Malu does not by itself establish that the goods allegedly sold by him in February-March 2011, were manufactured by him in and cleared from the premises in question. On the contrary, the evidence on record clearly establishes that the five machines were purchased on 11.05.2011, transported from Kanpur on 11.05.2011 and transited Sangli on 15.05.2011, en-route to Kolhapur and were accordingly installed only on 16.05.2011 in the premises in question and thereafter seized on 19.05.2011. Accordingly, the question of the Gutkha allegedly sold to Sunil and Pravin in Feb-March 2011 having been manufactured on the five machines in the said premises, does not arise at all. Thus, it was submitted that as per the settled position of law, reliance cannot be placed on the statements of co-noticees, without any corroborative evidence. In the present case, the department had not brought on any iota of evidence to prove that by using the uninstalled five machines, the appellants had manufactured the goods in February-March 2011.

5.6 He further submitted that two Panchnamas dated 19.05.2011 drawn at the Shop of Sunil and Residence of Pravin, based on which Gutkha is claimed to be recovered from the said shop and residence are ex-facie unreliable, as both panchnamas show presence of Shri Pravin Bhattad, at same time, on both the places. That in such case, the absence of cross-examination of the Panchas, no reliance can be placed on the said Panchnamas. He placed reliance on the judgments delivered in the case of *Arya Bhushan Bhandar Vs. Union of India* - 2002 (143) E.L.T. 25 (SC); *Kamlesh Gupta Vs. CC* - 2023 (386) E.L.T. 581, to state that where the Panch witnesses have not been examined by the department or where the Panch witnesses fail to appear for examination and cross-examination, and the department fails to produce the Panch witnesses for examination and cross-examination, the Panchnama has no evidentiary value and has to be discarded for consideration.

5.7 He has relied upon the statement of the appellant-Rajendra Babulal Malu to state that machines were used only for Trial run and Central Excise Registration was not obtained, since FDA license from State Government had yet to be obtained and the premix and Printed Rolls which were found by the Central Excise Officers in the said premises had been purchased on trial basis from Maruti Tobacco Products P. Ltd, Vasana, Gujarat and received under their

Delivery Challan. That further, as stated by him, the ZEE Gutkha found in the premises had been purchased from Zemini Marketing Co., Vadodara under their Bill No.80 dated 14-5-2011 and transported by Lalji Muli Co., under their LR dated 14-5-2011. The aforesaid version of the appellant-Rajendra Babulal Malu has been corroborated by statement dated 5.07.2011 of Bipinkumar Rameshchandra Bhatt, Accountant and Authorized signatory of Maruti Tobacco Products Ltd., in which, he had confirmed the facts of supplying one consignment of Pre-mix of Gutkha and laminates to SVPMIPL under their Delivery Challan, through transporter Lalji Mulji Transport Co., Vadodara and by statement dated 8-6-2011 of Amarsingh Mohabatsingh Inda, Proprietor of Zemini Marketing Co., Vadodara, in which, he confirmed having sold one consignment of ZEE Gutkha to SVPMIPL under their Invoice No. 80 dated 14-5-2011, which was transported by Lalji Mulji Transport Company, Vadodara. That the department has disputed the said purchases from Maruti Tobacco Products Ltd., and Zemini Marketing Co., merely based on the contention that declarations in Form 402 given by the said sellers under the Gujarat VAT Act, 2003 do not bear signature/ stamp of the VAT authorities at the Check Post. It is settled position of law that mere absence of stamp of check post cannot by itself mean that goods were not transported as it is common knowledge that truck drivers in order to avoid payment of local taxes, avoid check posts and take alternative routes. In this context, he has placed reliance on the decisions of the Co-ordinate Benches of the Tribunal in the case of CCE Vs. Garg Industries P. Ltd. – 2023 (385) ELT 541 (Tri. – Ahmd.) and Gujarat Victory Forgings P. Ltd. Vs. CCE – 2019 (7) TMI 5-CESTAT-AHMEABAD.

5.8 In case of M/s SVPMIPL, the penalty has been imposed without any reason under Rule 26 (1) of the Rules of 2002, holding that the firm was instrumental in collusion with Shri Rajendra Malu. In this context, he submitted that the impugned order is without any basis inasmuch as no goods were procured without payment of duty. He also referred to the inspection report of FDA authorities dated 21.04.2011 stating that during their visit, they did not find any Gutka/ Pan masala in the factory premises. That the evidence on record clearly shows that the manufacturing activity took place only from 16.05.2011 at the farm house and that the contention of the adjudicating authority that they are directly involved in illicit manufacture and removal of gutka from the farm house of their Managing Director Shri Rajendra Malu and that all the activities of involving illicit manufacture of gutka and clearance of same carried out in their name has no basis. That they had started only trial

production and no clearances were made. Thus, in absence of proper substantiation of illicit manufacture of Gutka, the penalties cannot be imposed on the appellants.

6. Shri A. B. Nawal, Learned Advocate appearing for the co-appellants supports the submissions made by the learned Advocate on behalf of the appellants Shri Rajendra Malu. He further submitted that in case of Zemini Marketing, Zee Gutka and Zee Pan Masala were supplied against invoice no. 80 dated 14.05.2011 through Lalji Mulji Transport. That the adjudicating authority has imposed penalty merely on ground that the documents are fabricated as no authenticated Form No. 402 by the check-post authorities were produced. No evidence has been provided as to how the invoice issued by them, the transport documents and the statements affirming sale, transport and delivery of goods by them to M/s SVPMIPL are not genuine. That no investigation was made at check post. That similarly in case of M/s E. C. Packaging, Kanpur, which supplied five numbers of pouch packing machines to M/s SVPMIPL at Jaysingpur, the goods were supplied through M/s S.K. Star Forwarding Agency through vehicle No. UP78 AN6797, but inadvertently the number was mentioned as UP78 AM 6797 and to such effect, the transit receipt of Sangli Miraj and Kupwad City Municipal Corporation were issued. The payment towards supply was also made. The statement dated 08.06.2011 of Shri Ajaykumar Mishra, Supervisor and statement dated 10.06.2011 of Shri Narendra Shrivastav, Authorised signatory are available on record, wherein they had clearly stated the fact about sale and transport of machines to M/s SVPMIPL and no contrary evidence to such effect was placed on record. The driver of the vehicle Shri Shivbalak Rajendra Kumar in his statement dated 06.08.2011 and the affidavit dated 18.08.2011 (part of the RUD), wherein he had clearly stated that, the machinery was transported on 11.05.2011 and the same had reached the farmhouse on 16.05.2011. Further, the affidavit of Shri Shivbalak Rajendra Kumar also referred to, affirming that he had reached Jaysingpur through Sangli. That no evidences were brought on record to show as to how the statements and documents to the above effect are fabricated and that the invoice is to be considered as ingenuine and as to why the escort receipt cannot be considered as proper evidence in support of transportation of the machines. In case of S.K. Star forwarding agency, which transported the machinery from Kanpur to Jaysingpur, he submitted that the statement of Mahendrakumar, authorised signatory has not been contradicted and no evidence against the bill issued by him or no evidence of non-transportation

of goods were submitted. In case of Pravin Bhattad and Shri Sunil Shrinivas Bhattad, he submitted that the gutka pouches supplied by Shri Rajendra Malu were obtained by Shri Malu from M/s Maruti Tobacco and were given to them free of cost as samples and not meant for sale. That the gutka pouches clearly contains the name of the manufacturer M/s Maruti Tobacco Products Pvt. Ltd. (MTPPL), Gujarat and said company was never owned by Shri Rajendra Malu. That they have never stated in their statements that the gutka were manufactured by Shri Rajendra Malu. They have only stated that the same was supplied by Shri Malu. There is no evidence that the said gutka was manufactured by Shri Malu and hence confiscation is not sustainable. That the onus is on the department to prove the clandestine removal and the department has failed to prove clandestine removal and their involvement. In reference to M/s Maruti tobacco Products Pvt. Ltd., he submitted that the appellant has been manufacturing gutka and paying royalty to Shri Rajendra Malu. They supplied lamination roll, pre-mix and loose cartons to M/s SVPMIPL and transported through M/s Lalji Mulji Transport Co. Statement of Shri Bipin Bhatt was recorded wherein he conceded the above facts. The adjudicating authority has termed the records as fake, whereas no evidence to support such stand has been placed on record. The only allegation is that Form No. 402 was not filled properly or not authenticated, which cannot be considered as the proper evidence against the appellant. No evidence has been provided that the documents showing delivery and transport documents and statements are wrong. No statement of check post officer or driver was recorded. He submitted that in case of M/s Lalji Mulji Transport, the said transport company has transported goods from M/s MTPPL to M/s SVPMIPL and copy of LR was also submitted. That no evidence contrary to such LR is one record. That only for the reason that copy of Form 402 was not fully filled up or was not authenticated by check post office, cannot be a ground to impose penalty. No investigation was made at check post nor statement of any checkpoint officer or driver was recorded. Therefore, the penalties imposed against the appellants cannot be sustained.

7. On the other hand, Shri Shamboo Nath, Special Counsel appearing for the Revenue has reiterated the findings recorded in the impugned order and supported the case of Revenue by contending that the impugned goods were manufactured and removed illicitly from the farm house since February, 2011. He has relied upon the panchnama proceedings and statement of Shri Pravin Bhattad and Sunil Bhattad, to state that the goods found with them were

having Lot no. and packaging date of Feb'2011 and the same was delivered to them by Shri Rajendra Malu. He also submitted that in case of pouch packing machines received from M/s E.C. Packaging and goods removed from M/s MTPPL, it has been shown to have received in the month of May, 2011. However, the said fact cannot be acknowledged, since the copy of Form No. 402 issued under Gujarat VAT Act was not authenticated by the check-post officer and was not completely filled, which shows that the machines were not received in May' 2011 and thus, the documents are fabricated. In case of receipt of Printed laminated sheets and pre-mix of Gutka from M/s MTPPL, which were shown to have received in May' 2011, it was submitted that the Form No. 402 under Gujarat VAT Act was not properly filled-up with details of driver and the number of the vehicle, and the same was also not authenticated by Check post officer. He thus submitted that Shri Rajendra Malu had started production and clearance of gutka from February' 2011 and the duty demand has been rightly confirmed in terms of Rule 17 (2) of Rules of 2008 for the period March' 2010 till May' 2011. Therefore, he has pleaded that the adjudged demands confirmed on the appellants are sustainable under the law.

8. Learned Counsel appearing on behalf of the appellant Shri Sunil Shrinivas Bhattad has submitted the certificate dated 12.03.2021, issued by the Health Department of the Government of Maharashtra, confirming the death of the said appellant on 03.03.2021, and prayed for deciding the appeal in terms of the statutory provisions.

9. Heard Shri J.C. Patel, learned Advocate; Shri A.B. Nanwal, learned Cost Accountant; Shri Shamboo Nath, Special Counsel and examined the case records, including the written submissions filed by all sides during the course of hearing of these appeals.

10. We find that during the course of investigation, in order to ascertain the purchase/ procurement and date of the installation of machines at the farm house, the officers in the department had made enquiry and recorded statement of the Electrician Shri Mahadeo Bapuso Lokare, who had stated that on 13.05.2011 and 14.05.2011, he had carried out the work of fixing five electric points, which were got completed on 14.05.2011 and that no machines were installed or available in the said room, prior to fixing of said five electrical points; and that the machines were connected on 16.05.2011. The officers also recorded statement of Shri Narendra Singh Shrivastav, authorized signatory of E.C. Packaging on 10.06.2011, wherein he had stated that the

Packaging machines were cleared on 11.05.2011 to M/s SVPMIPL; statement dated 10.06.2011 of Shri Mahendrakumar of M/s New S.K. Star Forwarding Agency, Kanpur was also recorded, wherein he had stated that five numbers of packing machines were transported by them on 11.05.2011 from M/s E.C Packaging to Kolhapur through Bilty No. 2418; that in the statement dated 06.08.2011 of Driver Shri Shivbalak Rajendrakumar, it had been deposed that he had transported machines from Kanpur to Jaysinghpur on 11.05.2011 and the same reached the premises of M/s SVPMIPL, Jaysinghpur on 15.05.2011 and the machines were unloaded on 16.05.2011. In addition, the Driver Shri Shivbalak also submitted affidavit dated 18.08.2011, affirming that the route taken by him from Kanpur to Jaysinghpur was through Sangli. Apart from the above statements, which are part of the 'Relied Upon Documents' (RUD) to the SCN, the Invoice No. 26 dated 11.05.2011, showing sale of five pouch packing machine by M/s E.C. Packaging, Kanpur to M/s SVPMIPL; Lorry receipt (Bilty) No.2418 dated 11.05.2011 of Vehicle No. UP 78 AN 6797 issued by M/s New S.K. Star Forwarding Agency for transportation of machines from Kanpur to Kolhapur; and transit receipt dated 15.05.2011 issued by Sangli Miraj & Kupwad City Municipal Corporation, before reaching Kolhapur, were also available on record, which were perused by us. The most important document, which is forming part of the RUD, is the statement dated 07.06.2011 of Shri Mahadeo Bapuso Lokare, who had stated that on 13.05.2011 and 14.05.2011, he had carried out the assigned work of fixing five numbers of electric points in the location, which got completed on 14.05.2011; and that till such time of providing electrical connection, no machines were either installed or available in the said premises. His statement has not been contradicted/ negated either in the SCN or in the impugned order, which leads to an inevitable conclusion that the disputed machines were installed on 16.05.2011 and not before-hand. Further, on reading of the statements recorded by the department from the suppliers and transporters, we find that nothing inculpatory is forthcoming nor any statements furnished pursuant to summons show any contradiction in such factual details. The above statements and documentary evidences available in the case file, clearly show that the machines were transported on 11.05.2011 to the farm house at Jaysinghpur and reached therein on 16.05.2011. We find that the department had made out a case that the disputed machines were installed and pre-printed packing material, pre-mix of Gutka were found therein, by stating that the keys of the room, where those goods were kept were obtained from one Shri Chavan, Construction Supervisor. However, it is noticed that no

statement to such effect was recorded from the said Construction Supervisor. We further find from the panchnama dated 19.05.2011 that when he was asked about since when the machines and raw material of gutka are procured in the above premises, he had pleaded his ignorance and stated that he is not aware of the same and only supervising the construction activities. Thus, from the said deposition of Shri Chavan, whose testimony about the commencement of the manufacturing activity of pan-masala/gutka is the vital focal point of investigation, has admittedly nowhere been specified for coming to the conclusion that the machines were installed on a specific date prior to 16.05.2011, as claimed by the appellants regarding actual commencement of the manufacturing activities of pan-masala/gutka. In other words, the said supervisor being the custodian of the rooms at the material time, was supposed to know the actual installation of the machines therein and that since he has not specifically commented about the date of installation, in our considered opinion, it is erroneous on the part of the department to merely assume that the manufacturing activity commenced on a date, prior to 16.05.2011, as claimed by the appellants.

11. Further, it is also observed from the case file that no statement of any other person viz., labour or watchman etc., had been relied upon in the SCN to prove that the pan-masala/gutka manufacturing activity was taking place at the farm house beforehand. On the contrary, when the officers visited the premises on 19.05.2011, which was a Thursday and normally considered as a working day, how can they would not found any labour deployed for carrying out the illicit activity of manufacture of pan-masala/gutka. Thus, it is evident that the department has not brought out any iota of evidence to prove their case that on the said date of their visit, the manufacturing activities were carried out in the premises. Furthermore, it is observed that Shri Rajendra Malu in his statement dated 27.05.2011, has also stated that the five pouch packing machines were purchased from M/s E.C. Packaging, Kanpur on 11.05.2011 and has also furnished the particulars of lorry receipt etc., issued by M/s S. K. Star Forwarding Agency. His statement is corroborated with the statement dated 10.06.2011 of Shri Narendra Shrivastav of M/s E.C. Packaging and the transporter Shri Mahendra, authorised signatory of M/s S.K. Star Forwarding Agency, wherein he had stated that five numbers of machines were transported through vehicle no. UP 78 AN 6797. The same is also supported by the statement and affidavit of the vehicle driver Shri Shivbalak. The driver in his affidavit has also stated that the vehicle transited

through Sangli on 15.05.2011 and the same is evident from the Transit receipt issued by the Sangli Miraj and Kupwad City Municipal Corporation.

12. The adjudicating authority has contended that the Vehicle No. UP 78 AM 6797 appearing on L.R. No. 2418 dated 11.05.2011, which said to have transported the five machines, pertains to a Santro Car and not a Truck, as claimed by Shri Malu. We find from the SCN and the statement dated 04.07.2011 recorded from Shri Mahendra, authorized signatory of M/s S.K. Star Forwarding Agency that due to inadvertence, the vehicle number has been wrongly mentioned as 'UP 78 **AM** 6797', whereas the correct number is 'UP 78 **AN** 6797'. This statement of Shri Mahendra has not been contradicted/negated either in the SCN or in the impugned order, and thus, we have no hesitation in accepting the fact that there was error in mentioning vehicle number and same cannot be considered as evidence for non-transportation of the alleged machines.

13. As regards the contention of the adjudicating authority that the toll plaza in-charge of Khed Shivpur and Anewadi toll at National Highway No.4 between Kolhapur and Pune had informed that there was no entry of the said vehicle UP – 78 AN 6797 in toll records from 11.05.2011 to 15.05.2011, we find that as per the driver's statement and the transit receipt of Sangli Miraj and Kupwad City Municipal corporation, the vehicle had reached from Kanpur to Jaysinghpur through other route and no enquiry was made in spite of bringing this fact to the knowledge of the investigating officers. Further, the statement of the driver was also not negated in the enquiry proceedings. In such case, the allegation that toll plaza in-charge of other route i.e., Khed Shivpur and Anewadi toll at National Highway No.4 connecting the places between Kolhapur and Pune, has denied passing of vehicle, alone cannot be considered as a vital piece of evidence, especially in view of the fact that the movement of the goods as stated by the driver has been supported with issuance of transit receipt by the Municipal Corporation has not been countered.

14. On the basis of the statement furnished by authorized person Shri Narendrakumar Shrivastav, the learned Adjudicating Authority has concluded that since M/s E.C. Packaging were not engaged in supply of new machine, but were engaged in supply of old/ repaired machines only, installation of new machines, as claimed by the appellants in the month of May' 2011 was not feasible. We find that there is no denial of the fact by Shri Narendra Shrivastav about sale and transportation of five pouch packing machinery by M/s E.C.

Packaging to M/s SVPMIPL at Jaysinghpur. Even assuming that M/s E.C. Packaging were selling old/repaired machines, but from the statement of Shri Narendrakumar Shrivastav, the authorized person of the said company, it would transpire that while carrying out process of refurbishing of machines, almost all the major parts, excluding the frame of the machines, were replaced. The nature of the activities undertaken by M/s E.C. Packaging for refurbishing of the machines, in our considered opinion, would tantamount to manufacture of new machines and therefore, the statements recorded from various persons, including Shri Rajendra Malu, Shri Narendra Shrivastav, transporter and driver cannot be considered as false or incorrect. Since, the statements recorded from those persons were uncontroverted and no documentary evidences were relied upon by the department to disprove the averments recorded in the statements, it can be concluded that the machines were brought to farmhouse in the Month of May, 2011 i.e., on 16.05.2011, for the purpose of carrying out the desired purpose of manufacturing pan-masala/Gutka.

15. The SCN and the impugned order have placed reliance upon the statement dated 19.05.2011 of S/Shri Pravin Bhattad and Sunil Bhattad to allege that the Gutka was received by them in the month of February and March' 2011. Further, relying upon the lot number and month of packing displayed on pan-masala/gutka pouches seized from their premises, it is alleged that the pan-masala/gutka was manufactured by Shri Malu since February, 2011. We find that the adjudicating authority has denied cross examination of Shri Pravin Bhattad and Shri Sunil Bhattad ('Bhattad brothers', for short), holding that it is not an absolute right. In this case, we find that the allegations of manufacture of pan-masala/gutka and their supply were levelled against the appellants in the impugned order, solely based upon the statements recorded from Bhattad brothers. Since on the basis of such statements alone, without any corroborative evidence, the appellant Shri Rajendra Malu was implicated, it was imperative on the part of the department to grant their cross examination for a proper fact finding with regard to the issue dealt with in the impugned order inasmuch as right to check and verify the authenticity of such statements through cross examination is the basic fundamental of the principles, in appreciation of the evidence. It was more so in the situation, especially where those statements were said to be incriminatory. In such case, no reliance can be placed on those types of statements, when Section 9D of the Act of 1944 was not complied with. Our

said views are supported by the Order passed by this Bench of the Tribunal, in the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* – (2024) 16 Centax 503 (Tri.- Bom.), which was also upheld by the Hon'ble Supreme Court, reported in 2024 (388) ELT 529 (SC). The Hon'ble Delhi High Court in the case of *Additional Director General (Adjudication) Vs. Its My Name Pvt. Ltd.* – 2021(375) ELT 545 (Del.) has also endorsed the said views expressed by the judicial forums, with regard to affording of cross examination for appreciation of evidence. The Co-ordinate Benches of the Tribunal, in the case of *M/s Surya Wires Pvt. Ltd. & Ors. Vs. Principal Commissioner, CGST, Raipur-2025* (4) TMI 441-CESTAT-NEW DELHI, *Commissioner of Central Excise & CGST, Jodhpur Vs. M/s Paradise Steels Pvt. Ltd. & Ors.* – 2025 (6) TMI 1961-CESTAT-NEW DELHI and *Mr. Ashfaq Baig Vs. Commissioner of Customs, ICD, Tughlakabad* – 2025 (6) TMI 692-CESTAT- NEW DELHI, have also endorsed the said views.

16. Further, we also find from the statements recorded from various persons that they had only stated about having purchased goods from Shri Rajendra Malu, but did not state that the same was manufactured by Shri Rajendra Malu at its farm house. Even if it is assumed that the sale of goods was made by Shri Malu in that case also, it will not automatically lead to the conclusion that the goods were allegedly manufactured by him. Moreover, no corroborative evidence has been produced, except the statement recorded from Bhattad brothers to show that the gutka was received from Shri Rajendra Malu in the month of February, March' 2011. No evidence in the form of dispatch of such gutka pouches from the farm house or any evidence of the vehicles deployed for transportation of gutka, and the details of drivers etc., were brought on record by Revenue to support the allegation levelled against the appellants.

17. The adjudicating authority has contended that as per the statement of Shri Bipin Brahmhatt of M/s MTPPL, the gutka in plastic pouches was banned from March' 2011 by the Hon'ble Supreme Court and the laminated rolls available in stock were destroyed by them. It was further alleged that some of the seized gutka found in farm house did not have month of manufacture and lot number printed on them and hence, the contention of Shri Malu regarding receipt of pre-printed material is false and is made to cover up the fact of manufacture of gutka in his farmhouse in the month of Feb'2011. In this context, we find that when the gutka in plastic pouches itself was banned w.e.f. March' 2011, it is clear that no gutka in plastic pouches could be supplied in market. Further, the department could not find any other source

from which printed laminated roll was procured by Shri Rajendra Malu. It is thus, obvious that pre-mix and laminated roll, in absence of any other source, was procured from M/s MTPPL only, inasmuch as there was no other source of procurement of pre-mix of gutka and laminated roll, except from the source of M/s MTPPL, for which the documents were produced by Shri Rajendra Malu. Furthermore, it is also a fact, which cannot be ignored that the appellants were well aware that Gutka cannot be sold in market in Plastic pouches and hence, there was no necessity for them to order and procure printed laminated plastic sheets, in view of the fact that gutka packed in such plastic pouches was not saleable in the market after 01.03.2011. We find that though the department had proceeded against the appellants, mainly based on the statements and documents produced by the appellants, but it had not brought any evidence by way of independent investigation to prove the charges levelled against appellants. When the SCN had chosen not to rely upon the statements of supplier and recipient, regarding procurement of pre-mix of gutka and laminated rolls, in that case they should have mentioned the other source and mode of procurement, as well as evidence of such procurement. The onus of producing evidence to the contrary to the statements and documents on record, which are part of RUDs to SCN lies heavily upon the revenue, which in the present case has not at all been substantiated. We also find that during seizure, no printing machine or any means of printing the packing date or lot number was found in the factory. Further in answer to question No. 8 in the statement dt. 27.05.2011 of Shri Rajendra Malu regarding date of packing and Batch/Lot number appearing on gutka manufactured on trial basis in farm house, it was replied by him that there is no system available for such activity in the machines. This gives credence to the contention of the appellants that they had received pre-printed laminated roll. There was no means or machinery available with Shri Rajendra Malu to print manufacturing date and lot number on the plastic pouches. Hence, the allegation of manufacturing/packing and clearing pan-masala/Gutka pouches in the months before May' 2011 is not sustainable.

18. It is also on record that Shri Rajendra Malu in his statement dated 27.05.2011 has clearly denied having supplied gutka to S/Shri Pravin Bhattad and Shrinivas Bhattad and disagreed with their statements. Further, we find that with respect to subject allegation of matching of Gutka pouches in respect of lot number and month of packing of 'Speed' and 'Zee' brand Gutka with the pouches at the farm house, the SCN in case of Speed Gutka has placed

reliance upon statement dated 05.07.2011 of Shri Bipin Bhatt, Accountant and authorized signatory of M/s MTPPL. He had stated that they had manufactured only one consignment of Speed Gutka, which was exported by them and on the basis of same, it is alleged that the gutka of another lot number carrying packing date of Feb', March'2011 found with Shri Pravin and Shrinivas Bhattad has been manufactured at farm house by Shri Rajendra Malu. We find that no evidence was brought on record to show that manufacture of gutka had taken place at the farm house before May' 2011. Further, it is an undisputed fact that no machinery was available or used for printing the lot number or month of packing in the gutka pouches, which activity was alleged to have been done in the farm house of Shri Rajendra Malu. The department had failed to acknowledge the fact that the gutka pouches containing details of the name of manufacturer as 'M/s MTPPL, Vasna', was not owned by Shri Rajendra Malu. The said firm has never raised any objection that their name on gutka pouches or packing material have been wrongly mentioned by some other person or the gutka contained in such pouches are fake. Therefore, it cannot be inferred merely on the basis of statements of Shri Pravin and Shrinivas Bhattad or Shri Bipin Rameshchandra Bhatt, accountant of M/s MTPPL that the gutka stock seized from Bhattad brothers was manufactured by Shri Rajendra Malu. Further, no records related to production and clearance of gutka from M/s MTPPL has been brought on record, which leads to inference that the allegation is based merely upon statement without any corroborative evidence. Pertinently Bhattad brothers in their statements had nowhere stated that such gutka was manufactured by Shri Rajendra Malu or that the same was received from farmhouse at Jaysinghpur. We also find that though the appellants had sought for samples of gutka pouches, in order to get it tested, for ascertaining the difference in the quality of gutka pouches found in the farm house vis-à-vis those found at the premises of Bhattad brothers, but such request of the appellants was not acceded to by the adjudicating authority. Most importantly the appellant had sought to cross examine the panch witness due to discrepancy in panchnama. The Panchnama drawn at the Shop of Sunil Bhattad, shows that during such proceedings, Shri Pravin Bhattad came to the Shop of Sunil Bhattad and the said panchnama proceedings were ended at 17.25 hours on 19.05.2011. On the other hand, Panchnama drawn at the residence of Pravin Bhattad stated that the Panchas went to the residence of Pravin Bhattad at 17.30 hours on 19.05.2011 and on knocking Shri Pravin Bhattad had opened the door at the said time. We find that when Shri Pravin Bhattad could not have been available at two different places at the same time

i.e., at the shop of Sunil Bhattad till 17.30 Hrs. and at his own residence at 17.25 Hrs., cross examination of the concerned persons, was a bare necessity, the facility of which admittedly had not been extended by the department. Thus, in absence of cross examination of Bhattad brothers and panch witnesses, the panchnama proceedings cannot be accepted as independent and free from bias. Our above views are also gets support from the judgment delivered by the Hon'ble Supreme Court in the case of Arya Abhushan Bhandar Vs. Union Of India - 2002 (143) E.L.T. 25 (S.C.) and the order passed by the Co-ordinate Bench of the Tribunal, in the case of Kamlesh Gupta Vs. Commissioner of Customs (Preventive), Lucknow - 2023 (386) E.L.T. 581 (Tri.- All.).

19. The adjudicating authority has contended that Shri Rajendra Malu could not produce copies of Form No. 402, duly signed or authenticated by the officer in-charge of check-post; pre-printed laminated rolls/ pre-mix of Gutka received from M/s MTPPL, Vasna; and Zee gutka received by M/s SVPMIPL from M/s Zemini Marketing Company, Vadodara; and hence, the appellant's claim about purchase of goods from those parties remain unproved. We find that only for the reason that the check-post documents were not produced or were incomplete, it does not mean that the goods were not transported as the documents like Bilty, statements of suppliers, supporting supply of goods to Shri Malu and M/s SVPMIPL are available on record. Hence, only for the reason that Form No. 402 showing transportation of goods was not presented, it cannot be assumed that the goods were not received by Shri Rajendra Malu or M/s SVPMIPL. In this context, we rely upon the orders passed by the Co-ordinate Benches of the Tribunal in the case of *Commissioner of Central Excise & Service Tax, Daman Vs. Garg Industries P. Ltd.* 2023 (385) E.L.T. 541 and *M/s Gujarat Victory Forgings Pvt. Ltd. & Ors. Vs. C.C.E. & S.T., Vadodara-II* - 2019 (7) TMI 5 - CESTAT-Ahmedabad, wherein it has been held that mere absence of check-post stamps on the documents, it cannot be said that the goods were not transported.

20. We find that statement dated 07.06.2011 of the electrician Shri Mahadeo Bapuso Lokare, mentioning about fixing of electric connections and panels in the farm house belonging to Shri Rajendra Malu has not been contradicted by the department. Thus, it is proved that the five numbers of pouch packing machines were installed only on 16.05.2011; and hence no manufacturing activity could have taken place earlier to such date. Similarly,

statements of Shri Rajendra Malu which are exculpatory, statement dated 10.06.2011 of Shri Narendra Shrivastav, authorized signatory of M/s E.C. Packaging, Kanpur who supplied pouch packing machines, statement dated 06.08.2011 of Shri Shivbalak Rajendra Kumar driver who transported machines and his affidavit dated 18.08.2011, statement dated 04.07.2011 of Shri Mahendra Kumar of M/s S.K. Star Forwarding agency and documents discussed in preceding paragraphs, which are part of the RUDs to SCN, have remained uncontroverted and unequivocally, prove the fact that the pouch packing machines were transported only on 11.05.2011 from Kanpur to Jaysinghpur and the trial production commenced only from 16.05.2011. The contention of Shri Rajendra Malu that the finished pouches had arisen out of the trial run also gets strength from the fact that the officers during investigation had found empty sealed pouches of gutka and with reference to which, Shri Rajendra Malu in his statement dated 27.05.2011 had stated that the empty pouches were in relation to the trial run activities, to check whether the sealing is being done by the pouch packing machines properly. All the above facts show that Shri Rajendra Malu had used the machines, since their installation for the purpose of trial run only from 16.05.2011.

21. Rule 17 (2) of the Rules of 2008 provides for duty liability in case of unregistered unit from the first day of financial year i.e., 1st day of April, unless proved contrary. In the present case, the evidences discussed in the proceeding paragraphs clearly show that the machines were purchased and transported from Kanpur on 11.05.2011, transited through Sangli and installed only on 16.05.2011 and seized on 19.05.2011. Hence, the actual days on which the machines could have operated were only from 16.05.2011 to 18.05.2011. Rule 17 of the Rules of 2008 deals with contravention of the statutory provisions and resultant imposition of penalty. Sub-rule (2) in the said Rule provides determination of duty, in case of unregistered unit, which is quoted herein below:

*"(2) If it is found that goods have been manufactured in or cleared from a unit which is not registered with the jurisdictional Central Excise Office, then the duty liability of such unit shall be determined on the basis of number of packing machines found available in the premises of the unit and the retail sale price of the pouches manufactured with the aid of such packing machines and unless evidence to the contrary is provided to the satisfaction of the Central Excise Officer, such machines shall be deemed to have been in operation since the first day of April of the financial year in which the unit was found to be not registered and shall be construed as operating packing machines for the purpose of Rule 7 and dealt with accordingly."*

22. Reading of the above statutory provision makes the position clear that if the manufacturer is found to be operating without obtaining registration, then it has to be deemed that the manufacturing activity was taking place therein from the First day of April of the financial year, in which the unit was not found to be registered. However, if the manufacturer is in a position to demonstrate the actual date of commencement of production or clearance of goods, then the deeming provision under the said sub-rule would not apply. In the present case, the evidences available on record clearly show that the machines in fact were installed on 16.05.2011; and trial production was commenced by Shri Rajendra Malu w.e.f. 16.05.2011. Therefore, demand of duty would only be confined for the period from 16.05.2011 till 18.05.2011. Our such views are based upon the orders passed by the Co-ordinate Benches of the Tribunal in the cases of *Krishan Gopal Lawania Vs. CCE, Kanpur* in Final Order No. 71536-71537/2018 dated 17.07.2018 in appeal No. E/55963-553964/2013 – EX (DB) and *Trimurti Fragrances Pvt. Ltd. Vs. CCE, Delhi-III - 2015 (329) ELT 175 (Tri. – Del.)*. As such, taking into record the evidences available in the case file, sub-rule (2) of Rule 17 of the Rules of 2008 read with the said Orders of the Tribunal (supra), we hold that the duty liability is to be confirmed against the appellant for the period from 16.05.2011 to 18.05.2011. However, as there was no clearance of goods during such period, owing to the reason of trial production, we do not find any ground to upheld penalty imposed on the said appellant in the impugned order.

23. Coming to point of imposition of penalty on M/s SVPMIPL, we find that the adjudicating authority in support of such imposition had recorded that the said company is the instrumental and had acted in collusion with its Managing Director Shri Rajendra Malu; that they had acquired possession of the notified goods ZEE and SPEED brand gutka and packing material required in the manufacture of pan-masala/gutka were stored in their premises. In this context, as per the discussions made herein above, we have expressed our views that there has been no violation by Shri Rajendra Malu, and hence there is no reason to impose penalty upon M/s SVPMIPL on this count. As far as storage of goods is concerned, we find that the Speed brand gutka seized from their factory was received by M/s SVPMIPL from M/s Zemini Marketing vide Invoice No. 80 dated 14.05.2011 and this fact has not been denied by M/s Zemini marketing. Further, the laminated rolls printed with 'Zee and Speed' brand has also been received from M/s MTPPL as stated by employee Shri Koli and also by Shri Bipinkumar Bhatt, who in his statement dated 05.07.2011

had agreed to the fact of supplying the same through Challan dated 13.05.2011. The stand point taken by M/s SVPMIPL also strengthen their case from the inspection report of FDA authorities dated 21.04.2011, conducted in the factory, wherein they have mentioned that during their visit, they did not find any Gutka/ Pan masala in the factory premises. In such case, the allegation levelled against M/s SVPMIPL for storage of illicit goods does not survive, and hence there is no ground to impose any penalty on them.

24. With regard to imposition of penalties on the co-appellants viz., M/s MTPPL, Vasna; M/s Zemin Marketing Company, Vadodara; M/s E.C Packaging, Kanpur; transporter of machine M/s S.K. Star Forwarding Agency; M/s Lalji Mulji Transport Co., Mumbai, we find that the penal provisions have been invoked on them for the reason of their being concerned with/involved in alleged violation of central excise laws. In the preceding paragraphs, we have clearly discussed that there is no reason to doubt about the clearance of goods made/dealt with by the aforesaid persons; transportation of such goods through proper documents; and as such, there is no reason to impose penalty on them. Similarly, as the clandestine clearance of pan-masala/gutka by Shri Rajendra Malu at the farm house does not stands proved, the penalty imposed on Shri Pravin Bhattad is also not sustainable.

25. In view of the foregoing discussions and analysis, the appeals filed by the appellants are disposed of in the following terms:

- (i) the duty demand confirmed against Shri Rajendra Babulal Malu is set aside and the appeal, excepting for the period 16.05.2011 to 18.05.2011, is allowed;
- (ii) the penalties imposed on Shri Rajendra Babulal Malu is set aside;
- (iii) the appeal filed by Shri Sunil Shrinvas Bhattad stands abated, as he had already expired;
- (iv) the adjudged demands confirmed on the rest of the appellants are set aside and the appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on 13.03.2026)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**