

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**EXCISE APPEAL NO. 50751 OF 2025**

(Arising out of Order-In-Original No. 144/2024-CE date 27.09.2024 passed by Additional Director General (Adjudication), New Delhi)

**M/s. Raj Kumar Menghani,** ..... **Appellant**  
House No. 89, Sindhu Nagar,  
Indore, Madhya Pradesh- 452014

Versus

**Additional Director General** ..... **Respondent**  
**(Adjudication)**  
DGGI- New Delhi

**APPEARANCE:**

Shri Kamal Jeet Singh, advocate for the appellant

Shri P.R.V Ramanan, special counsel and Shri Rakesh Kumar, authorized representative of the department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER TECHNICAL**

**DATE OF HEARING : 19.02.2026**

**DATE OF DECISION: 06.04.2026**

**FINAL ORDER NO. 50667/2026**

**JUSTICE DILIP GUPTA:**

This appeal has been filed to assail that portion of the order dated 27.09.2024 passed by the Additional Director General (Adjudication) that has imposed penalty upon the appellant under rule 26 of the Central Excise Rules, 2002<sup>1</sup> read with rules 17 and 18 of the Pan Masala Packing Machine (Capacity Determination and Collection of Duty) Rules, 2008.

2. A show cause notice dated 27.01.2018 was issued to the appellant alleging violation of regulation 26 of the 2002 Rules in

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**1. the 2002 Rules**

respect of an unregistered factory situated at Khasra No. 1340, village Belinga in District Bastar. The appellant filed a detailed reply to the show cause notice and contended that the ingredients of rule 26 were not satisfied. The appellant also pointed out that the statement made on 30.01.2017 by the appellant under section 14 of the Central Excise Act, 1944<sup>2</sup> cannot be relied upon as the procedure contemplated under section 9D of the Central Excise Act was not followed. The appellant further stated that during the search of his residential premises at Indore 65 pouches of 2 grams each of 'Nazar' brand Pan Masala Packets were resumed in which the name of the manufacturer was shown as Devesh Industry, Industrial Area, Delhi. The appellant also stated that the statements made by the appellant while he was in his custody, were immediately retracted. The appellant also pointed out that he had no connection with the unregistered unit at village Belinga as neither was he the owner or the tenant of the land nor was there any evidence to show that he was in touch with the raw material suppliers or the purchasers of the finished goods. The appellant also pointed out that the machinery was also not purchased by the appellant. The appellant also stated that the case of the department was based on unsubstantiated and uncorroborated statements of few persons which cannot be considered as relevant.

3. The Additional Director General (Adjudication) however, imposed penalty upon the appellant under rule 26 for the following reasons:

**"Penalty Proposal upon Shri Rajkumar Menghani, Indore: The SCN dated 27.01.2018 & 28.12.2020 proposes penalty on Shri Nitin Sabhagchand under Rule 26 of**

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**2. the Central Excise Act**

**the Central Excise Rules, 2002 readwith readwith Rule 17 & 18 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.** It has been alleged in the SCN(s) that Sh. Rajkumar Menghani @ Raju Menghani @ Raju was one of the key associates of Sh. Natwar Lal Sharda and he established the said unregistered factory at village Balenga, Bastar on direction of Sh. Natwar Lal Sharda. He managed to purchase all the raw materials used for manufacturing of Pan Masala/Gutkha in the unregistered and sale as well as transportation of the same from the unregistered factory. **Against the allegations, Sh. Rajkumar Menghani has contended that the entire case of the Department is based on the unsubstantiated and uncorroborated statements of a few persons. There is no evidence on record to allege that the noticee was an associate of Sh. Natwar Sharda in running the said unregistered unit. In the absence of the evidence, the allegation of connivance against the noticee is not sustainable and consequently, penalty is not imposable. I find from the impugned SCN(s) that he was controlling all the business activities of the said unregistered factory from Indore through Sh. Sabhagchandani on direction of Sh. Natwar Lal Sharda and Sh. Mukesh Agrawal @ Dilip Agrawal. These facts have been reflected in the documents recovered from his residence at Indore during search conducted by the officers on 30.01.2017 and printouts of whatsapp messages retrived from Sh. Nitin Sabhagchandani.**

**In view of above, I find that the ingredients of Rule 26 are satisfied in the case of Sh. Rajkumar Menghani @ Raju Menghani @ Raju. Therefore, I hold that Sh. Sh. Rajkumar Menghani @ Raju Menghani @ Raju is liable to penalty under Rule 26 of the Central Excise Rules, 2002 readwith readwith Rule 17 & 18 of Pan Masala Packing**

Machines (Capacity Determination and Collection of Duty) Rules, 2008.”

4. The contention of Shri Kamal Jeet Singh, learned counsel for the appellant is that penalty could not have been imposed upon the appellant under rule 26 of the 2002 Rules for the reason that the show cause notice dated 27.01.2018, in which the appellant is a notice, does not propose that the appellant knew or had reason to believe that the excisable goods were liable to confiscation under the provisions of the Central Excise Act or under the provisions of the 2002 Rules. Learned counsel also submitted that the finding recorded by the Additional Director General that the appellant was controlling the business activities of the unregistered factory through Nitin Sabhagchandani on the direction of Natwar Lal Sharda and Mukesh Agrawal is based on the statements recorded under section 14 of the Central Excise Act, which statement cannot be relied upon as the provisions of section 9 (D) of the Customs Act were not followed. Learned counsel also pointed out that even the documents recovered from the residence of the appellant during the search conducted on 30.01.2017 do not in any manner indicate that the appellant was connected or had any interest in the unregistered factory at village Belinga.

5. Shri P.R.V Ramanan, learned special counsel appearing for the department however, supported the imposition of penalty upon the appellant.

6. As penalty has been imposed under rule 26(1) of the 2002 Rules, it will be appropriate to reproduce the same and it is as follows:

**“26. Penalty for certain offences**

(1) **Any person who acquires possession of,** or is in any way concerned in transporting,

removing, depositing, keeping, concealing, selling or purchasing, **or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater:**

PROVIDED that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded."

7. A bare perusal of the aforesaid rule 26 shows that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, **any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater.**

8. The first issue that arises for consideration in this appeal is whether the ingredients set out in rule 26 of the 2002 Rules are satisfied.

9. For any penalty to be imposed upon any person under rule 26 of the 2002 Rules, the following conditions have been satisfied:

(a) The person should have undertaken any of the activities mentioned in the first portion of the rule like, acquires, possesses, transports and removes;

(b) The above activities should have been undertaken in respect of any excisable goods; and

(c) While undertaking any of the above activities he should have had knowledge or had reason to believe that the said excisable goods are liable to confiscation.

10. Knowledge or reason to believe that the excisable goods are liable to confiscation is, therefore, a pre-requisite for imposing penalty under rule 26.

11. In this connection, it would be pertinent to refer to the judgment of the Delhi High Court **Rakesh Kumar Garg Vs. Commissioner of Central Excise**<sup>3</sup> which deals with rule 26 of the 2002 Rules. The observations of the Delhi High Court are as follows:

“**48.** The present appeals essentially concern the role of the three appellants and whether the penalty levied on them under Rule 26 of the CE Rules, 2002 and Rule 209A of the CE Rules, 1944 was justified.

**49.** Rule 209A of the CE Rules, 1944 was more or less similarly worded. These are penal provisions that call for a strict interpretation. Therefore, in order that penalty may be levied, it will have to be satisfactorily proved that the ingredients of Rule 26 of the CE Rules, 2002 are existent qua the person proposed to be subject to the penalty. **In other words, for the purposes of levy of penalty the Department would have to show the actual involvement of the person sought to be penalised in the actions of possessing, transporting, removing, keeping, concealing, selling or purchasing, etc. of the excisable goods, which he knows or has reason to believe are liable to confiscation.**

**51.** The SCN which proposed the penalty would have to make out a case for how Rule 26 is attracted. In the present case, apart from merely stating that the three Appellants were in control of the affairs of AJP, there is nothing in the SCN which points to how they were exactly involved in the transporting, removing or clearing of

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**3. 2016(331) E.L.T. 321 (Del.)**

excisable goods by AJP. The SCN at the same time acknowledges that AJP is an independent entity against whom the SCN was also issued and against whom a separate order has been passed confirming the demand of duty of interest, apart from penalty.”

**(emphasis supplied)**

12. It is, therefore, necessary that for penalty to be imposed under rule 26 of the 2002 Rules, the person should either know or should have reason to believe that the excisable goods are liable to confiscation. The impugned order does not record that the appellant knew or had reason to believe that the excisable goods were liable to confiscation, which is a pre-requisite condition for imposing penalty under rule 26 of the 2002 Rules. The order imposing the penalty upon the appellant under rule 26 of the 2002 Rules, therefore, deserves to be set aside for the reason.

13. This apart, the order has recorded findings on the basis of the statements made under section 14 of the Central Excise Act. A statement made under section 14 of the Central Excise Act cannot be relied upon if the procedure contemplated under section 9D of the Central Excise Act has not been followed. This is what has been held by the Tribunal in **Excise Appeal No. 50198 of 2025 filed by Natwar Lal Sharda**, which has been decided by order of date.

14. Even if the statement of the appellant is considered, then too it does not in any manner show that the appellant was connected with the unregistered factory at village Belinga in Chattisgarh. The appellant had stated that he had established a registered Pan Masala and Guthka manufacturing factory in Saucer, Chhindwara by the name of M/s Rohit Industries and the Pan Masala and Gutkha manufactured were mainly sold in Maharashtra. This factory was closed in 2012 but in 2014 he started another registered

manufacturing company by the name of M/s Rohit Tobacco Pvt. Ltd. at village Belinga, Jagdalpur, Chhattisgarh. However, this factory was also closed after it was operated for a month and after the closure he dismantled the machines and sold them to one Yadav of M/s Yadav Machine, Indore for Rs. 22,000/- per machine. After closing of M/s Rohit Tobacco Private Limited, he started trading of Pan Masala. Regarding the two files resumed from his residential premises, Indore during search proceedings, the appellant stated that the documents placed in those two files were print outs and whatsapp messages exchanged from the mobile of Nitin Sabhagchandani and his mobile number as Nitin Sabhagchandani was not only his distant relative but had worked with him and also due to his expertise in the Pan Masala field. He also stated that the pages placed in the two files show details of Pan Masala stocked and details of cash received by him and expenses incurred by him.

15. The findings in the impugned order for imposing penalty upon the appellant under rule 26 of the 2002 Rules are based on the statement of the appellant and other statement and the contents of the two files. As noticed above, the statement of the appellant does not establish that the appellant was in any manner connected with the unregistered factory situated at Khasra No. 1340, village Belinga in District Bastar. The contents of the two files also do not show that the appellant was in any manner connected with the unregistered factory in village Belinga in District Bastar.

16. To arrive at the finding that the appellant was controlling the business activities of the unregistered factory through Nitin Sabhagchandani who was working on the direction of Natwar Lal Sharda and Mukesh Agrawal, reliance has been placed on the

statement of Natwar Lal Sharda made under section 14 of the Central Excise Act. This statement cannot be considered as relevant as the procedure contemplated under section 9D of the Central Excise Act was not followed.

17. The impugned order dated 27.09.2024 passed by the Additional Director General (Adjudication), therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **06.04.2026**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

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