

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Excise Appeal No. 51496 of 2025

(Arising out of Order-in-Original No. 01/COMM/C.EX.IND/2024-25 dated 26.09.2024/08.10.2024 passed by the Commissioner of CGST & Central Excise GST Bhawan, Indore, M.P.)

M/s. R. S. Company

130, Sanjay Nagar-B.
Opp, Samudayik Bhawan,
Jhotwara, Jaipur, Rajasthan

....Appellant

Versus

**Commissioner of CGST, Central Excise,
GST Bhawan, Manik Bhag Palace,
Indore-452014, M.P.**

....Respondent

WITH

Excise Appeal No. 51497 of 2025

(Arising out of Order-in-Original No. 01/COMM/C.EX.IND/2024-25 dated 26.09.2024/08.10.2024 passed by the Commissioner of CGST & Central Excise GST Bhawan, Indore, M.P.)

Shri Natwar Lal Sharda

M-38-39, Mahesh Colony
Near Tonk Phatak,
Jaipur-302015

....Appellant

Versus

**Commissioner of CGST, Central Excise,
GST Bhawan, Manik Bhag Palace,
Indore-452014, M.P.**

....Respondent

APPEARANCE:

Shri J.C. Patel and Shri Ankur Upadhyay, Advocates for the Appellant
Shri S.K. Ray, Authorised Representative of the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**DATE OF HEARING: 28.04.2026
DATE OF DECISION: 08.05 2026**

FINAL ORDER NO's. 50844-50845/2026

JUSTICE DILIP GUPTA

Excise Appeal No. 51496 of 2025 has been filed by M/s. R.S. Company¹ to assail that portion of the order dated 26.09.2024 passed by the Commissioner that confirms the demand of central excise duty from the appellant under the proviso to section 11A of the Central Excise Act, 1944² with interest under section 11AA of the Central Excise Act and penalty under section 11AC of the Central Excise Act.

2. **Excise Appeal No. 51497 of 2025** has been filed by Natwar Lal Sharda against that portion of the order dated 26.09.2024 passed by the Commissioner that imposes a penalty upon him under rule 26 of the Central Excise Rules, 2002³.

3. The appellant claims that it was at the material time engaged in the manufacture of "Gutka" and Natwar Lal Sharda was a partner in the appellant.

4. In February 2000, the office of Directorate General of Central Excise Intelligence⁴ initiated investigations into alleged clandestine manufacture and removal of Scented Tobacco by one Suresh Enterprises operating at Wgholi, Pune. The search of premises of Suresh Enterprises on 18/19-2-2000 did not result in recovery of documents such as delivery challans, Invoices, purchase orders or Lorry Receipts. However, a Pocket diary was recovered from an employee of Suresh Enterprises by the name Ramesh Pardesi. It is the case of DGCEI that such pocket diary revealed transportation of Scented Tobacco to Indore by the following three transporters:

- a) Sarita Roadways, Wagholi, Pune,
- b) Vijayant Travels, Pune,
- c) Hari Roadways Corporation, Pune.

1 the appellant
2 the Central Excise Act
3 the Central Excise Rules
4 DGCEI

5. The case of DGCIE is that Lorry Receipts resumed from Sarita Roadways showed that Scented Tobacco was transported from Suresh Enterprises to the appellant. According to DGCIE, Peon book produced by Vijayant Travels showed transport of Scented Tobacco from Suresh Enterprises to the appellant. Further, according to DGCEI, Registers resumed from Hari Roadways Corporation, Pune showed transport of Scented Tobacco from Suresh Enterprises to the appellant.

6. According to DGCIE, investigations at the premises of one Laminar Industries, revealed clandestine clearances of laminated rolls (packing material) from Laminar Industries to the appellant.

7. In his statement dated 11-4-2000, Natwar Lal Sharda denied having received unaccounted laminated rolls from Laminar Industries. In his Statement dated 12-7-2001. Natwar Lal Sharda also denied receipt of unaccounted Scented Tobacco alleged to have been transported by the aforesaid transporters. In his Statement dated 24-7-2001, Natwar Lal Sharda also denied having placed orders for unaccounted laminated rolls on Laminar Industries.

8. However, a show cause notice dated 23-4-2003 was issued to the appellant and Natwar Lal Sharda demanding central excise duty of Rs. 39,44,21,052/- under the proviso to section 11A of the Central Excise Act, on 39,44,210.52 kgs of Gutka alleged to have been clandestinely manufactured and cleared during the period from April 1998 to February 2000.

9. A reply was filed by the appellant and Natwar Lal Sharda denying the allegation made in the show cause notice.

10. The Commissioner of Central Excise, Indore, by order dated 26.02.2004 discharged the show cause notice, by inter alia, holding as follows:

- (a)** That the Pocket Diary recovered from an employee of Suresh Enterprises by the name Ramesh Pardesi, was not a reliable piece of evidence. The same had cuttings and over-writings and none of the figures appearing therein were authenticated. There is no mention of the appellant nor of dispatch to Indore nor was there any mention of the Transporters in the said diary;
- (b)** The documents recovered from Transporters being third party documents were not sufficient to make out a case against the appellant; and
- (c)** There was no evidence of procurement of other raw materials required to manufacture Gutka nor evidence of huge amount of expenditure required to manufacture the large quantity of Gutka alleged to be clandestinely manufactured.

11. However, the department filed an appeal against the said Order dated 26-2-2024 before this Tribunal and by order dated 6-3-2012, the appeal was disposed of by the Tribunal with a direction to the adjudicating authority to re-check the documents and identify the Lorry Receipts of Sarita Raodways which are not accounted for and determine the question of clandestine removal only with reference to Lorry Receipts of Sarita Roadways. The relevant observations of the Tribunal are as follows:

- (a)** The number of machines installed by the appellant though good piece of evidence was not good enough in deciding quantum of clearance;
- (b)** Reliance placed by the department on the Pocket diary recovered from Ramesh Pardeshi, supervisor working with Suresh Enterprises, had fatal flaws and there was no material to support the case of the department from this diary;

- (c) Lorry Receipts recovered from Sarita Roadways was evidence of reliable quality whereas evidence collected from other transporters namely Vijayant Travels and Hari Roadways Corporation was not good enough to prove delivery of unaccounted Scented Tobacco to the appellant;
- (d) Evidence recovered from Laminar Industries was good enough to show that appellant was getting unaccounted packing material;
- (e) Evidence collected by the department from suppliers of other raw materials i.e. lime, katha, menthol, supari, kimam and perfume, was only good enough to locate the possible source of unaccounted raw material, but such evidence was not good enough to ascertain the quantity of unaccounted raw material procured; and
- (f) The demand based on Scented Tobacco allegedly transported by transporters other than Sarita Roadways is not adequately proved.

12. It would be seen that though the Tribunal held that transportation of Scented Tobacco by transporters other than Sarita Roadways was not proved, it held that the Lorry Receipts recovered from Sarita Roadways would show receipt of Scented Tobacco by the appellant.

13. Pursuant to the said directions of the Tribunal, the adjudicating authority passed a fresh order dated 31-10-2016. The duty demand of Rs.7,98,42,106 was confirmed against the appellant and penalty equal to the said duty was imposed on the said appellant under section 11AC of the Central Excise Act, Penalty of Rs.79,84,211/- was imposed on Natwar Lal Sharda under rule 26 of the Central Excise Rules.

14. The appellant preferred an appeal against the said Order dated 31-10-2016 and the Tribunal by order dated 26-3-2018 again directed the adjudicating authority to verify all the Lorry Receipts of Sarita Roadways and to adjudicate the matter only with respect of such Lorry Receipts as were in the name of appellant. The appeal filed by the department against the said order dated 26-3-2018 of this Tribunal was dismissed by the Madhya Pradesh High Court.

15. The appellant, by letter dated 21-8-2024 addressed to the Commissioner, sought inspection of the original Lorry Receipts of Sarita Roadways. However, the Commissioner did not accede to the request for inspection of the original Lorry Receipts of Sarita Roadways.

16. The Commissioner passed an order dated 26.09.2024. The order mentions, in paragraphs 13 and 15, that letters were sent to DGGI to verify the Lorry Receipts of Sarita Roadways and to determine the quantum of clandestine removal of the Gutka based thereon. In accordance with the quantification provided by DGGI, the Commissioner confirmed the demand for duty of Rs. 1,14,21,053/- for the period 25-04-1998 to 10-9-1998 under the proviso to section 11A of the Central Excise Act with interest under section 11AA and penalty equal to the said duty under section 11AC. The Commissioner also imposed penalty of Rs.11.42,105/- on Natwar Lal Sharda. The said duty demand of Rs. 1,14,21,053/- was worked out by applying mathematical formula/ ratio that for manufacturing 100 kgs of Gutka, 5.7 kgs of Scented Tobacco is consumed. The said formula has been applied to the total quantity of Scented Tobacco appearing in the photocopies of Lorry Receipts of Sarita Roadways in name of the

appellant. The relevant portions of the order passed by the Commissioner are reproduced below:

"13. xxx Subsequently, the quantification of the 6 LRs pertaining to M/s R.S. Company as mentioned by the Hon'ble CESTAT was sought for from the Directorate General of Central Excise Intelligence (DGGI) vide letters dated 30.04.2024 and subsequent reminders dated 13.06.2024 and 27.06.2024. Finally, DGGI vide letter dated 25.07.2024 submitted the re-quantification of the Central Excise duty demand on the basis of Lorry Receipts in the name of M/s R.S. Company only.

xxx xxx xxx

18. The Noticee has demanded for inspection of the 6 LRs (in original) in question for ascertaining the demand of duty. I find that the 6 LRs in the name of M/s R.S. Company have been found referred and gone through not only by the CESTAT, the same were also mentioned in the previous litigation proceedings. During these times the Noticee did not demand the copies of any LR at the stage of case pending at any of the forums. It is therefore obvious and shows clear intent of Noticee to delay the adjudication process. On the one hand, the Noticee was claiming that the adjudication is inordinately delayed and thus should be dropped outrightly for this reason but on the other hand, they are trying to delay the adjudication process by demanding original copy of LRs at this stage, which are on record and may be available with them. Since the case is now to be adjudicated only in respect of 6 LRs in the name of M/s R.S. Company as per CESTATs order dtd. 26.03.2018 which can be done even without supply of original copy of LRs to Noticee, I proceed for the same.

19. xxx Since, DGGI was the investigating agency in the instant case and they have re-quantified duty, based on the records and evidences available, and submitted the same, I rely on and consider the same for the purpose of ascertaining demand and accordingly, the total Central Excise duty of Rs. 1,14,21,053/- is liable to be confirmed and ordered to be recovered from M/s. R.S. Company as per express/specific order of Hon'ble CESTAT in the instant case.

20. Further, this is a case of clandestine manufacture and clearance of excisable goods and, suppression of facts, willful misstatement etc. are well established, hence, extended period of limitation for demand of Central Excise duty under Section 11A of Central Excise Act, 1944 is justified.

xxx xxx xxx

22. xxx As evident from the above, the provision of Section 11AC of the Central Excise Act, 1944 clearly express for imposition of penalty in case of removal of goods without payment of duty/short payment of duty, for contravention of any of the provision of this Act or of Rules made there under with an intent to evade payment of duty. In view of the provisions of Section 11 AC ibid, the penalty to be imposed under section 11AC shall be equal to the duty so re-quantified/re-determined in the instant case. Accordingly, a penalty of Rs. 1,14,21,053/-is imposable upon M/s R. S. Company, Indore under Section 11AC of the Act, which is equivalent to the duty so re-quantified and determined/to be confirmed.

23. In the matter of imposition of penalty on the co-noticees under rule 26 of CER, 2002 in the instant case, the Hon'ble CESTAT in earlier round of litigation, vide order dated 06.03.2012 has already viewed that it will be adequate if a penalty of 10% of duty evaded is imposed on Shri Natwar Lal Sharda."

17. Shri J.C. Patel, learned counsel appearing for the appellant assisted by Shri Ankur Upadhyay, learned counsel made the following submissions:

- (i)** Demand of central excise duty confirmed on the basis of photo copies of Lorry Receipts of Sarita Roadways without giving inspection of originals and without accounting for non-production of the originals is untenable in law;
- (ii)** Verification has not been carried out by the adjudicating authority in accordance with the directions of the Tribunal;
- (iii)** There cannot be quantification of clandestine manufacture of Gutka merely on the quantify of Scented Tobacco alleged to have been received; and
- (iv)** Quantification of duty demand on alleged clandestine removal of Gutkha, based on theoretical/hypothetical/ mathematical formula based on the quantity of one raw material namely Secented Tobacco is not sustainable in law.

18. Shri S.K. Ray, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

- (i) The remand order was limited to the duty relatable to the six Lorry Receipts in the name of the appellant;
- (ii) The appellant never demanded physical inspection of the original Lorry Receipt at earlier stages of the proceedings and request for inspection of the Lorry Receipts after the matter was remanded was with a clear intention to stall the adjudication proceedings; and
- (iii) The Commissioner committed no legality in requiring the DGGI to verify the Lorry Receipts of Sarita Roadways and to determine the quantum of clandestine removal of the Gutka.

19. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

20. The first issue that arises for consideration is regarding the scope of the the final order dated 26.03.2018 passed by the Tribunal remanding the matter to the adjudicating authority. The relevant portions of the said order are reproduced below:

"8. It is the allegation that out of 39 LRs, only 38 LRs were brought on record as per annexure 36 of the paper book. One receipt was not brought on record. A chart of these receipts have been prepared as annexure 6 of the paper book. Various names were mentioned on the Lorry Receipts as per the chart. Some names are M/s. R S Company; M/s. RS & Company; M/s. R S Industries and so on. According to the Department, all Lorry Receipts belong to the appellant so demand was raised against the appellant. No other corroborated material / evidence was brought on record.

9. By considering the totally of the facts and circumstances of the case, it appears that all business entities mentioned in the Lorry Receipts are independent business entities as their assessment, registration etc. were separate.

In the eyes of law, each firm/ business entity is a separate business entity as its assessment was separate.

10. When it is so, then we are of the view that LRs which are in the name of M/s. R.S. Company only will have to be adjudicated for the purpose of making the duty demand from the appellants. The rest receipts cannot be added in the hands of the appellants.

11. During the course of arguments, learned AR submits that only 6LRs are in the name of M/s. R S Company. **Hence, we direct the adjudicating authority to verify all the Lorry Receipts and raise the duty demand pertaining to the Lorry Receipts in the name of M/s. R S Company only. No other Lorry Receipt can be added in the name of Appellants.** Penalty will have to be decided accordingly.”

(emphasis supplied)

21. A perusal of the aforesaid order clearly shows that a finding was recorded that the Lorry Receipts which are in the name of the appellant only will have to be **adjudicated** for the purpose of making the duty demand from the appellant. The order further shows that during the course of the argument, the learned authorized representative pointed out that only six Lorry Receipts were in the name of the appellant. The Tribunal, therefore, directed the adjudicating authority to **verify** all the Lorry Receipts and raise the duty demand pertaining to the Lorry Receipts in the name of the appellant only.

22. It is, therefore, clear that the adjudicating authority on remand had to adjudicate upon only those Lorry Receipts which were in the name of the appellant after verifying all the Lorry Receipts and then raise the duty demand pertaining to such Lorry Receipts. The adjudicating authority, therefore, was required to verify all the Lorry Receipts and determine which were in the name of the appellant. In the present case, six Lorry Receipts were found in the name of the appellant. These six Lorry Receipts were, therefore, required to be

adjudicated upon by the adjudicating authority and, thereafter, the duty demand had to be determined.

23. After remand, the appellant requested the adjudicating authority to permit inspection of the original Lorry Receipts as only photostat copies of the Lorry Receipts were enclosed with the relied upon documents. The only reason assigned by the adjudicating authority for rejecting inspection of the original receipts is that this will delay the proceedings. The adjudicating authority was not justified in rejecting the request of the appellant for inspection of the six Lorry Receipts for this reason. Inspection would hardly take any time. Even otherwise, when photostat copies of the Lorry Receipts were supplied to the appellant as relied upon documents, the appellant was justified in claiming that the original Lorry Receipts should at least be shown to the appellant for ascertaining whether they were in its name. It needs to be noted that these Lorry Receipts were not recovered from the premises of the appellant.

24. It is also important to notice that in terms of the remand order dated 26.03.2018 passed by the Tribunal, the adjudicating authority was required to verify all the Lorry Receipts. A perusal of the impugned order shows that the adjudicating authority instead of verifying the Lorry Receipts requested the office of the DGGI to re-quantify the duty demand based on the records and evidence available and submit the same to the adjudicating authority. The adjudicating authority, thereafter, has simply relied on the information supplied by DGGI and determined the demand of duty without examining the evidence.

25. When the Tribunal had required the Commissioner to adjudicate upon the six Lorry Receipts, the issue raised by the appellant that

merely on the basis of two raw materials namely Scented Tobacco and kimam, clandestine manufacture and clearance of Gutka could not have been worked out without evidence of receipts of the required quantities of other raw materials namely lime, katha, menthol, supari and packing material, it was necessary for the adjudicating authority to have examined this issue but it did not.

26. In **Commissioner of Central Excise vs. Brims Products**⁵, the Patna High Court observed that receipt of one raw material only does not conclusively prove clandestine manufacture and surreptitious removal of finished product. The relevant portion of the judgment is as follows:

“9. In our opinion, since the charge was for clandestine manufacture and surreptitious removal of finished final product, the same is required to be proved beyond doubt by the Revenue. **One has to keep in mind that, though being the main ingredient, betel-nut is not the only raw material which is used in manufacture of Pan Masala.** That apart, since the investigation has been carried only at the transporters end, no presumption could be drawn with regard to manufacture and removal of the final product. Presumptions and assumptions cannot take place of positive legal evidence, which are required for proving the charge. Even if, it is assumed that some raw materials were received at the factory of the respondent during the said period, the same cannot become conclusive proof of production and clandestine sale to different parties. Due to lack of positive evidence, benefit of doubt will always go in favour of the assessee.

10. Accordingly, we answer the reference against the Revenue and in favour of the assessee and **it is held that the receipt of one of the raw materials, does not conclusively prove clandestine manufacture and surreptitious removal of finished final product.** Further, since the charge is regarding clandestine manufacturer and removal of finished product for evading excise duty, the same cannot be held to be proved on the basis of principle of preponderance of probabilities and the Revenue has to prove the same beyond doubt. The reference is answered accordingly.”

(emphasis supplied)

5 2011 (271) E.L.T. 184 (Pat.)

27. In **M/s Dhariwal Industries Ltd. vs. C.C.E. & S.T. Vadodara-I and Others**⁶ the aforesaid judgment of the Patna High Court was followed by the Tribunal and it was held as follows:

“4. We find that on the basis of average consumption of Printed laminated, a packing material arrived on the basis of disputed trial run, it cannot be alleged that the Appellant has manufactured PMGs and the same in turn were removed clandestinely. Only on the basis of alleged average consumption of PLR, the charge of clandestine removal cannot be made. As pointed out by the Ld. Counsel, we find that only from PLR, PMG cannot be produced, it is a mere packing material. The show cause notice has not shown any unaccounted receipt or excess consumption of main raw materials i.e. Supari, Tobacco, Katha, kimam, perfume, menthol which are main raw materials for manufacture of PMG. The packing material would come into picture, only once raw material is consumed and the finished goods are produced. In case of CCE Vs. J Brims Products 2011 (271) E.L.T. 184 (Pat.), the Hon'ble High Court has held as under:”

28. Thus, the finding recorded by the Commissioner regarding clandestine manufacture of Gutka merely on the quantity of Scented Tobacco cannot be sustained.

29. The Commissioner, therefore, was not justified in recording a finding regarding clandestine manufacture and removal of Gutka. Demand of central excise duty, therefore, could not have been confirmed. Penalty under section 11AC of the Central Excise Act is levied for short levy or non levy of duty. As there is no short levy or non levy of duty in the present case, penalty under section 11AC of the Central Excise Act could not have been imposed upon the appellant.

30. Penalty has been imposed upon Natwar Lal Sharda under rule 26 of the Central Excise Rules. Rule 26 provides that any person who deals with excisable goods which he knows or has reason to believe are liable to confiscation under the Central Excise Act shall be liable to

penalty. In the present case, the goods have not been held liable to confiscation. Penalty under rule 26 of the Central Excise Rules could not have been imposed upon Natwar Lal Sharda.

31. Thus, for all the reasons stated above, the impugned order dated 26.09.2024 passed by the Commissioner is set aside and the two appeals are allowed.

(Order pronounced in the Open Court on 08.05.2026)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P. ANJANI KUMAR)
MEMBER (TECHNICAL)**

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