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केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
नारायण उपाध्याय मार्ग, भावनगर-364001
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.
दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V/15-85/Dem/HQ/2006

F. No.

आदेश की तारीख : 19/07/2011

Date of Order :

जारी करने की तारीख : 19/07/2011

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

मूल आदेश संख्या Order-in-Original No : 14 to 28/BVR/Commissioner/2011

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए निःशुल्क भेजी जा रही है ।
1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.
2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरुद्ध सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ-20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केन्द्रीय उत्पाद शुल्क अधिनियम की धारा 35-बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35-बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि , छूट , बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।
2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.
3. अपील फॉर्म E.A.-3 में केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।
3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.
4. केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35-B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।
4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).
5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरुद्ध अपील की गई है , उस आदेश की समान संख्या में प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्राणित होनी चाहिए) । उक्त अपील के समर्थक सभी संसावेज चार प्रतियों में भेजे जाए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री डाक द्वारा भेजी जाए । परन्तु उक्त रजिस्ट्रार के कार्यालय में प्राप्ति की तारीख नियत अवधि में होगी ।



5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है। यह ड्राफ्ट जहाँ पीठ स्थित है, किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

- (क) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो, रु. 10,000/- (रूपए दस हजार)
- (a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);
- (ख) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) से अधिक हो लेकिन, रूपए 50,00,000/- (रूपए पचास लाख) से कम हो 5,000/- (रूपए पांच हजार)
- (b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/- (Rupees Five Thousand);
- (ग) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) अथवा कम हो, रूपए 1,000/- (रूपए एक हजार)
- (c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/- (Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम, 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रु. 5 (रूपए पांच) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. पूर्ण जानकारी हेतु केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 एवम CEGAT (कार्यविधि) नियम 1982 देखें।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

To,

M/s. Makson Pharmaceuticals (I) Pvt. Ltd.
195, Rajkot Highway,
Kherali, Surendranagar – 363 020 (Guj.)

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice F. No. (i) V/17/15-67/Dem/HQ/2006 (ii) V/15-85/Dem/HQ/2006
(iii) V/15-31/Dem/HQ/2007 (iv) V/15-98/Dem/HQ/2007 (v) V/15-41/Dem/HQ/2008
(vi) V/15-78/Dem/HQ/2008 (vii) V/15-113/Dem/HQ/2008 (viii) V/15-132/Dem/HQ/2008
(ix) V/15-14/Dem/HQ/2009 (x) V/15-17/Dem/HQ/2009 (xi) V/15-40/Dem/HQ/2009
(xii) V/15-53/Dem/HQ/2009 (xiii) V/15-120/Dem/HQ/2009 (xiv) V/15-03/Dem/HQ/2010-11
(xv) V/15-45/Dem/HQ/2010-11



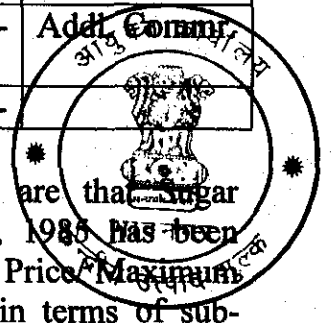
BRIEF FACTS :-

M/s. Makson Pharmaceuticals (I) Pvt. Ltd., 195, Rajkot Highway, Surendranagar, (hereinafter referred to as the 'noticee') is engaged inter-alia in the manufacture of Sugar Confectionery, falling under Chapter sub head 1704.90 of the Central Excise Tariff Act, 1985 (herein after referred to as CETA-1985). The noticee is holding Central Excise Registration No. AABCM2806LXM001 for the said purpose and availing Cenvat Credit facility under Cenvat Credit Rules, 2004 (herein after referred to as 'CCR, 2004').

2. Following Show Cause Notices (SCNs) have been issued to the noticee for demanding Central Excise Duty, Education Cess and SHE Cess along with interest under Section 11A and 11AB of the Central Excise Act, 1944 (herein after referred to as 'CEA, 1944') and also proposing penalty under Rule 25 of the Central Excise Rules, 2002 (herein after referred to as 'CER, 2002'). In SCN F. No. V.17/15-67/Dem/HQ/2006, proposal has also been made for demand under Section 11D along with interest under Section 11DD of CEA, 1944 and penalty under Rule 25 of the CER, 2002.

Sl. No.	SCN No.	SCN Date	Period involved	Amount of Duty (₹)	SCN Issuing Authority
1.	V.17/15-67/Dem/HQ/2006	22.12.2006	Jan-06 to June-06	16,79,841/- 82,15,973/-	Commissioner
2.	V/15-85/Dem/HQ/2006	04.05.2007	July-06 to Sept-06	52,22,051/-	Commissioner
3.	V/15-31/Dem/HQ/2007	13.09.2007	Oct-06 to Dec-06	50,16,784/-	Commissioner
4.	V/15-98/Dem/HQ/2007	18.01.2008	Jan-07 to Mar-07	62,69,676/-	Commissioner
5.	V/15-41/Dem/HQ/2008	01.05.2008	Apr-07 to June-07	6,03,381/-	Addl. Commr.
6.	V/15-78/Dem/HQ/2008	24.07.2008	July-07 to Sep-07	13,93,702/-	Addl. Commr.
7.	V/15-113/Dem/HQ/2008	16.10.2008	Oct-07 to Dec-07	22,10,359/-	Addl. Commr.
8.	V/15-132/Dem/HQ/2008	30.12.2008	Jan-08 to Mar-08	33,94,860/-	Addl. Commr.
9.	V/15-14/Dem/HQ/2009	25.02.2009	Apr-08 to June-08	31,91,442/-	Addl. Commr.
10.	V/15-17/Dem/HQ/2009	06.03.2009	July-08 to Sept-08	34,44,973/-	Addl. Commr.
11.	V/15-40/Dem/HQ/2009	22.05.2009	Oct-08 to Dec-08	38,20,367/-	Addl. Commr.
12.	V/15-53/Dem/HQ/2009	18.12.2009	Jan-09 to Mar-09	20,93,782/-	Addl. Commr.
13.	V/15-120/Dem/HQ/2009	10.03.2010	Apr-09 to June-09	22,67,338/-	Addl. Commr.
14.	V/15-03/Dem/HQ/2010-11	04.05.2010	July-09 to Sept-09	25,21,223/-	Addl. Commr.
15.	V/15-45/Dem/HQ/2010-11	18.10.2010	Oct-09 to Dec-09	23,30,257/-	Addl. Commr.
				5,36,67,009/-	

3. The facts leading to issuance of aforesaid SCNs are that Sugar Confectionery falling under Chapter Heading 1704.90 of CETA, 1985 has been subjected to assessment of Excise duty with reference to Retail Sale Price/Maximum Retail Price (RSP/ MRP) declared on said Sugar Confectionery in terms of sub-

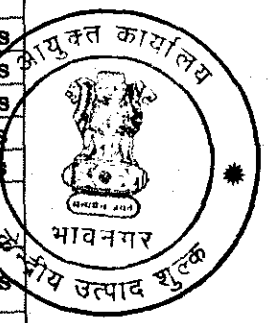


Section (2) of Section 4A of CEA, 1944 and thereby brought under the MRP based assessment, as provided under sub-Section (1) of Section 4A of CEA-1944, vide Notification No. 13/2002-CE(NT) dated 01.03.2002, 2/2006-CE(NT) dated 01.03.2006, as amended and 14/2008-CE(NT) dated 01.03.2008, as amended. The Central Excise duty is leviable on the said Sugar Confectionery on the assessable value arrived at in accordance with the provisions of Section 4A (i.e. Retail Sale Price less abatement, as specified under the said Notifications).

4. The noticee, vide letter dated 03.02.2006 and 10.02.2006, addressed to the Assistant Commissioner, Central Excise, Surendranagar, informed that in pursuance of the Hon'ble CESTAT's Order No. A/218-227/WZB/06/C-III dated 25.01.2006 in respect of M/s. Makson Foods Pvt. Ltd. and M/s. Makson Confectionery Ltd., Sugar Confectionery of less than 10 gms. individually wrapped and sold as wholesale packages of 500 grams will be cleared on payment of Central Excise duty on the assessable value ascertained under Section 4 instead of Section 4A of the CEA, 1944 and accordingly started paying duty on the goods under Section 4 of CEA, 1944 from January-2006 and onwards.

5. The noticee was called upon, from time to time, to provide the details of Sugar Confectionery cleared by them consequent to their having made assessment and payment of Central Excise duty on the value ascertained under Section 4 instead of under Section 4A of the CEA, 1944. The noticee, from time to time, informed that in pursuance to Hon'ble CESTAT's Order No. A/218-227/WZB/06/C-III dated 25.01.2006 passed in the case of M/s. Makson Foods & Others, they have started paying Central Excise duty on Sugar Confectionery weighing less than 10 gms (details of product as mentioned below) (herein after referred to as the 'impugned products') on the value ascertained under Section 4 instead of under Section 4A of the CEA, 1944 :-

Sr No	Name of the product	Pack Size
1	Éclair	Jar Pack - 12 x 265 x 4.1 gms
2	Eclair	Jar Pack - 12 x 265 x 4 gms
3	Eclair	Jar Pack - 12 x 265 x 3.82 gms
4	Eclair	Jar Pack - 12 x 265 x 3.51 gms
5	Éclair	Jar Pack - 4 x 840 x 4.1 gms
6	Éclair	Jar Pack - 4 x 840 x 4 gms
7	Éclair	Jar Pack - 4 x 840 x 3.82 gms
8	Éclair	Jar Pack - 4 x 840 x 3.51 gms
9	Éclair	Poly Bag - 30 x 120 x 4.1 gms
10	Éclair	Poly Bag - 30 x 120 x 4 gms
11	Éclair	Poly Bag - 30 x 120 x 3.82 gms
12	Éclair	Poly Bag - 30 x 120 x 3.51 gms
13	Éclair	Jar Pack - 12 x 250 x 4 gms
14	Éclair	Jar Pack - 2 x 2000 x 4 gms
15	Éclair	Jar Pack - 2 x 2000 x 3.82 gms
16	Éclair	Jar Pack - 2 x 2000 x 3.51 gms
17	Éclair Butter Scotch	12 x 250 x 3.64 gms
18	Butter Scotch	Jar Pack - 15 x 300 x 3.40 gms
19	Butter Scotch	Jar Pack - 15 x 300 x 3.23 gms
20	Butter Scotch	36 x 100 x 3.23 gms
21	Polo Power Mint	Jar Pack - 16 x 250 x 3 gms
22	Polo Power Mint	Poly Bag - 36 x 150 x 3 gms
23	Polo Mini Mini	Jar Pack - 48 x 30 x 9.375 gms
24	Polo Zero Sugar	16 x 12 x 7.5 gms
25	Polo Extra Strong	Jar Pack - 36 x 114 x 2.20 gms
26	Polo Extra Strong	Jar Pack - 36 x 114 x 2.06 gms
27	Polo Uno	Jar Pack - 36 x 114 x 1.70 gms
28	Tengeez	Poly Bag - 36 x 120 x 2.74 gms
29	Tengeez	Jar Pack - 15 x 228 x 2.74 gms
30	Hajmola Candy Kachha Aam	Jar Pack - 24 x 250 x 3 gms
31	Hajmola Candy Kachha Aam	Jar Pack - 24 x 250 x 3.25 gms
32	Kachha Aam	Jar Pack - 24 x 150 x 3.25 gms



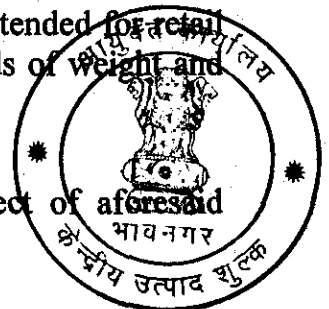
33	Kachha Aam	Jar Pack - 6 x 500 x 3 gms
34	Hajmola Candy Jar Pack	Jar Pack - 12 x 250 x 3.25 gms
35	Hajmola Candy Jar Pack	Jar Pack - 6 x 500 x 3.25 gms
36	Hajmola Candy Poly bag	Poly Bag - 12 x 250 x 3.25 gms
37	Hajmola Aam Imli	12 x 250 x 3.25 gms
38	Aam Imli	12 x 250 x 3 gms
39	Hajmola Aam Imli	24 x 250 x 3 gms
40	Hajmola Aam Imli	6 x 500 x 3.25 gms
41	Aam Imli	6 x 500 x 3 gms
42	Hajmola Aam Imli	12 x 150 x 3.25 gms
43	Hajmola Aam Imli	24 x 150 x 3.25 gms
44	Aam Imli	24 x 150 x 3 gms
45	Aam Imli	Jar Pack - 4 x 1000 x 3 gms
46	Aam Imli	Jar Pack - 6 x 500 x 3 gms
47	Natkhat Nimbu	24 x 150 x 3.25 gms
48	Hajmola Candy Natkhat Nimbu	12 x 250 x 3.25 gms
49	Natkhat Nimbu	12 x 250 x 3 gms
50	Natkhat Nimbu	6 x 500 x 3 gms
51	Orange Candy	132 x 75 x 2.53 gms
52	Orange Candy	132 x 75 x 2.40 gms

6. The details of clearances of the said goods made by the noticee was also submitted by them. Further, the Maximum Retail Price (MRP) for each of the aforesaid products was also submitted by the noticee. From the ER-1 returns filed for the relevant months, it was also found that the duty in respect of the said goods has been paid on the value under Section 4 and not on the value under Section 4A of the CEA, 1944.

7. On being asked to furnish the nature of packing/ mode of packing and clearance of the said goods, the said noticee, interalia submitted that :-

- ⇒ They are manufacturing and clearing the aforesaid goods and paying Central Excise duty on the value ascertained under Section 4 instead of Section 4A of the CEA, 1944 since January - 2006;
- ⇒ The individual pieces of sugar confectionery of Eclair brand are of weight below 10 gms each and are the packs intended for retail sale;
- ⇒ The individual pieces of Polo Power Mint and Polo Mini Mini are packed in rolls and each roll is of weight below 10 gms.
- ⇒ these individual retail packs are wrapped in wrappers and then are further packed in wholesale packages in poly bags/ plastic jar packs and then put into duplex boxes and cleared from the factory;
- ⇒ The said small individual retail packs, after being packed into the said wholesale packages i.e. poly bags/ plastic jars, are intended for sale by wholesale traders to the retail traders;
- ⇒ The retail traders in turn break open such wholesale packages and sell in numbers, the said small individual packs contained in the said wholesale packages, to the actual consumer;
- ⇒ The poly bags/ Jar packs which are not intended for retail sale, into which the aforesaid individual packs intended for retail sale (which are below 10 gms of weight) are put, are wholesale packages;
- ⇒ The poly bags/ Jar packs being wholesale packages and not intended for retail sale are not required to print thereon MRP under the standards of weight and measures (PC) Rules, 1977.

8. The noticee had submitted packing samples in respect of aforesaid products of sugar confectionery.



9. The noticee mentioned in their letters dated 03.02.2006 and 10.02.2006 that, the valuation of Sugar Confectionery of less than 10 gms individually wrapped and sold as wholesale packages, will be valued under Section 4 instead of Section 4A in view of the Hon'ble CESTAT's judgement dated 25.01.2006 in respect of M/s Makson Foods Pvt. Ltd. & Makson Confectionary Ltd.

10. Rule 34(1)(b) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (herein after referred to as 'PCR, 1977) reads as under:

"Rule 34. Exemption in respect of certain packages .- Nothing contained in these Rules shall apply to any package containing a commodity, if -

(a) *****

(b) *the net weight or measures of the commodity is ten grams or ten milliliters or less, if sold by weight or measure : "*

11. The said noticee relied on the Hon'ble CESTAT's Order No. A/218-227/WZB/06/C-III dated 25.01.2006 passed in the case of M/s Makson Foods Pvt. Ltd, Surendranagar and M/s Makson Confectionery, Surendranagar and Others. The Department however, preferred an Appeal before the Hon'ble Supreme Court in March 2006 against the aforesaid Order dated 25.01.2006 passed by the Hon'ble CESTAT.

12. The Department had sought for clarification with regard to admissibility of exemption under Rule 34(1)(b) of the PCR, 1977 in the case of aforesaid M/s Makson Foods Pvt. Ltd., Surendranagar, from the Weights and Measures Department, Ahmedabad, who vide letter No. KAMAV/PCR/15686 dated 04.12.2002, interalia, clarified as under :-

⇒ As per Rule 34(1)(b) of the Packaged Commodities Rules, 1977, if the weight or measure of the commodity is less than 10 gms or 10 ml and if sold by weight or measures, in retail, then it is exempted from affixing of MRP and net weight. The exemption is not available for commodities of weight or measures more than 10 gm or 10 ml.

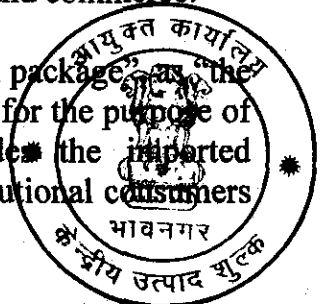
⇒ If the product is sold in nos. then the exemption is not available.

⇒ If the product is packed in numbers of two or more, then it is called multi-piece package as per Rule 2(j) of the Packaged Commodity Rules, 1977 and then it is mandatory to mention MRP on the individual piece or the whole packet as per Rule 17 of the Packaged Commodity Rules, 1977.

13. It has been alleged in the SCNs that the impugned products manufactured by the noticee are being sold individually in numbers in retail to the actual consumers and not by weight or measures. The ER-1 returns filed by the noticee also reflect the unit in numbers. Therefore, proviso to Rule 34(1)(b) of the PCR, 1977 is not applicable to the said Noticee.

14. Rule 1(3) of the PCR, 1977 read as "they shall apply to commodities in the packaged form which are, or are intended or likely to be, - (i) sold, distributed, or delivered or offered or displayed for sale, distribution or delivery, or (ii) stored for sale or for distribution or delivery, in the course of inter-state trade and commerce.

15. Further, Rule 2(p) of the PCR, 1977 defines the "retail package" as "the package which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and include the imported packages". The said Rule 2(p) excludes only the industrial or institutional consumers from the expression "ultimate consumer".

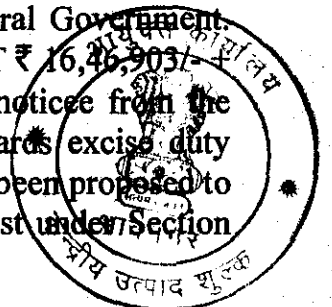


16. In view of the foregoing narration, it has been alleged that the impugned products manufactured and cleared by the noticee falls under Sub-Heading No. 1704.90 of the CETA, 1985 and are notified under Section 4A of the CEA, 1944 attracting Central Excise duty on MRP less abatement in pursuance of Notification No. 13/2002-CE(NT) dated 01.03.2002, 2/2006-CE(NT) dated 01.03.2006, as amended and 14/2008-CE(NT) dated 01.03.2008, as amended. As the impugned products are sold in numbers and cleared from the factory premises of the noticee in packaged form, as per the provisions envisaged under the Standards of Weights and Measures Act, 1976 (herein after referred to as the 'SWAM Act, 1976'), it appeared that the noticee is required to assess their impugned products under Section 4A instead of Section 4 of the CEA, 1944 and pay Central Excise duty accordingly.

17. On the basis of details of clearances of the said goods during the period covered by the SCNs, it appeared that the noticee has cleared the said goods under Central Excise invoices after self assessment of Central Excise duty on the value ascertained under Section 4 of the CEA, 1944 instead of on the value [MRP less abatement] under Section 4A of the CEA, 1944. Therefore, it has been alleged that the noticee has short paid duty on the clearance of the said goods during the period covered by the SCNs.

18. It has been alleged that by clearing the said goods after assessment under Section 4 instead of Section 4A of the CEA, 1944 and payment of Central Excise duty made on the value under Section 4 of the CEA, 1944, the noticee has contravened the provisions of Rule 4, 6 & 8 of the CER, 2002 read with the provisions of Section 4A of the CEA, 1944. It has been further alleged that by acting in the manner narrated above, the noticee has rendered itself liable for penal action under the provisions of Rule 25 of the CER, 2002.

19. In SCN F. No. V.17/15-67/Dem/HQ/2006, proposal for demand of differential duty of ₹ 82,15,973/- (CENVAT ₹ 80,54,876/- + Education Cess ₹ 1,61,097/-) has been made on the aforesaid grounds. Besides, in the said SCN, proposal has also been made for demand of ₹ 16,79,841/- under Section 11D along with interest under Section 11DD of CEA, 1944. From the details of clearances of the impugned products for the period 01.01.2006 to 02.02.2006, as detailed in Annexure 'A' to the letter dated 11.08.2006 of the said noticee and also from the remarks made in the monthly ER-1 returns for the months of January - 2006 and February - 2006, it was observed that the said noticee had cleared the impugned products under the Central Excise Invoices after self assessment of Central Excise duty therein on the value of ₹ 5,59,98,085/- ascertained under Section 4A of the CEA, 1944 and the noticee had collected duty accordingly. However, the said noticee had re-assessed the assessable value as ₹ 3,54,11,802/- under Section 4 from earlier assessable value of ₹ 5,59,98,085/- under Section 4A of CEA, 1944 for the clearances of the impugned products effected in the month of January - 2006 and February - 2006 as detailed in said Annexure - A and accordingly paid Central Excise duty aggregating to ₹ 28,89,603/- (CENVAT ₹ 28,32,944/- + Education Cess ₹ 56,659/-) on 05.02.2006 and 05.03.2006 respectively for the said two months instead of duty of ₹ 45,69,444/- (CENVAT ₹ 44,79,847/- + Education Cess ₹ 89,597/-) on assessable value under Section 4A of CEA, 1944. According to the provisions of Section 11D of CEA, 1944, every person who has collected any amount in excess of duty assessed or determined and paid, from the buyers of such goods representing as duty of excise is required to forthwith deposit the amount so collected to the credit of the Central Government. Therefore Central Excise duty amounting to ₹ 16,79,841/- (CENVAT ₹ 16,46,903/- + Education Cess ₹ 32,938/-) alleged to have been collected by the noticee from the buyers and not paid to the credit of the Central Government towards excise duty leviable on the goods so cleared and thereby short paid the same has been proposed to be recovered from the noticee under Section 11D along with interest under Section



11DD of the CEA, 1944 and penalty under Rule 25 of the CER, 2002 has also been proposed.

DEFENCE REPLY :-

20.1 The noticee vide their letter dated 02.12.2010 submitted that they have been clearing the goods of Sugar Confectionery of below 10 gms. under Section 4 of the CEA, 1944 whereas the Department was not in agreement and demanding duty on such goods under Section 4A of the CEA, 1944. The Hon'ble Tribunal, Mumbai vide its Order No A/218-227/WZB/06/C-III dated 25.01.2006 had held that such goods would be subject to excise duty only under Section 4 of the Act and not under Section 4A since the goods are clearly covered under the exemption as per the SWAM Act, 1976 and there is no mandatory requirement for such packs to carry MRP. Against the Order of the Tribunal, Department had filed appeal to Hon'ble Supreme Court vide its Civil Appeal No. 4338/2006. The appeal has been finally disposed off by the Hon'ble Supreme Court which dismissed the Department's appeal.

20.2 In view of the above, as the matter has attained finality, the noticee requested to drop the proceedings initiated against them vide various SCNs issued in this regard for the subsequent period.

PERSONAL HEARING :-

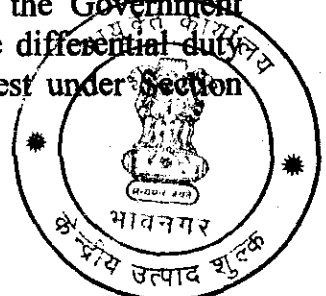
21. Personal Hearing in this case was held on 15.06.2011. Shri Wilson A. Christian, Manager Excise of the noticee, appeared for Personal Hearing. He stated that the ratio of the Hon'ble Supreme Court's decision in Civil Appeal No. 4338/2006 in the case of M/s. Makson Confectionery Pvt. Ltd. is applicable in their cases as the products covered by the 15 SCNs are same and the individual weight of disputed products is less than 10 grams. Therefore, the valuation of such products under Section 4 of the CEA, 1944 being done by them is correct.

DISCUSSION AND FINDINGS :-

22. I have carefully gone through the subject SCNs, submission made by the noticee in their written reply as well as during personal hearing and other evidences available on record.

23. I find that that following two issues are involved in the present proceedings.

- (i) The main issue involved in these SCNs is whether valuation of the impugned products for the purpose of charging excise duty should be as per transaction value under Section 4 of CEA, 1944, as adopted by the noticee or as per Retail Sale Price less abatement under Section 4A of CEA, 1944, as proposed in the SCNs.
- (ii) The second issue involved is pertaining to period from 01.01.2006 to 02.02.2006. During this period, the noticee cleared the impugned products under invoices by self assessing Central Excise duty considering valuation under Section 4A of the CEA, 1944 and collecting duty accordingly from the buyers but subsequently re-ascertained the assessable value under Section 4 and paid duty to the Government Account on such re-ascertained assessable value. The differential duty has been proposed to be demanded along with interest under Section 11D and Section 11DD of the CEA, 1944.



24.1 I observe that there is no dispute regarding the facts that the impugned products (sugar confectionery) fall under Chapter Heading 1704.90 of the CETA, 1985; that as per Notification No. 13/2002-CE(NT) dated 01.03.2002, 2/2006-CE(NT) dated 01.03.2006, as amended and 14/2008-CE(NT) dated 01.03.2008, as amended issued in exercise of the powers conferred by sub-section (1) and (2) of section 4A of the CEA, 1944, the goods falling under Chapter Heading 1704.90 are specified as the goods to which the provisions of sub-section (2) of section 4A of CEA, 1944 shall apply; that weight of individual pieces of impugned products is less than 10 grams each but such individual retail packs are wrapped in wrappers and then are further packed in wholesale packages in Poly Bags/ Plastic Jar packs which are then put into duplex boxes and cleared from the factory; that the weight of the wholesale packages is around 500 grams / 1 Kg or more in case of Poly Bag / Jar.

24.2.1 For deciding the issue whether valuation of the impugned products for the purpose of charging excise duty should be under Section 4A of the CEA, 1944, it would be useful to refer to the provisions of Section 4A of the CEA, 1944. Section 4A was inserted in CEA, 1944 w.e.f. 14.05.1997 to provide for valuation of specified excisable goods with reference to Maximum Retail Price / Retail Sale Price (MRP/ RSP) less abatement. Various issues relating to charging of excise duty with reference to MRP/ RSP have been clarified by C.B.E.C. vide Circular No. 411/44/98-CX dated 31.07.1998 and Circular No. 625/16/2002-CX dated 28.02.2002. Relevant provisions of Section 4A and clarifications issued by CBEC vide these Circulars are reproduced below for ease of reference.

24.2.2. Section 4A of CEA, 1944, which provides for valuation of excisable goods with reference to retail sale price, is as follows :-

Section 4A. Valuation of excisable goods with reference to retail sale price.

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

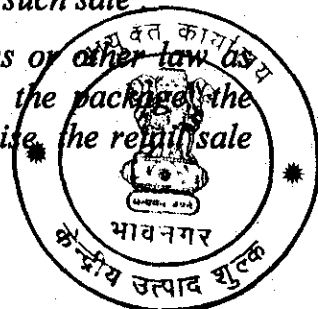
(3)

(4)

Explanation 1. - *For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale :*

Provided that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2. -



24.2.3 Para 2 of the Circular No. 411/44/98-CX dated 31.07.1998 is as follows:-

"2. Instructions were issued by the Board vide Letter F.No. 341/64/97-TRU, dated 11th August, 1997 clarifying that sub-section (1) of Section 4A applies only when the MRP is required to be indicated under the provisions of Standards Weights and Measures Act, 1976 or under any other law for the time being in force. In other words, Section 4A applies only when there is statutory requirement of affixing the MRP. Accordingly, in case a manufacturer voluntarily affixes MRP which is not statutorily required then the excise duty on goods in such packings shall not be charged on the basis of Section 4A of the Central Excise Act, 1944.

24.2.4 Para 2 and 4 of Circular No. 625/16/2002-CX dated 28.02.2002 are as follows :-

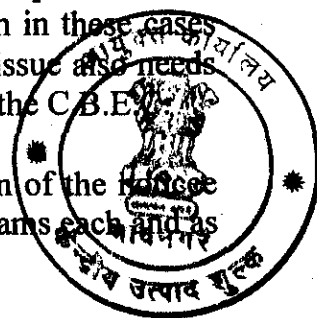
"2. The matter has been examined. Sec. 4A of the Central Excise Act, 1944 is applicable in respect of those cases only where the manufacturer is legally obliged to print the MRP on the packages of the goods, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force.

3.

4. The basic issue, therefore, is to determine the circumstances in which sec. 4A of the C.E. Act can be applied. The wording of Sec. 4A(1) makes it very clear that it will apply only to such goods".....in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976, or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods....." In other words, if there is no statutory requirement under the provisions of Weights and Measures Act to declare the retail sale price on the packages, Sec.4A will not apply. As for example, in respect of bulk sale of ice-cream to hotels/ restaurants which are not meant for retail sales as such, the provisions of the Weights and Measures Act will not apply. Chapter V of the Weights & Measures (packaged Commodity) Rules, 1977 mentions the instances where MRP is not required to be printed on the packages. Thus, in these cases valuation will have to be done under sec.4 of the C.E. Act, 1944."

24.2.5 It is evident from the text of Section 4A of the CEA, 1944 and above clarifications issued by the C.B.E.C. that if there is no statutory requirement under the provisions of SWAM Act, 1976 or rules made there under or under any other law for the time being in force to declare the retail sale price on the packages, provisions of Section 4A of CEA, 1944 will not apply to such goods and valuation in these cases will have to be done under Section 4 of the CEA, 1944. The present issue also needs to be decided in light of the above statutory provisions, as clarified by the C.B.E.C.

24.3 In respect of the impugned products, it is the contention of the assessee that the individual pieces of such impugned products is less than 10 grams each and as



per Rule 34 of the PCR, 1977, they are not required to declare retail sale price on such individual package. Further, there is no statutory requirement under the SWAM Act, 1976 and Rules made thereunder, to declare the MRP on the wholesale package. Therefore, the provisions of Section 4A of the CEA are not attracted in their case, even if the products are specified as the goods to which the provisions of sub-section (2) of section 4A of CEA, 1944 shall apply. In view of this contention, it is important in this case to ascertain whether there is statutory requirement under the provisions of SWAM Act, 1976 and Rules framed thereunder, to declare MRP/ RSP on the impugned products. The clarification issued by the Weights and Measures Department, Ahmedabad vide letter No. KAMAVI/PCR/15686 dated 04.12.2002, in this regard is as under :-

- (i) *As per Rule 34(1)(b) of the Packaged Commodities Rules, 1977, if the weight or measure of the commodity is less than 10 gms or 10 ml or and if sold by weight or measures, in retail, then it is exempted from affixing of MRP and net weight. The exemption is not available for commodities of weight or measures more than 10 gm or 10 ml.*
- (ii) *If the product is sold in nos. then the exemption is not available.*
- (iii) *If the product is packed in numbers of two or more, then it is called multi-piece package as per Rule 2(j) of the Packaged Commodity Rules, 1977 and then it is mandatory to mention MRP on the individual piece or the whole packet as per Rule 17 of the Packaged Commodity Rules, 1977.*

24.4 Therefore, the issues which arise for consideration are :-

- (i) whether the weight or measure of the impugned products is less than 10 gms or 10 ml;
- (ii) whether the impugned products are sold in numbers;
- (iii) whether the impugned products are sold in multi-piece package; and
- (iv) whether Plastic Jar/ Poly Bags are intended for retail sale to the ultimate consumer ; whether it is mandatory to declare MRP/ RSP on such packing (Plastic Jar / Poly Bags) and whether the same can be assessed to Central Excise duty on the basis of valuation under Section 4A of the CEA, 1944.

24.5 I observe that all these issues have been examined in detail by the Hon'ble CESTAT in the case of M/s. Makson Food Pvt. Ltd., M/s. Makson Confectionary Pvt. Ltd and others {reported as Swan Sweets Pvt. Ltd. V/s. Commissioner of Central Excise, Rajkot [2006 (198) E.L.T. 565 (Tri. - Mumbai)]}. Hon'ble CESTAT, in the said decision, has extensively referred to the provisions of SWAM Act, 1976 and PCR, 1977 as well as contentions put forth by the assesses/ department. Some of the impugned products in the present proceedings were also the subject matter of proceedings before the Hon'ble CESTAT. I have the benefit of referring to this decision while examining the issues arising for consideration in present case.

24.6.1 The first issue to be examined is whether weight or measure of the impugned products is less than 10 gms or 10 ml and whether the exemption provided under Rule 34 of the "PCR, 1977" is available to the said products.

24.6.2 Rule 34 of the PCR, 1977, which provides exemption in respect of certain packages, is as follows :-



"34. Exemption in respect of certain packages – Nothing contained in these rules shall apply to any package containing a commodity if –

(a)

(b) The net weight or measure of the commodity is twenty grams or twenty milliliters or less, if sold by weight or measure.

(Provided that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10 g to 20 g or 10 ml to 20 ml)."

24.6.3 The provisions of Rule 34 of PCR, 1977 and clarification issued by Weights and Measures Department, Ahmedabad vide letter No. KAMAVI/PCR/15686 dated 04.12.2002, indicate that if the net weight of an individual package is less than 10 grams or 10 ml, there is no legal requirement for declaration of MRP/ RSP on such packs. In the present case, there is no dispute that the weight of individual packs is not more than 10 grams. Therefore, the exemption from MRP declaration on the individual packages provided vide Rule 34(1)(b) is available to the noticee. In such case, even if there is a voluntary declaration of MRP either on such individual confectionary packs or on whole packs, Section 4A of the CEA, 1944 is not applicable, as clarified vide C.B.E.C. Circular No. 411/44/98-CX dated 31.07.1998 and Circular No. 625/16/2002-CX dated 28.02.2002.

24.7.1 As the exemption from affixing of MRP and net weight provided under Rule 34(1)(b) of the packaged Commodities Rules, 1977 is not available, if the product is sold in nos, it needs to be examined whether the impugned products are being sold in nos. or weight.

24.7.2 The issue whether impugned products are sold in nos. or otherwise has been examined by the Hon'ble CESTAT in the case of Swan Sweets Pvt. Ltd. (supra), wherein it has been held as follows :-

"2.10 Since confectionary/candy is sold by weight or measure and not by numbers, 6th Schedule to MRP Rules is not specified; this Schedule prescribes the manner in which the commodities intended to be sold by number should be packed. This would go to indicate that the confectionary is not intended to be sold in number. The case of the appellants is also that. In fact this plea has been accepted by the ld. Commissioner of Central Excise (A). Therefore, the finding of the Commissioner (A) that the assessee cannot take shelter under Rule 34 from the applicability of Section 4A of the Central Excise Act cannot be upheld in this case.

2.11 *The appellants rely upon the following clarification –*

a) *Letter dated 20.08.2003 addressed to Maharashtra Jarda Manufacturer's Association. In this it was clarified by the Legal Metrology Department that when a package contains ten or more numbers of retail packages, it will be treated as wholesale package. It has further been clarified that if the individual retail pack contains less than 10 gms., there is no need to MRP. In this case, the wholesale package contained number of individual packs of jarda.*



b) Letter dated 22.08.2003 addressed to Swadesh Chewing Tobacco Industry to the above effect in respect of chewing tobacco/khaini.

and submit, in view of the above, the interpretation being granted to a package containing individual packages of less than 10 gms. nor requiring a declaration of MRP has to be upheld.

2.12 (a)

2.12 (b)

.....The decision in the impugned Order-in-Appeal that the exemption given in Rule 34(1)(b) of the PCR would not be available to the impugned products as the same are being sold in pieces/ numbers and not by weight is completely misplaced in as much as the impugned products, as explained above, are cleared from the appellants' factory either in pouches of 500 gms. and in jars of 720 gms. and above which are sold in the wholesale market as such, which is mandatory requirement that as per the National Industrial Classification, the sugar confectionary is required to be sold in Kgs., i.e. by weight. This clearly shows that the impugned goods are sold by weight in the market and not be pieces/ numbers. The appellants submit that, the net weight of each piece of confectionary in the package is 3.3 gms., which is less than the weight specified in Rule 34(1)(b) and the packages are sold by weight as a wholesale package, which is an admitted position. In this connection, the appellants refer to and rely upon the decision of the Hon'ble Tribunal in the following cases.

- Caress Beauty Care Products vs. CCE., Chennai – 2004 (164) ELT 53 (T)
- Krafetch Products Inc. vs. CCE, Vapi – 2004 (174) ELT 508 (T)
- CCE, Daman vs. Krafetch Products Inc. – 2005 (179) ELT 43 (T)
- Anabond Ltd. vs. Dy. CCE, Chennai-I Division, Chennai-II Commissionerate – 2002 (48) RLT 237 [CCE(A)]

2.12 (c) Without prejudice to the above, the appellants would like to refer to the National Industries Classification with reference to the following :-

NIC/ Prod. Code	Description	Unit of Qty.
2092	Mnf. Of Sugar, Confectionary, Chewing/ Bubble Gum	Kg.
209201002	Confectionary (Except Chocolates and chocolate preparations)	Kg.
209202009	Chocolates	Kg.
209205008	Toffees	Kgs.
209207000	Sugar Candy	Kg

It can be seen from the above that the impugned goods are required to be packed and sold by weight, viz. Kgs. and not by numbers. Under the circumstances, the packages under which the impugned products are sold by the appellants clearly fall within the exemption provided under Rule 34(1)(b) of the said Rules. ”

24.7.3 Thus, as hold by the Hon'ble CESTAT, impugned products (sugar confectionery) are sold by weight and not in numbers or pieces. Therefore, I hold that exemption from affixing of MRP and net weight provided under Rule 34(1)(b) of the packaged Commodities Rules, 1977 is available to the impugned products.



24.8.1 It has also been clarified by the Weights and Measures Department, that if the product is packed in numbers of two or more, then it is called multi-piece package as per Rule 2(j) of the Packaged Commodity Rules, 1977 and then it is mandatory to mention MRP on the individual piece or the whole packet as per Rule 17 of the Packaged Commodity Rules, 1977. Therefore, it needs to be ascertained whether the packages of impugned products falls under the category of 'multi-piece package' or otherwise.

24.8.2 I find that after referring to the definitions of 'wholesale packages', 'multi-piece package' and 'retail package' as defined under PCR, 1977, Hon'ble CESTAT has examined the issue whether the packages in which impugned products are sold can be termed as 'multi-piece package'. The relevant paras of Hon'ble CESTAT's decision in the case of Swan Sweets Pvt. Ltd. (supra) are reproduced below :-

"2.7 The findings and the view of the Revenue that product removed is a multi-pack also cannot be accepted, since the term 'multi-pack' is a work of art in MRP Rules and has to be interpreted in the fashion provided thereunder. It is relevant to note that the definition of 'wholesale package' has undergone various changes. Rule 2(x) of the MRP Rules was amended on 17-8-1999 vide the Standards of Weights and Measures (Packaged Commodities) (Second Amendment) Rules, 1999, wherein in Rule 2, Clause 10, after sub-clause 2, the following sub-clause was inserted,

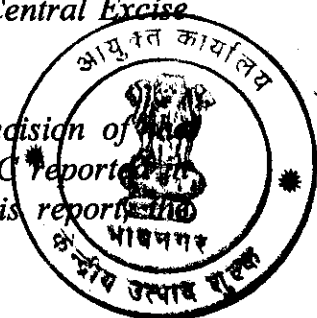
(iii) more than ten packages where total value of the retail packages exceed ₹ 100/-

The above clause was amended once again vide Notification No. GSR 631(E), dated 21-7-2000 and the amended clause reads as under :

(iii) packages containing ten or more than ten retail packages provided that the retail packages are labeled as required under the Rules.

A reading of these amendments, will make it very clear that the same were arrived with a view to remove doubts with regard to the definition of 'Wholesale packages' and to determine when the package is whole pack and when it would be a retail pack. If the package contains ten or more than ten retail packs irrespective of the value of such retail pack, that would be covered under the definition of 'whole packs'. In view of the above, entire basis of the Department that the whole packs in question which contain more than 10 Toffees, are "Multi-Piece Packs" cannot be upheld. The view that the said packs are 'mufti piece packs' are also not correct, because 'multi piece' packages have been defined in Rule 2(j) of MRP Rules and the packs in question do not satisfy the definitions when read with whole sale pack definition. According to the definition, both the individual pieces as well as the package as a whole must be intended for retail sale. In this case, the container pack (i.e. the plastic jar or the plastic pouch containing 500 gms. or so of the Toffees) is not intended for retail sale. Only the individual Toffee placed inside such wholesale packs (jar, polybags) are intended and meant for retail sale. Therefore, the wholesale packs in this case are not multi-piece package. They would, therefore, exclude the application of Section 4A of the Central Excise Act, 1944.

2.8 The reliance of the Commissioner (Appeals) on the decision of Madras High Court in the case of M/s. Varnica Herbs v. CBEC reported in 2004 (163) E.L.T. 160 is not well founded. In para 15 of this report,



Hon'ble High Court has held that the article in that case (i.e. herbal powder) was not sold either by weight or by measure, the exemption under Rule 34 of MRP Rules was not applicable. It is pertinent to note that in the present case that is not the position. Further the High Court has held that in the very case exemption under Rule 34 was not applicable to multi-piece pack. In the present case, the pack is not found to be a multi-piece pack. Therefore, the decision in the case of M/s. Varnica Herbs of Hon'ble Madras High Court is not applicable to the facts of this case.

.....

2.12 (b)

Section 2(x) defines 'wholesale packages'; and reads as follows :

"Whole sale package means a package containing :

- i.
- ii.
- iii. package containing 10 or more than 10 retail packages provided that the retail packages are labeled as required under the rules".

.....

Under Rule 2(j) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, "multi-piece packages" has been defined as follows :-

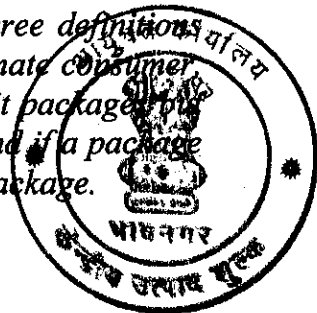
"multi-piece package" means a package containing two or more individually packaged or labeled pieces of the same commodities of identical quantity intended for retail sale, either in individual pieces or the package as a whole"

Illustration : a package containing "5 toilet soap cakes net weight 20 g each, total net weight 100 g" is a Multi-piece package.

Under Rule 2(p) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, "Retail package" has been defined as follows :

"Retail package" means a package containing any commodity which is produced, distributed, displayed, delivered or stored for sale through retail sale agencies or other instrumentalities for consumption by an individual or a group of individuals, individually packaged or labeled pieces of the same commodities of identical quantity, intended for retail sale, either in individual pieces or the package as a whole".

A careful reading of the above definitions would show that in the case of multi-piece package such a package should contain two or more individually packaged or labeled pieces of the same commodities of identical quantity, intended for retail sale, either in individual pieces or the package as a whole. In the case of a wholesale package, inter alia, it should contain 10 or more than ten retail packages provided that the retail packages are labeled as required under the Rules. A harmonious construction of the three definitions would show that a unit package, which is consumed by the ultimate consumer is a retail package; and a package which contains two such unit packages or not more than 9 such unit package, is a multi-piece package; and if a package which contains ten or more such unit packages, is a wholesale package.



24.8.3 Thus, the Hon'ble CESTAT has held that, a unit package, which is consumed by the ultimate consumer, is a retail package; a package which contains two such unit packages but not more than 9 such unit package, is a multi-piece package; and a package which contains ten or more such unit packages, is a wholesale package. In the present case also, as the packages of impugned products contain more than 10 unit packages, I hold that the impugned products are not sold in 'multi-piece package' but are being sold in 'wholesale package'. As the impugned products are not being sold in 'multi-piece package', it is not mandatory to mention MRP/ RSP on the individual piece or the whole packet as per Rule 17 of the PCR, 1977.

24.9.1 The next issue which arises for consideration is whether Plastic Jar/ Poly Bags are intended for retail sale to the ultimate consumer; whether it is mandatory to declare MRP/ RSP on such packing (Plastic Jar / Poly Bags) and whether the same can be assessed to Central Excise duty on the basis of valuation under Section 4A of the CEA, 1944. This issue has also been examined at length by the Hon'ble CESTAT in the decision of Swan Sweets Pvt. Ltd. (supra). I can do no better than to quote from the said decision wherein it has been held as follows :-

"2.5 In Chapter 11 of the MRP Rules, Rule 2A states that provisions of the chapter shall apply to pre-packaged commodities except in respect of grains and pulses containing a quantity more than 15 kg. Rule 3 further clarifies that the provisions of this chapter shall apply to packages intended for retail sale and the expression "package", wherever it occurs in this chapter, shall be construed accordingly. Rule 4 mandates that no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under these Rules. "Retail sale" has been defined under Rule 2(q) as under :

(q) "retail sale", in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales agencies or other instrumentalities or consumption by an individual or a group of individuals or any other consumer".

The declaration to be made on every package intended for retail sale is prescribed in Rule 6 which is as under :-

'6. Declaration to be made on every package -

(1) Every package shall bear thereon or on a label securely affixed thereto a definite, plain and conspicuous declaration, made in accordance with the provisions of this Chapter as to -

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, of the packer or with the written consent of the manufacturer;

(b) the common or generic names of the commodity contained in the package;

Explanation :- Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt, sodium chloride is the generic name.

