

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 22 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Approved for Reporting	Yes	No

THE PRINCIPAL COMMISSIONER OF CUSTOMS

Versus

M/S R M DHARIWAL (HUF)

Appearance:

MS HARDIKA VYAS(11450) for the Appellant(s) No. 1

MR MIHIR JOSHI SENIOR ADVOCATE with MR PREMAL R JOSHI(1327)

MR HARDIK MODH for the Opponent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 25/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present Tax Appeal, the appellant - Customs has proposed the following substantial question of law:-

‘Whether ld. Tribunal erred in wrongly interpreting Rule 5(d) and 5(g) of the Plastic Waste (Management and Handling) Rules, 2011 to be read along with Section 113(d) and 118 of the Customs Act,1962?’

2. The present appeal is directed against the judgment and order in Appeal No. C/10088, 10344,10345/2018-DB dated 08.10.2018 passed by the Customs, Excise, & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short ‘the Tribunal’), whereby the Tribunal has allowed the appeals filed by the respondent. The appellant – Customs seeks to quash and set aside the impugned Judgment and Order.

3. The answer to the said substantial question of law which has been pressed hinges upon the order passed by the Supreme Court, in the case of M/s Harsh International & Anr Vs. Union of India & Ors in Writ Petition (C) No. 856 of 2013, in the case of M/s R.M. Dhariwal 100% EOU Vs. Union of India & Ors in Writ Petition (C) No. 471 of 2015 and Baba Global Ltd & Anr V. Union of India & Anr in Writ Petition (Civil) No. 466 of 2011 read with Plastic Waste and Management and Handling Rules, 2011 (for short 'the Rules, 2011').

4. It is the case of the appellant – Customs that the Tribunal has fell in error in passing the impugned judgment and order dated 08.10.2018 in favour of the respondent – Company by placing reliance on the aforesaid judgments and by holding that the Rules 2011 do not apply to the respondent who tried to export the goods (i.e. 'gutkha') by using the packing material which are prohibited under the Rules, 2011 more particularly, Rules 5(d) and (g) of the Rules, 2011.

5. Learned Senior Standing Counsel Ms. Hardika Vyas while placing reliance on the Rules, 2011 has submitted that the respondent- exporters have used the packing material of *pan masala, gutkha or tobacco*, which are clearly prohibited under the Rules, 2011, however, the Tribunal has set aside the action of confiscating such goods on the basis that the plastic materials which has been used is bio-degradable. She has submitted that Clause (g) of the Rule 5 of the Rules, 2011, does not in any manner exempts any form of plastics, including bio-degradable plastics. Thus, it is urged that the Tribunal has fell in error in passing the impugned Judgment and Order. She has further submitted that in the instant case the goods were exported on 01.12.2011 and hence, accordingly penalty and fine were imposed, whereas, the orders passed by the Supreme Court are subsequent to the exports of the respondents. It is submitted that initially the Supreme Court had passed orders in the case of **M/s Baba Global**

Limited (supra), who were also exporting Pan Masala, gutkha etc., and it was exempted from the Rules 2011, in view of undertaking given before the Supreme Court, which appears to be on 30.08.2013. She further submitted that Government of India's Ministry of Finance Department of Revenue, vide communication dated 30.08.2011 further clarified about the applicability of Rule 5 of the Rules, 2011. Thus, it is urged that the impugned Judgment and Order requires to be quashed and set aside.

6. In response to the aforesaid submissions, learned Senior Advocate Mr. Mihir Joshi appearing for the respondent at the outset has submitted that the substantial question of law in the present case is neither required to be framed nor required to be answered, in view of litigation which travelled to the appellate authority and was remanded.

7. It is submitted that in fact the case of the respondent is squarely covered by the Judgments and Orders passed by the Supreme Court as mentioned hereinabove, wherein the exporters of the *pan masala*, *guthka* and tobacco products using bio-degradable plastics has been permitted by the Supreme Court and the exporters are exempted for operation of the Rules, 2011. Further, learned Senior Advocate Mr. Joshi has pointed out Section 113(d) of the Customs Act, 1962 (for short 'the Customs Act') and has submitted that the said provision will not apply to the case of present writ petition, so far as it relates to packaging of the material as the provisions under 113(d) of the Customs Act, would apply to the goods which are attempted to be improperly exported contrary to any provisions imposed under the Act. It is submitted that in the present case, the *pan masala* and tobacco products are not prohibited to be exported and hence, the provisions of Section 113(d) of the Customs Act will not apply. Similarly, learned Senior Advocate Mr. Joshi has pointed out the provisions of Section 118 of the Customs Act, which refers to the packaging and the contents to those goods which are liable to be

confiscated as prohibited goods under this Act or any other act.

8. We have heard learned advocates appearing for the respective parties at length.

9. The established facts are that in the similar cases the respondents who were exporting *pan masala*, *gutkha* or tobacco, the Supreme Court has passed the following orders exempting such exporters from the application of the Rules, 2011. The first order which came to be passed on 03.09.2013 in Writ Petition (Civil) No. 466 of 2011 in the case of **M/s Baba Global Limited (supra)**, wherein the Supreme Court had permitted the export of the goods and exempted the exporter for operation of the Rules, 2011 upon an undertaking given on 30.08.2011. The said order has been subsequently followed in **M/s Harsh International and Anr (supra)** and **R.M. Dhariwal (supra)**, the said exporters were exempted from operation of the Rules 2011. Thus, this Court cannot delve out of any different view orders passed by the Supreme Court allowing the applicability and operation of Rules, 2011. Thus, this Court cannot take any different view to that of the Supreme Court.

10. So far as the contention and the substantial question of law proposed in the present appeal relating to the violation of Section 113(d) and 118(b) of the Customs Act are concerned, the same was never raised before the Tribunal. However, we are of the of the opinion that the provisions would not apply in the instant case. Both the provisions refers to the goods which are prohibited under this Act or any other Act.

10.1 The Section 113(d) of the Customs Act, 1962 provides:

“(d)Any goods which are attempted to be exported or are brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation..”

10.2 Section 118(b) of the Customs Act, 1962 reads as follows:

“(b) Where any goods are brought in a package within the limits of customs area for the purpose of exportation and are liable to confiscation, the package and other goods contained therein shall also be liable to confiscation.”

11. Both the provisions refer to the prohibitory goods which are liable to be confiscated along with the packages. In the present case, it is not the case of the appellant - Customs that the goods which the respondent are exporting falls within the category are liable to be confiscated and are prohibitory goods.

12. The observations made by the Tribunal, reads thus:

“We have carefully considered the submissions made by both the sides and perused the records, we find that the limited issue involved in the present case is that whether the export of goods namely; R.M.D. Guthka is in violation of Rule, 5(d) and 5(g) plastic waste (management and handling) Rules, 2011. the Customs authorities drawn a sample sent for test to Customs laboratory, Vadodara, wherein, the report reveals that the packaging material is composed of paper, Aluminium and Plastic, however, the said report does not clarify whether the nature of plastic non Poly Lactic Acid and otherwise. Therefore, the said is bio-degradable and report was not clear. At the same time the appellant through there supplier M/s. Dhariwal packaging obtained the test report from CIPET, Chennai, Which is also a Government Institution, same is scanned below:-

From the above test certificates it is clear that the plastic is based on starch based Polyester Film (other than P.E.T) and it also does not contains a Vinyl Chloride based Co-Polymer. The Revenue also obtains a test report from CIPET, Chennai, wherein, the report dated 24.04.2004 was issued:

From the above report also it is clear that the material used is Poly Lactic Acid.

From the above final report it is seen that the plastic layer in the packaging (From material is made of Poly Lactic Acid / Co-polymer Lactic Acid. From all the above report of the Chemical Examiner it is clear that the plastic based on Ploy Lactic Acid is made of starch which is clearly bio-degradable. Therefore, as per the direction of the Commissioner (Appeals) in the first appellate order the adjudicating authority had no option except to allow the appeal, however, he in complete defiance of the Commissioner Appeal's direction, once again visited on the original issue and given the finding that irrespective of any nature of plastic there is a violation of Rules, 5(d) and 5(g) of Plastic Waste (Management And Handing) Rules, 2011, which is absolutely incorrect and illegal.”

13. Thus, in the present case, we find that, no substantial question of law arises, and the issue is premised on the appreciation of the facts, more particularly, on the report of chemical analysis of the package. Accordingly, the tax appeal stands dismissed.

A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

Radhika/17