

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI**

**WPA 1882 of 2026
M/s. S.A. Aromatics Private Limited & Anr.
Vs.
Union of India & Ors.**

For the Petitioners : Mr. Abhratosh Majumder, Ld. Sr. Adv.
Mr. Saurabh Bagaria, Adv.
Mr. Pranav Sharma, Adv.
Mr. Salil Arora, Adv.

For the UOI : Mr. Vipul Kundalia, Ld. Sr. Adv.
Mr. Amit Sharma, Adv.
Mr. Anindya Kanan, Adv.
Mr. Dhirodatto Chaudhuri, Adv.

For the Respondent CGST & CX : Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
Ms. Shatabdi Sen, Adv.

Hearing Concluded on : 27.02.2026

Order on : 06.03.2026

Om Narayan Rai, J.:-

1. This writ petition assails three notifications being Notification No. 04/2025-Central Excise dated December 31, 2025 (hereafter the first notification), Notification No. 04/2025-Central Excise (N.T.) dated December 31, 2025

(hereafter the second notification) and Notification No. 05/2025-Central Excise (N.T.) dated December 31, 2025 (called “Chewing Tobacco, Jarda Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection Duty) Rules hereinafter referred to as the 2026 Rules) and asserts that the same are ultra vires the Central Excise Act, 1944 (hereafter the said Act of 1944) and the Constitution of India.

2. The petitioner no.1 is engaged in manufacturing of scented chewing tobacco. The petitioner no.2 is one of the directors of the petitioner no.1 (hereafter the petitioner). The petitioners pray for an interim order restraining the respondents from giving any effect and/or further effect to the said notifications.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Mr. Majumder learned Senior Advocate appearing for the petitioners has taken this Court through the said notifications and submitted that all of them have been issued in the purported exercise of powers under Section 3A of the said Act of 1944. It was submitted that the said notifications cumulatively specify the notified goods on which there shall be production based levy of excise duty.
4. It was submitted that the same was violative of parent statute as also other laws. It was submitted that there is nothing in the said Rules of 2026 to indicate that labour laws which provide for weekly offs and not more than two shifts in a factory have been taken into consideration. It was further submitted that the expression “*upto 500 pouches*” was itself very nebulous.

5. It was next submitted that Rule 4 of the 2026 Rules takes into consideration only the maximum capacity for production which is not there in Section 3A of the said Act of 1944
6. Referring to Rule 5 thereof it was submitted that the same only gives the figures of pouches per minute without disclosing the basis therefor. He further submitted that it neither takes into consideration man-days nor work-days nor timing of factory nor the aspect as to how the machine is to be operated nor the working shifts etc. It was submitted that non consideration thereof renders the said 2026 Rules arbitrary.
7. It was next submitted that the process of evaluation to be undertaken by the Assistant Commissioner has been reduced to an empty formality by prescribing formulae thereby leaving no room for the Assistant Commissioner to do anything further.
8. He further submitted that the deeming fiction was regulated by Section 3A(2)(b) (i) and (ii) of the said Act of 1944 but the essence thereof was lacking in the 2026 Rules. He exemplified the same by demonstrating that applying the calculation mentioned in the 2026 Rules if a machine worked for 14 hours work per day the amount indicated as maximum number of pouches will be reached in 26.7 days and if a machine worked for 8 hours work per day the amount indicated as maximum number of pouches will be reached in 46.8 days. It was submitted that the same did not show any rationality.
9. He referred to the charts appended to the writ petition at pages 68 and 69 of the writ petition to demonstrate that taxes calculated in terms of the present

taxation regime (governed by the impugned notifications) would surpass even the maximum retail price of the product.

10. He relied on the judgment of the Hon'ble Supreme Court in the case of ***Indian Express Newspapers (Bombay) Private Limited & Others vs. Union of India & Others***¹ to submit that a Rule could be held arbitrary and ultra vires the Constitution if the same lost sight of the very vital factors. Relying on the judgment of the Hon'ble Supreme Court in the case of ***Godawat Pan Masala Products I.P. Limited & Another vs. Union of India & Others***², it was submitted that gutkha and chewing tobacco were not *res extra commercium*.
11. Relying on an order dated January 23, 2026 passed by the Hon'ble High Court of Karnataka in the case of ***Ghodawat Packers LLP vs. Union of India***³ and another order dated February 03, 2026 passed by the Hon'ble High Court of Karnataka in ***M/s. MVT Industries Private Limited vs. Union of India***⁴, it was submitted that similar challenges to the Rules and notifications impugned herein had been entertained by the said Hon'ble Court and interim orders had been passed in favour of the petitioners therein.
12. An order of the Hon'ble High Court of Allahabad in the case of ***M/s. Well Frangnances Private Limited vs. Union of India & 2 Others***⁵ was cited to assert that a similar challenge to the vires of Rule 16 of the said Rules of 2026 had been entertained by the said Hon'ble Court and the respondents had been

¹ (1985) 1 SCC 641

² (2004) 7 SCC 68

³ WP/100220/2026

⁴ WP/3010/2026

⁵ Writ Tax No. 891 of 2026, decided on February 04, 2026

restrained from taking coercive steps against the petitioners before the Court for non-compliance with the said 2026 Rules till the next date.

13. Mr. Majumder pressed for interim orders restraining the respondents from taking any coercive steps against the petitioners for non-compliance with the said Rules of 2026.

SUBMISSIONS ON BEHALF OF THE RESPNDENT CGST AUTHORITIES:

14. Mr. Banerjee learned Advocate appearing for the Respondent CGST Authorities vehemently opposed the submissions of Mr. Majumder and submitted that the said Rules of 2026 have been framed in order to curb rampant evasion of taxes on the items mentioned in the said Rules of 2026.
15. It was submitted that the Rules had been framed upon due and proper deliberations by the Group of Ministers (GOM) and in support of his submissions, he relied on the minutes of the meeting held by the GOM. It was demonstrated that the GOM had exhaustively deliberated on capacity based taxation and Special Composition Scheme in certain sectors in GST which included pan masala, gutkha, tobacco and similar items.
16. Attention of this Court was also invited to the “*Frequently Asked Questions (FAQs) on Machine-Based levy in case of Chewing Tobacco, Jarda Scented Tobacco and Gutkha*” uploaded on the website of the Ministry of Finance, Government of India in order to assert that the manner and method of determination of annual capacity of production as well as calculation of abatement is clearly provided in the Rules. It was also asserted that CCTV

installation is mandatory as the same would help in ensuring compliance with the legal provisions.

17. He relied on the judgment of the Hon'ble Supreme Court in the case of **Gopal Corporates LLP vs. Commissioner Delhi – East, GST – Central Tax**⁶ to demonstrate that in matters relating to tobacco manufacturing it is permissible to tax the manufacturer based on the number of packing machines and it may not be dependent on the actual days of operation of the machines. He then cited **Prabhat Zarda Factory India Private Limited vs. Union of India**⁷ to contend that Courts have validated capacity based levies and upheld provisions where speed of manufacturing machines had been made relevant consideration for determining production based capacity.

SUBMISSIONS ON BEHALF OF THE UNION OF INDIA:

18. Mr. Kundalia, learned Senior Advocate appearing for the Union of India also by and large echoed the submissions made by Mr. Banerjee and submitted that the said Rules of 2026 could not be said to be wholly arbitrary. He relied on the judgment of the Hon'ble Supreme Court in the case of **Kunnathat Thatehunni Moopil Nair, Etc. vs. State of Kerala & Others**⁸ and submitted that the said Rules of 2026 are not discriminatory and treat all manufacturers alike. Relying on the judgment in the case of **Gopal Corporates LLP** (supra), it was submitted that mode of determination of maximum capacity of production as

⁶ (2023) 11 Centax 87 (Del.)

⁷ 2017 (347) E.L.T. 208 (Pat.), decided on February 08, 2017

⁸ 1960 SCC OnLine SC 7

indicated in Rule 5 of the said Rules of 2026 owes its genesis to Section 3A of the said Act of 1944 itself.

19. It was submitted that there was nothing arbitrary in the said Rules of 2026 and this Court should not grant any interim order as prayed for.
20. Referring to the chart presented by the petitioner at pages 68 and 69 of the writ petition; he submitted that the same are self-serving and misleading.

REPLY BY THE PETITIONERS:

21. Mr. Majumder in reply submitted that the minutes of the GOM all pertained to discussions in the context of capacity based taxation and Special Composition Scheme in certain sectors in GST. The Court was taken through the minutes and it was demonstrated that the same did not disclose crystallization of any law and rather indicated that the discussions made were subject to be examined by the Law Committee. It was submitted that in any case the same had no manner of application to a case which was governed by the excise laws under the said Act of 1944 and not under the GST Act of 2017.
22. It was submitted that the 2010 Rules with which **Gopal Corporates LLP** (supra) and **Prabhat Zarda Factory India Private Limited** (supra) were concerned did not provide a mechanical multiplication formula as provided in the said Rules of 2026. It was submitted that the 2010 Rules and the said Rules of 2026 are not *pari materia* with each other.
23. He referred to the table indicated in Rule 5 of the 2010 Rules and compared the same with the said Rules of 2026 to show that the manner of calculation of the maximum capacity is wholly arbitrary.

ANALYSIS & DECISION:

24. Heard learned Counsels for the respective parties and considered the material on record.

25. Section 3A of the said Act of 1944 reads as follows:-

“3A. Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods.— (1) *Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.*

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,—

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant 2[Principal Commissioner of Central Excise or Commissioner of Central Excise] and such annual capacity shall be deemed to be the annual production of such goods by such factory; or

(b)(i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Principal Commissioner of Central Excise or Commissioner of Central Excise] and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

Provided that where a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.

(3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:

Provided that where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.”

- 26.** A perusal of the aforequoted provision would reveal that Section 3A of the said Act of 1944 vests power with the “*Central Government to charge excise duty on the basis of capacity of production in respect of notified goods*”. Sub-section (1) thereof provides the power to notify goods i.e. Central Government can specify certain "notified goods" for capacity-based taxation. This decision is based on factors like *the nature of the process of manufacture or production of excisable goods or the extent of evasion of duty in regard to such goods or other such relevant factors.*
- 27.** Sub-section (2) of the said Section provides that the government may frame rules to determine a factory's annual production capacity. Such capacity is deemed to be the actual annual production capacity of the factory for the purpose of calculation of duty. The determination must be made by an officer

not below the rank of Assistant Commissioner of Central Excise in the manner prescribed.

- 28.** Sub-section (3) thereof provides that the duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed. The proviso thereto provides for abatement.
- 29.** On a cumulative reading of the provision, it will be clear that the same permits and provides for a compounded levy of duty.
- 30.** Rule 4 of the said 2026 Rules provides the factors relevant to the production of notified goods. It names (a) - the number of packing machines in the factory of the manufacturer and (b)- the maximum capacity of production of such packing machines as the relevant factors. It is *prima facie* evident that the Rule 4 encompasses factors that align with the legislative mandate of Section 3A(2)(b)(i) and (ii) of the said Act of 1944.
- 31.** In terms of Rule 5 of the said Rules of 2026, the quantity of notified goods is to be determined by the number and speed of packing machines and the retail sale price of the pouches. Mr. Majumdar had submitted that the deeming fiction spoken of in Section 3A has been disregarded in the impugned Rules by stating arbitrary figures. The same may not be quite correct.
- 32.** Section 3A(2)(b)(i) and (ii) of the said Act of 1944 provides that the Central Government may frame rules and specify the factors relevant to production of the notified goods. In the case at hand Rule 4 enumerates the number of

packing machines and the maximum capacity of production of such packing machines as the relevant factors. Similarly, section 3A(2)(b)(ii) of the said Act of 1944 provides that the Central Government may frame rules and provide the manner of determination of the annual capacity of production of the factory, in which goods are produced. Rule 5 provides the manner of determination of the annual capacity of production in terms of the provisions of section 3A(2)(b)(ii) of the said Act of 1944.

33. Now it has been asserted that the same specifies arbitrary figures. It would appear to be so if one looks at it from the actual production point of view. It must be remembered that Rule 5 provides the maximum capacity of production per packing machine per month for notified goods regardless of the actual quantity produced. It cannot be said with certainty and could not be demonstrated before the Court that the figures mentioned in the table appended to Rule 5 of the 2026 Rules were impossible figures. All that was sought to be demonstrated was that it was not clear as to what were the number of working hours and days in a month that were taken into consideration. In the *prima facie* view of the Court that would not be the right test to apply in order to judge the validity of the 2026 Rules. It cannot be lost sight of that the 2026 Rules have been framed in order to curb tax evasion which a stated objective of section 3A of the said Act of 1944. Under such situation, certain conditions imposed by it may appear to be harsh but that would not necessarily make it irrational. The argument of Mr. Majumdar especially in the light of the examples given by him though appealing at the

first blush, fail to persevere in the light of the clear legislative intent of Section 3A of the said Act of 1944.

- 34.** In ***Prabhat Zarda Factory India Private Limited*** (supra) the Hon'ble High Court at Patna had turned down similar challenges to the 2010 Rules while observing that there was need for standardizing the levy on the basis of factors of production and that scheme of levy of excise duty based on factors relevant to production has been very important measure for preventing tax evasion as also for rationalizing duty to ensure that the honest tax payers of Pan Masala and Gutka industries do not suffer.
- 35.** In ***Gopal Corporates LLP*** (supra) the Hon'ble High Court of Delhi had confirmed levy of excise duty determined on the basis of the maximum number of packing machines installed during a given month regardless of days of operation.
- 36.** Insofar as the challenge to Rule 16 of the 2026 Rules is concerned this Court finds no unreasonableness in mandating installation of CCTV systems more so since the said Rules are aimed at curbing tax evasion. Such installation would facilitate and ensure compliance with the relevant Rules. Once Section 3A of the said Act of 1944 vest the Central Government with the power of issuing notification *interalia* for the purpose of curbing tax evasion, in the *prima facie* view of the Court any separate delegation for installation of CCTV footage may not be necessary as held by the Hon'ble Allahabad High Court in the case of ***M/s. Well Frangnances Private Limited*** (supra).

- 37.** Similarly, the second notification i.e. the Notification No. 04/2025-Central Excise (N.T.) dated December 31, 2025 is also *prima facie* consistent with the provisions of section 3A(3) of the said Act of 1944 inasmuch as the rates of duty prescribed therein clearly relate to the *factor relevant to the production* of the notified goods.
- 38.** The interim order passed by the Hon'ble High Court of Kerala and Allahabad being interim in nature, cannot be said to have any precedential value. In any case this Court has given its reasons to hold differently in the interim stage.
- 39.** ***Indian Express Newspapers (Bombay) Private Limited.*** (supra) cannot aid the petitioner inasmuch as this Court is of the *prima facie* view that the relevant factors have been taken into consideration by the respondents in the impugned notifications.
- 40.** ***Godawat Pan Masala Products I.P. Limited*** (supra) had been cited in support of the proposition that pan masala and gutka are not *res extra commercium*. The same is not in issue in the present case at all.
- 41.** As regards Mr. Majumdar's assertion that Rule 5 has left almost nothing doable for the Assistant Commissioner, the same may not be correct. Section 3A 2(a) clearly provides that the manner for determination of annual production capacity is to be provided by the Rules. The same has been done. The calculation that is to follow thereafter is not the only exercise. Rule 7 provides for an exercise of verification to be undertaken by the Assistant Commissioner which would include physical inspection of the factory as well. Rule 8 follows thereafter which provides for passing orders of determination.

- 42.** For all the reasons aforesaid, this Court is not inclined to pass any interim order in the matter. The said notifications and the Rules impugned are *prima facie* neither beyond the legislative mandate of the relevant provisions of the said Act of 1944 nor manifestly arbitrary.
- 43.** The respondents shall be at liberty to file affidavit opposition to the writ petition within four weeks from date. Affidavit in reply thereto, if any, be filed within two weeks thereafter. Liberty to mention for hearing after expiry of the time fixed for exchange of affidavits.
- 44.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)