

(2023) 06 CESTAT CK 0029

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 11712 Of 2013

Rajesh Mangal

APPELLANT

Vs

C.C.E. & S.T.-Ahmedabad-III

RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 26

Citation : (2023) 06 CESTAT CK 0029

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : M.G. Yajnik, G. Kirupanandan

Final Decision : Partly Allowed

Judgement

Ramesh Nair, Member (J)

1. The brief facts of the case are that the appellant is working as DGM Finance with M/s. Electrotherm (India) Ltd. A case was made out under a common show cause notice dated 31.05.2010 against M/s. Electrotherm (India) Ltd wherein, Shri Rajesh Mangal, the present appellant was also made a party. There was an excise duty demand proposed against the company M/s. Electrotherm (India) Ltd for an amount of Rs. 1,30,14,009/- and a penalty under Rule 26 was proposed on the present appellant. A show cause notice was adjudicated by Commissioner of Central Excise, Ahmedabad-I vide Order-In-Original against the said order, the present appellant was imposed with a penalty of Rs. 10 lacs in terms of Rule 26 of Central Excise Rules, 2002 therefore, the present appeal filed by the appellant.

2. Shri M.G. Yajnik, learned counsel appearing on behalf of the appellant submits that as regard the main case of M/s. Electrotherm (India) Ltd the same has been settled under SVLDRS-2019 and the company has paid the duties as required under the scheme. He submits that as regard the present appellant, he has no role in the non-payment of duty by the company as the work related to removal of goods was being handled by one Shri S.G. Pathak. Even, the present appellant

has not given any statement in his personal capacity. He has given a statement only for and on behalf of the Director of the company. In this fact, the appellant being not involved in case of evasion of duty, cannot be imposed penalty under Rule 26. He also submits that no specific sub-rule or clause of Rule 26 was invoked for imposing penalty. For this reason also the penalty under Rule 26 was wrongly imposed. In support of his submission, he placed reliance on the following judgments:-

- Commissioner of C. EX. Chandigadh Vs. Pepsi Food Ltd. – 2010 (260) ELT 481(S.C)
- Manohar Singh Rana Vs. Commissioner of Central Excise, Indore – 2017 (357) ELT 1163 (Tri. – Del.)
- Raymond Apparels Ltd. Vs. Commissioner of Central Excise, Thane-I 2013 (294) ELT 151 (Tri.- Mumbai)
- Commr. of C.Ex. Pune-III Vs. Jamshri Ranjitsinghji SPG. & Weaving Mills Co. Ltd. – 2014 (302) ELT 574 (Tri. Mumbai)
- Metro Enterprise Vs. Commissioner of Central Excise, Thane-II 2014 (311) ELT 785 (Tri. Mumbai)
- Amrit Foods Vs. Commissioner of Central Excise, U.P. 2005 (190) ELT 433 (S.C)
- Oswal Knit India Ltd. Vs. Commissioner of C.Ex. Ludhiana – 2006 (204) ELT 510 (Tri. – Del.)

3. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that the appellant being DGM-Finance of the company is responsible for all the transactions, be it clandestine removal or otherwise.

Accordingly, he is recording sales of the goods in the books of accounts therefore, he is very well aware of the overall affairs of the company hence, rightly imposed penalty under Rule 26. He placed reliance on the following judgments:-

- Indo Farm Tractors & Motors Ltd. Vs. Union Of India – 2008(222) ELT 184(H.P)
- Case New Holland Construction Vs. Commiseioner of C.Ex. Indore – 2013 (287) ELT 447 (Tri.-Del.)
- Ronak Chaudhari Vs. CCE, Surat-I, Final Order No. A/12576/2021-dtd.02.12.2021
- Naresh Agarwal Vs. CCE Vadodra –II – A/1056/2020 dtd. 27.02.2020
- Mangalam Druga & Organics Ltd Vs. CCE, Surat-I – A/12582-12584/18 dtd14.11.2018
- Rajeev Reniwal Vs. CCE, Ahmedabad –III A/10972/2018 dtd 15.03.2018

- Paragon Steel Ltd Vs. CCE, Calicut 2018 (15) GSTL 298 (Tri-Bang)
- Goyal Ispat Ltd Vs. CCE, Puducherry ,2017 (6) GSTL 210 (Tri-Chennai)
- Sanjay Vimalbhai Deora Vs. CESTAT 2014 (306) ELT 533 (Guj.)
- Sanjay Vimalbhai Deora Vs. CESTAT 2014 (309) ELT A131 (Guj.)

4. I have carefully considered the submissions made by both the sides and perused the record. I find that there is a force in the counsel's submission that from the record it appears that the major work related to removal of goods is looked after by one Shri S.G. Pathak and the appellant's personal statement was not recorded. The statements which he has given to the investigating officer is on behalf of the Director accordingly, such statement can be used against the Director only and not anyone else.

However, the appellant being worked as DGM Finance ultimately all the transactions are finally booked in the books of accounts and for which the appellant is responsible as he was aware with the transaction made without payment of duty.

4.1 As regard the duty, the same has been admitted by the company therefore the evasion of duty is not under dispute. As regard the judgment cited by both the sides, I am of the view that as regard the penalty under Rule 26 each case has to be dealt with in its fact therefore, without relying to any judgment considering the involvement of the appellant, I am of the view that the appellant deserves for leniency therefore, I reduce the penalty from Rs. 10 lacs to Rs. 1 lac.

5. Therefore, the impugned order in respect of the present appellant is modified to the above extent. The appeal is partly allowed in the above terms.