CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 1154 of 2011

[Arising out of OIO-10/BRC-I/MP/2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s Mansa Cigarettes Pvt. Ltd .....**Appellant**
Plot No. 2006, Vasad Road, Village-Sarsa,
Anand, Gujarat

VERSUS

C.C.E. & S.T.- Vadodara-i .....**Respondent**
1st Floor, Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

WITH

1. **Excise Appeal No. 1155 of 2011 (Golden Tobacco Ltd)**
2. **Excise Appeal No. 1156 of 2011 (S.P. Malkoti)**
3. **Excise Appeal No. 1157 of 2011 (Jagdish Govindbhai Patel)**
4. **Excise Appeal No. 1158 of 2011 (A K Joshi)**
5. **Excise Appeal No. 1174 of 2011 (Dinesh Raj Kumar Sharma)**

[Arising out of OIO-10/BRC-I/MP/2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

APPEARANCE:

Sh. Vinod Kumar Bindal, CA & Ms. Sujata Shirolkar, Advocate for the Appellant
Shri. A. Mishra, Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11434-11439 /2019

DATE OF HEARING: 08.04.2019
DATE OF DECISION: 02.08.2019

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of Cigarettes falling under chapter Sub-Heading No. 24022020, Cigar falling under chapter Sub Heading No. 24021010 and cigarillos falling under chapter Sub Heading No. 24021020 of the First Schedule to Central Excise Tariff Act. A SCN dated 19.05.2010 was issued to the appellant wherein cigarette of brand "Golden Cigar" and the raw material totally valued at Rs. 1,84,22,502/- seized on 25.11.2009 was proposed to be confiscated under Rule 25(1) (d) and Rule 25 (1) (b) of Central Excise Rules, 2002. The finished goods brand "Golden Cigar" was proposed to be classified under chapter Sub Heading 24022030 as cigarette against the claim of the appellant that product is cigar and classifiable under chapter Sub Heading 24021010. The differential excise duty amounting to Rs. 62,47,758/- was proposed to be recovered under Section 11A(1) of Central Excise Act, 1944. The penalty was also proposed to be imposed under Section 11AC and Rule 25(1) of Central Excise Rules, 2002. The interest was also proposed to be demanded under Section 11AB of Central Excise Act, 1944 on the duty short paid / evaded. The SCN also proposes to impose personal penalty on Sh. Dinesh Raj Kumar Sharma, Sh. Santosh Kumar Sharma and all Director of M/s Mansa Cigarettes Pvt. Ltd under Rule 26(1) of Central Excise Rules 2002. The SCN also proposed confiscate of the goods seized from M/s Golden Tobacco Ltd and penalty under Rule 26(1) of the Central Excise Rules, 2002. The SCN also proposed to be impose personal penalty against various persons under Rule 26 of Central Excise Rules, 2002. The adjudicating authority vide the impugned order confirmed the demand as under:

(i) I order the classification of the finished goods of brand "Golden Cigaro" as Cigarette under Chapter Sub heading 2402 20 30.

(ii) I order to recover and confirm the differential Central Excise duty amounting to Rs.62,47,758/- (Rupees sixty two lakhs forty seven thousand seven hundred fifty eight only), as detailed in Annexure-B to the notice, on the finished goods viz. Golden Cigaro already removed by them under the cover of various invoices be recovered from M/s. Mansa Cigarettes Pvt. Ltd, Sarsa, Anand under Section 11A(1) of the Central Excise Act, 1944.

(iii) I impose penalty of Rs. 62,47,758/- (Rupees Sixty Two lakhs Forty Seven Thousand Seven Hundred Fifty Eight only)on M/s. Mansa Cigarettes Pvt. Ltd., Sarsa, Anand under Section 11-AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules'2002. However, in terms of the first proviso to Section 11AC of the Central Excise Act, 1944, where such duty as determined under sub-section (2) of Section 11A, and the interest payable thereon under Section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the duty so determined. In terms of the second proviso to Section 11 AC of the Central Excise Act, 1944, the benefit of such reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.

(iv) I order to recover the interest on the amount of duty confirmed above from M/s. Mansa Cigarettes Pvt. Ltd., Sarsa, Anand under the provisions of Section 11-AB of the Central Excise Act, 1944.

(v) I order for confiscation of 1338 Cartons (5619600 Nos.) of Cigarettes of the brand "Golden Cigaro" and the raw materials, as detailed in **Annexure A** to the notice, totally valued at Rs. 1,84,22,502.00, seized on 25.11.2009 at the factory premises of M/s Mansa, under Rule 25 of Central Excise Rules' 2002 read with Rule 28(1) of the Central Excise Rules, 2002. However, all the goods except 1338 cartons of cigarettes were sold off in auction proceedings and an amount of Rs. 1,30,872/- has been realized which is appropriated against that sold part of the confiscated goods. In respect of remaining goods which are not sold off i.e. 1338 carton of cigarettes, I give them an option to redeem them on payment of fine in lieu of the confiscation of Rs. 40,00,000/- (Rupees Forty Lacs only) under the provisions of Section 34 of the Central Excise Act, 1944.

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(vi) I order for confiscation of 3354778 Nos. of Cigarettes of the brand "Golden Cigaro" collectively valued at Rs 68, 93, 277/- at the time of seizure at M/s. Golden Tobacco Limited's various marketing divisions/depots and having total MRP of Rs 1,00,64,334/- (MRP @ Rs 3/- per cigarette) [detailed in Annexure C to the notice], under Rule 25 of Central Excise Rules' 2002 read with Rule 28 (1) of the Central Excise Rules, 2002. Since the goods in question were provisionally released on execution of bond supported by appropriate security (bank guarantee), which they could not produce at the time of adjudication, I impose fine in lieu of confiscation of **Rs. 28,75,000/- (Rupees Twenty Eight Lacs seventy Five Thousand only)** under the provisions of Section 34 of the Central Excise Act, 1944. I also enforce the said bond and order to recover fine in lieu of confiscation of Rs. 28,75,000/- by encashing the said Bank Guarantee by jurisdictional Divisional officer.

(vii) I impose penalty of Rs. 30,00,000/- (Rupees Thirty Lacs Only) upon M/s. Golden Tobacco Limited, Tobacco House, S. Vivekanand Road, Vileparle (W), Mumbai under Rule 26(1) of the Central Excise Rules, 2002 for dealing with cigarettes by mis-declaring them as 'Golden Cigaro' cigar as detailed in Annexure B to the SCN, which they knew were liable for confiscation;

(viii) I also impose penalty of **Rs. 10,00,000/- (Rupees Ten Lacs Only)** on Shri Dinesh Rajkumar Sharma, Director, M/s. Mansa Cigarettes Pvt. Ltd., Plot No. 2006, Vasad Road, Village-Sarsa, District Anand under Rule 26(1) of the Central Excise Rules, 2002.

(ix) I also impose penalty of **Rs. 10,00,000/- (Rupees Ten Lacs Only)** on Shri Santosh Kumar Sharma, Director, M/s. Mansa Cigarettes Pvt. Ltd., D-762,D- Block, Mandir Marg, New Delhi under Rule 26(1) of the Central Excise Rules, 2002.

(x) I also impose penalty of **Rs. 5,00,000/- (Rupees Five Lacs Only)** on Smt. Kalpana Vaidya, Director, M/s. Mansa Cigarettes Pvt. Ltd., D-762,D-Block, Mandir Marg, New Delhi under Rule 26(1) of the Central Excise Rules, 2002.

(xi) I also impose penalty of **Rs. 5,00,000/- (Rupees Five Lacs Only)** on Shri A. K. Joshi, Director(Finance), M/s. Golden Tobacco Limited, Tobacco House, S. Vivekanand Road, Vileparle (W), Mumbai under Rule 26 of the Central Excise Rules, 2002.

(xi) I also impose penalty of **Rs. 3,00,000/- (Rupees Three Lacs Only)** on Shri V.B. Pawaskar, Senior GM (Works), M/s. Golden Tobacco Limited, Tobacco House, S. Vivekanand Road, Vileparle (W), Mumbai under Rule 26 of the Central Excise Rules, 2002.

(xii) I also impose penalty of **Rs. 5,00,000/- (Rupees Five Lacs Only)** on Shri Viney Mehra, Director (Technical), M/s. Golden Tobacco Limited, Tobacco House, S. Vivekanand Road, Vileparle (W), Mumbai under Rule 26 of the Central Excise Rules, 2002.

(xiii) I also impose penalty of **Rs. 3,00,000/- (Rupees Three Lacs Only)** on Shri V.K. Singhal, Senior GM (Accounts) M/s. Golden Tobacco Limited, Tobacco House, S. Vivekanand Road, Vileparle (W), Mumbai under Rule 26 of the Central Excise Rules, 2002.

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(xiv) I also impose penalty of **Rs. 2,00,000/- (Rupees Two Lacs Only)** on Shri Jagdish Govindbhai Patel, Senior Manager (Personnel & Administration), M/s. Golden Tobacco Ltd., Darjipura,, Vadodara under Rule 26 of the Central Excise Rules, 2002.

(xv) I also impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on Shri S P Malkoti, Manager (Accounts), M/s. Golden Tobacco Ltd., Darjipura,, Vadodara under Rule 26 of the Central Excise Rules, 2002.

Being aggrieved by the impugned order, M/s Mansa Cigarettes Pvt. Ltd, M/s Golden Tobacco Ltd, Sh. S.P. Malkoti, Sh. Jagdish Govindbhai Patel and Sh. A. k. Joshi filed the present appeals.

2. Sh. Vinod Kumar Bindal Ld. CA with Ms. Sujata Shirlokar Ld. Advocate appeared for the appellant. He reiterating the grounds of appeal and made a detailed submission on the classification. As per his submission, the goods in question is small cigar, hence it is correctly classifiable under 24021010 and not under 24022030 as cigarette claimed by Revenue. He reduced his argument in writing and submitted detailed written submission on 25.04.2019 which was taken on record.

3. Sh. A. Mishra Ld. Joint Commissioner (AR) appearing on behalf of Revenue reiterates the findings of the impugned order.

4. Heard both the sides and perused the records. Before going into the entire case on merit, we find that the investigating authority has recorded statements of various persons. All the statements were relied upon in the SCN. The appellant strongly made request before adjudicating authority for cross examination of 18 persons, out of 18 persons only 1 person i.e. Chemical examiner was allowed to be cross examined and request for cross examination of other persons was turned down by the adjudicating authority on one or other pretext. The adjudicating authority has refused the cross examination on the ground that other persons are employees of the appellant and he also observed that the ample of evidence is available, therefore, no cross examination is required. We completely disagree with the adjudicating authority as provided under Section 9D of the Central Excise Act, it is incumbent on the adjudicating authority to cross examine the persons whose statements were recorded by the investigating agency, only thereafter such statements can be used for adjudication of the SCN. Since admittedly the adjudicating authority has refused cross examination of

17 persons, there is clear violation of principles of natural justice. We are of the view which is based on settled law that cross examination of witnesses is primary step to complete adjudication process. Therefore, in our view, the appellant should be given opportunity for cross examination of witnesses.

5. We therefore set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after observing the principles of natural justice. All the issues are kept open.

(Pronounced in the open court on 02.08.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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