

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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 239 of 2012

[Arising out of Order-in-Original No. OIO-27/MP/VAPI/2011 dated 28.12.2011 passed by Commissioner of Central Excise & ST, Vapi]

Moongipa Roadways Pvt Limited

.... Appellant

116, Kehavji Naik Road, Chinchbunder,
Mumbai, Maharashtra

VERSUS

Commissioner of Central Excise & ST, Vapi

.... Respondent

4th Floor, Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi,
Gujarat-396191

APPEARANCE :

Shri Ravinder Jain, Consultant for the Appellant
Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/10331 / 2020

DATE OF HEARING/ DECISION : 23.01.2020

RAMESH NAIR :

In this appeal, the appellant has challenged imposition of penalty of Rs. 2 Lakh under Rule 26 of Central Excise Rules, 2002/

2. Shri Ravinder Jain, learned Consultant appearing on behalf of the appellant submits that the appellant has not dealt with the goods and they have only issued LR's as per the instructions of main appellant. Since they are not dealing with the goods, penalty under Rule 26 of Central Excise Rules, 2002 is not imposable. He placed reliance on the following judgments:-

(a) 2004 (171) E.L.T. 421 (Tri. - Chennai) - CCE, Coimbatore vs. AL Matheswara Lorry Service

(b) 2003 (161) E.L.T. 165 (Tri. - Mumbai) - Chawla Highway Carriers vs. Commissioner of C. Ex, Mumbai

(c) 2008 (230) E.L.T 154 (Tri. - Ahmd.) - Vijay Transport Co. Limited vs. CCE, Daman

(d) 2017 (352) E.L.T 81 (Tri.- Mumbai) V-Trans (India) Limited vs. Commissioner of Central Excise, Thane

(e) 2014 (312) E.L.T 803 (Tri. - Mumbai) - Nirmal Transports vs. Commissioner of Central Excise, Pune

(f) 2014 (311) E.L.T. 465 (Tri. - Del.) Santosh Tobacco vs. CCE, Delhi

3. Shri Sanjiv Kinker, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue, at the outset submits that, this is a co-appellant, and against the main appellant and other appellants, this Tribunal remanded the matter vide order No. A/11009-11011/2014 dated 22.05.2014, therefore this matter also needs to be remanded.

4. Heard both sides and perused the record. We find that in the present appeal there is penalty of Rs. two lakh on the appellant which is consequential to the confirmation of demand against the main appellant i.e. M/s. Jaydeep Tubes Pvt. Limited and since the appeal of M/s. Jaydeep Tubes Pvt. Limited has been disposed of by way of remand for passing denovo order, in the interest of justice, we are of the view that this matter should also go back to the Adjudicating Authority for passing fresh order. Accordingly, the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)