Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12846 of 2013 - SM

(Arising out of OIO-25-27-MP-VAPI-2012 dated 26/11/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Arvindkumar Mithalal Jain ....**Appellant**
Partner Of Bhiksu Margam, Plot No. 73-76, S No. 200-1-2b,
Nanji Industries Estate Kharadpada,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi ......**Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

WITH

Excise Appeal No. 12847 of 2013 - SM

(Arising out of OIO-25-27-MP-VAPI-2012 dated 26/11/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Nirmal Shanti Lal Jain ....**Appellant**
Partner Of Bhiksu Margam, Plot No. 73-76, S No. 200-1-2b,
Nanji Industries Estate Kharadpada,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi ......**Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

AND

Excise Appeal No. 12880 of 2013 - SM

(Arising out of OIO-25-27-MP-VAPI-2012 dated 26/11/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Anand Kumar Menon Manager Of Bhikshu Margam ....**Appellant**
Plot No. 73-76, S No. 200-1-2b,
Nanji Industries Estate Kharadpada,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi ......**Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191

APPEARANCE:
Shri Hasit Dave, Advocate appeared for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10745-10747 /2023

DATE OF HEARING: 08.02.2023
DATE OF DECISION: 29.03.2023

RAMESH NAIR

This appeals are directed against Order- In- Original passed by the Commissioner of Central Excise, Customs and Service Tax-VAPI whereby the present appellants were imposed penalty of Rs. 10,000/ - under Rule 26 of Central Excise Rules, 2002 in connection with case of mis-classification of polished marbles, slabs and tiles held to be classified under Chapter sub heading No. 68022190 and 6802211 respectively instead of assessee's claim under chapter sub-heading 25151220 and 25151290 respectively.

2. Shri Hasit Dave, Learned Counsel appearing on behalf of the appellant submits that the issue involved in the main case is classification of polished marbles, slabs and tiles. The appellant had been paying duty regularly. Therefore, as per bona fide belief even the differential duty demanded by the impugned order has been paid along with interest. Therefore, there is no mala fide intention to evade payment of duty. Hence the penalty is not imposable on the appellants. Alternatively, he submits that as regard the appeals filed by the Shri Arvindkumar Mithalal Jain and Shri. Nirmal Shantilal Jain, they are partners of the company on which penalty was already imposed under section 11 AC. He submits that in case of partnership once the penalty is imposed on the partnership firm no separate penalty can be imposed on partners.

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the record. On the present appellants penalty was imposed under Rule 26 of Central Excise Rules, 2002 . The main case made out against the partnership firm is the classification of goods manufactured by the appellant's firm. It is fact on record that the appellant's firm was registered and paying excise duty. The department has contended that the goods are wrongly classified and by interpreting the tariff entry came to the conclusion that due to mis- classification of goods there is the differential

duty demand. In this case since the appellant firm has been clearing the goods on payment of duty, the fact was known to the department. Therefore, only in case of interpretation of classification it cannot be alleged that the appellants have actively involved with intention to evade the duty. Therefore, in the case of classification issue the penalty under Rule 26 cannot be imposed.

4.1 As regard the appellant namely Shri. Arvind Mithalal Jain and Shri. Nirmal Shantilal Jain, they are the partners of the Partnership firm. Against the Partnership firm duty demand and penalty has been confirmed . As of now it has been settled by various high courts including the jurisdiction High Court of Gujarat that in case of Partnership firm no separate penalty on partners can be imposed. Relevant judgments are cited as under :-

- Commissioner of Central Excise vs. Jai Prakash Motwani – 2010 (258) ELT 204 (Guj.)
- Pravin N Shah – 2017 (52) STR 217 (Guj.)
- Soni Ceramics and Dineshbhai Patel Vs. CCE & ST – Ahmedabad-III – 2022 (5) TMI 7 – CESTAT
- Gautam Cables Industries – 2003 (152) ELT 139 (Tri. Del)

In view of above discussion and findings, I do not find this a fit case for imposition of penalty on the appellants. Accordingly the penalties are set aside. Appeals are allowed.

(Pronounced in the open court 29.03.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

Geeta