CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 10597 OF 2015

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-002-COM-031-14-15 dated 06.01.2015 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

YOGESHKUMAR D VARSHI **Appellant**
204a, Arihant Park Apartment,
Lambe Hanuman Road,
Surat, Gujarat

Vs.

CCE & ST-SURAT-II **Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,Gujarat-395001

Appearance:
Present for the Appellant :Shri S.Bissa, Advocate
Present for the Respondent: Shri A R Kanani, Superintendent (AR)

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Date of Hearing/ Decision : **21/08/2024**

FINAL ORDER NO. 11823/2024

SOMESH ARORA

In this case allegation sustained is that appellant has connived with the main accused, who availed credit on bogus tax invoices. The status of the main accused and whether it is before this Tribunal could not be ascertained by both sides. In the instant case penalty has been imposed by the learned Commissioner as Adjudicating Authority under Rule 25 amounting to Rs. 10 lakhs for the alleged role.

2. Learned Advocate pleads that despite submitting before the Commissioner that Rule 25 is not applicable against any individual and firm, the same has not been considered and penalty has been imposed

contrary to the statutory provision. He also seeks to place reliance on various decisions as following :-

- Mohid Bearing Agency V/s. CCE, Delhi-1 2018(362) ELT 278 (Tri.Del.)
- Pharmaica V/s. CCE, Thane-II 2017(349) ELT 765 (Tri.-Mumbai)
- CCE, Delhi-I V/s. Balaji Trading Co. 2013(290) ELT 200 (Del.)
- NGA Steels P.Ltd. V/s. CCE, Salem 2010(252)ELT 395 (Tri.-Chennai)

His point of emphasis is that it has been consistently held that the Rule 25 is applicable in case manufacturer or registered person is alleged to have violated the provision of Rule 25. He particularly relied upon decision of CCE V/s. Balaji Trading Company as reported in 2013 (290) ELT 200. (Tri.-Del.) which considered the scope of Rule 25 and held that the same could not be applied where person involved is other than that A) producer B) manufacture C) registered person D) registered dealer. The relevant paras are reproduced below :-

> *"4. The Commissioner passed an order-in-original dated 31-10-2011, whereby the said penalties were imposed on the respondents under Rule 25 of the said Rules. Rule 25 of the said Rules reads as under*
>
> *RULE 25. Confiscation and penalty. (1) Subject to the provisions of Section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer,-*
>
> *(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules or*
>
> *(b) does not account for any excisable goods produced or manufactured or stored by him, or*
>
> *(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section of the Act or*
>
> *(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,*

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in Clause (a) or Clause (b) or Clause (c) or Clause (d) has been committed, or rupees two thousand, whichever is greater.

(2)xxx

5. The Tribunal, however, allowed the appeals of the respondents by holding that Rule 25 does not apply of the respondents as it was not the case of the prosecution that the respondents were producers, manufacturers, registered persons of a warehouse or registered dealers. It is pertinent to note that Rule 25(1) specifically mentions four categories of persons (a) producer, (b) manufacturer, (c) registered person of a warehouse, or (d) a registered dealer These four categories of persons are also mentioned at the end of Rule 25, where the liability of penalty has been spelt out. It is, therefore, clear that the penalty can be imposed on such persons only. The respondents are neither producers nor manufacturers of the said Prabhat Zarda nor are they the registered persons of a warehouse in which the said zarda had been stored. The respondents are also not the registered dealers. That being the case, no penalty can be imposed on the said respondents. The Tribunal has come to the correct conclusion, particularly, as it was not the case of the prosecution that the respondents fell within any one of the four categories of persons mentioned above.

6. The leaned counsel for the appellant contended that Rule 25(1)(c) would be applicable. However we do not agree with this contention because sub-clause (c) would apply only in respect of the four categories of persons mentioned in the earlier part of Rule 25(1) of the said Rules. That is clearly not the case. Therefore, Rule 25(1)(c) would have no application in the present case."

3. Learned AR reiterates finding of the learned Commissioner and supports penalty as imposed under Rule 25.

4. Considered. This Court as of the view that learned Commissioner has imposed penalty on the present appellant of Rs. 10 lakhs going beyond the scope of statutory provision as upheld by this Tribunal as

well as Hon’ble High Court of Delhi. Respectively, following above decisions as well as looking at the scope of Rule 25 this Court, is of the view that the penalty as imposed on this appellant, is not maintainable. Same is therefore set aside.

5. Appeal is allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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