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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 12381 of 2014- DB

(Arising out of OIO-AHM-EXCUS-003-COM-058-059-13-14 dated 18/03/2014 passed by Commissioner of Central Excise-AHMEDABAD-III)

J M Joshi ....**Appellant**
J M J House, Orchard Avenue,
Hiranandani Gardens,powai,
Mumbai, Maharashtra,

VERSUS

Commissioner of C.E. & S.T.-Ahmedabad-iii ......**Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat- 380009

WITH

(i) EXCISE Appeal No. 12383 of 2014- DB (Vinayak Kashiram Sawant)
(ii) EXCISE Appeal No. 12384 of 2014- DB (Sachin J Joshi)
(iii) EXCISE Appeal No. 12385 of 2014- DB (Balraj Maurya)

APPEARANCE:
Shri J C Patel & Shri Rahul Gajera, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 12290-12293/2024

DATE OF HEARING: 24.06.2024
DATE OF DECISION: 01.10.2024

RAMESH NAIR

The present appeals arise out of Order-In-Original dated 18-3-2014 passed by the Commissioner of Central Excise, Ahmedabad – III. The main appellant Shree Meenakshi Food Products Private Limited (herein after "SMFPPL), against whom duty demand was confirmed, is liquidated and hence the appeal of the said appellant was dismissed as infructuous in terms of Rule 22 of CESTAT Procedure Rules vide this Tribunal Order No. 11393/2024 dated 29.02.2024.

1.1 The issue involved in the present appeals is therefore limited to sustainability of penalties imposed on the other appellants under Rule 26 of the Central Excise Rules 2002 on the ground of alleged aiding and abetting evasion of central excise duty payable under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 is sustainable in law or otherwise. The Appellant, Shri J. M. Joshi, was Director of SMFPPL prior to 7-10-2000 and he resigned as Director of SMFPPL with effect from 7-10-2000. The Appellant, Shri Sachin J. Joshi, is son of Shri J.M.Joshi and was authorized to operate Bank accounts of SMFPPL for the period from January 2009 to March 2011. The appellant Vinayak Kashiram Sawant was the Director of SMFPPL from 17.5.2008 to 11.4.2011. The appellant Balraj Maurya was the Authorized Signatory of SMFPPL.

1.2 Briefly, the facts of the case are that SMFPPL having their factory at Plot No.901, GIDC, Sector 28, Gandhinagar, Gujarat-3802028, was engaged in the manufacture of Gutkha (Pan Masala containing Tobacco).

It appears from the record that on 1-3-2011, SMFPPL filed with Central Excise department, Declaration in Form 1, under Rule 6 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 issued under Section 3A of the Central Excise Act 1944, giving particulars of 62 Machines for packing of Gutkha. A revised declaration in respect of the said 62 machines was filed on 4-3-2011 and the said Machines were duly verified by the Range officers on 4-3-2011. As per the said declaration filed on 4-3-2011 by SMFPPL, 54 Machines were to be used for packing Pouches of Gutkha having MRP of Rs.1/-, 5 Machines were to be used for packing Pouches of Gutkha having MRP of Rs.2/- and 3 Machines were to be used for packing Pouches of Gutkha having MRP of Rs.3/-. It is the department's case that upon visit to factory of SMFPPL by Officers of DGCEI, Delhi, on 12/13-3-2011, it was found by the said officers that the said 62 machines were in operation, of which, 44 Machines were being used to manufacture Pouches having MRP of Rs.2/- and 18 Machines were being used to manufacture Pouches having MRP of Re.1/-. It was further found that SMFPPL had failed to pay the duty by the 5th of March 2011 and failed to file intimation of such payment, as required by Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008.

1.3 Further, it is the department's case that since the Machines were not used as per the declaration filed under Rule 6, duty was payable on all goods manufactured in March 2011 at the highest of the MRPs i.e. Rs.3/-.

1.4 It appears from the record that the duty so calculated by the department along with interest thereon, aggregating to Rs.15,37,00,390/- was paid up by SMFPPL in March 2011 itself. And that 99,86,450 Pouches/ Sachets which were packed and were lying within the factory premises on the day of search i.e. 12/13-3-2011 were seized on the ground that the same were not packed in accordance with the declaration made under Rule 6.

1.5 The following statements were thereafter recorded by the department:

a) Statement dated 12-3-2011 of Dilip Amrutlal Jani, Director of SMFPPL, wherein, he inter alia, stated that he is Director of SMFPPL since last 6 months and that he was supervising the production of Gutkha at and controlling the Gandhinagar factory of SMFPPL;

b) Statement dated 12-3-2011 of Pradip Sharma, Plant Supervisor, in which he inter alia, stated that since last three and half years, he was supervising the packing of the finished goods,

c) Statement Dated 12-3-2011 of Lalan Singh, who inter alia, stated that he was working in the mixing department since last two years,

d) Statement dated 12-3-2011 of Priyank Gala, who, inter alia, stated that he was working as Operator in Katha mixing department since last 2 years and that he worked as per directions of Dilip Jani,

e) Statement dated 12-3-2011 of Ganeshram Meghwal, who, inter alia, stated that he was working in Packing department since one month,

f) Statement dated 12-3-2011 of Ganga Singh, who was working as Gate keeper,

g) Statement dated 24-8-2011 of Balraj Maurya, authorized representative of SMFPPL, who inter alia, stated that he looked after day to day excise matters of SMFPPL. He followed instructions of Dilip Jani. He further stated that Dilip Jani received instructions from Mumbai office of SMFPPL. He however, did not know who controlled Mumbai office. He stated that Gutkha was produced as per directions of Dilip Jani, who received message from Mumbai office. He stated that the Daily Stock Register and Sales Invoices had been taken over by Dhule Police and local Sales Tax authority,

h) Statement dated 30-5-2011 of Manoj Kumar, Director of SMFPPL, wherein, he inter alia, stated that he joined as Director on 1-7-2010 and resigned as Director on 30-4-2011. Except him, no other Director was at the Registered Office. He was not aware whether employees of SMFPPL worked under the directions of J.M.Joshi and Sachin J. Joshi.

i) Statement dated 27-6-2011 of Vinayak K. Sawant, Director of SMFPPL, in which he inter alia, stated that he was Director of SMFPPL from 17-5-2008 to 11-4-2011, when he looked after the Silvassa unit of SMFPPL. He stated that Dilip Jani looker after Gandhinagar unit of SMFPPL. He was not aware as to who overall supervised the three units of SMFPPL.

j) Statement dated 14-7-2011 of Umesh Singh Gehlot, Director of SMFPPL, in which he inter alia, stated that he was Director of SMFPPL since 2009 and looked after its unit in Andhra Pradesh. He left SMFPPL on 18-3-2011.

k) Statement dated 24-8-2011 of Ashok Kumar Vikram Singh, Director of SMFPPL, in which he inter alia, stated that he was Director of SMFPPL since 30-9-2010 and that the Gandhinagar unit of SMFPPL was being looked after by Dilipbhai A. Jani as Director since 30-9-2010,

l) Statement dated 6-9-2011 of the Appellant, J.M.Joshi, in which he inter alia, stated that he was Director of SMFPPL since 1994 and he resigned as Director on 7-10-2000 and also sold his shares in April 2011. He had no control over and was not related to the manufacturing activity of SMFPPL, which was looked after by its Director Dilip Jani. He had sold the GOA brand bearing his photo to GT & T Ajman, UAE.

m) Statement dated 2-11-2011 of the Appellant, Sachin J. Joshi, in which he inter alia, stated that except being authorized to operate Bank accounts of SMFPPL during the period 2008 to March 2011, he was never associated with SMFPPL in any manner. He denied that J.M.Joshi and he looked after production of SMFPPL.

1.6 It appears from the record that a Show Cause Notice dated 9-9-2011 was issued to SMFPPL proposing confiscation of the goods under Rule 17 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008 and proposing imposition of penalty on SMFPPL under the said Rule 17. The Appellants were not made parties to the said Show Cause Notice dated 9-9-2011 and no penalty was proposed to be imposed on the Appellants by the said Show Cause Notice dated 9-9-2011. Thereafter, another Show Cause Notice dated 31-8-2012 was issued to SMFPPL, demanding Central Excise duty of Rs.15,24,00,000/- under Section 11A (4) of the Central Excise Act 1944 along with interest under Section 11AA of the said Act read with Rule 9 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008 and seeking to appropriate against the said demand, the sum of Rs.15,37,00,390/- deposited by SMFPPL in March 2011. The said Show Cause Notice dated 31-8-2012 proposed imposition of penalty on the Appellants under Rule 26 of the Central Excise Rules 2002, on the ground that the Appellant had knowingly and deliberately aided and abetted SMFPPL to evade payment of the said Central Excise duty.

1.7 The Appellants, J. M. Joshi and Sachin J. Joshi replied to and contested the said Show Cause Notice dated 31-8-2012 by their letters dated 17-12-2012 and 31-12-2012 respectively, whereby, the Appellants inter alia submitted that the Appellants were not involved in the manufacture and clearance of goods by SMFPPL. It was submitted that the Appellants' statements were exculpatory and they had in their statements categorically denied that they looked after the production of SMFPPL. It was submitted that since the department's case was based merely on statements of others, the Appellants were entitled to cross-examine the persons whose statements were relied upon in the Show Cause notice and accordingly the Appellants sought such cross-examination. The appellants Vinayak Kashiram Sawant and Balraj Mauraya also filed their reply dated 31.12.2012 and interalia submitted that their statements were exculpatory in as much as there was no admission that they filed the said declaration with intent to suppress the production and pay lesser duty and further submitted that ingredients of Rule 26 is not attracted in absence of goods having been held liable to confiscation.

1.8 The Commissioner of Central Excise, Ahmedabad-III, passed Order-in-original dated 18-3-2014, by which he has imposed penalty of Rs. 3,81,00,000/- each on the Appellants under Rule 26 of the Central Excise Rules 2002, on the ground of aiding and abetting SMFPPL in the evasion of Central Excise duty. It is against this Order-In-Original dated 18-3-2014, the appellants are in appeal.

2. Shri. J C Patel learned counsel, appearing for the appellants, J M Joshi and Sachin J Joshi and Shri. Rahul Gajera, Advocate appearing for the appellants, Vinayak Kashiram Sawant and Balraj Maurya submitted that the findings recorded by the Commissioner in the Order-in-Original are mere ad-verbatim reproduction of the Show Cause Notice, without dealing with the various submissions and case law cited by the Appellants. The only submission dealt with by the Commissioner is the Appellant’s request for cross-examination, which has been denied by him. It was further pointed out that the issue stands settled in the Appellants’ favour by decision of this Hon’ble Tribunal in the Appellants’ own case, reported as Meenakshi Food Products (P) Ltd v CCCE- 2019 (370) ELT 1330.

3. Shri Tara Prakash, Learned Assistant Commissioner, Authorized Representative appearing for the department reiterated the findings given in the Order-In-Original.

4. Heard both sides and considered submissions made by both the sides. We take the matter of appellants, J M Joshi and Sachin J Joshi first. It is noticed that on identical facts pertaining to the period April 2011 this Tribunal has already by its decision in Meenakshi Food Products (P) Ltd v CCE – 2019 (370) ELT 1330 held in the Appellants' favour and set aside the penalty imposed on the Appellants under Rule 26 of the Central Excise Rules 2002. The relevant extract of the said judgment is as under:-

> ***"7.*** *Heard both the sides and perused the records. We find that the Unit had filed declaration on 1-4-2011 in terms of Rule 6 of PMPM Rules wherein they declared the details of packing machines to be used for packing of Gutkha along with specific MRP of the pouches. However the unit was found to be engaged in packing pouches of higher MRP in contravention of declaration filed by them under Rule 6 of PMPM Rules, 2008. Clearly the Appellant unit contravened the provisions of Rule 6(6), 7 and 9 of the PMPM Rules, 2008 and since the notified goods were manufactured in contravention of their declaration, therefore as per the provisions of Rule 9 of the PMPM Rules, 2008 the rate of duty applicable to goods of Highest RSP, Rs. 3 in this case will be applicable in respect of all packing machines operated by the Appellant and they are liable to pay duty as per said RSP on all machines. The language of Rules is absolutely clear in this regard and leaves no scope of any doubt. We thus hold that the duty demand is sustainable and the impugned order inasmuch as it relates to central excise duty liability on the basis of Highest retail sale price i.e. Rs. 3, interest on duty and penalty on Appellant Unit as imposed by the adjudicating is legal and we do not find any reason to interfere with the same. Therefore the impugned order inasmuch as it relates to demand of duty and penalty against the appellant company is concerned is upheld.*
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> ***8.*** *Coming to the personal penalty imposed upon the Appellant Shri Dilipkumar Amrutlal Jani, director of the Appellant Unit and Shri Jagdishprasad Mohanlal Joshi and Shri Sachin Joshi we find that at the time of the visit of the officers, the affairs of the unit was being found to be managed by Shri Dilipkumar Amrutlal Jani as stated by Production Supervisor Shri Pradeep G Sharma, Labour Supervisor, Shri Narpatsingh Kishorsingh Khichi and Shri Pappuram Mangaram and Authorised signatory Shri Balraj Chamansingh Maurya. Shri Dilipkumar Amrutlal Jani in his statement dated 25-4-2011 also agreed with the facts of panchnama dated 21/22-4-2011 and also agreed with the verification of machines. He also*

accepted filing declaration and was aware of the law that the 'Guthka' is notified goods and manufactured in Appellant's Unit. In such case we find that the director Shri Dilipkumar Amrutlal Jani being managing the affairs of the unit was responsible for violation of Rule 6 of PMPM Rules, 2008. The impugned goods were manufactured in violation of Rule 6 of PMPM Rules, 2008 and since Shri Dilipkumar Amrutlal Jani being involved in violation of subject rules being director of the unit is liable for penalty. However considering the amount of duty and imposition of penalty on the company, we are of the view that personal penalty imposed upon Shri Jani is on higher side, which requires reduction. Therefore we find it appropriate to reduce the penalty, accordingly penalty imposed upon Shri Dilipkumar Amritlal Jani is reduced from Rs. 5,00,00,000/- to Rs. 4,00,00,000/-. Therefore the impugned order against Shri Dilipkumar Amrutlal Jani is modified to the above extent.

9. *As regard penalty upon Shri Jagdish M. Joshi and Shri Sachin Joshi, we find that no involvement of above persons is on record. We do not find any act committed by both Appellants to evade payment of duty or to violate the Pan masala packaging Rules. Shri Dilipkumar Amrutlal Jani has not named any of these persons to be involved in any act of violation of law nor any of the persons whose statements has been relied upon i.e. production Manager or Supervisors has named the Appellants to be involved in any act of violation. The show cause notice has relied upon the statements of employees Shri Maurya, Shri Manoj Kumar, Shri Sawant, Shri Gehlot, Shri Gautam recorded in relation to some other case booked by the DGCEI against the Appellant Unit to hold both the Appellant's responsible for alleged violation in present case. However we find that in the present case no involvement of these Appellants is on record. The Appellant had sought cross examination of the aforesaid persons which has been denied by the adjudicating authority. In such case when the statements were not recorded in investigation of present case, the same cannot be relied upon. Even also in absence of cross examination in terms of Section 9D of the Central Excise Act, 1944, these statements cannot be relied upon. We find that Shri J.M. Joshi was not a director of SMFPPL since year 2000 and that he had sold all his shares even before the investigation in the instant case had begun. None of the witnesses has made any statement to the effect that the Appellants were aware of or involved in the alleged clandestine removal by SMFPPL. Also Shri Sachin Joshi was not even director of the Appellant Unit at any point of time. There is no acceptance of the any of two Appellants to manage the affairs of the unit. The Ld. Adjudicating authority has relied upon Sections 266 and 270 of the Companies Act and to hold that Shri Dilipkumar Amrutlal Jani is director for namesake only and the Appellants hold the company. We find that even before the present case the shares were transferred by the Appellant and he was not even shareholder. Even if assumed to be that he was holding shares, then too without any evidence it cannot be said that any of the Appellant was involved in violation of any law. The adjudicating authority has relied upon Section 266 of the Companies Act, to hold that a person cannot become director if he does not hold any shares. However we find that the sub-section (1) is applicable only where the company is filing a prospectus of an intending company. It is not applicable in case of an existing company. Further sub-section 5 of Section 266 clearly states that the section shall not apply to a private company. In the present case the Appellant unit is a private Ltd. company and hence*

Sections 266 is not applicable to the present case. Therefore the contention of adjudicating authority is incorrect.

10. *As regard applicability of Section 270, it is submitted that said section is applicable to the person named in Articles of Association as director. It is not applicable to appointment of subsequent directors or nominated directors. Pertinently the Articles of Association of the appellant company permits a person to be director even if he is not a shareholder. We also find that penalty has been imposed under Rule 26 on the Appellant. The said section is applicable on person involved in clearance of goods by different ways as enumerated in Rule 26. Whereas, in the present case the duty demand has been made by interpreting the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and not on basis of clearance of goods. There is no evidence that any of both the Appellants has concerned himself in transporting, depositing, selling or purchasing of excisable goods which they knew or had reason to believe that the goods were liable for confiscation. There is no findings that the Appellants had played role in acquiring, possessing of, or Appellants were in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealt with, any excisable goods which they knew or had reason to believe were liable for confiscation under Central Excise Act, 1944 or the Rules. Therefore penalty under Rule 26 cannot be imposed. Moreover, it is also seen that in the present case, there was no proposal to confiscate goods. Hence for this reason also the penalty under Rule 26 cannot be imposed. Even above all we do not find any involvement of Appellant in alleged act of violation. Shri J.M. Joshi was director only till year 2000 and no involvement of him or Shri Sachin Joshi who was previously authorised signatory is appearing on record or either through statement of any person. Therefore in absence of any evidence of involvement of both of these persons in any act of violation of Pan Masala Packing Machinery Rules, 2008 or central excise law, we do not find any reason to impose penalty upon them. We therefore set aside the impugned order only to the extent, it imposes penalty upon Shri J.M. Joshi and Shri Sachin Joshi, resultantly the penalty on both of these persons is set aside.*

11. *As a result of our above discussions and observations, appeal filed by M/s. Meenakshi Foods Pvt. Ltd. is dismissed, appeal filed by Shri Dilip Kumar Amritlal Jani is partly allowed in the above terms and appeals filed by Shri J.M. Joshi and Shri Sachin Joshi are allowed."*

4.1 It follows from the aforesaid decision that:-

a) There is no involvement of the Appellants, J.M.Joshi and Sachin Joshi and there is no act committed by them to evade payment of duty or to violate the Pan Masal Packaging Rules.

b) That the Director of SMFPPL, Dilipkumar Jani, production Manager and Supervisor, in their statements have not stated that J.M.Joshi and Sachin Joshi were involved in the act of violation i.e. operation of the packing machines contrary to the declared plan. None of the witnesses have stated that the Appellants were involved in the alleged clandestine removal of goods by SMFPPL,

c) In any event, in absence of cross-examination being granted of persons whose statements are relied upon, no adverse finding against the Appellants can be arrived at on the basis of such statements,

d) J.M.Joshi had resigned as Director in 2000 and Sachin Joshi was never director of SMFPPL,

e) There is no confession in the statements of J.M.Joshi and Sachin Joshi,

f) Commissioner has wrongly relied upon Sections 266 and 270 of the Companies Act 1956 to hold that Dilip Jani, Director of SMFPPL, who was controlling the operation of SMFPPL, could not have been appointed as Director since he did not hold Shares in SMFPPL. The said Sections had no application in the present case,

g) Mere ownership of Shares by J.M.Joshi cannot make him liable to penalty under Rule 26 of the Central Excise Rules 2002,

h) The said Rule 26 can apply only to a person who is involved in the clearance of goods by different ways enumerated under Rule 26, whereas in the present case, duty demand had been made on interpretation of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008. There is no evidence and finding of the Appellants’ role in acquiring, possessing or being concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with exciseable goods with knowledge or reason to believe that the same were liable to confiscation under the Central Excise Act 1944 or the Central Excise Rules 2002,

i) The Show Cause Notice to which the Appellants were made parties, was not for confiscation of goods and for that reason also, Rule 26 did not apply.

4.2 We find that the aforesaid findings equally apply in the present case. It is further observed that Statements of the appellants, J. M. Joshi and Sachin J Joshi are exculpatory and there is no confession on their part of being in any way involved in the alleged contravention committed by SMFPPL of operating the Pan masala Packaging Machines differently from that declared by SMFPPL under Rule 6 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008. We find that the entire case of the department is based merely on statements of various persons however, the cross-examination was denied by the Commissioner despite specific request to grant such cross-examination was made. Hence, no reliance can be placed on such statements as laid down in the following judgments that, as provided in Section 9D of the Central Excise Act 1944, a Statement of any person recorded under the said Act, shall be relevant in adjudication only when such person is examined in the adjudication proceedings:-

- Basudev Garg v CC – 2013 (294) ELT 353
- Andaman Timber Industries v CC – 2015 (324) ELT 641 (SC)
- Kelvin Industries v CCE- 2023 (3) CENTAX 252.

4.3 It is further observed that in any event, none of the statements which have been relied upon in the Show Cause Notice establish the said Appellants' involvement in the alleged contravention committed by SMFPPL of operating the Pan masala Packaging Machines differently from the Plan declared by SMFPPL under Rule 6 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008. It is evident from Statement dated 12-3-2011 of Dilip Amrutlal Jani, Director of SMFPPL, that he was Director of SMFPPL since last 6 months and that he was supervising the production of Gutkha at and controlling the Gandhinagar factory of SMFPPL. He has nowhere stated that the Appellants were supervising and controlling the Gandhinagar factory of SMFPPL. The Plant Supervisor, Pradip Sharma, Lalan Singh, worker in Mixing department, Ganga Singh, Gatekeeper and Ganeshram Meghwal working Packing department, in their statements dated 12-3-2011 have nowhere stated that they were working as per the directions of the Appellants or that the Appellants were in charge of the day to day working of SMFPPL or involved with the production and clearance of goods from SMFPPL. In his statement dated 12-3-2011, Priyank Gala, Operator in Katha Department has stated that he was working as per directions of Dilip Jani and he has nowhere stated that he was working as per the directions of the said Appellants, In his Statement dated 24-8-2011, appellant Balraj Maurya, authorized representative of SMFPPL, who looked after day to day excise matters of SMFPPL, stated that he followed instructions of Dilip Jani. He further stated that Dilip Jani received instructions from Mumbai office of SMFPPL. He however, did not know who controlled Mumbai office. He stated that Gutkha was produced as per directions of Dilip Jani, who received message from Mumbai office. In his Statement dated 30-5-2011, Manoj Kumar, Director of SMFPPL, has stated that he was not aware whether employees of SMFPPL worked under the directions of J. M. Joshi and Sachin J. Joshi. In his Statement dated 27-6-2011, appellant Vinayak K. Sawant, Director of SMFPPL, has stated Dilip Jani looked after Gandhinagar unit of SMFPPL. He was not aware as to who overall supervised the three units of SMFPPL and that he looked after Silvassa plant. In his Statement dated 24-8-2011, Ashok Kumar Vikram Singh, Director of SMFPPL, has stated that the Gandhinagar unit of SMFPPL was being looked after by Dilipbhai A. Jani as Director since 30-9-2010. In view of the aforesaid statements, it is clear that it was Dilip A. Jani, Director of the SMFPPL, who was looking after the production and clearance of SMFPPL and not the Appellants. This is also the finding of this Hon'ble Tribunal in the said decision in Meenakshi Food Products (P) Ltd v CCE – 2019 (370) ELT 1330.

4.4 It is further observed that the ground on which the Commissioner has imposed penalty on the Appellants does not satisfy the ingredients of Rule 26 of the Central Excise Rules 2002. It is an admitted fact that the Appellants were not made parties to Show Cause notice dated 9-9-2011, which proposed confiscation of the goods and imposition of penalty on SMFPPL. The Appellants were made party only to Show Cause Notice dated 31-8-2012 which demanded duty from SMFPPL by interpreting the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules 2008. This Show Cause Notice dated 31-8-2012 proposed imposition of penalty on the Appellants under Rule 26 of the Central Excise Rules 2002. As held by this Hon'ble Tribunal in Meenakshi Food Products (P) Ltd v CCE – 2019 (370) ELT 1330, the said Rule 26 can apply only to a person who is involved in the clearance of goods by different ways enumerated under Rule 26, whereas in the present case, duty demand had been made on interpretation of the Pan Masala Packing Machines (Capacity

Determination and Collection of Duty) Rules 2008. There is no evidence and finding of the Appellants' role in acquiring, possessing or being concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with exciseable goods with knowledge or reason to believe that the same were liable to confiscation under the Central Excise Act 1944 or the Central Excise Rules 2002. Therefore, imposition of penalty under Rule 26 is liable to be set aside. The Show Cause notice dated 31-8-2012 proposed imposition of penalty on the Appellant under Rule 26 of the Central Excise Rules 2002, on the ground of aiding and abetting SMFPPL in the evasion of Central Excise duty. The Order-in-original also imposes penalty on the Appellant under said Rule 26 on the ground of aiding and abetting SMFPPL in the evasion of Central Excise duty. As held by this Hon'ble Tribunal in Meenakshi Food Products (P) Ltd v CCE – 2019 (370) ELT 1330 this is not a ground prescribed under Rule 26 for imposition of penalty. There is no finding of the Appellants' role in acquiring, possessing or being concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with excisable goods with knowledge or reason to believe that the same were liable to confiscation under the Central Excise Act 1944 or the Central Excise Rules 2002. Therefore, imposition of penalty under Rule 26 is liable to be set aside. As held by the Hon'ble Tribunal in Meenakshi Food Products (P) Ltd v CCE – 2019 (370) ELT 1330**,** the Show Cause Notice to which the Appellants were made parties, was not for confiscation of goods and for that reason also, Rule 26 did not apply.

4.5 It has been further argued that Rule 26 of the Central Excise Rules 2002 can have no application in case of Compounded Levy under Section 3A and the Rules thereunder which are a separate and complete scheme as regards demand for duty, confiscation and penalty. However, since we have decided the issue on merits, we are not giving any finding on this issue and the same is kept open.

4.6 In view of above discussion and findings, impugned Order imposing penalty upon the appellants, J M Joshi and Sachin J Joshi cannot be sustained. Therefore penalty imposed upon the appellants under Rule 26 is hereby set aside.

4.7 As regards, the appellant namely Vinayak Kashiram Sawant, the Director of SMFPPL, it appears from the records that he looked after Silvassa plant of SMFPPL, further Dilip Jani, Director of SMFPPL ,Gandhinagar has admitted that he was looking after production and clearance of goods at Gandhinagar factory. As such, we find that he was not concerned with the activities of SMFPPL, Gandhinagar. In that view, penalty imposed upon him under Rule 26 is hereby set aside.

4.8 The appellant, namely Balraj Maurya, authorized person and authorized signatory of SMFPPL, it appears from records that he was the person responsible for and looking after day to day activities relating to central excise including filing Form I declaration and ER 1 returns, maintained daily stock register, preparing central excise invoice for clearance of goods and has admitted to have made mistakes in making declarations. However, it also appears from records that he was acting upon the instructions of Dilip Jani, Director of SMFPPL. It is not the case of the revenue that the appellant is beneficiary of any duty evasion, if any committed by SMFPPL. He was mere employed director of the company. In these facts and taking into consideration various factors discussed herein above, including payment of duty by SMFPPL on the day of search, interest of justice would be met, by reducing penalty upon him upto Rs. 10,00,000/- (ten lacs) and we hold so.

5. In view of our above discussion and finding, the appeals of JM Joshi, Sachin J Joshi and Vinayak Kashiram Sawant are allowed and appeal filed by Balraj Mourya is partly allowed in the terms mentioned in above Para 4.8 with consequential relief as per law, in the above terms.

(Pronounced in the open court on 01.10.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha