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

REGIONAL BENCH- COURT NO. 3

EXCISE APPEAL NO. 10453 of 2014-SM

(Arising out of OIO-RAJ-EXCUS-000-COM-126-13-14 Dated 24/10/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Abbas Rangwala **........Appellant**
Former Plant Accounting Manager, Cargil India Private Ltd,
Survey No.415, National Highway 8-a Padana Road,
Taluka-anjar
Kutch, Gujarat

VERSUS

Commissioner of C.E. & S.T.- Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

With

EXCISE APPEAL NO. 10229 of 2014-SM

(Arising out of OIO-RAJ-EXCUS-000-COM-126-13-14 Dated 24/10/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Anilkumar P Jian **........Appellant**
C/o, M/s, Paras Trading Co, Plot No. 272,
House No. 06, Opp. Mangal Prabhat Township,
Gurukul Area, Gandhidham, Gujarat,

VERSUS

Commissioner of C.E. & S.T.- Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

AND

EXCISE APPEAL NO. 10369 of 2014-SM

(Arising out of OIO-RAJ-EXCUS-000-COM-126-13-14 Dated 24/10/2013 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Santosh Khandelwal **........Appellant**
Manager (accounts)of
Ruchi Soya Industries Ltd ,
Survey No.217/2, Village Mithi Rohar,
Gandhidham, Gujarat

VERSUS

Commissioner of C.E. & S.T.- Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:
Shri S J Vyas, & Shri Dhaval K Shah Advocate , Shri K J Kinariwala Consultant appeared for the Appellant
Shri Anand Kumar, Superintendent (AR) appeared for the Respondent

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

FINAL ORDER NO. 13145-13147/2024

DATE OF HEARING: 10.12.2024
DATE OF DECISION: 10.12.2024

RAMESH NAIR

These appeals are directed against order-in-original No. RAJ-EXCUS-000-COM-126-13-14 dated 25.10.2013 passed by the Commissioner of Customs and Central Excise, Rajkot against the penalties imposed under Rule 26 of Central Excise Rules, 2002. The penalties on the present appellants were imposed by the adjudicating authority in connection with nonpayment of duty by the manufacturer of goods on job work basis by M/s Paras Trading Company. The appeal of the Paras Trading Company, since the proprietor expired, has been abated and disposed of accordingly. The role of the three present appellants are as under:-

1) Abbas Rangwala- E/10453/2014

This appellant is working as Plant Account Manager of M/s Cargill India Pvt Ltd, the company who is the principal manufacturer wherein the goods processed on job work basis by M/s Paras Trading Company was used.

2) Santosh Khandelwal- E/10369/2014

He is working as a Senior Manager of Accounts with M/s Ruchi Soya Industries the company who is the principal manufacturer wherein the goods manufactured on job work basis by M/s Paras Trading Company is used .

3) Anilkumar P Jain- E/10229/2014

He is the authorized signatory of M/s Paras Trading Company.

2. Shri K J Kinariwala, Learned Consultant with Shri S J Vyas, Learned Advocate appearing for the appellant namely Shri Anilkumar P Jain submits that firstly there was no mala fide intention on the part of the proprietor firm M/s Paras Trading Company as they were under impression that the goods were manufactured on job work basis for and on behalf of the principle manufacturer namely Cargill India Ltd. and Ruchi Soya Industries Ltd is not liable for excise duty in the hands of the job worker. All the transaction were made legitimately under proper invoice, therefore, this is not the case of clandestine removal.

2.1 He further submits that prior to the Larger bench judgment in the case of Thermax Babcock & Wilcox Ltd- 2018 (364) ELT 945 (Tri.-LB) there was a confusion that whether the job worker is required to pay duty or otherwise and the issue was settled by the larger bench judgment in the case of Thermax Babcock & Wilcox Ltd (supra). Therefore, no mala fide can be attributed to the firm M/s Paras Trading Company and Consequently no penalty under Rule 26 can be imposed on the appellant.

3. As regard the appeal of Shri Santosh Khandelwal, Shri Dhaval K. Shah Learned Counsel appearing on behalf of the appellant submits that the appellant is an employee of M/s Ruchi Soya Industries Ltd. firstly, there was bona fide belief on the part of the job worker. Secondly, even if the job worker has not paid the duty, at the hand of recipient of goods, no penalty can be imposed. More so, the appellant being an employee that too of recipient of goods, is not concern with duty liability of the job worker. He further submits that no penalty was imposed on the company where appellant is working. For this reason also when there is no offence against the company it's employee cannot be held for penalty.

4. As regard the appeal of Shri Abbas Rangwala, I find that though no one appeared on behalf of the appellant but his case is identical to the case of Santosh Khandelwal. The appellant Shri Abbas Rangwala is also employee of Cargill India Pvt. Ltd for which the M/s Paras Trading Company is manufacturing the goods on job work basis.

5. Shri Anand Kumar Learned Superintendent (AR) appearing for the revenue reiterates the findings of the impugned order.

6. I have carefully considered the submission made by both the sides and perused the records. I find that on all three appellants the penalties were imposed under Rule 26 of Central Excise Rules, 2002 for aiding and abating the duty evasion committed by M/s Paras Trading Company. As per the facts of the case, we find that M/s Paras Trading Company was involved in direct sale on principal to principal basis as well as on job work on behalf of the Rcuhi Soya Industries as well as Cargill India Pvt Ltd. The appellant was under bona fide belief that the direct sale is covered under SSI exemption for the reason that as per their bonafide belief job work goods being not dutiable in their hands is not includible in the aggregate value of the overall clearances of the goods. For this reason M/s Paras Trading Company has not discharged the duty. I also find that the issue of excise duty liability on the job work was under serious dispute as there were conflicting judgments and subsequently this CESTAT's Larger Bench in the case of Thermax Babcock & Wilcox Ltd

(supra) settled the issue holding that job worker is liable to pay duty even the goods is manufactured on job work basis. The larger bench judgment was delivered subsequent to the passing of the impugned order in the present case. In this fact there in no mala fide intention on the part of the M/s Paras Trading Company, in non payment of Excise duty. It is also observed that M/s Paras Trading Company has made legitimate transaction by issuing of invoices and all the transactions and payment particulars are recorded in their books of accounts. This is not case of clandestine removal such as removal of goods without issuing any documents. Therefore, there is no doubt that the appellant has rightly entertained the bona fide belief even though they were liable to pay the excise duty.

6.1 Without prejudice to the above as regard the appeals of Shri Santosh Khandelwal and Shri Abbas Rangwala, I find that these appellants are employees of the principal manufacturers and that too handling the Account Section. They are nothing to do with the excise duty liability in the hands of the job worker. When the goods were received by the principal manufacturers under proper documents, if any lapse on the part of the job workers the same cannot be attributed to the principal manufacturer or even to their employees. Therefore, irrespective of any offence whether or not committed by the M/s Paras Trading Company these two appellants cannot be penalized under Rule 26. As per my above observation and over all facts and circumstances, I am of the clear view that the appellants are not liable for penalty under Rule 26 of Central Excise Rules, 2002.

7. Accordingly, penalties on all the present appellants are set aside. Appeals are allowed with consequential relief.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha