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

REGIONAL BENCH – COURT NO. 02

Customs Appeal No. 11455 of 2013-SM

[Arising Out Of OIO-35-COMMR-SURAT-II-2013 Dated- 06/03/2013 Passed By Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Swagat Synthetics **.....Appellant**
C-1/B,568/569, Gidc, Pandesara,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **.....Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat 395001

WITH
Excise Appeal No. 11442 of 2013-SM

[Arising Out Of OIO-35-COMMR-SURAT-II-2013 Dated- 06/03/2013 Passed By Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Swagat Synthetics **.....Appellant**
C-1/B,568/569, Gidc, Pandesara,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **.....Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat 395001

AND
Excise Appeal No. 11445 of 2013-SM

[Arising Out Of OIO-12-MP-2012-13 Dated- 28/12/2012 Passed By Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Swagat Synthetics **.....Appellant**
C-1/B,568/569, Gidc, Pandesara,
Surat, Gujarat

VERSUS

CGST & Central Excise-Surat **.....Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat 395001

APPEARANCE:
None appeared_for the Appellant
Shri. H. P. Shrimali, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 10029-10031 /2025

DATE OF HEARING: 10.01.2025
DATE OF DECISION:10.01.2025

A request from the advocate has been received to decide these matters on merits. In the instant case, the preset appellant have been penalized under the Customs Excise Act, 1962 as well as under Central Excise Act, 1944 for alleged involvement in paper transaction. While levying penalty, learned adjudicating authority imposed the same under Section 112 of the Customs Act and Rule 26 of the Central Excise Rules. The Advocate for the appellant is before this Court on the ground that penalty under Section 112 is incorrect as appellant being a 100% EOU was receiver of the finished goods and had nothing to do with the import of raw-material or with alleged diversion done by main party M/s. Micro Polyester P. Ltd. Further, appellants have also pleaded wrongful imposition of the penalty under Rule 26 of the Central Excise Rules. As they have are a "firm" and not any person and therefore cannot be brought within the ambit of a "person".

2. The Learned Advocate has relied upon various case law on both the propositions.

3. Learned AR requests for upholding the order as they had admittedly dealt with and facilitated wrongful transaction. He also states that the case law now being quoted by the party were not considered by the adjudicating authority, therefore, matter is in any case deserves remand.

4. This Court has considered the matter with the details on record. It is found that they have case law which indicates that under the Rule 26, Penalty can only be levied against the person and not a firm. Same was not considered by the lower authority i.e. Adjudicating Commissioner. It is also found that it was not considered as to whether expressions under Section 112 is wide enough to cover the firm. The order on these aspects needs to

adjudged along with ambit of penalty with reasons in details. This Court, therefore, remits these matters back to the adjudicating authority to decide the same in the light of case law now being brought on record by the appellant as well as the ambit and scope of Section 112 of Customs Act, 1962 and Rule 26 of the Central Excise Rules vis-à-vis the present appellant which is a 'firm'. Matters are remanded with liberty to the party to raise any question of law on the basis of facts available.

5. Appeals allowed by way of remand.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi