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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10357 of 2020

(Arising out of OIO-BVR-EXCUS-000-COMM-13-14-2019-20 dated- 21/01/2020 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR)

SHRI KISHORBHAI PARMAR **........Appellant**
V.B. Sheth & Co,
Rajkot
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-BHAVNAGAR **......Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

WITH

Excise Appeal No. 10382 of 2020

(Arising out of OIO-BVR-EXCUS-000-COMM-13-14-2019-20 dated- 21/01/2020 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR)

SHRI NITIN PATEL **........Appellant**
Devraj Tobacco Company,
VillageMuli,Limdi
Surendranagar, Gujarat

VERSUS

C.C.E. & S.T.-BHAVNAGAR **......Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

Appearance:
Shri Paresh Sheth & Shri Saurabh Dixit, Advocates 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 / 12181 - 12182 /2022

DATE OF HEARING: 08.12.2022
DATE OF DECISION: 08.12.2022

RAMESH NAIR

These appeals were filed by the appellant who are the partners in the company namely M/s. Devraj Tobacco Company. The penalty under Rule 26 was imposed for the charge of abatement for the evasion of excise duty in respect of clandestine removal of Cigarettes by the Partnership Firm.

2. Shri Saurabh Dixit, Learned Counsel appearing on behalf of the appellant Shri Nitin Patel and Shri Paresh Sheth, Learned counsel appearing

on behalf of the appellant Shri Kishorbhai Parmar submits that these appellants being the partner of the partnership firm cannot be penalized since the partnership firm has already been penalized. They relied upon the following judgments :

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

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 records. I find that the limited issue is that in case of partnership firm when there is duty demand and penalty imposed on the partnership firm whether a separate penalty against the partners can be imposed in terms of section 26 of Central Excise Act, 2002. I find that this issue is no longer res-integra as the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise vs. Jai Prakash Motwani – 2010 (258) ELT 204 (Guj.) held that once the partnership has been penalized no separate penalty can be imposed on the partner of the partnership. The Similar view was expressed by this Tribunal in the case of Soni Ceramics and Dineshbhai Patel Vs. CCE & ST – Ahmedabad-III – 2022 (5) TMI 7 - CESTAT

4.1 The above decision is supported by the Hon'ble Gujarat High Court Judgment in the case of Pravin N Shah – 2017 (52) STR 217 (Guj.) which held that separate penalties on partners cannot be imposed.

4.2 Considering the above settled legal position, I am of the considered view that Penalty under Rule 26 on the present appellants which are the Partners of M/s. Devraj Tobacco Company is not sustainable.

5. Accordingly, penalties are set aside and appeals are allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

geeta