CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmadabad

REGIONAL BENCH- COURT NO.3

Excise APPEAL NO. 1651 OF 2010
(Arising out of OIA-09/VDR-II/MP/SSCSIL/COMMR/2010 dated 27.10.2010 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

NARENDRA C SOLANKI ....**Appellant**
(M.D.) SHREE SARDAR CO OP SUGAR INDS LTD.,
D-201, TAKSH COMPLEX, NEAR SARABHAI COLONY BUS STOP,
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.- VADODARA-II ....**Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

WITH

Excise APPEAL NO. 1652 OF 2010
(Arising out of OIA-09/VDR-II/MP/SSCSIL/COMMR/2010 dated 27.10.2010 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

DEVENDRA AMBALAL THAKAR ....**Appellant**
(VICE PRESIDENT) SHREE SARDAR CO OP SUGAR INDS LTD.,
AT & POST-NANA KRALA, TALUKA-SINOR,
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.- VADODARA-II ....**Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

AND

Excise APPEAL NO. 1654 OF 2010
(Arising out of OIA-09/VDR-II/MP/SSCSIL/COMMR/2010 dated 27.10.2010 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

JAYKANT AMBALAL PATEL ....**Appellant**
(PRESIDENT) SHREE SARDAR CO OP SUGAR INDS LTD.,
SANT VIHAR SOCIETY, B/H RANESHWAR TEMPLE, VASANA ROAD,
VADODARA-GUJARAT

VERSUS

C.C.E. & S.T.- VADODARA-II ....**Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

APPEARANCE:
Shri. Dhaval Shah, Advocate for the Appellant
Shri. V.G. Iyengar, Authorized Representative for the Respondent

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

Final Order No. A/10088-10090 /2023

DATE OF HEARING: 02.01.2023
DATE OF DECISION:23.01.2023

RAMESH NAIR

The brief facts of the case are that the company M/s Shree Sardar Co-operative Sugar Industries Limited cleared sugar in excess to the quota allowed to them and on this excess clearances, parallel invoices were issued whereas no duty was paid on the parallel invoices. The company recorded the said clandestine clearance in the books of accounts showing as deposit of sale proceed against the respective customers. The said clearances were not declared in the ER-1 Returns. Accordingly, the demand was confirmed against company, however though the company had filed the appeal before this Tribunal under Appeal No. Excise 666 of 2011 but the same was disposed as deemed withdrawn on the ground that the company has settled their case under SVLDRS-2019 Scheme. The present appellants were imposed penalty under Rule 26 for the charge of abatement in evasion of duty by the company. All the present appellants are Managing Director/ Director of the company.

2. Shri Dhaval Shah, learned Counsel appearing on behalf of the appellants submits that as regard Shri Narendra C Solanki, he is in-charge Managing Director of the Company and was appointed as per the resolution of the company. He submits that all the activities of parallel invoices and clearance there under were made by the staff of the company and Shri Narendra C. Solanki was not looking after day to day affair, therefore, the penalty was wrongly imposed on him under Rule 26.

2.1 As regard other two appellants namely, Shri Devendra Ambalal Thakar and Shri Jaykant Ambalal Patel, he submits that no proper investigation was carried out against these appellants which is admitted by the adjudicating authority inasmuch as no statement was recorded. Hence, the penalty could not have been imposed on them under Rule 26. He placed reliance on the following judgments:

- CCE vs Pepsi Foods Ltd. 2010 (260) ELT 481 (SC)

- Manohar Singh Rana vs CCE 2017 (357) ELT 1163 (Del.)
- Raymond Apparel Ltd. 2013 (294) ELT 151 (Tri. Mum)
- CCE vs Jamshri Ranitsinghji SPG & Weaving Mills Co. Ltd. 2014 (302) ELT 574 (Mum.)
- Metro Enterprises 2014 (311) ELT 785 (Mum.)

3. Shri V.G. Iyengar, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records.

5. I find that the fact of clandestine removal done by the company M/s Shree Sardar Co-operative Sugar Industries Limited is not under dispute as the company has issued parallel invoices on which no duty was paid. The transaction were also not booked properly in the books of accounts. Against the said parallel invoices, the company also received the payment which intentionally not shown in the sales account but shown as deposit against the respective customers, therefore, it clearly transpires that the company and its board under systematic modus operandi, carried out the clandestine removal of the excisable goods. As per the facts of this case, the entire modus operandi can only be done by the board of the company which includes all the directors, it is beyond imagination that such a systematic act of clandestine removal and in proper accounting of the payment in the books as deposit can be done without the knowledge of the Directors of the company. Such type of act cannot be accepted from the employee of the company. It is also observed that the employee in their statement clearly stated that for the entire act, information is available with Shri Narendra C Solanki. Moreover, even Shri Solanki also in his statement accepted about entire modus operandi. As regard, the other two namely, Shri Devendra Ambalal Thakar and Shri Jaykant Ambalal Patel, even though the statements were not recorded, the fact is

not under dispute that they are the directors in the company and without their knowledge, this entire modus operandi cannot be concluded, therefore, even if any statement was not recorded, that too due to their non-cooperation in the investigation, they cannot be absolved from the penalty for the charge of abatement in evasion of excise duty by the company. The judgements relied upon by the appellant are on different facts. Penalty under Rule 26 is decided on the basis of the fact of each case depending on the role of the person which varies from case to case. Therefore, considering the fact of the present case, the judgments are not applicable. Accordingly, I do not find any infirmity in the impugned order imposing penalty on the present appellants. Hence, the penalties are sustained. Appeals are dismissed.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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