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

REGIONAL BENCH- COURT NO.3

EXCISE Appeal No. 10360 of 2020-SM

[Arising out of Order-in-Original/Appeal No DMN-EXCUS-000-COM-025-19-20 dated 17.03.2020 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

BANAS ENTERPRISES **...Appellant**
Plot No C-1, 506/2, Gidc Halol
Panchmahal,
Gujarat

VERSUS

C.C.E. & S.T.-DAMAN **...Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi
Gujarat-396191

WITH

i. **Excise Appeal No. 10361 of 2020 (Vitrag Polypack)**
ii. **Excise Appeal No. 10362 of 2020 (Gautam Industries Huf)**
iii. **Excise Appeal No. 10446 of 2020 (Rajguru Enterprises Pvt Ltd)**
iv. **Excise Appeal No. 10447 of 2020 (Ramesh Bafna)**
v. **Excise Appeal No. 10483 of 2020 (Mahendra Ishwarlal Sanghavi)**
vi. **Excise Appeal No. 10524 of 2020 (Shri Jayantilalnahar)**

APPEARANCE:
Shri S. J Vyas, Shri A. Banerjee, Advocates for the Appellant
Shri G. Kirupanandan, Assistant Commissioner (Authorized representative) for the Respondent

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

Final Order No._A/10522-10528 / 2023

DATE OF HEARING:24.11.2022
DATE OF DECISION:23.03.2023

RAMESH NAIR

These appellants have challenged imposition of penalty under Rule 26(1) of Central Excise Rules, 2002. The penalties were imposed on all the appellants except M/s. Rajguru Enterprises Pvt Ltd, for the charge that they have purchased the inputs without cover of invoice from M/s. Tarun Polymers, Daman and in respect of such materials M/s. Tarun Polymers, Daman has availed Cenvat credit of Rs. 2,91,70,642/- fraudulently. As regard, M/s. Rajguru Enterprises Pvt Ltd., the penalty was imposed on the charge that they have received bills without receipt of finished goods from M/s. Tarun Polymers, Daman.

2. Shri S. J Vyas, Shri A. Banerjee, Learned Counsels appearing on behalf of the appellants submits that the appellants have received the invoice but did not receive the goods. It was submitted that since they have not handled the goods physically they are not liable for penalty under Rule 26(1) of Central Excise Rules, 2002. As regard penalty imposed on the buyer of the goods, the submission of the appellants is that the goods are duty paid, hence the same is not liable for confiscation. Consequently, no penalty under Rule 26(1) can be imposed. Learned Counsel relied upon the following judgments:

- Commissioner of C. Ex., Ludiana Vs. Sangrur Agro Ltd.- 2006 (202) ELT 835 (Tri.-Del.)
- Commissioner of Central Ex., Ludhiana Vs. Sangrur Agro Ltd. – 2010 (254) ELT 25 (P & H.)

3. Shri G. Kirupanandan, Learned Assistant Commissioner (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. I find that there is no dispute about the fraudulent availment of Cenvat Credit by M/s. Tarun Polymers, Daman, who has wrongly availed the Cenvat Credit of huge amount of 29170642/-. In order to avail this fraudulent Cenvat credit by M/s. Tarun Polymers, Daman, all buyers of the goods purchasing the goods without cover of invoice have clearly facilitated M/s. Tarun

Polymers, Daman for wrong availment of CENVAT Credit. In case of M/s. Rajguru Enterprises Pvt Ltd it is clear that though they have received the bills but not received the goods covered therein. Therefore, in the above facts it is a clear case of abatement in evasion of duty on the part of the appellants. The learned Commissioner in the adjudication order given a detailed finding while imposing penalties on the appellants which is as under:

> ***18.44***. *Further, all the buyers of M/s Tarun Polymers, Daman viz. (i) Shri Jayantilal Nahar, Proprietor of M/s Arvindkumar & Company, Goregaon (West), Mumbai: (i) Shri Kamlesh Mulani, Proprietor of M/s Saibaba Polymers, Sarangpur, Ahmedabad; (iii) Shri MahendralshwarlalSanghavi, Karta of M/s Rhythm Industries (HUF), Halol, District- Panchmahal, (iv) Shri Gautam Jain, Karta of M/s Gautam Industries, Halol, Dist- Panchmahal, (v) Shri Gautam Jain, Proprietor of M/s Vitrag Poly Pack, Halol, Dist Panchmahal, and (vi) Shri Girish Shah, Proprietor of M/s Banas Enterprise, Halol, Dist.- Panchmahal who have purchased plastic granules without cover of Central Excise Invoice are responsible for the contraventions to receive the excisable goods/Cenvatable inputs without cover of Central Excise invoices from M/s Tarun Polymers, Daman through transporters namely M/s. Kataria Cargo Movers, Vapi and M/s Shree Momai Roadways and M/s Kajal Transport. They were responsible for all the purchases, receipt and were actively involved and looking after all the activities of their units relating to purchase and receipts of the excisable/Cenvatable inputs ie. Plastic Granules in cash amount which has been confirmed in their respective statements. From the investigations conducted, it is an admitted fact that all were concerned in storing, receiving and purchasing of the excisable/Cenvatable inputs which they knew and had reason to believe that such goods are liable for confiscation under the Cenvat credit Rules, 2004. Thus, they were concerned in omission/commission of all such acts. Therefore, (i) Shri Jayantilal Nahar, Proprietor of M/s Arvindkumar & Company, Goregaon (West). Mumbai: (i) Shri Kamlesh Mulani, Proprietor of M/s Saibaba Polymers, Sarangpur, Ahmedabad; (iii) Shri MahendralshwarlalSanghavi, Karta of M/s Rhythm Industries (HUF), Halol, District- Panchmahal; (iv) Shri Gautam Jain, Karta of M/s Gautam Industries, Halol, Dist- Panchmahal, (v) Shri Gautam Jain, Proprietor of M/s Vitrag Poly Pack, Halol, Dist: Panchmahal, and (vi) Shri Girish Shah, Proprietor of M/s Banas Enterprise, Halol, Dist.- Panchmahal are liable for imposition of penalty under Rule 26(1) of Central Excise Rules, 2002.*
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> ***18.45***. *Further, all the customers of M/s Tarun Polymers, Daman viz. (i) Shri Hemant Navinchandra Shah, Proprietor of M/s Aarnath Impex Bhayander, Mumbai; (ii) Smt. Asha Hemant Shah, Proprietor of M/s Kalyan Textile, Bhayandar, Mumbai; (ii) Shri ShatruMalbaSarule, Proprietor of M/s SevenStars Trading Co., Bhayander(W), Mumbai; (iv) Shri Jitendra G. Solanki, Proprietor of M/s ShreeRajguru Text, Bhayander West, Mumbai and (v) Shri*

Ashish Kavediya, Proprietor of M/s Jay Ambe Enterprise, Bhayandar (W). Mumbai and (vi) M/s Rajguru Enterprises Pvt. Ltd., Sarigam, Bhilad only received Central Excise invoices without actually receiving any goods which is an admitted fact. It is thus evident that all the above customers were fully involved in the said fraud. It therefore appeared that by all such acts of omission/commission done by them, they have rendered themselves liable for penalty for involvement in fraudulently receiving only the invoices (126) without receipt of raw materials and helping M/s Tarun in all the illegal activities. Therefore, they were concerned in concealing the purchase of the excisable goods, which they knew and had reasons to believe that such goods are liable for confiscation under the Central Excise Rules, 2002. Thus, they were concerned in omission/commission of all such acts. Therefore, (i) Shri Hemant Navinchandra Shah, Proprietor of M/s Aarnath Impex Bhayander, Mumbai; (ii) Smt. Asha Hemant Shah, Proprietor of M/s Kalyan Textile, Bhayandar, Mumbai; (iii) Shri ShatruMalbaSarule, Proprietor of M/s Seven Stars Trading Co., Bhayander(W), Mumbai; (iv) Shri Jitendra G. Solanki, Proprietor of M/s Shree Rajguru Text, Bhayander West, Mumbai (v) Shri Ashish Kavediya, Proprietor of M/s Jay Ambe Enterprise, Bhayandar (W), Mumbai and (vi) M/s Rajguru Enterprises Pvt. Ltd., Sarigam, Bhiladare liable for imposition of penalty under Rule 26(1) of Central Excise Rules, 2002.

From the above finding, it is clear that all the appellants were indulged in abating M/s. Tarun Polymers, Daman for fraudulent availment of Cenvat credit therefore, they have made themselves liable for penalty under Rule 26(1) Cenvat credit rules 2002. Accordingly I do not find any infirmity in the impugned order imposing penalty under Rule 26(1) of Central Excise Rules. Therefore, the impugned order to the extent it imposes penalty on the present appellants is upheld and appeals are dismissed.

(Pronounced in the open Court on 23.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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