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

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 1415 of 2011
[Arising out of Order in Appeal BC-230-235-SURAT-II-2011 dated 05/09/2011 passed by Commissioner (Appeals), Central Excise & Customs, Surat-II)

Zulfikar Maksudbhai Khan **.....Appellant**
Proprietor, Azaz Trading Co., Plot No. 164, 165,
Ansar Market, N.h. 08, Ankleshwar, 442-393001,

VERSUS

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

WITH
Excise Appeal No. 1416 of 2011
[Arising out of Order in Appeal BC-230-235-SURAT-II-2011 dated 05/09/2011 passed by Commissioner (Appeals), Central Excise & Customs, Surat-II)

Malik Mazhar Hussain **.....Appellant**
Proprietor, Malik Plastic Trading,
Azadnagar, Plot No. 37, Ansar Market,
Ankleshwar,,, 442-393001, 24

VERSUS

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

AND
Excise Appeal No. 1417 of 2011
[Arising out of Order in Appeal BC-230-235-SURAT-II-2011 dated 05/09/2011 passed by Commissioner (Appeals), Central Excise & Customs, Surat-II)

Abulash Chaudhary Alias **.....Appellant**
Shri Gabbubhai, Proprietor, Star Traders,
Azadnagar, Plot No. 19, Ansar Market,
Ankleshwar,,, 442-393001, 24

VERSUS

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

APPEARANCE:
Shri. Vinay Kansara, Advocate appeared for the Appellant
Shri. Himanshu Nachane,, Superintendent, (AR) for the Respondent

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

Final Order No. 10717-10719/2026

DATE OF HEARING:27.08.2026
DATE OF DECISION:27.08.2026

SOMESH ARORA

1. Learned consultant Shri Vinay Kansara, appearing for Appellants Nos. 3 to 5 in Appeal Nos. E/1415-1417/2011, submits that he seeks to rely upon the decision of the Division Bench of this Tribunal in the case of Govind Agencies Limited v. Commissioner of Central Excise, Surat-II, reported in 2016 (333) E.L.T. 320 (Tri.-Ahmd.), wherein it was held that penalty cannot be imposed upon traders where clandestine clearance has been effected by the manufacturer and the traders have purchased the goods in the normal course against proper bills and challans.

1.1 Shri Vinay Kansara further submits that the same position emerges in the present case, as the appellants had purchased the goods against proper invoices and the payments were made through legitimate banking channels. He, therefore, submits that imposition of penalty upon his clients, who are second-stage traders, for the acts committed by the manufacturer is not justified.

2. Learned AR after having gone through the decision reiterates the position of the impugned order.

2.1 In this regard, this Court finds that there is a force in the argument advance by the advocate as it cleared from the Para 7-9 of the decision of Govind Agencies Limited reproduced below:

> *"7. We have already stated that there is no material available on record that the Appellants had knowledge of the non-duty paid character of the goods. It is seen from the records that the Appellant as per the normal trade practice, purchased the goods with bills and challans from the said company. In view of that, we find that the imposition of penalty under Rule 209A of Central Excise Rules, 1944 on the Appellants/Traders cannot be sustained.*
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> *8. Regarding the Imposition of penalty of Rs.23 lakhs on Shri Ketan M. Shah, Director, the learned Authorised Representative for the Revenue, drew the attention of the Bench to Para 77 of the impugned order. It is seen that the Appellant in his statements dated B-6-2001, and 29-3-2003 had categorically admitted that they were preparing parallel invoices on*

computer and quantity of goods mentioned therein were sold without payment of duty, without accounting of the same in their Central Excise statutory records. He also admitted that he had knowingly indulged himself in illicit clearance and removal of Dyed Polyester Yarn without payment of duty, without issuing Central Excise invoice and without accounting for in statutory records. We find that the Appellant was directly involved in the clandestine removal of the goods. It is also noted that that the Appellant Company had not complied with the stay order passed by this Tribunal. Hence, the imposition of penalty on Shri Ketan M. Shah is justified.

9. In view of above discussion, we set aside the penalties on all the appellants, except the penalty on Shri Ketan M. Shah, Director of the said Company is upheld. Accordingly, all the appeals filed by the Appellants are allowed, except the appeal filed by Shri Ketan M. Shah is rejected."

3. In view of the foregoing position, appeals are allowable. The same are allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi