CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70362 of 2017

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/EX/025/16-17 dated 28/12/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Shri Pal Singh Yadav, ...Appellant

(C-1/35, Priya Darshani Colony Sitapur Road, Lucknow)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow ....Respondent

(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Pal Singh Yadav, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

WITH

Excise Appeal No.70180 of 2017

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/EX/025/16-17 dated 28/12/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Shri Balram Gupta Alias Suraj, ...Appellant

(D-1242, Indira Nagar, Ghazipur, Lucknow)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow ....Respondent

(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Shambhu Chopra, Advocate &
Ms Mahima Jaiswal, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

AND

Excise Appeal No.70361 of 2017

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/EX/025/16-17 dated 28/12/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Shri Kamal Chandra Katiyar, ...Appellant

(Ninauwa, Fatehgarh, Farukhabad)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow ....Respondent

(7-A, Ashok Marg, Lucknow-226001)

APPEARANCE:

Shri Pal Singh Yadav, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOS.70566-70568/2024

DATE OF HEARING & DECISION : 07 August, 2024

SANJIV SRIVASTAVA:

These three appeals are directed against Order-in-Original No.LKO/EXCUS/000/COM/EX/025/16-17 dated 28/12/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

"ORDER

I. I confirm the demand of Central Excise duty not paid amounting Rs.2,57,88,000/- (Rupees two crore fifty seven lacs eighty eight thousand only) on **Noticee No.1** Shri Dilip Kumar Jaiswal under Section 11A(4) of the Act read with Rule 18 (2) of 2010 Rules, along with interest thereon under Section 11AA of the Act;

II. I order for confiscation of goods seized by police (as detailed in Police FIR/Fard No.613/14 dated 06.09.2014). Since the goods are not available with the department as of now and the value of goods have also not been ascertained by the Police I do not impose any redemption fine in lieu of confiscation under Rule 25 of the Central Excise Rules, 2002.

III. I impose an equal penalty of Rs. 2,57,88,000/- (Rupees two crore fifty seven lacs eighty eight thousand only) on

Noticee No 1 Shri Dilip Kumar Jaiswal under Section 11AC of the Act read with Rule 18 (1) of the 2010 Rules.

IV. I impose personal penalty of Rs 10,00,000/-(Rupees Ten Lacs only) on Noticee no 2 Shri Dhawaj Jain under Rule 26 (1) of the Central Excise Rules, 2002.

V. I impose personal penalty of Rs 10,00,000/-(Rupees Ten Lacs only) on Noticee no 3 Shri Balram Gupta under Rule 26 (1) of the Central Excise Rules, 2002.

VI. I impose personal penalty of Rs 10,00,000/-(Rupees Ten Lacs only) on Noticee no 4 Shri Pal Singh Yadav, under Rule 26 (1) of the Central Excise Rules, 2002.

VII. I impose personal penalty of Rs 5,00,000/- (Rs Five Lacs only) on Noticee no 5 Shri Jitendra Singh under Rule 26 (1) of the Central Excise Rules, 2002.

VIII. I impose personal penalty of Rs 50,000/- (Rs Fifty Thousand only) on Noticee No 6 Shri Guddu Singh Yadav under Rule 26 (1) of the Central Excise Rules, 2002.

IX. I impose personal penalty of Rs 5,00,000/- (Rs Five Lacs only) on Noticees no 7 Shri Kamal Chandra Katiyar under Rule 26 (1) of the Central Excise Rüles, 2002."

2.1 Against this order only appeals of the above said three appellants are available on record and it has been informed that no other appeal has either been filed or has been pending before the Tribunal. Accordingly, these three appeals are taken up for consideration.

3.1 We have heard Shri Shambhu Chopra and Shri Pal Singh Yadav learned Counsel for the appellants and Shri Manish Raj learned Authorised Representative appearing for the revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For imposing penalties on the three appellants following findings has been recorded in the impugned order:-

*"**15. Regarding imposing penalty on Noticee No 2 and 3 Shri Dhawaj Jain and Shri Balram Gupta alias Suraj** respectively, I find that-*

(i) Seven (7) bags of spurious tobacco were seized from the room of Shri Dhawaj Jain (Noticee No 2) by the Police which was allegedly purchased from Noticee No.1 Shri Dilip Kumar Jaiswal. No invoice for the purchase of the same was shown by Shri Dhawaj Jain at the time of seizure.

(ii) Seven bags of tobacco were seized by the Police from vehicle No UP32EF 9995 (Mahindra Xylo) which was found to be owned in the name Smt Pramila Singh wife of Shri Balram Gupta alias Suraj (Noticee No 3) as verified by the RTO, Lucknow. However, in his defense submissions before me, he has enclosed photocopy of three sale invoices dated 02.09.2014, 01.06.2015, and 17.03.2015 for the purchase of Shree Ram tobacco for Rs 50,000/- issued by Jai Durga Trading Company, Lucknow in the name of M/s Naveen Traders at Munshi Pulia Indiranagar, Lucknow owned by him.

(iii) When the Central Excise officers went to record their statements in the jail, they denied to record any statement.

In any case, they both were found in possession of unaccounted bags of alleged spurious tobacco as stated above for which they were not able to give any cogent explanation at the time of recovery of such spurious tobacco. They did not agree to record their respective statements before the Central Excise officers in jail as well. Therefore, I propose to impose personal penalty under Rule 26 (1) of the Central Excise Rules, 2002 on both of them for possession, transport and sale of clandestinely manufactured goods.

***16. Regarding imposing penalty on Noticee No.4 Shri Pal Singh Yadav**, I find that he is the landlord of the alleged premises, House No C-1/62, Priyadarshini Colony, Thana- Madiaon, Dist- Lucknow from where the activity of manufacturing of alleged spurious tobacco was going on and from where the recovery of raw materials and finished product of the alleged spurious tobacco was done. He had submitted rent agreement dated 13.06.2014 for eleven months from the period from 20.05.2014 to 19.04.2015 between him and Shri Dilip Kumar Jaiswal, Noticee No 1 and says that he was not aware of any such activity from his premises.*

However, I observe that he cannot shy away from his responsibility by simply not acknowledging for the illegal activity going on in his rented premises. I propose to impose personal penalty under Rule 26 (1) of the Central Excise Rules, 2002 on him for providing his residential place which was used for illicit manufacturing of the spurious chewing tobacco Khaini having brand name "Sriram Superfast" and for which he should have been aware as a responsible citizen.

***17. Regarding imposing penalty on** Noticee No. 5 and 7 Shri Jitendra Singh and **Kamal Chandra Katiyar** respectively, I find that as per their respective submissions, they are Accountant and Manager respectively in the M/s Vidya Travels Agency lodged at House No C-1/62, Priyadarshini Colony, Thana- Madiaon, Dist- Lucknow and were present at the aforesaid premises at the time of raid by the Police. When the Central Excise officers went to record their statements in the jail, they cooperated with them and tendered their respective statements denying any involvement in the illicit manufacturing of the spurious chewing tobacco. Nothing was recovered from the direct possession of both Shri Jitendra Singh and Kamal Chandra Katiyar at the time of*

Police raid. Since they were employees of the travel agency lodged in the same premises, so their presence in the alleged premises at the time of Police raid cannot be disputed. However, since the Noticee No.1 had informed the police officers that Shri Jitendra Singh and Shri Kamal Chandra Katiyar assisted him in the business activities, therefore, I propose to impose personal penalty under Rule 26 (1) of the Central Excise Rules, 2002 on them for being in the knowledge of the said activity of illicit manufacturing of the spurious chewing tobacco which was being done in the same premises and for which their ignorance is only an afterthought hence not acceptable."

4.3 From perusal of the impugned order, we are not in position to ascertain as to how the three appellants were involved or connected with the case of evasion of duty of Rs.2,57,88,000/- by Shri Dilip Kumar Jaiswal?

4.4 **Shri Pal Singh Yadav** is owner/landlord of the premises in which the said alleged activities were undertaken by Shri Dilip Kumar Jaiswal. However, no findings has been recorded to the effect that he was engaged in anywhere in manufacture, clearance, handling of the said goods. He rented the said premises during the course of normal business and could not have been said to be in acting knowledge of the same, without establishing any connection with the said goods or having received any benefit out of the said activity. We note that Commissioner has in the impugned order proceeded to impose penalty under Section 26(1) of the Central Excise Act, without even establishing that he was in any way concern with the goods clandestinely manufactured and cleared by Shri Jaiswal, which is a basic requirement for the said Section.

4.5 Accordingly, we do not find any merits in the penalty imposed on Shri Pal Singh Yadav.

4.6 In respect **of Shri Balram Gupta alias Suraj** also, we do not find any specific findings recorded by the Commissioner vis-à-vis his connection with the activities of Shri Dilip Kumar

Jaiswal. Even the impugned order records that the vehicle from which 7 bags of tobacco were seized, the vehicle was registered from the name of wife of Shri Balram Gupta. It is not even the case that Shri Balram Gupta was in active possession or control on the vehicle at the time of the seizer, who was driving the vehicle, who was there in the vehicle with the seized goods, no findings has been recorded in this regard. It is not even the case that Shri Balram Gupta was connected even then certain invoices out of which one invoice is of 02.09.2014 which is prior to the date of seizer from the vehicle was produced, no findings has been recorded in respect of this. As such, we do not find any merits in the penalty imposed under Section 26 (1) on Shri Balram Gupta which is also set aside.

4.7 In the case of **Shri Kamal Chandra Katiyar** no findings are recorded against the appellant to the implicate him in the case. Nothing was recovered from his possession, neither was he was an employee of the person against whom the case of duty evasion has been adjudicated nor was he in any way associated in handling or transportation of any of the contravening goods liable for confiscation. He was employee of somebody else, he was present in the premises of M/s Vijay Travels as an employee of M/s Vidya Travels Agency, which was situated at the same premises. Just for his presence in the said premises, without establishing anything proper, penalty has been imposed under Section 26 (1) of the Act. Accordingly, we do not find any merits in the penalty imposed under Section 26 (1) on Shri Kamal Chandra Katiyar which is also set aside.

4.8 It is settled position in law for imposition of penalty under Section 26 (1) of the Act that the person should be actively involved in handling, possession, and transportation etc. of the goods which are liable for confiscation without establishing the same penalties imposed upon the appellants cannot be sustained.

4.9 Before closing these appeals we would make it clear that we have decided the case of these three appellant in respect of the penalties imposed under Rule 26 (1) of the Central Excise Rules, 2002. The observations made by us are restricted only to the case under Central Excise Act, 1944 and should not be construed to exonerating the appellants in any other proceedings which have been initiated against them before any court of law in any associated matter under any other Central or State Act.

5.1 Appeals are allowed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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