IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1079, 1080 & 1082/2012-EX[DB]

(Arising out of Order-in-Original No. 30/COMMR/LKO/CX/2011-12 dated 17/01/2012 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Commissioner of Central Excise, Luknow **Appellant(s)**

Vs.

Shri Rajnish Goel (in Appeal No. E/1079/2012),

M/s Awadh Center (in Appeal No. E/1080/2012) **&**

M/s Pioneer Agencies (in Appeal No. E/1082) **Respondent(s)**

Appearance:

Shri Sandeep Kumar Singh (Dy. Commr.) AR for Appellant(s)
Shri Ashwani Sharma, (Advocate) for Respondent(s)

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 06/11/2017
Date of Decision : 06/11/2017

FINAL ORDER NOs. 70984-70986/2018

Per: Anil Choudhary

These appeals have arisen out of common impugned Order-in-Original No. 30/COMMR/LKO/CX/2011-12 dated 17.01.2012 whereby the proposed penalty under Rule 26 CER, 2002 against the respondents herein was dropped with the following observations by the learned Commissioner:-

"Lastly, penalties have been proposed under Rule 26 of the CER, 2002 against M/s Avadh Center, Lucknow, M/s

Pioneer Agencies, Lucknow and Shri Rajnish Goel a partner in both the firms. No allegation regarding clandestine supply of tobacco has been leveled against them. It has been mentioned in the Show Cause Notice that Shri Rajnish Goel who is partner in both above firms admitted in his statement dated 08.09.2010 that unbranded tobacco sold by them is used only in manufacture of Gutkha and they have sold/supplied tobacco to Gutkha manufacturers in cash sales apart from credit sales through their intermediaries/brokers/traders. Such observations are not enough to indict any of the three viz M/s Avadh Cneter, M/s Pioneer Agencies the suppliers of tobacco and the partner in both the firms Shri Rajeesh Goel. There is no allegation of any clandestine sales made by them or otherwise abetting in the offences. Cash & credit sales are accepted business practices which did not any way point towards clandestine activities.

Apart from above in the charging section it has been alleged that all the persons named in preceding paragraph were concerned with transporting removing, depositing, keeping concealing, selling and purchasing of goods which they had knowledge or reason to belief were liable to confiscation as such they are liable to penal action under Rule 26 of the Rules. The allegation is not supported by any evidence. Even in the statement dated 08.09.2010 nothing has been accepted by Shri Rajnish Goel. It has not been explained what were/was *the commodity they were keeping, concealing, transporting etc. certainly the commodity was not Gutkha which has been allegedly cleared without payment of duty by its manufacturer. As such the allegation and proposal of penalty under Rule 26 are not sustainable against any of these three persons."*

2. Heard the parties.

3. We find that there is no ostensible ground by Revenue against dropping of penalty against these respondents herein. Accordingly, we uphold the impugned Order-in-Original dropping penalty against these respondents. Accordingly, these appeals by Revenue are dismissed.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Ankit