IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/70432/2018-EX[SM]

(Arising out of Order-in-Appeal No.47/Comm.(Audit)/CE/Appl./KNP/2018 dated 07.02.2018 passed by Commr.(Audit), Central Tax & Central Excise, Kanpur.)

Pawan Gupta

…APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Vaibhav Dixit (Advocate) for the Appellant
Shri Sandeep Kumar Singh(Dy.Commr.) (AR) for the Revenue

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 11.06.2018

FINAL ORDER NO.71096/2018

Per ANIL G. SHAKKARWAR :

Present appeal is directed against Order-in-Appeal No.47/Comm.(Audit)/CE/Appl./KNP/2018 dated 07.02.2018 passed by Commr.(Audit), Central Tax & Central Excise, Kanpur. The ld.Commissioner(Audit) was assigned to decide the appeals under Order No.9/2017-ST dated 16.11.2017 issued by Central Board of Excise & Customs, New Delhi.

2. Brief facts of the case are that appellant was a small time trader dealing with sale of cigarettes. Citgarettes valued at Rs.51,000/- were seized from the premises of appellant by officers of Central Excise on 21.02.2011 under the

reasonable belief that the same were cleared without payment of duty. The appellant could not produce any invoice in respect of purchase of the said goods by him. A show cause notice was issued which was decided through Order-in-Original dated 27.06.2013 wherein the said goods were confiscated and redemption fine of Rs.12,750/- was imposed. Further personal penalty of Rs.29,942/- was imposed on the appellant under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said order appellant preferred appeal before Commissioner(Appeals). The said appeal was decided as stated hereinabove by Commissioner(Audit). The ld.Commissioner(Audit) has held that confiscation of the said goods was upheld by him and therefore the appellant was liable for penal action under said Rule 26. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld.Counsel for appellant. He has submitted that confiscation is governed by Rule 25 of Central Excise Rules, 2002 which are applicable to producer, manufacturer or registered person of a warehouse or a registered dealer and that the present appellant was not falling in any of the categories to whom the said Rule is applicable and therefore, Commissioner(Appeals)'s finding that personal penalty under Rule 26 ibid is automatic if the goods are confiscated under Rule 25 ibid is erroneous. He has further submitted that in the whole proceedings it was nowhere established by Revenue that the appellant had knowledge that the said goods were liable for confiscation. He relied on final order issued by this Tribunal in the case of Chawla Highway Carriers v. Commissioner of C.Ex., Mumbai-III reported at 2003 (161) E.L.T. 165 (Tri.-Mumbai). He further submitted that the ld.Bench had held in the said case that for imposing penalty under Rule 26, the department has to prove not only the non duty-paid nature of the goods, but also that the

persons dealing with such goods had conscious knowledge that the goods were non duty-paid.

4. Heard the ld.AR, who has supported the impugned order-in-appeal.

5. Having considered the rival contentions and on perusal of record I find that Revenue has not established that the appellant had knowledge that the impugned goods were liable for confiscation. Therefore I hold that said requirement for invocation of said Rule 26 was not complied with. Therefore, the order imposing penalty under Rule 26 ibid is not sustainable. I, therefore, set aside the penalty imposed under Rule 26 of Central Excise Rules, 2002 on the appellant and modify the Order-in-Appeal to that extent. In above terms, the appeal is allowed in part.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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