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

APPEAL No. E/697/2010-EX[DB]

(Arising out of Order-in-Original/Appeal No. 58/Commissioner/GZB/2009 dated 24/12/2009 passed by Commissioner of Customs, Central Excise & Service Tax (Ghaziabad)

SH. HARI BABU SHARMA PROP **Appellant**

Vs .

C.C.E GHAZIABAD **Respondent**

Appearance:

Absent on Call for Appellant
Shri Mohd Altaf (Assistant Commissioner) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Whadwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/05/2018
Date of Decision : 23/05/2018

FINAL ORDER No.71133/2018

Per: ARCHANA WADHWA

On matter being called nobody appeared for the applicant. We also note that the matter has earlier come up on record number of times and was being adjourned in the interest of natural justice. Accordingly, we have heard learned AR and have gone through the impugned order.

2. The challenge in the present appeal is to penalty of Rs.5 lakh imposed under Rule 26 of Central Excise Rules, 2002 on the allegations and findings that the appellant, as a transporter, carried no duty paid goods from the premises of

M/s Qualimax Electronics (P) Ltd., situated at Sahibabad and thereafter the invoices were exchanged showing the clearance from one M/s Vikram Tyres. As per the revenue the appellant had the knowledge of clandestine activities of the manufacturer and was aware of the fact that the goods were being cleared from the manufacture's factory without payment of duty.

3. The findings arrived at by the lower authority to justify the imposition of penalty upon the appellant read as under:-

> "Penal action has also been proposed against Shri Hari Babu Sharma (noticee No. 9), Proprietor of M/s National Cargo Movers, RZ/513/256. Dayal park, West Sagarpur, Janakpuri, New Delhi under rule 26 of the Central Excise Rules. I find that M/s National Cargo Movers had transported the tyre flaps which were cleared from the factory of M/s QEPL without payment of duty and were finally delivered by the said transporter under cover of invoices of M/s Vikram Tyres. I find that he used to make two GRs first of M/s QEPL to M/s Agarwal Tyres and second one of M/s Vikram Tyre to J.K. Tyre & Industries Ltd. and as such they knowingly facilitated in evasion of Central Excise duty by M/s QEPL. Also he received freight amount in cash from M/s Vikram Tyre. In this way by transporting the goods on which no duty was paid, he had been instrumental in carrying out the activities of evasion by noticee No. 1. He is therefore liable for penal action under rule 26 of the Central Excise Rules, 2002".

4. From above, we note that the revenue's case is based upon the sole factor that the goods were first moved from the manufacturer factory under an invoice issued by the

manufacturer in the name of M/s Agarwal Tyres and was subsequently replaced with the second invoice issued in the name of M/s Vikram Tyres to J.K. Tyres & industries Ltd. According to us, the said facts by itself, cannot be held to be sufficient to reflect knowledge on the part of the appellant. It is to be kept in mind that appellant is only a transporter and as such cannot be expected to be aware of the Excise procedures or formalities. The transportation has been done by him under the cover of invoice and he cannot be expected to verify the genuineness or the legality of the said invoice. Similarly payment of freight amount in cash by itself would not account to appellant having any knowledge about the malafide intension of the manufacturer. As such we are of the view that imposition of penalty upon him is not justified. We accordingly set aside the same and allow the appeal with consequential relief.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(ARCHANA WADHWA)
Member (Judicial)

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