# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

**Excise Appeal No.51491 of 2014**

(Arising out of Order-in-Original No.KNP-EXCUS-000-COM-012-13014 dated 26.11.2013 passed by Commr. of Central Excise & Service Tax, Kanpur.)

**Shri Subash Chandra Alias Bhasi Babu**
(R/o 393, Gali No.14, Arya Nagar,
Firozabad, Uttar Pradesh)

**...Appellant**

*VERSUS*

**Commr. of Central Excise & Service Tax, Kanpur** **.....Respondent**
(117/7, Sarbodaya Nagar, Kanpur-208005)

**APPEARANCE**

Shri A.K.Prasad (Advocate) for the Appellant (s)

Shri Rajeev Ranjan (Addl.Commr.) (A.R.) for the Revenue

**CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER(JUDICIAL)**
**HON'BLE SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 71334 / 2019**

DATE OF HEARING : 11 July 2019
DATE OF DECISION : 11 July 2019

**MRS. ARCHANA WADHWA :**

The challenge in the present appeal is to penalty of Rs.1.25 Crores imposed upon the appellant in terms of the provisions of Rule 26 of Central Excise Rules 2002.

2. As per facts on record, the Police officers searched residential premises of one Shri Sanjay Rathore on 3 August 2011. During the course of the search, certain packing machines for manufacture of Pan Masala and Gutkha were found installed in the said premises. Along with the said machines, Police officers also found fully packed Pan Masala/Gutkha pouches 'Dilbahar' brand, which were put under seizure.

3. The above search and seizure was subsequently referred to the Central Excise department, who undertook the investigations. During the course of investigations, statements of Shri Sanjay Rathore was recorded on 8 August 2011 wherein he disclosed that Shri Subash Chandra, the present appellant was providing him loose Gutkha as also the packing material out of which he was manufacturing the Gutkha pouches.

4. As a result of the above revelation made by Shri Sanjay Rathore, the officers recorded the statement of Shri Subash Chandra on 3 January 2012 and 4 May 2012. In both the said statements, the appellant deposed that he has got nothing to do with the Gutkha being manufactured by Shri Sanjay Rathore and he was a small time trader of matches, Biris, tea leaves, mosquito coil etc.. He denied supplying any loose Gutkha or packing material to Shri Sanjay Rathore.

5. Revenue further made enquiry from one M/s.Kanti Chemical, who stated that they are engaged in the packing material under the brand name of 'Dilbahar' and they had a customer by the name of Shri Subash Chandra, but they do not know him personally.

6. In the light of the result of the investigations, proceedings were initiated against Shri Sanjay Rathore proposing confirmation of demand of duty to the extent of Rs.1.25 Crores as also for imposition of penalties upon Shri Sanjay Rathore as also on Shri Subash Chandra. The said proceedings resulted in passing the present impugned order by Commissioner of Central Excise, Kanpur confirming the demands as also imposing penalties.

7. The said order is impugned before us.

8. We note that the Appeal of Shri Sanjay Rathore against whom demands stands confirmed is not before us today. Only the appeal filed by Shri Subash Chandra challenging imposition of penalty upon him under Rule 26 of the Central Excise Rules, 2002 is being taken up for final disposal.

9. After hearing the submissions made by both the sides and after going through the impugned orders we find that the Commissioner has not considered the present appellant as the manufacturer of Pan Masala/Gutkha. The adjudicating authority has observed that Shri Sanjay Rathore as also M/s.Kanti Chemicals, suppliers of the packing material has named Shri Subash Chandra as the person who was supplying the packing material and loose Gutkha to Shri Sanjay Rathore, and as such, he has to be penalized.

Apart from the fact that supply of loose Gutkha and packing material by itself cannot be held to be a crime or any illegal activity so as to call for imposition of penalty, we note that the entire case of the Revenue is primarily based upon the statement of Shri Sanjay Rathore, who was a co-noticee as also on the statement of M/s.Kanti Chemicals. The said two deponents have not been examined by the Commissioner in terms of the provisions of section 9-D of the Central Excise Act and as is the well settled law, the said statements cannot be admitted as an evidence. If the said two statements are taken out of consideration, nothing survives with the Revenue so as to hold against the appellant. Otherwise also it is well settled law and does not require support of any precedent decisions to conclude that the oral statements, by themselves, cannot be relied upon, unless there is documentary corroborative material to support the same. We note that the appellant’s statements recorded during investigation are exculpatory statement and he has clearly deposed that he was a small time trader and was in no way involved with the manufacturing activities of Shri Sanjay Rathore. The adjudicating authority has not given any reason to doubt or reject the said statement of the appellant, which also stands recorded in terms of the provisions of section 14 of the Central Excise Act.

10. In the absence of any positive, tangible and sufficient evidences against the appellant, we find no reasons to uphold the penalty upon him. The same is accordingly set aside and appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court.)

SD/

**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

SD/

**(ANIL G. SHAKKARWAR)**
**MEMBER(TECHNICAL)**

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