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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 02/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70416/2017-SM[BR] dated 23/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1025/2010	SH SANJAY MITTAL B-174, Old Avas Vikas, Saharanpur (UP)
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To
3 Advocate(s) / Consultant(s):

Aalok Arora,Adv
82 - Mission Compound,
Saharanpur,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/1025/2010-EX[SM]

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

M/s Sh. Sanjay Mittal **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:
Shri Aalok Arora, Advocate, for Appellant
Shri D. K. Deb, Assistant Commissioner, (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 23/03/2017

FINAL ORDER NO....70416/2017.........

Per: Anil Choudhary

The issue in this appeal is, whether the penalty of Rs. 10 lacs, under Rule 26 of the Central Excise Rules, 2002, has been rightly imposed on the appellant an employee of the main party, M/s Qualimax Electronics (P) Ltd., situated at D-12, Site-IV, Industrial Area, Sahibabad, Distt. Ghaziabad, during the relevant period, and if yes, whether the quantum of penalty imposed of Rs. 10 lakhs, is just and proper.

2. On the basis of intelligence that M/s Qualimax Electronics (P) Ltd. (for short 'M/s QEPL') is registered with Central Excise Department for manufacture of Tyres Flaps on Excisable product, who were also doing job for M/s J.K. Tyres & Industries Ltd., that they had floated a firm namely; M/s Vikram Tyres, at Mehrauli , Delhi which was not registered with the Central Excise Department and was using the invoices of this firm to clandestinely clear the Tyres Flaps

(Excisable product) manufactured by M/s QEPL. The office and factory of M/s QEPL and some other related premises were searched/investigated by Revenue on 23/07/2008 under Panchnama drawn at the premises. According to the facts, Tyres Flaps manufactured by M/s QEPL were cleared on their invoices in the name of M/s Agarwal Tyres, Delhi, from their factory at Sahibabad to Delhi. On entering Delhi, the invoices of M/s QEPL were destroyed and the material was further consigned/transported on the invoices of M/s Vikram Tyres to the buyers like M/s J.K. Tyres & Industries Ltd., M/s Birla Tyres, etc. Central Excise duty was charged on the invoices of M/s Vikram Tyres raised on M/s J.K. Tyres & Industries Ltd., & M/s Birla Tyres, but the same was not deposited with the exchequer. Investigations, further, revealed that the Proprietor of M/s Vikram Tyres, is one Smt. Manju Gupta, wife of Mr. Pradip Gupta, who is Director of M/s QEPL. Further, Mr. Pradip Gupta was the Authorized Signatory, operating the bank accounts of M/s Vikram Tyres. Two more bank accounts in the name of M/s Vikram Tyres were found, wherein the said Mr. Pradip Gupta had signed as Proprietor of M/s Vikram Tyres. Further, in his statement, Mr. Pradip Gupta stated that he had been operating the account in the name of M/s Vikram Tyres. In the course of investigation, the clandestine activity was admitted by Mr. Pradip Gupta and he further issued a checque of Rs. 2 crore towards approximate duty liability and deposited the same.

The other Director, in M/s QEPL, was Smt. Manju Gupta. Further, during the search at the office of M/s QEPL at Nehru Place, Delhi invoices of M/s QEPL to M/s Agarwal Tyres and corresponding invoice of M/s Vikram Tyres to M/s J.K. Tyres & Industries Ltd. were resumed alongwith other documents. The Revenue also obtained details of purchases made by the major buyers of M/s QEPL namely: M/s J.K. Tyres & Industries Ltd. & M/s Birla Tyres Ltd. and on the basis of those data it appeared that the Central Excise duty including Special Excise duty & Cess amounting to Rs.5,66,75,487/- had been evaded during the period July, 2003 to November, 2007 on the Tyre Flaps which were cleared on the invoices of M/s Vikram Tyres. The said estimate of duty evaded was admitted by Mr. Pradip Gupta in his statement on 26/09/2008. Statement of Mr. Mohit Gupta son of Mr. Pradip Gupta was also recorded on 25/08/2008, wherein he stated that he was Authorized Signatory of M/s Vikram Tyres, Delhi, since October, 1999. He admitted that the unaccounted Tyre Flaps manufactured by M/s QEPL were being sold to M/s J.K. Tyres & Industries Ltd. & M/s Birla Tyres Ltd. on the bills of M/s Vikram Tyres, which did not have any manufacturing facility of its own, and all the goods cleared on the bills of M/s Vikram Tyres were understandable manufactured by M/s QEPL. He also confirmed that being Authorized Signatory of M/s Vikram Tyres, he had issued Cheques of M/s Vikram Tyres. Further, the statement of Mr.

Kamlesh Kumar Gupta, Proprietor of M/s Agarwal Tyres, was recorded wherein he had stated that he did not make any unaccounted purchase of Tyre Flaps of M/s QEPL.

3. During the course of investigation, statement of Shri Sanjay Mittal, the appellant herein was also recorded. The appellant was Manager of M/s QEPL and alongwith Shri Subhash Attri, Supervisor of M/s QEPL, was concerned with transporting, removing, depositing, keeping, concealing, selling and purchasing of excisable goods, which they were having knowledge or reason to believe were liable to confiscation. In his statement dated 24/07/2008, stated that he is a Postgraduate in Economics. He started working since 1996 and he was employed with M/s QEPL from June, 2005 to mid-April, 2007. He was posted at the Head Office, Delhi. He was doing the work allotted by the Directors from time to time. M/s J.K. Tyres & Industries Ltd. are supplying all raw materials such as Rubber, Carbon black, Chemicals etc. under job work challans. M/s QEPL manufactures Tyre flaps from the raw material supplied by M/s J.K. Tyres & Industries Ltd., under job work challans and returns the rubber flaps to them on challans. No Central Excise duty was payable by M/s QEPL on the job work done by them for M/s J.K. Tyres & Industries Ltd. M/s QEPL was also manufacturing Tyre Flaps by purchasing raw materials from the market. Tyre Flaps, so manufactured required were cleared on their invoices issued in the name of M/s Agarwal

Tyres, Delhi. No Excise duty was paid by M/s QEPL on such Rubber Flaps. As soon as the consignment of such Rubber Flaps crossed U.P. border into Delhi, the invoices issued by M/s QEPL in the name of M/s Agarwal Tyres were destroyed and invoices issued by M/s Vikram Tyres were given to the transporter. For the transportation of such Rubber Flaps to M/s J.K. Tyres & Industries Ltd., situated in the state of M. P. & in Rajasthan. On the invoices of M/s Vikram Tyres appropriate duty of Central Excise was charged from M/s J.K. Tyres & Industries Ltd. Since M/s Vikram Tyres had in fact not undertaken any manufacturing activity they had not paid any duty of Central Excise on the invoices issued by them to M/s J.K. Tyres & Industries Ltd. For transportation of rubber flaps the services of transporter, namely; M/s National Cargo Movers, Delhi had been used. M/s Vikram Tyres, is a Proprietor concern of Mr. Pradip Gupta. All the invoices, in the name of M/s Vikram Tyres, had been issued from the Head Office of M/s QEPL situated at Delhi and these were signed by one Mr. Sanjay Jaiswal. The appellant had again joined in the new firm of Mr. Pradip Gupta, namely; M/s M. B. Rubber (P) Ltd., having its office also at Nehru Place, New Delhi, since the month of November 2007. In his further statement, the appellant have admitted to have been maintaining a diary (Singapore 109) which contains transactions of unaccounted raw material, purchases for use in manufacture of Tyre Flaps, sold on the Bills of M/s Vikram

Tyres. In this diary hand-written ledger accounts of the raw material suppliers were maintained. The appellant also dealt with the dealers to whom rejected Tyre flaps were sold without payment of duty. He had made cash transactions and payments to various prominent suppliers against purchase of raw material. One, Shri Hari Babu Sharma, Proprietor of M/s National Cargo Movers stated that he used to get instructions from the appellants - Shri Sanjay Mittal for transport of Tyre Flaps cleared.

4. Based on such findings ld. Commissioner have held that the appellant Shri Sanjay Mittal is involved in evasion of duty and in this way he has dealt with the goods which were cleared without payment of duty liable to confiscation and as such is liable to penal action under Rule 26 of the Central Excise Rules, 2002. And accordingly, a penalty of Rs. 10 lakhs was imposed vide the impugned order.

5. The ld. Counsel, Shri Aalok Arora, appearing for the appellant stated that it is nowhere case of the Revenue that the appellant was getting any share in the supply and/or the clandestine activity of M/s QEPL and its director(s). The appellant was working as the Manager of M/s QEPL as it appears from the duties done by him. He was only carrying out the instructions of the Directors and had no personal interest in the clandestine activity of the company namely: M/s QEPL or the firm - M/s Vikram Tyres. It is also a matter of record, that the appellant was drawing a salary of

Rs.10,000/- only per month. It is further stated that it is not the case of Revenue that the appellant on his own motion and/or voluntarily had involved himself in the clandestine activity of his masters. Accordingly, prays for a lenient view of the matter, praying for deletion of the penalty imposed.

6. The ld. A. R. for Revenue relies on the impugned order and has taken me through the allegations and the findings.

7. Having considered the rival contentions and on perusal of record, I hold that the appellant was a small-time employee drawing a salary of Rs.10,000/- during the relevant period. Although, he is an educated person, but it is not the case of Revenue that he was entitled to and/or getting the share in the clandestine activity of his employer. It appears that the appellant unknowingly got involved as an employee in the clandestine activity of his employers. Under the facts and circumstances, I uphold that the appellant is liable to penalty but at the same time I find that the quantum of penalty imposed is quite high and harsh. Accordingly, I reduce the penalty imposed to Rs.2,50,000/-. Thus, the appeal is allowed in part. The appellants will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

प्रमाणित प्रति/Certified True Copy
08/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari