CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1482 of 2011
[Arising out of OIO No.09/LDH/2011 dated 31.03.2011 passed by the Commissioner of Commissioner of Central Excise, Ludhiana]

M/s JPFL Films Private Limited **: Appellant (s)**
(Previously known as Jindal Poly Films Limited)
Village Mundegaon, Taluka-Igatpuri,
District-Nashik, MH-422403

Vs

Commissioner of Central Excise,
Ludhiana **: Respondent (s)**
ICD, GRFL, G.T. Road, Sahnewal,
Ludhiana, Punjab-141001

With

2. Excise Appeal No. 1720 of 2011 [Jalan Jee Polytex Ltd.]

3. Excise Appeal No. 1721 of 2011 [Kavita International Agency]

4. Excise Appeal No. 1741 of 2011 [Kuldeep Singh P A to Director]

5. Excise Appeal No. 1742 of 2011 [D P Singh, Accountant]

6. Excise Appeal No. 1745 of 2011 [R Knitfab]

7. Excise Appeal No. 1746 of 2011 [Perfect Designer]

8. Excise Appeal No. 1763 of 2011 [V K Kalra Hosiery Works]

9. Excise Appeal No. 1854 of 2011 [Reliance Industries Limited (formerly known as Silvassa Industries Pvt. Ltd.]

10. Excise Appeal No. 2056 of 2011 [Kanpur Wool Industries]

11. Excise Appeal No. 2204 of 2011 [Swastik Trading Co.]

12. Excise Appeal No.2723 of 2011 [Apex Corporation]

13. Excise Appeal No. 2726 of 2011 [Mansa Traders]

[All Arising out of OIO No.09/LDH/2011 dated 31.03.2011passed by the Commissioner of Commissioner of Central Excise, Ludhiana]
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APPEARANCE:
Shri R.K. Hasija and Shri Shivang Puri, Advocatesfor Appellant No. 1
Shri Sudeep Singh Bhangoo, Advocate for Appellant No.2, 3 & 11
Shri Sumeet Jain, Advocate for Appellant No. 9
Shri Aman Garg, Advocate for Appellant No. 10

Shri Rajeev Gupta, Shri Pawan Kumar and Shri Narinder Singh, Authorised Representatives for the Respondent

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.60677-60689/2023

Date of Hearing: 17.11.2023

Date of Decision: 06.12.2023

Per: P. ANJANI KUMAR

The present set of appeals has been filed by various appellants challenging the impugned order No.09/LDH/2011 dated 31.03.2011 and claimed to have been communicated on 09.05.2011. On initiating an investigation into M/s Cannon Industries Private Limited; on searching various premises and on recording statements of various persons, Revenue concluded that M/s Cannon India Private Limited have availed CENVAT credit fraudulently without actually receiving the goods in their factory. Show-cause notice was issued to M/s Cannon India Private Limited seeking to recover credit of Rs.5,59,50,128/- along with interest and penalty; seeking to levy penalty on 39 suppliers, of the goods, under Rule 26 of Central Excise 2002, on the allegation that they have connived with M/s Cannon India Private Limited. M/s Cannon India Private Limited has settled the case with Revenue under Sabka Vishwas Legacy Dispute Resolution Scheme. The appellants herein have not applied for settlement and have approached this Bench with this set of appeals.

2. Learned Counsels appearing on behalf of the appellants submit that SVLDR Scheme provides for relief for penalty where there is no duty involvement; the fact that they have not applied for the Scheme should not come in the way of getting the relief which is rightfully due to them; they submit that the Tribunal in a series of judgments has taken this stand and has extended relief to the assessees.

3. Learned Counsels further submit that there is a contradiction in the Department's stand on the issue. On the one hand, Department alleges that no goods were transported and on the other hand, penalty is proposed to be levied under Rule 26 of Central Excise Rules, 2002 wherein penalty can only be imposed on persons who have dealt with excisable goods in any manner. Learned Counsels also submit that whereas penalty for issuing only invoice without supply of goods is made punishable by insertion of sub-Rule 2 of Rule 26 of Central Excise Rules, 2002 w.e.f. 01.03.2017, the Department chose to impose the penalty retrospectively i.e. for the period before 01.03.2017. They further submit that the appellants have proved their bona fide by producing the documents showing sale of goods and their transport thereof. Penalty cannot be imposed on suppliers for any fraudulent activity on the part of the receiver; moreover, a company or a firm cannot be penalized under Rule 26. They rely on the following cases:

- CCE Vs Mini Steel Traders – 2014 (309) ELT 404 (P&H).
- Vee Kay Enterprises – 2011 (266) ELT 436 (P&H).
- CCE Vs Asim Enterprises – 2015 (328) ELT 658.

- Shri Ram Bilas Bansal – Final Order No. 60192-60194/2023.
- M/s Virani Metal Industries – SCA No.13233 of 2022 dated 30.11.2022.
- Vaishali Khanapurkar – 2008 (223) ELT 245 (Tri.).
- Castrol India Co. – 2008 (222) ELT 408 (Tri.).
- Mukund Ltd. – 2007 (218) ELT 120 (Tri.).
- Indian Roadway Corpn. – 2005 (71) RLT 203.
- Nasik Strips Pvt. Ltd. – 2008 (226) ELT 410 (Tri. Mumbai) and Woodmen Industries – 2004 (164) ELT 339 (Tri.) affirmed by Hon'ble Supreme Court-2004 (170) ELT A307.
- M.N. Shah – 2005 (187) ELT 321 (Tri.)
- Apple Sponge & Power Ltd. – 2018 (362) ELT 894 (Tri.).
- CCE Vs Novice Polymers & DR Polymers – 2019 (1) TMI 1159-CESTAT-CHANDIGARH.
- Steel Tubes of India Ltd. – 2007 (217) ELT 506 (Tri. LB).
- Lok Nath Varinder Kumar Impex Ltd. – Final Order No. 60485-60486/2019 dated 08.05.2019.

4. Learned Counsel, appearing for M/s Reliance Industries Limited and M/s Jalan Jee Polytex Limited, submits that Commissioner's findings are contrary to the facts recorded therein in the order itself. He submits that while the Commissioner admits in Paras 4.38 and 4.39 of the Order that the goods supplied by them to M/s Cannon India Private Limited were found to have entered the Punjab ICC Check Post and on the other hand come to the conclusion in Para 4.86 that the appellants have only issued invoices without transporting the goods.

5. Learned Authorized Representative for the Department reiterates the findings of the impugned order; he takes us through various provisions of SVLDR Scheme and submits that filing of a declaration is mandatory; CBIC clarified in the FAQs released after the Scheme was declared that the co-noticees can avail the Scheme by

filing a declaration. In cases where the appellants have not filed any declaration contemplated under Section 125 of the Finance Act, 2019, the benefit of the Scheme cannot be claimed.

6. Coming to the merits of the case, he submits that a watertight case has been made against the appellants after conducting verification at the ICC Check Post and Department came to the conclusion that no goods were supplied by the appellants. He submits, quoting from various paras of the impugned order that the involvement of M/s Swastik Trading Company, Ludhiana; M/s Kavita International Agency, Ludhiana; M/s Mansa Traders, Bhiwandi; M/s Apex Corporation, Bhiwandi; M/s Kanpur Wool Industries; M/s V.K Kalra Hosiery Works, Ludhiana; M/s Knit Fab, Ludhiana and M/s Perfect Designer, Ludhiana. He also submits that the role of M/s Jindal Poly Films Limited; M/s Jalan Jee Polytex Limited and M/s Reliance Industries is detailed in the impugned order. He submits that therefore, all the appellants have rendered themselves liable for penalty under Rule 26 of Central Excise Rules, 2002; he submits that there was no bar on imposition of penalty for connivance in the evasion of Central Excise duty before 01.03.2017; the only change was that after 01.03.2007, penalty was prescribed for issuing invoices without movement of goods. He relies on the following case laws:

- Vee Kay Enterprises- 2011-TIOL-174-HC-P&H-CX.
- M. S. Metals – 2014 (309) ELT 241 (P&H).
- Steel Tubes of India Ltd. – 2007 (217) ELT 506 (Tri. LB).
- Shripal Aggarwal – 2013 (289) ELT 302 (Tri. Del.).
- Mahindra Ugine Steel Co. Ltd. – MANU/CM/0110/2015.

- V.K. Enterprises – 2010 (249) ELT 462 (Tri. Del.)
- Cannon Industries Pvt. Ltd. – MANU/CM/0079/2019.
- Sanjay Vimalbhai Deora – 2014 (306) ELT 533 (Guj.) and 2014 (309) ELT A131 (SC).
- Ajay Kumar G. Baheti – 2017 (348) ELT 115 (Tri. Mumbai).
- CC Vs Navneet Agarwal – 2012 (276) ELT 515 (Tri. Ahmd.)
- Kay Iron Works (Jorian) Pvt. Ltd. – 2018 (359) ELT 110 (P&H).
- Ranjeev Alloys Ltd. – 2009 (236) ELT 124 (Tri. Del.) and 2009 (247) ELT 27 (P&H).
- Siemens Ltd. (formerly known as M/s Morgan Construction Co. Pvt. Ltd.), Mr. Sunil Chellani – 2023 (5) TMI 377- CESTAT-Mumbai dated 06.03.2023.
- Dinesh Kanoria – 2022 (12) TMI 1408 – CESTAT Mumbai dated 20.12.2022.
- Shakil Zakaria Memon – 2023 (11) TMI 6 – CESTAT AHMEDABAD.
- Shri V.K. Aggarwal & Shri J.K. Aggarwal – 2023 (9) TMI 178 - CESTAT NEW DELHI.
- Shri B.V. Kshatriya – 2023 (5) TMI 858- CESTAT Mumbai dated 11.01.2023.
- Sri Sasthi Charan Banerjee – Final Order No.75578/2022 dated 14.12.2022.
- Manjeet Kaur Bansal – 2022 (56) GSTL 295 (Tri. Del.)

7. Heard both sides and perused the records of the case. The case of the Department is that the appellants have not made the declaration as required under the SVLDR Scheme; Department relies on Section 125 of the Finance Act, 2019 and Rule 3 of the Rules made under the Scheme and submits that declaration is to be submitted case-wise and therefore, each of the appellants require to file a declaration and therefore, there is no automatic immunity to the co-noticees when the main noticee settles the duty and penalty under the Scheme.

8. Rule 3 of the Rules made under the Scheme is as follows:

> **3. Form of declaration under section 125.** - (1) The declaration under section 125 shall be made electronically at https://cbic-gst.gov.in in Form SVLDRS-1 by the declarant, on or before the 31st December,2019.
> (2) A separate declaration shall be filed for each case.
> *Explanation.* - For the purpose of this rule, a "case" means -
> (a) a show cause notice, or one or more appeal arising out of such notice which is pending as on the 30th day of June, 2019; or
> (b) an amount in arrears; or
> (c) an enquiry or investigation or audit where the amount is quantified on or before the 30th day of June, 2019; or
> (d) a voluntary disclosure.

9. We find that the relief available under the Scheme is provided under Section 124 which reads as follows:

> 124. Relief available under Scheme. - (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows: -
> (a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is, -
> (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
> (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
> (b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;
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10. It is clear from the provision of Section 124 that the applicants are eligible for relief of entire penalty or late fee. Now the question arises as to whether the immunity or relief is automatic or is consequent upon the declaration required to be filed by the assessees. The statutory provisions indicate that the appellants are eligible for relief for the entire amount of penalty or late fee. The relief is not subject to the satisfaction of the committee constituted for operationalization of the Scheme as in the case of settlement of duty. Had the appellants filed declarations, the said committee had no role but to give relief as contained in Section 124. Thus, we find that the filing of declaration, more so, in the instant case, where only penalty is involved, remains a procedural issue or a formality. Tribunal and High Courts have been consistently holding that procedural infractions, if any, should not come in the way of a substantial right. We find that the very same issue has been deliberated and decided in favour of the assessees by this Tribunal on a number of occasions. We find that this Bench in the case of Col. Randhir Singh Malik (Service Tax Appeal No.60304 of 2017) held that: *"considering the fact that the main party has already been discharged and obtained Form-4, in that circumstance, we waive the penalty imposed on the appellant and allow the appeal with consequential relief, if any."* The Conclusion by the Tribunal in other cases as cited by the appellants was also similar.

11. Coming to the merits of the case, we find that in the case of M/s Reliance Industries and M/s Jalan Jee Polytex Limited has given findings contrary to the facts recorded therein in the order itself. Commissioner observes that in the above said cases, goods have been

found entered on the Punjab ICC Check Post, but M/s CIPL neither had any manufacturing facility as discussed above nor had they got manufactured any finished goods out of these inputs from outside on job-work basis; thus, it is clear that M/s CIPL had availed fraudulent CENVAT credit on the said yarn and the same is recoverable from them. Though, no positive act of connivance was evidenced by the above appellants, Commissioner goes on to impose penalty on the appellants. We are of the considered opinion that such an order passed without appreciation of the facts and law cannot be sustained. On going through the records of the case, it is seen that no investigation at the end of the transporter/ truck drivers has taken place to falsify the claims of the appellants and to support the allegations by the Department. In the absence of the same, penalty cannot be fastened to the appellants merely because of the fact that there was a fraud committed by the company which procured goods from the appellants. Also, the financial transactions claimed by the appellants have not been negated. Under these circumstances, penalty cannot be imposed on the appellants. Moreover, the Commissioner has imposed penalty on some appellants keeping in mind the provisions of law which did not exist at the material time. For this reason, also, the penalty imposed cannot be held to be sustainable.

12. In view of the above, we find that the benefit of the Scheme cannot be denied to the appellants just because they did not file the declaration under SVLDR Scheme. Moreover, as for the submissions of the appellants and our discussion as above, the impugned order

cannot be sustained on merits also as far as the imposition of penalty, on the appellants herein, is concerned. Therefore, all the appeals are allowed.

(Pronounced on 06/12/2023)

(S.S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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