CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60313 of 2018

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-114-2017-18 dated 19.12.2017 passed by the Commissioner (Appeals), CGST, Chandigarh]

Gagan Kwality Works **......Appellant**
Plot No. 11-A & 51, Industrial Area,
Phase-II, Chandigarh 160002

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Chandigarh **......Respondent**
Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

<u>APPEARANCE:</u>

Mr. Gagan Kohli, Advocate for the Appellant

Mr. Aniram Meena, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60456/2026

DATE OF HEARING: 25.03.2026
DATE OF DECISION: 22.07.2026

<u>S. S. GARG</u> :

The present appeal is directed against the impugned Order-in-Appeal dated 19.12.2017 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the Appellant.

2. Briefly stated facts of the present case are that the Appellant M/s Gagan Kwality Works are engaged in the manufacture of Nuts Threaded and Nuts Un-Threaded classifiable under Chapter 73 of the Central Excise Tariff Act, 1985. The allegation of the department is that the Appellant had wrongly availed the SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 during the Financial Year 2010-11. Further, the allegation of the department is that the Appellant paid duty on a quarterly basis and filed quarterly ER-3 returns instead of paying duty on a monthly basis and filing monthly ER-1 returns during the period 2010-11. Further, the department observed that during the Financial Year 2009-10, the Appellant had cleared the goods valued at Rs.4,32,46,469/- and paid duty of Rs.36,93,022/-. On this basis, the department alleged that the Appellant had crossed the SSI exemption threshold limit of Rs. 4 crore during the previous Financial Year 2009-10 and therefore, was not eligible to avail the benefit of SSI exemption during the period 2010-11. It was further alleged that the Appellant wrongly paid duty and filed returns on a quarterly basis instead of on a monthly basis and defaulted in timely payment of duty under Rule 8 of the Central Excise Rules, 2002. On these allegations, two Show Cause Notices dated 08.04.2011 & 30.05.2011, for the period April 2010 to December 2010 and January 2011 to February 2011 respectively, were issued proposing recovery of the duty amounting to Rs.4,60,182/- (Rs.4,33,330/- + Rs.26,852/-) along with interest and penalty. Further, in the first round of proceedings, the Adjudicating Authority vide Order-in-Original dated 31.05.2012, confirmed the

demand, interest and imposed penalty. On appeal, the Commissioner (Appeals) vide Order-in-Appeal dated 19.03.2013, upheld the demand but reduced the penalty to Rs.5000/- under Rule 27. On further appeal, the Tribunal vide Final Order dated 26.07.2013 remanded the matter to the lower authority for examining and verifying the total clearances of the Appellant in light of the statement produced on record and also to examine the issue regarding payment of duty through CENVAT Credit. However, in the remand proceedings, the Adjudicating Authority vide Order-in-Original dated 31.03.2014, again confirmed the demand of Rs.4,60,182/- along with interest and imposed an equivalent penalty of Rs.4,60,182/-. Aggrieved by the said Order-in-Original, the Appellant filed an appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal, has upheld the said Order-in-Original and has rejected Appellant's appeal. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts & the law and the binding judicial precedents.

4.1 He further submits that the Adjudicating Authority did not conduct any verification from the buyers of the branded goods despite the statement dated 04.03.2011 and the relevant invoices having been placed on record. He further submits that the value of branded goods amounting to Rs.39,88,125/- pertaining to the Financial Year 2009-10 was required to be excluded while computing the aggregate value of clearances for the purpose of determining SSI eligibility. He also submits that after excluding the value of branded goods, the effective clearances during the Financial Year 2009-10 come to Rs.3,92,68,344/- which is below the prescribed threshold limit of Rs. 4 crore and accordingly, the Appellant was fully eligible to discharge duty liability on a quarterly basis and also to file quarterly ER-3 returns.

4.2 He further submits that even if there was delay in payment of duty, the duty already paid through CENVAT Credit cannot be treated as improper or irregular in view of the settled legal position. He also submits that it is a settled law that duty paid through CENVAT Credit cannot be demanded again to be paid through PLA or cash, and in such a situation, interest alone is payable from the date of each clearance till the date on which the default is made good. As per the learned Counsel, the total interest worked out to be only **Rs.22,457/-**, (i.e. Rs.12,835/- + interest on short duty of Rs.9,622/-).

4.3 He further submits that imposition of equivalent penalty under Rule 25 is bad in law because there was no suppression of facts with the intent to evade payment of duty on the part of the Appellant, and at the most, the penalty, if any, could have been proposed under Rule 27 and not under Rule 25.

4.4 In support of his above submissions, he places reliance on the following case-laws:

- **Sandley Industries vs. UOI - 2015 (326) ELT 256 (P&H)**
- **Shreeji Surface Coatings Pvt Ltd vs UOI - 2015 (320) 764 (Guj.)**
- **Praweg Conveyors vs. CCE, Kalyan-III - 2016 (337) ELT 450 (Tri. Mum.)**
- **CCE & Cus vs. Saurashtra Cement Ltd – 2010 (260) ELT 71 (Guj.)**
- **CCE, Mumbai-II vs. Chopra Engineering Co. - 2016 (339) ELT 423 (Tri. Mum.)**

5. On the other hand, the learned Authorized Representative for the Respondent-Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record as well as the decisions relied upon by the learned Counsel for the Appellant, we find that the only dispute in the present case is whether the Appellant has wrongly availed the SSI exemption under Notification No. 8/2003-CE dated 01.03.2003 during the Financial Year 2010-11?

7. Further, we find that as per the department, the Appellant has wrongly been filing the ER-3 returns quarterly and paying the duty on quarterly basis instead of paying duty on monthly basis and that too in cash. Further, we find that in the impugned order, the learned Commissioner (Appeals) has categorically held that the Appellant has not been able to provide the evidence regarding the sale of

branded goods; further held that during the year 2010-11, the Appellant is not eligible for SSI exemption.

8. Further, we find that though the Appellant had paid the duty on quarterly basis through the CENVAT Credit, which as per the department, is irregular, and the Appellant was required to pay duty in cash. We note that this issue has been settled by the jurisdictional High Court of Punjab & Haryana in the case of **Sandley Industries** (supra) as well as by the other courts as cited by the Appellant. In the case of **Sandley Industries** (supra), the Hon'ble High Court has held that the duty paid through CENVAT Credit is valid and cannot be demanded again to be paid through cash/PLA. At the most, the Appellant is required to pay the interest for the delay which in the present case, the Appellant has fairly agreed that they are liable to pay the interest and has worked out the total interest amounting to Rs.22,457/-.

9. As regards the imposition of equivalent penalty under Rule 25 of the Central Excise Rules, 2002 is concerned, we find that the said penalty is not justified in law in absence of any fraud, suppression of facts, wilful misstatement with intention to evade payment of duty on the part of the Appellant. We also note that in the first round of litigation, the learned Commissioner (Appeals) vide Order-in-Appeal dated 19.03.2013, reduced the penalty to Rs.5000/- under Rule 27 instead of Rule 25, therefore, we accordingly hold that the Appellant is liable to pay penalty under Rule 27 which is quantified as Rs.5000/-.

10. In result, we partially allow the appeal on the following terms:

(a) The Appellant is liable to pay the interest amounting to Rs.22,457/-.

(b) The Appellant is liable to pay the penalty amounting to Rs.5000/- under Rule 27 of the Central Excise Rules, 2002.

(Order pronounced in the open court on 22.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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