# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## CHANDIGARH

REGIONAL BENCH - COURT NO. I

**Excise Appeal No.60876/2019**

[Arising out of OIA No.LUD-EXCUS-001-APP-2422-2424-19 dated 10.5.2019 passed by the Commissioner (Appeals), Central & Service Tax, F-Block, Rishi Nagar Ludhiana)

**Shri Krishan Kukreja** **Appellant**
(R/o 3A/57, WEA, Sat Nagarm Karol Bagh, New Delhi-110005)

*VERSUS*

**Commissioner of Central Excise, Jalandhar** **Respondent**
(F-Block, Rishi Nagar, Ludhiana)

**APPEARANCE:**
Present for the Appellant: Shri Ayush Mehrotra, Advocate
Present for the Respondent: Shri Bhasha Ram, AR

**CORAM:** **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

DATE OF HEARING: 04.03.2021

DATE OF DECISION: 19.03.2021

**FINAL ORDER NO.60564/2021**

**PER ASHOK JINDAL**

The appellant is in appeal against the impugned order imposing penalty under Rule 26 of Central Excise Rules, 2002.

2. The brief fact of the case are that M/s. Nagahia & Sons Pvt.Ltd., Railway Road, Nakodar and M/s. Karsh Enterprises, Ludhiana Road, Nakodar are manufacturers of filter cigarettes. An Intelligence gathered that two persons were evading central excise duty by way of clandestine removal of filter cigarettes. Acting on the said intelligence, the officers of DGCEI detained a consignment of100 bags at New Delhi Railway station, New Delhi. The printing on packets

showed that the same were manufactured by these two persons. In the follow up action on the same day by the officers of the Ludhiana Regional unit of DGCEI, it was found that all records maintained by the two persons and both the units were under physical control. However, during the investigation at the Railway Parcel Booking office at New Delhi, it was found that the consignment had been booked for Bhubaneswar and purportedly the consignment had originated from the above mentioned factories/units. Further, on enquiry conducted by DGCEI, it was informed that these two units had complained that some other manufacturers are manufacturing spurious cigarettes under their brand name. Since the issue was under consideration in respect of clandestine removal of consignment of 100 bags of cigarettes detected at New Delhi Railway Station, New Delhi was handed over to Central Excise Jalandhar for further enquiry. The detained goods being perishable in nature were also handed over to Central Excise Division, Jalandhar for further investigation. The officers of Central Excise, Division Jalandhar visited DGCEI, New Delhi on 9.5.2014 along with the following documents:-

(a) railway receipts
(b) copy of detained memo
(c) copy of superdnama
(d) copy of panchnama dt.20.1.2014 drawn at New Delhi Railway Station
(e) copy of panchnama dt.20.1.2014 drawn at Karsh Enterprises alongwih Annexure A & B
(f) copy of summons dated 20.1.2014 issued by DGCEI, New Delhi.

3. The panchnama dated 20.1.2014 revealed that the consignment was booked by one Sh.Kishan Kukreja, resident of 3A/57, WEA, Karol Bagh, New Delhi. On being asked, he stated that the consignment of100 bags booked by his employees. He further

stated that he was not having invoices in respect of the consignment and that the goods have been brought to parcel booking office by an employee of the buyer for booking of the same by his employees. On being asked about the description of goods declared by his employees, the same was stated to be as pan masala. He further stated that such types of consignments were also booked at earlier instances as he was receiving Rs.100 per bag in cash, over and above the freight in lieu of booking and he was not maintaining any records. He also stated the consignment was booked for Bhubaneswar. Further the details of detained goods by DGCEI, New Delhi on 20.1.2014 and taken over by the preventive staff of Central Excise Division, Jalandhar on 9.5.2014 is tabled below:-

| S.No. | Name of the party | Brand | Quality | Value based on MRP (in Rs.) | Central Excise Duty involved (in Rs.) |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | M/s. Karsh Enterprises, Ludhiana Road, Nakodar | Eleven 10 ((69 mm) | 56 bags i.e.(small packages) | 32,25,600/- (Rs.24/pack) | 18,50,507/- |
| 2 | M/s.Nagahia Sons, Railway Road, Nakodar | Eleven 10 ((69 mm | 56 bags i.e.(small packages | 25,34,400/- (Rs.24/pack) | 15,42,541/- |

4. Summons were issued to the units of cigarettes manufacturers. On being investigation, a show cause notice was issued to the appellant for imposition of penalty under Rule 26 of Central Excise Rules ,2002 for aiding and abetting the payment of Central Excise

duty by the unit mentioned hereinabove. The matter was adjudicated initially and seized goods were ordered for confiscation and penalty on the appellant is imposed to the tune of Rs.34,93,048/- under Rule 26 of the Rules. The said matter was taken up with Commissioner (Appeals), who dropped the proceedings against the manufacture ring units located but confirmed the penalty on the appellant holding that as the appellant has not obtained invoices before booking consignment, therefore, the appellant is liable to be imposed penalty under Rule 26 of the Rules. Against the said order the appellant is before me.

5. Ld. Counsel for the appellant submits that the appellant is only booking agent and have no knowledge of the goods contained in the consignment. As the job of the appellant is to assist in booking of the consignment of the buyer at Railway Station booking counter, therefore, the appellant is not liable to obtain invoices. For earlier booking of 100 bags of cigarettes, the appellant received as service charges, in that circumstance, penalty under Rule 26 of Central Excise Rules, 2002 cannot be imposed on the appellant. Therefore, he prays that as the proceedings against the manufacturers themselves have been dropped, therefore, no penalty is imposable on the appellant.

6. On the other hand, ld. AR opposed the contention of the appellant and submits that the appellant is not registered booking agent with Indian Railway, the activities performed are akin to that of Railway Porter except the porter, who are engaged in carrying passenger luggage and required to be registered. The appellant engages some workers to help in unloading and carriage of goods

within the station premises, The customer engaged him for assistance in booking as well as transportation of consignments of100 gunny bags stating to be of pan masala through Railway from Delhi to Bhubaneswar. As seized cigarettes being mis-declared and non-duty paid, declaration made in Railway receipts is on the basis of declarations made by the customer and he applied and got cancelled freight booking from Railway. It is admitted that the customer-suppliers engaged him for booking and transportation of huge quantity of 100 bags from Delhi to Bhubaenshwar and said consignment was in possession of Appellant and that is why he got cancelled the same on visit by officers of DGCEI. By not taking invoices/bills, transportation and other relevant documents of said consignments the appellant flawed the prescribed rule and regulations and directly helped and saved the suppliers and got succeeded in destruction of evidence; otherwise history of the case would be different and suppliers would not get benefit. To receive any consignment without documentation is not a small act but grave offence and is destruction of evidence to save the real culprits from the illegal activities. If such practice is performed in this way by such person then the Railway station and other places can be used for any illegal activities, which can be fatal for public. The act of the appellant is indicator that the appellant involved in illegal activity. Therefore, the penalty has rightly been imposed under Rule 26 of Central Excise Rules, 2002.

7. To support his contention, he relied on the decision of Hon'ble Punjab & Haryana High Court in the case of Deepak Roadways-2010 (254) ELT 26 (P&H). He also relied on the decision of this Tribunal in

the case of Devi Dass Garg vs. CCE, Delhi-2010 (257) ELT 289 (Tri.-Del.) and the decision of Hon'ble Madras High Court in the case Lawn Textile Mills Pvt.Ltd. vs. CESTAT, Chennai-2018 (362) ELT 559 (Mad.)

8. Heard the parties and considered the submissions.

9. The issue for consideration before me is that whether the penalty can be imposed under Rule 26 of Central Excise Rules, 2002 in the facts and circumstances of the case or not?

10. For better appreciation, Rule 26 of Central Excise Rules, 2002 is reproduced below:-

> "Penalty RULE 26. for certain offences. - [(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.
>
> Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded…."

11. On going through the said provisions, it is very much clear that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty. From the facts of the case neither Revenue nor the statement of the appellant having knowledge of description of the goods and the goods in

question are not duty paid. Further, the appellant is only booking agent who facilitates the persons coming to the Railway counter for booking and charging Rs.100/- for booking and assistance. The appellant was nowhere had opportunity to know about the description of the goods or duty paying character of the goods. In the absence of such element of knowledge, provisions of Rule 26 of the Rules cannot be attracted in the facts and circumstances.

12. In these terms, without establishing knowledge of the appellant about the character of non payment of duty and description of the goods, penalty under Rule 26 of Central Excise Rules, 2002 is not imposable. Further, I find that the manufacturers, who were implicated in the case and the show cause notices have been issued have already be exonerated.

13. In that circumstance, I hold that the impugned order quo imposing penalty on the appellant is set aside and the appeal is allowed with consequential relief.

(pronounced in the open court 19.3.2021)

**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

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