IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH AT CHENNAI

E/MISC/360/2007 & E/133/2007 and E/134/2007 to E/142/2007

(Arising out of Order-in-Original No. 53/2006 dated 21.11.2006 passed by the Commissioner of Central Excise, Chennai II Commissionerate, Chennai).

1. M/s. Appollo Corrugators (P) Ltd — Appellants
2. Smt. Latha Jain
3. Shri H. Punaram
4. ShriS.Premchand Jain
5. Shri K. Mohanlal
6. ShriUmed Raj Jain
7. Shri B. Rajasekar
8. Shri P. Murugalingam
9. ShriAjith Raj Jain
10. Shri M. Purushothaman

Vs.

Commissioner of Central Excise
Chennai-II — Respondent

Appearance

Shri S.Jaikumar, Advocate
for the appellants

Shri S. Nagalingam, AC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: 18.01.2017
Date of Pronouncement : 07/03/2017

Customs, Excise & Service Tax Appellate Tribunal

FINAL ORDER NOs. 40407–40416/2017

Per: Madhu Mohan Damodhar

All the aforesaid appeals since emanating from the same impugned order, they are taken up together for common disposal.

2. The first named appellant, M/s. Appolo Corrugators Pvt. Ltd. (hereinafter referred to as ACPL), are manufacturers of corrugated boxes falling under CTH 48191010 of the Central Excise Tariff Act, 1985. Pursuant to a visit by Central Excise Officers to the factory premises of ACPL and conduct of verifications and investigation, the following apparent facts emerged:

a) ACPL had indicated their turnover for 2001-02 and 2002-03 as Rs.85,63,438/- and Rs. 78,85,538/- respectively.

b) There were instances of repetition of sales invoice/ serial numbers/irregular serial numbers of invoice and also missing of invoice serial numbers issued for sales purposes.

c) Shri Ajith Raj Jain, Director of ACPL, in a statement dated 15.03.2006, admitted that they used to suppress clearances of manufactured goods by raising invoices under the same serial numbers twice and by destroying the second invoice on completion of the transaction.

d) During the year 2001-02, ACPL had reported in their sales tax returns, clearances of sale value of Rs.1,75,23,061/- to nine customers. After allowing deductions of sales tax paid, abatement of duty free clearances for SSI units upto Rs.one crore, and considering the balance amount as cum-duty value, the assessable value worked out to Rs. 61,60,040/-, on which central excise duty liability not paid worked out to Rs. 9,85,606/-.

e) For the year 2002-03, they had made clearances on their own to various customers involving sale value of Rs. 1,37,90,166/-.

f) Apart from the above, during 2002-03, ACPL had additionally got manufactured and cleared corrugated boxes under the names of seven dummy units, to M/s. Ruchi Group of companies to the tune of Rs. 4,08,76,172/-

g) Thus, for 2002-03, total value of clearances effected by ACPL on their own plus the clearances made by the alleged dummy units worked out to Rs.5,46,66,338/-. After allowing deductions of sales tax paid, abatement of Rs.one crore amount for duty free SSI clearances, and treating the balance amount as cum-duty price, the assessable value worked out to Rs. 3,79,88,646/- and the excise duty payable thereon worked out to Rs. 60,78,183/-.

h) For the year 2003-04, it appeared that an amount of Rs. 10,88,494/- did not figure in the value/invoices declared to the department; that in certain cases there was repetition of invoice numbers involving value of Rs. 66,933/-;these were also liable to be added to the declared value of Rs. 2,12,13,406/- for the purpose of determining excise duty for year 2003-04.

i) It further appeared that ACPL was not eligible to claim SSI duty free exemption of Rs. One crore during 2003-04, since the turnover of 2002-03 had exceeded the prescribed limit of Rs.Three crores. After allowing deductions of sales tax and considering balance value as cum-duty price, ACPL was therefore liable to pay additional excise duty of Rs. 14,71,729/- for 2003-04.

3. Accordingly, a SCN dated 06.07.2006 was issued, interalia, to ACPL, proposing total demand of differential excise duty amounting to Rs. 85,35,518/- along with interest liability thereon, equal penalty under Section 11AC of the Central Excise Act, 1944 and penalty under Rule 25 of the Central Excise Rules, 2002. Notice also proposed imposition of penalties under Rule 26 of the Rules to the following persons (the other appellants herein):

a) Shri Ajith Raj Jain and Smt. A. Latha Jain (Directors of ACPL)
b) Shri Umed Raj Jain (Proprietor of Apollo Packers),
c) Shri B. Rajasekar (Proprietor of M/s. Sekar Packers)
d) Shri M. Purushothaman, (Proprietor of M/s. Amman Cartons)
e) Shri P. Murugalingam (Proprietor of M/s. Murugan Packaging Industries).
f) Shri K. Mohanlal (Proprietor of M/s. Mohan Cartons)
g) Shri H. Punaram (Proprietor of M/s. Sachin Packaging Industries)
h) Shri S. Premchand Jain (authorized representative of M/s. Paras Packers)

4. After due process of adjudication, the original authority, vide order dated 21.11.2006 (impugned order) confirmed the proposals made in the SCN for duty demand of Rs. 85,35,518/- with interest

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liability thereon, on ACPL and also imposed the following penalties:-

- Rs. 85,35,518/- under Section 11 AC ibid on ACPL
- Rs. 45,00,000/- (Rs.Forty five lakhs) penalty under Rule 26 of Central Excise Rules, 2002 each on Shri Ajith Raj Jain, Smt. A. Latha Jain and Shri Umed Raj Jain.
- Penalty of Rs.1,00,000/- (Rs.One lakh) under Rule 26 ibid each on Shri B. Rajasekar and on Shri P. Murugalingam
- Penalty of Rs. 2,00,000/- (Rs.Two lakhs) under Rule 26 ibid on Shri M. Purushothaman
- Penalty of Rs. 4,00,000/- (Rs.Four lakhs) under Rule 26 ibid each on Shri K. Mohan Lal, Shri H. Punaram and Shri S.Premchand Jain

Aggrieved, all these appellants have filed the aforesaid appeals.

5. The matter came up for hearing on 18.01.2017, Shri S. Jaikumar, Ld. Advocate, on behalf of all the appellants has interalia made the following submissions:-

i) For the year 2001-02, against the duty demand of Rs.9,85,606/- they admit their duty liability of Rs.9,32,882/, after deducting the value of clearances of Rs.2,56,762/- pertaining to 2000-01 wrongly included by Revenue.

ii) With regard to duty demanded for 2002-03 by clubbing value of clearances of M/s. Apollo Packers (value of Rs.28,45,027/-) liability thereof is admitted by the appellant.

iii) With regard to demand of duty for 2002-03 by clubbing the value of other six manufacturers, he submitted that ACPL had only done job work for the above manufacturers and the job charges received has been duty accounted for in the Balance Sheet.

iv) Extending help in formation of the above said seven units and assisting in procurement of orders from M/s. Ruchi Group of Companies will not make the aforesaid units as dummy units of the appellant. All the units are independent and distinct units.

v) Mere fact that the appellant has done job work cannot be a reason to allege that the other units are dummy units.

vi) During the cross-examination, witnesses have interalia deposed that they had purchased the raw materials in their respective companies, the said raw materials have been sent to ACPL for conversion into corrugated boards on job work basis and thereafter the said units had undertaken stitching activities on such corrugated boards and then sold the corrugated boxes to their customers.

vii) Clubbing of clearances not sustainable except of M/s. Apollo Packers, hence clearances of 2002-03 is within limit of Rs.Three crores and ACPL is therefore entitled to SSI exemption benefit for the year 2003-04.

viii) Appellant admits duty liability on account of duplication of invoices in 2003-04, to the extent of Rs.16,16,181/-. differential duty admitted on this count is only Rs.91,469/-.

ix) Hence total admitted duty liabilities are as follows :

S.No.	Details	Amount
1.	Demand pertaining to the year 2001-02	Rs.9,32,882
2.	Demand pertaining to the year 2002-03(own clearances as well as clearances of M/s.Appolo Packers	Rs.8,48,369
3.	Demand pertaining to the year 2003-04	Rs.91,469
	Total	Rs.18,72,720

x) Out of the total liability amount of Rs.18,72,720/- they have already deposited an amount of Rs. 18,65,813/-.

xi) In as much as duty demand for the year 2001-02 has been accepted, cenvat credit of duties paid on the raw materials to the extent of Rs.2,80,327/- has to be extended to ACPL.

6. On behalf of Revenue, Ld. AR, Shri S. Nagalingam (A.C) reiterated the correctness of the impugned order.

7. Heard both sides and have gone through the facts and records of the case. For the year 2001-02, appellants have more or less admitted and accepted their duty liability demanded thereof for the period except raising a contention that against duty demand

of Rs.9,85,606/-, the correct duty liability should be Rs.9,32,882/- since the clearances pertaining to 2000-01 amounting to Rs.2,56,762/- have been wrongly included by Revenue. However, no clinching evidence in support of this contention is available. On the other hand, it is established that for the period 2001-02, against the total value of clearances declared in the sales tax returns, namely Rs.85,63,438/-, value of actual clearances were more than double at Rs. 1,75,23,061/-. The adjudicating authority has deducted sales tax paid thereon, extended SSI exemption limit of Rs. One Crore, and has also been generous in extending cum-duty benefit to arrive at the duty demand of Rs. 9,85,606/- for the period. It is also leads to the inescapable conclusion that ACPL was in the habit of hiding more than half of their clearances, which in any way cannot be attributed to inadvertence or genuine error but will necessarily have to be given the colour of intentional omission and suppression to evade discharge of Central Excise duty.

8. For the period 2002-03, demand of duty is on account of alleged clearances through seven alleged "dummy" units created by ACPL, apparently with intention to evade payment of duty. It has been alleged that while ACPL had declared value of their clearances for 2002-03 as Rs. 1,37,90,166/-, additional undeclared clearances amounting to Rs. 4,08,76,172/- were effected through seven "dummy" units floated by them, the sum of these clearances amounting to Rs. 5,46,66,338/-. At this stage, it would be useful

to reproduce the details incorporated in para-11 of the show cause notice, indicating therein the names of the alleged dummy units and sales value of their clearances in 2002-03 as under:-

S.No.	Name of the Dummy Unit	Sale Value (Rs.)
1	Sekar Packers	48,50,562/-
2	Apollo Packers	28,45,027/-
3	Mohan Cartons	85,29,129/-
4	Amman Cartons	52,40,868/-
5	Sachin Packaging Industries	86,31,818/-
6	Paras Packers	83,95,781/-
7	Murugan Packaging Industries	23,82,987/-

Interestingly, the appellant has admitted and accepted this modus operandi in respect of one such "dummy" unit, namely, M/s. Appolo Packers, and have conceded that value of clearances of Rs. 28,45,027/- alleged in respect of that unit should be clubbed with that of ACPL. However, in respect of the remaining 6 alleged "dummy" units, ACPL has contended that they have done only job work for these units, that the said units are independent and distinct and that they had undertaken activity of stitching in their respective premises. Appellant argues that these six other units had purchased raw materials themselves, which they sent to ACPL for conversion into corrugated boards on job work basis and subsequently they had undertaken the stitching activity thereon, converted them into corrugated boxes in their respective units and sold the corrugated boxes to their customers.

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9. We however note that the facts on record and the inescapable conclusions thereof give the lie to these contentions. The following table, again in para-11 of the show cause notice, makes for interesting reading;

Name of the unit	Proprietor's name Smt./Shri	Present occupation	Whether related to Shri. Ajit Raj Jain (brother of Shri Umed Raj)
Amman Cartons	M. Purushothaman	Building contract	No
Sachin Packaging Industries	H. Punaram	Pawn Broker shop	No
Paras Packers	Smt. Paras Bai (rep. by S. Premchand Jain)	Smt. Paras Bai (house-wife aged 73) S. Premchand Jain (Jewellery shop)	Yes. Smt. Paras Bai Mother of S.Premchand Jain, Brother
Murugan Packaging Industries	P. Murugalingam	Manager-M/s. Sapna Packaging Industries	No. But working in a unit owned by the father of Shri Ajit Raj Jain
Mohan Cartons	K. Mohanlal	Pawn broker shop	No.
Sekar Packers	B. Rajasekaran	Supervisor M/s. Appollo Bright Steels (P) Ltd.	No. But working in a unit in which Shri Umed Raj Jain and his wife are the directors
Appolo Packers	S. Umed Raj Jain	Jewellery shop	Yes. Brother

9.1 Shri M. Purushotaman, Proprietor of M/s. Amman Cartons, who had claimed to be a building contractor, however admitted during cross examination that he was a driver in a rental tempo and that he is now assisting his father who is a "maistri" in civil construction work. In para60.5 of the impugned order, the adjudicating authority has very appropriately questioned as to how such a person who earns only Rs. 3000/- per month could have owned a manufacturing unit doing business of more than Rs. 52 lakhs during 2002-03, and has logically concluded that Shri M. Purushotaman was only a dummy person in the hands of ACPL.

9.2 In respect of M/s. Sachin Packaging Industries, Shri H. Punaram, Proprietor, who had initially claimed to have a pawn broker shop, however admitted during cross examination that he came from Rajasthan to do some business. The adjudicating authority has, in para 60.7 of the impugned order has rightly questioned as to how such a person, who had no expertise in the business of corrugated boxes, could do business of over Rs. 86 lakhs during 2002-03 and nil thereafter.

9.3 In respect of M/s. Paras Packers, the proprietrix Smt. Paras Bai is the mother of Shri Ajit Raj Jain (Director of ACPL) and is 73 yrs. Old. During investigations, she was represented by Shri Premchand, brother of Shri Umed Raj Jain. Adjudicating authority at para 60.3 of the impugned order, is correct in concluding that Smt. Paras Bai will not be in a position to undertake any commercial/business activities and hence M/s. Paras Packers is a dummy unit of ACPL/family concern of Shri Umed Raj Jain.

9.4 In respect of M/s. Murugan Packing Industries, the proprietor Shri P. Murugalingam, during examination has further admitted that he was unemployed from 1997 onwards and after closure of M/s. Murugan Packaging Industries is now working in another corrugated boxes unit managed by the family members/promoters of ACPL of Shri Umed Raj Jain. Invoice of stitching machine was found to be bogus. The adjudicating authority in para 60.6 raised a valid question as to how Shri Murugalingam do business of Rs. 24 lakhs during 2002-03, and has correctly concluded that there was no manufacturing unit in reality but only it was a dummy unit on paper.

9.5 In respect of M/s. Mohan Cartons, the purported proprietor was only running a pawn-broker shop. Invoice of stitching machine was found to be fictitious.

9.6 In respect of M/s. Sekar Packers, the proprietor Shri B. Rajasekaran admitted during cross-examination that he was a supervisor in M/s. Apollo Bright Steels Pvt. Ltd. and that after closure of M/s. Sekar Packers he is working in same compound again getting Rs. 4000 per month. M/s. Appolo Bright Steels is a unit promoted/controlled by relatives/family members of Shri Umed Raj Jain. The address of M/s. Sekar Packers at No. U-29/8 , Central Avenue, Korattur, Chennai-80, was found to be nonexistent. Shri Rajasekaran has admitted in his statement dated 13.09.2005 that except for registering the unit under TNGST and opening an account in TNSE Bank as advised by Shri Umed Raj Jain, he was not involved in any manufacturing activity or clearance of the corrugated boxes in the name of M/s. Sekar Packers. The adjudicating authority in para 60.4 of the impugned order has raised obvious questions as to how the person who is getting only a salary of Rs. 4000/- at present was the proprietor of a Company which has done business of more than Rs. 48 lakhs during 2002-03. In a statement dated 13.09.2005, Shri B. Rajasekaran, has admitted the payments received by him and remitted to the bank account would be withdrawn by him and handed over to Shri Umed Raj Jain. Further, B. Rajasekaran's statement that he was not involved in any activity in relation to manufacture and clearance of corrugated boxes etc., have not been rescinded by him during cross examination. The obvious conclusion is that M/s. Sekar Packers was a dummy unit created by ACPL.

9.7 In respect of M/s. Appolo Packers, the appellants have already conceded that the clearances thereof will have to be added to that of ACPL, which equates to an admission that the unit was a 'dummy unit' of ACPL.

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9.8 Interestingly, except for M/s. Sachin Packaging Industries, all the other units were started and closed in the financial year 2002-03 itself. However, during investigation, ostensibly to justify the existence and manufacturing by these units, purchase invoices of stitching machines were produced by each of these units. However, when investigation was conducted it came to light that the manufacture /sellers indicated in the said invoices did not exist and were fictitious. The counter arguments of the appellant that this has happened since the department caused verification during the year 2006, around 6 to 7 years after the machines were procured, does not hold water. The inescapable conclusion that arises is that the said seven units were but dummy units set up on paper by ACPL to spread out the latter's actual production and clearances, with the nefarious intent of evading their excise duty liability.

10. In respect of demands pertaining to 2003-04, appellants have fairly conceded duty liability in respect of value of goods where invoice Nos. were repeated, in addition to other sales effected during such period, totally amounting to Rs.2,23,68,833/-. However, they are not admitting duty liability worked out in Annexure A-III to the notice and confirmed in the impugned order amounting to Rs. 14,71,729/- by denial of SSI exemption. Appellant contended that since for the year 2002-03 clubbing of clearances with that of the said seven units, except M/s. Apollo

Packers, is not sustainable, hence, previous year's clearance is within the limit of Rs. 3 crores and appellant ACPL is entitled to SSI exemption for the year 2003-04. Nonetheless, in view of the findings herein above that the said seven units are nothing but dummy units of the appellant and the turnover shown in their name will necessarily be added to that of appellant ACPL, the total clearances of 2002-03 definitely exceed the upper limit of Rs. 3 crores provided in the SSI exemption, which will have a domino effect on the next financial year 2003-04, to the extent that SSI exemption will be unavailable to the appellant ACPL for that year. This being so, the demand of duty in respect of 2003-04 amounting to Rs. 14,71,729/- as proposed in Annexure-AIII to the SCN confirmed in the impugned order does not call for any interference.

11. We, therefore find ourselves in full agreement with the following conclusions of the adjudicating authority:-

> "60.10. Keeping in view the above, if one looks at the back ground of the proprietors of 7 dummy units, their financial strength, expertise in the manufacturing, marketing of corrugated box as also their activities before and after 2002-2003 and their present employment as also various machines that are required for the manufacturing of corrugated boxes and the facilities that were available with Apollo Corrugators and in all these 7 dummy units, the only inevitable conclusion is that the 7 units wee dummy units having no manufacturing activity or any other facility and were created on paper to evade Central

Excise duty. All the people who were cross examined are even today under the direct/indirect control/part of family members of promoters of M/s. Apollo Corrugators Pvt. Ltd.

61. From the foregoing factors, it is clearly evident that ACPL had, with the active assistance of Shri Umed raj Jain (former Director of ACPL and also brother of Shri Ajit Raj Jain, present Director of ACPL) persuaded seven individuals to float seven dummy proprietary units (including one in the name of M/s. Apollo Packers under the proprietorship of Shri Umed Raj Jain) and on the pretext of labour activities on account of the said seven dummy units manufactured and cleared goods from ACPL without discharging the duty due thereon. After existence of a very short period of these dummy units, the practice of labour activity in their names wee discontinued by ACPL. The cumulative facts of various reasoning discussed above coupled with the admitted fact of clandestine removal with intent to evade payment of duty persuades me to come to the inevitable conclusion that apart from the admitted case of Apollo Packers, all other six units are also dummy units of ACPL. As a consequence, the value of clearances in respect of these dummy units are liable to be included to the turnover of ACPL for the period 2002-2003 as detailed in Annexure A-2 enclosed to the SCN. Since the total turnover during 2002-2003 has exceeded the prescribed limit of Rs. 3 Crores, ACPL is disentitled to the benefit of SSI exemption in terms of Notification No. 08/03 during the year 2003-04 as proposed under the impugned SCN.

62. In the facts and circumstances of the case, I cannot but hold that, there has been a suppression of facts, as there has been deliberate failure by ACPL to include the clearances effected under certain invoices, duplication of the same sl. Nos. of the invoices and non-disclosure of clearances effected under certain invoices. ACPL has been fully conversant with the

provisions of Central Acts and Rules made here under. This fact is clearly evident from their evasive actions and hence there is no scope for bonafide mis-construction. On the other hand, they had full knowledge about their eligibility to exemption under SSI notification and hence there was clear malafide intention to evade payment of duty. To meet this end they had devised two strategies, one suppression of clearances through clandestine means and the other to create dummy/ units and divert their own manufactured clearances in the name of the dummy units".

12. Viewed in the totality of the facts before us, in our considered opinion, the contentions of the appellant are but diversionary, albeit futile, tactics to draw attention to perceived deficiencies in investigation and adjudication. But nothing has been demonstrated by the appellant to show that they were pure as the driven snow or that they had no unaccounted clearances. On the other hand, investigation has successfully unearthed a well planned subterfuge of deceit and deception planned and executed by the manufacturer appellant with the nefarious intent of evading central excise duty that was enjoined of them to discharge, adversely affecting the exchequer. The maxim "***Acta Exteriora Indicant Secreta Interiora*** "(outward acts show the secret intentions) is thus verily applicable to the appellants. In the event, the determination of total duty liability of Rs.85,35,518/- by the adjudicating authority in the impugned order under 11A(2) of the Act, on ACPL along with interest liability thereon in terms of Section 11 AB ibid, imposition

of equal penalty of Rs. 85,35,518/- under Section 11AC ibid are very much in order and does not call for any interference.

12.1 Coming to the remaining appeals filed by the other appellants, they are in relation to penalties imposed on each of them in the impugned order, under Rule 26 of the Central Excise Rules.

12.2 Appellants Shri Umed Raj Jain (Appeal E/138/2007) and Shri Ajith Raj Jain, Director of ACPL (Appeal E/141/2007) are aggrieved by the imposition of penalty of Rs.45 lakhs each on each of these appellants under Rule 26 of the Rules. In their appeals, they have interalia contended that as the duty demand itself is not sustainable, penalty imposed on them is also not sustainable. They submit that there is no specific allegation or other evidence as to how they had rendered themselves liable for such penalty. The appellants also contend that since the SCN has not alleged that any goods are liable for confiscation, hence no penalties can be levied. In our opinion, these contentions do not carry any merit. From the facts on record, it has been firmly established that all the seven dummy units were floated by Shri Umed Raj Jain and Shri Ajith Raj Jain, with fraudulent intent to deprive the exchequer of the rightful central excise duties due to it. Shri Ajith Raj Jain, when confronted in investigation, in his deposition recorded on 15-03-2006, categorically admitted suppression of invoices by way of raising invoices under the same numbers twice and destroying the second invoice on completion of the transactions. This testimony of

Shri Ajith Raj Jain has not been retracted. In the entire saga, we have occasion to note that each of the modus operandi adopted by the appellant ACPL was master minded and executed *'a **capite al calcem'***- from head to heel, by Shri Umed Raj Jain and Shri Ajith Raj Jain. Even the purported proprietors or their authorized representatives of the seven 'dummy units' have revealed in their statements, how the said dummy units were the brain child of Shri Umed Raj Jain and how the cash flows through these created units and were controlled by him only. Thus Shri Umed Raj Jain and Shri Ajith Raj Jain can definitely not claim to have come with clean hands. With regard to other contention of the appellants on lack of proposal in SCN for confiscation of goods, it would be worthwhile to reproduce Rule 26 ibid as it existed at the relevant time :

> **RULE 26 – Penalty for certain offence.** – 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 rupees ten thousand, whichever is greater.

A plain reading of Rule 26 will indicate that imposition of the penalty therein is not tied to a conditionality that excisable goods have to be placed under confiscation under the Act/Rules. On the other hand, what the rule propounds is that a person who is involved either directly or indirectly, by way of possession, or transporting, removing, depositing etc. or in any other manner dealing with excisable goods and who has the knowledge that consequence of such said acts or omissions on his part could result in the impugned goods becoming liable for confiscation under the Act/Rules is then exposed to imposition of penalty under this rule. Only, the person implicated/concerned should have the knowledge of "possible confiscation" of the impugned goods. Both these appellants being the fulcrum of the entire modus operandi, they cannot claim they were unaware that the goods so cleared unaccounted or clandestinely would have been liable to confiscation. In the event, we are of the considered opinion that imposition of penalties of **Rs. 45,00,000/-** (Rupees Forty five thousand only) on Shri Umed Raj Jain and **Rs.45,00,000/-** (Rupees Forty five thousand only) on Shri Ajith Raj Jain, under Rule 26 ibid is fully justified and do not call for any interference.

12.3 The other appellants, namely, Shri B. Rajasekar (A.No. E/139/2007), Shri P. Murugalingam, (A.No.E/140/2007), Shri H. Punaram (A.No. E/135/2007), Shri M. Purushothaman (A.No. E/142/2007), Shri K. Mohanlal (A.No.E/137/2007) and Shri S.Premchand Jain (A.No. E/130/2007), have filed identical grounds of appeal wherein they have submitted that since penalty levied on them is the consequence of confirmation of duty demand against the main appellant, grounds of appeal disputing the department's attempt to club the value of clearances may be considered as part of their appeal also; that as the duty demand itself is not sustainable, personal penalties imposed on them is also not sustainable. All these appellants have argued that as there is no proposal in the SCN to either confiscate excisable goods or any

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allegation that the goods were liable for confiscation, no penalty can be imposed on them under Rule 26 of the Rules. In this regard, the contention concerning non imposability of penalty on account of proposal in the SCN for confiscation of goods, already raised by the other appellants, have been discussed supra and found lacking in merit. With regard to other contentions, investigations have revealed that all these appellants knowingly allowed themselves to be nominal "proprietors" of the dummy units floated by ACPL. The adjudicating authority has cogently brought out the implausibility of any of these appellants, otherwise holding low level jobs or low income vocations, to be capable of starting such units on their own. It is not known as to for what consideration these appellants allowed their names to be utilized for the floatation of the dummy units. Nevertheless, these appellants cannot claim to have been totally innocent or unaware of the goings on and the modus operandi adopted. Investigations, as also the statements recorded from these appellants clearly indicate that they had full knowledge of the entire exercise designed to evade due liability of central excise. They also cannot claim ignorance that excisable goods cleared unaccounted, in the name of "dummy units', would have been liable for confiscation. In the event, we are of the considered opinion that imposition of penalties on these appellants under Rule 26 of the Rules as ordered in the impugned order is fully justified. Further, taking into account the magnitude of the duty evasion, the penalties imposed on them are relatively not very high. For these reasons, there is no merit in these appeals and they will have to be dismissed, which we hereby do.

12.4 Smt. Lata Jain, the Director of ACPL (Appeal E/134/2007) is aggrieved by imposition of penalty of Rs.45 lakhs under Rule 26 of the Rules. In her appeal, she has *inter alia* submitted that non-payment of duty even after crossing the SSI exemption limit is not with any intention to evade payment of duty but only due to ignorance. She has also pointed out that the main appellant has paid the duty liability admitted by them. She contends that there is no specific allegation as how the appellant had rendered herself liable for penalty under Rule 26 of the Rules except for a passing reference in para-21 of the SCN. The appellant has also reiterated the objection concerning inapplicability of penalty under Rule 26 on the grounds that there is no proposal in the notice for confiscation of excisable goods. In this regard, the contention concerning inapplicability of penalty under Rule 26 on account of non-proposal in the SCN for confiscation of excisable goods, also made by other appellants Shri Umed Raj Jain and Shri Ajith Raj Jain, have already been analyzed supra and found without merits. However, there is some merit in the other contention of the appellant that there has been no allegation in the notice or giving grounds therein for imposition of penalty on her. No doubt, the appellant is a Director of ACPL, but it is not forthcoming from the investigations that she was either a kingpin of the entire modus operandi or a key player thereof. All the same, appellant, being a Director of ACPL, cannot claim that she was unaware of the goings on. Being a Director, she would surely be in the know of the nefarious acts and omissions, albeit masterminded by others, and that the resultant goods so cleared clandestinely/unaccounted would have been liable for confiscation. We are therefore of the considered opinion that while the penalty of Rs.45 lakhs imposed on this appellant Smt. Lata Jain is excessive, however, the appellant cannot totally escape penalty. A penalty of **Rs.10,00,000/-** (Rupees Ten lakhs only) under Rule 26 ibid, in our opinion would meet the ends of justice in so far as this appellant is concerned. Ordered accordingly. Appeal E/134/2007 filed by this appellant is therefore partially allowed.

12.5 In the result, the appeals filed by the following appellants are dismissed.

Appeal No.E/133/2007 - M/s. Appollo Corrugators (P) Ltd,
Appeal No.E/135/2007 - Shri H. Punaram
Appeal No.E/136/2007 – Shri S.Premchand Jain
Appeal No.E/137/2007 - Shri K. Mohanlal
Appeal No.E/138/2007 – Shri Umed Raj Jain
Appeal No.E/139/2007 - Shri B. Rajasekar
Appeal No.E/140/2007 - Shri P. Murugalingam
Appeal No.E/141/2007 – Shri Ajith Raj Jain
Appeal No.E/142/2007 - Shri M. Purushothaman

Appeal No.E/134/2007 filed by Smt. Latha Jain is partially allowed.

Customs, Excise & Service Tax Appellate Tribunal

12.6 In view of disposal of above appeals, MA No.E/Misc./3602/007 stands disposed.

(Order pronounced in the open court on 07-03-2017)

(Madhu Mohan Damodhar)
Technical Member

(Justice Dr. Satish Chandra)
President

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