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

E/450/2006 and E/475, 476 and 477/2006

(Arising out of Order-in-Appeal No. 40 to 43/2006 dated 22.3.2006 passed by the Commissioner of Central Excise (Appeals), Madurai)

Shri R. Palanisamy
M/s. Raja Rajeswari Spinning Mills (P) Ltd.
Shri M. Ramamoorthy
Shri P. Dhandapani — Appellants

Vs.

CCE, Madurai — Respondent

Appearance

Shri S. Murugappan, Advocate for the Appellant
Shri Jude Joseph, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing: **31.10.2016**

Date of Pronouncement: 10.02.2017

Final Order Nos. 40186 - 40189 /2017

Per Madhu Mohan Damodhar

These four appeals emanate from a common impugned order upholding the following consequences ordered by the original authority.

Sl. No	A.No	Name of the appellant	Status of the appellants	Amount involved in Rs.
1	E/475/ 2006	M/s. Raja Rajeswari Spinning Mills (P) Limited, Vedasandur-624710 Dindigul District	Manufacturer of cotton yarn and First appellant in the impugned appeals.	Duty Rs.49,24,207/along with interest and a Penalty Rs.49,24,207/-

2.	E/476/ 2006	Shri. M. Ramamoorthy, Director, M/s. Raja Rajeswari Spinning Mills (P) Limited, Vedasandur 624710. Dindigul District	Managing Director of First Appellant. Appellant No.2	Penalty Rs.1,00,000/-
3.	E/450/ 2006	Shri. R. Palanisamy, 12, NGGO Colony 7th Street, Erode	Yarn Broker and depot in-charge of the first appellants Appellant No.3	Penalty Rs.50,000/-
4.	E/477/ 2006	Shri. P. Dhandapani, Prop. Of M/s. Sakthi Reeling Unit, No.13, Pasu Pon Nagar, Thadicombu Road, Chennamanaicken patti Post, Dindigul	Job Worker (Reeling Unit) for first appellants. Appellant No.4	Penalty Rs.25,000/-

2. Show Cause Notice reveals the following basis for the purpose for its issue:-

> "Scrutiny of the records sized from the above premises and further investigations conducted with various other job workers / customers of RRM appeared to reveal the following:-
>
> i) M/s. Raja Rajeswari Spinning Mills (RRM) are manufacturers of cotton yarn in various counts (ranging from 10's to 42's count) in cone form as well as in hank form
>
> ii) RRM had 12248 spindles, seven double sided reeling machines and three single sided reeling machines.
>
> iii) RRM manufactured cotton yarn in plain reel hanks within the factory as well as through various reeling units viz. Sakthi Reeling, M/s. Arasan Textiles etc. by sending the cone yarn under cover of AR3As and got it back from the said reelers under AR3As.
>
> iv) RRM cleared cone yarn in bags of 50 kgs / 51 kgs and Hank Yarn in chippams of 92 kgs or bales of 184 kgs / 200 kgs.

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v) RRM had effected majority of the sales through their agent Shri. R. Palanisamy of Erode and M/s. Sri Vijayalakshmi Agency (SVA) run by Shri. Palanisamy

vi) Cotton purchase details available in the made-up file seized from RRM indicated unaccounted purchase of cotton

vii) Comparison of the documents such as worker-wise production notebook, mixing cost details, Yarn Realization statements recovered from the premises of RRM with their accounted production revealed that RRM had suppressed their actual production of cotton yarn during the period June 2002 and July, 2002

viii) Comparison of the cone winding production details files, shift-wise spinning production and production log book recovered from RRM with the RG1 indicated that RRM had accounted the cone production as Hank Production during 2/2002 and 3/2002 to evade payment of duty. Further on comparing the production details contained in the diary of Factory Manager of RRM with RG1 indicated that during the period from 4/01 to 7/01 indicated that though RRM accounted the cone yarn manufactured by them as hank yarn

ix) Computer statements / P&L accounts recovered from RRM containing the details of accounted sales and the actual sales indicated clandestine removal of cotton yarn without payment of duty

x) The calculation based on the freight amount paid by Shri. Palanisamy of SVA as available in the notebook No.1, 14/15, 1 12/15 and 1 13/15 indicated that SVA have received a total quantity of 140260 kgs of cotton yarn (approx.) during the period 6/2002 to 9/2002

xi) Documents recovered from the godown of SVA revealed sale of cotton yarn without accounting by RRM through SVA and receipt of sale proceeds for such unaccounted sale in cash

xii) Documents seized from RRM further indicated suppression of purchase of 6535 nos. of bags which appeared to have been used in clearance of cone yarn in the guise of hank yarn

xiii) RRM had the infrastructure for reeling of 573342 kgs of cotton yarn whereas they had shown that they had converted 610972 kgs of 40s counts 140641 kgs of various other counts from cone yarn to hank form in their own factory indicating that RRM have shown bogus conversion work in their accounts

xiv) Similarly the capacity for reeling available with the job workers viz. M/s. Arasan Textiles and M/s. Sakthi Reeling Unit, Dindigul indicated bogus conversion of cone yarn into hank yarn

xv) The records seized from the residences of Shri. Palanisamy indicated that RRM have cleared cone yarn in the guise of hank yarn to evade payment of duty

xvi) Verification conducted with various customers of RRM indicated unaccounted clearance of cotton yarn in cone form and clearance of cone yarn in the guise of hank yarn through SVA / Shri. Palanisamy."

3. Upon adjudication by original authority following consequence arose:

ORDER

i) Demand of duty liability of an amount of Rs.49,24,207/- (BED/CENVAT of Rs.42,81,920/- & AED(T&TA) of Rs.642287/-) (Rupees forty nine lakhs twenty four thousand two hundred and seven only) from M/s. Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur, on the cotton yarn removed illicitly during the period from 5/99 to 9/02, under the proviso to Section 11A(1) to the Central Excise Act, 1944

ii) Penalty of Rs.49,24,207/- was imposed on M/s. Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002

iii) Interest at the appropriate rates on the duty amount was realizable from the date on which the duty ought to have been paid till the date of payment, under Section 11 AB of Central Excise Act, 1944.

iv) Penalty of Rs.1,00,000/- was imposed on Shri M. Ramamoorthy, Managing Director of Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur under Rule 26 of Central Excise Rules, 2002

v) Penalty of Rs.50,000/- was imposed on Shri R. Palanisamy, Agent of Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur under Rule 26 of Central Excise Rules, 2002

vi) Penalty of Rs.25,000/- was imposed on Shri P. Dhandapani, Prop. of Sakthi Reeling Unit, Job worker of Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur under Rule 26 of Central Excise Rules, 2002

vii) *Penalty of Rs.25,000/- was imposed on Shri M. Selvam, Prop. of Arasan Textiles, Dindigul, Job worker of Raja Rajeswari Spinning Mills (P) Ltd., Vedasandur under Rule 26 of Central Excise Rules, 2002".*

4. On appeal, the ld. Commissioner (Appeals) vide the common impugned order dated 22.3.2006 upheld the order of the original authority. Hence these appeals before this forum, by RRM (Appeal No. E/475/2006), Shri M Ramamoorthy, Director of RRM (Appeal No.E/476/2006), Shri R. Palanisamy, (Appeal No. E/450/2006) and Shri P. Dhandapani (Appeal No. E/477/2006).

5. When the matter came up for hearing, ld. counsel vehemently opposed the adjudication on the ground that when the principal appellant RRM had sent the goods for the purpose of job work, there is no fault that can be found against that appellant. If at all there is any breach of law, that may be attributable to job worker and duty liability shall be confined to the job worker exonerating the appellant from the charges leveled against it.

6. Learned counsel also relied on Rule 96E as well as Rule 173N of Central Excise Rules, 1944.

7 Revenue on the other hand supports the adjudication.

8. Heard both sides and have gone through the records.

9. From the facts on record it emerges that the following evidences were unearthed in investigation:-

a. From the details available in the file seized from RRM (chit Nos.86-93) indicate that RRM had purchased 6659 kgs of cotton from Shri. S.P. Vijayakumar vide Invoice Nos.26 and 27 dated

25.02.2000. However such purchase of cotton was not accounted by RRM in their books of accounts. The unaccounted purchase of cotton and non-accounting of the same in their books of accounts has been admitted by Shri. Subramanian, Accountant of RRM in his statement dated 17.09.2002.

b. The Worker-wise production note book, mixing cost details. Yarn Realization Statements (Chit Nos.78,79 and 156) contained in the made up file recovered from RRM indicates the actual production of cotton yarn at RRM. On comparing the same with their accounted production it appeared, that RRM have suppressed the actual production in their books of accounts, as below:

(Qty in kgs)

Month	Accounted production in RG-1	Actual production		
		As per the production note book	As per the Mixing cost details	As per the Yarn Realization statement
June, 02	5327	13728	10684	-----
July, 02	51966	59689	----	79594

c. From a comparison of the cone winding production details files, shift-wise spinning production and production log book recovered from RRM with the RG-1 it appeared that RRM had accounted the cone production as hank production during the period from 2/2002 to 3/2002 as given below:

Month	**Actual production (in kgs)**	**Accounted production (in kgs)**
February, 2002	Cones: 72664 kgs	Cones: 7402 kgs Hanks: 51080 kgs
March, 2002	Cones: 55318 kgs	Cones: 4321 kgs Hanks: 22576 kgs

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d. From a comparison of the production details contained in the diary of Shri. Mohan Kumar, factory Manager of RRM with the RG1, it appeared that though they had actually produced cone yarns, accounted the same as hank yarn during 4/2001 to 7/2001 as given below:

Details	40's	10's	20's
Diary of FM	3638 bags	799 bags	140 bags
Accounted	22533 kgs (450 bags)	10600 kgs (212 bags)	3500 kgs (70 bags)

The details of production contained in his diary have also been confirmed by Shri Mohan Kumar in his statement dated 17.09.2002.

e. In the books of accounts of RRM, it is shown that they have sent various counts of cotton cone yarn to job workers like M/s. Arasan Textiles and M/s. Sakthi Reeling Unit for conversion into hank yarn. Verification conducted by the officers with Arasan Textiles indicated that the said concern had only one reeling machine in working condition and they have no industrial /commercial power connection and the unit was run on the domestic power connection available from the adjoined house. As per the SITRA norms, 4.5 units of electricity is required for conversion of 100 kgs. of cotton cone yarn in to hank form (for 40s count). The total power consumption during the material period was 830 units only using which the maximum possible production could have been only 17291 kgs. (40s count). However as per their records, they have converted 86652 kgs. of cone yarn of various counts into hank form during the period from 4/2001 to 10/2001 for RRM (65030 when converted into 40s count). Shri Selvam in his statement dated 05.10.2002 has admitted that he reeled only 10s count of yarn and did not reel any other count and did not have the machinery facilities for reeling other counts; that he got Rs.1.10 per kg for reeling 10s count and Rs.0.50 to 0.75 for giving accommodation AR3As and writing accounts as if other counts of yarn were received by him for reeling and returned after reeling.

f. Hank bills were raised by RRM in different parties name but cone yarn were cleared from RRM and delivered at the place of Shri Palanisamy, Proprietor, M/s. Sri Vijayalakshmi Agency (SVA in short) mostly. Shri Palanisamy in turn sold such goods without any bills to his customers. The above mode of clearance is evident from the fact that most of the invoices for hanks were raised in the name of the individuals without indicating full address or Sales Tax RC No. etc. as illustrated below:

'Thangam Textiles, Weaver Colony, Kumarapalayam'

This is further proved by the fact that the torn pieces of invoices No.81/15.09.2001 and 82/15.09.2002 issued in the name of M/s. Laxmi Textiles, Bhavani and M/s. Valli Textiles, Edapadi found available at SVA were raised in the name of unidentifiable persons but delivered to Shri Palanisamy, Agent of RRM. Further summons issued to various weavers as also to Thangam Textiles, Kumarapalayam, Lakshmi Textiles, Bhavani, P. Chinnasamy, Pallipalayam, Krishnamoorthy, Pallipalayam, Valli Textiles, Edapadi,

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Vijay Tex, Erode and M/s. RG Textiles, Erode were returned with postal remarks that no such person available clearly shows that all the above persons were fictitious ones and the invoices were raised on such fictitious names to cover up the actual sales of cone yarn by RRM through Shri Palanisamy. Further though the invoices have been raised against many such names as above, the payments on this count were made by Shri Palanisamy.

g. The note books No.1 1/15, 3/15, 4/15 and 5/15 recovered from the godown premises of SVA contains the details of payments made by Shri Palanisamy to RRM and other mills during the period from 12/1999 to 12/2001 as illustrated below:

Date: 02.04.2001

"Raja Rajeswari Spg. Mills – Cash – BOB –

P. Chinnasamy – Rs.1,00,000/- and K. Rajkumar: Rs.1,00,000/-

From the above it appeared that though invoices were raised by RRM in the name of different parties, payments were made by Shri Palanisamy only. Furthermore, the payments received by RRM from Shri Palanisamy / SVA are clearly distinguishable from the records maintained by him.

10. Ld. Counsel has contended that since RRM had sent the goods for the purpose of job work, any breach of law should be attributable to the latter only. However, from the facts on record, this contention does not hold water. From the evidences available it clearly comes out that RRM had shown in their books of accounts, that they had sent various counts of Cotton cone yarn to

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job workers for conversion into hank yarn and the job workers purported did not have sufficient infrastructure for carrying out conversion of yarn that was purportedly sent to them. Even the normal conversion charges of around Rs. 2.25 and Rs. 1.20 per Kg. for 40s and 10s counts respectively have been collected by the job workers and instead only a inconsequentially low amount of Rs.0.20/0.15 per kg. was paid to them. It therefore appeared that such a low payment could only have been paid towards administrative cost for raising bills for collection of job charges as if cone yarn were converted into hank yarn for accounting purposes.

11. It is not disputed that cotton yarn manufactured by RRM was marketed predominantly, if not fully, through Shri Palanisamy of Shri Vijayalakshmi Agency. A diary recovered from the respondent Shri Palanisamy contained details of receipts of cotton yarn from RRM and sales thereof from 01/01/2001 to 08.08.2001. Details contained in the diary have been explained by Shri Palanisamy in his statement dated 05.10.2002.

From a comparison of the details contained in the above diary with the accounted clearances made through Shri Palanisamy (SVA /weavers/others), the following facts have been established:

Period	As per the diary of Shri Palanisamy	Accounted clearances
1/2001 to 3/2001	3047 bags of cone yarn 50 bales of hank yarn	608 bags of cone yarn 1335 bales of hank yarn
4/2001 to 8/2001	3045 bags of cone yarn 48 bales of hank yarn	1131 bags of cone yarn 2452 bales of hank yarn

From the entries found in the diary of Shri Palanisamy it is seen that RRM had sent cone yarn in the guise of hanks. This modus is further corroborated by the sale pattern adopted by SVA for clearance of cone yarn in the guise of hank yarn. In his statement dated 5.10.2002, Shri Palanisamy has admitted that even though they received cotton cone yarn, bills were raised by RRM as hank yarn in the names of various parties.

12. We find that the lower authority has correctly analyzed all such facts in this regard and come to a proper conclusion that RRM had indulged in the clearance of cotton cone yarn in the guise of hank yarn to evade payment of duty. It is pertinent to note that the admissions made by Shri Palanisamy in his statement have not been since retracted by him or denied at any stage, including during adjudication process. From these evidences, the stark picture that emerges is that bills for hank yarn were raised by RRM in the name of different parties, but in actuality, only cone yarn was cleared from RRM and delivered to Shri Palanisamy, who in turn sold such goods without any bills to his customers. The purported buyers of the hank yarn so raised by RRM were found to be non-identifiable or fictitious. Cone yarn invoiced as hank yarn in the name of unidentifiable fictitious parties were actually delivered at the place of Shri Palanisamy or at the places instructed by Shri Palanisamy. Investigations have also conclusively proved that although the invoices under cover of which invoices described as hank yarn were sent to Shri Palanisamy, corresponding invoices

of Shri Palanisamy of SVA clearly indicate that the goods sold by them are cone yarns only.

13. The entire modus operandi also stands exposed by Shri S. Subramanian, Accountant, Central Excise authorized signatory of RRM in his stated 17/09/2002. Shri S. Subramanian has stated that cone yarn and hank yarn attracts sales tax of 4% and 2% respectively and due to severe competition in the market, RRM used to clear the cone yarn as hank yarn. Being the authorized signatory for central excise, Shri S. Subramanian, would definitely be in the know of nature, type and manner of clearances of finished products or for that matter goods sent for job workers by /from RRM. This being so, the aforesaid admission of Shri S. Subramanian will have to be treated with considerable gravity and credibility. Here also, it is pertinent to note that the statement of Shri S. Subramanian has not been retracted at any stage including during examination. The dubious modus adopted by RRM and their co-conspirators in such nefarious activities have also been corroborated in the statement dt. 17.09.2002 of Shri M. Mohan Kumar, Factory Manager of RRM, statement dt. 12.22.2002 of Shri T. Rajendran, Driver of RRM, statement dated 18.11.2002 of Shri G. Ravindran, Clerk of RRM and statement dated 01.10.2002 and 29.11.2002 of Shri M. Ramamoorthy, Managing Director of RRM.

14. Appellant has argued that while their installed capacity during August 2000 to March 2001 was eleven reels, they had employed more casual laborers also during that period. Presumably by this contention, appellant is attempting to justify

production that could achieve higher than the capacity, because that they had employed extra casual laborers. However, no proof of such additional employment has been adduced. We are also not able to understand how additional man power employed, on the same number of reelers, which have a maximum rated capacity, can in any way increase their production.

15. Appellants have further contended that statements of factory staff/Director are uncorroborated in the absence of any tangible evidence regarding clandestine receipt of raw materials, manufacture of finished goods out of these materials and clandestine removal of the same to the buyers without payment of duty. We do not find merit in this argument, considering that the investigation had yielded a cache of incriminating documents including worker-wise production note book, yarn realization statement, cone winding production detail files, shift-wise spin production file, diary of Sh. M. Mohan Kumar, Factory Manager, records retrieved from M/s. Arasan Textiles, M/s. Shakthi Reeling Unit etc., diary and note books retrieved from Sh. Palanisamy/SVA containing interalia details of receipt of cotton yarn from RRM fictitious invoices raised by RRM, etc. These documents have enabled corroboration of modus operandi and have confirmed the clandestine removals and resultant evasion of duty. From the worker-wise production note book and yarn realization statement recovered from RRM, the fact of suppression of actual production viz-a-viz. books of accounts could be established. Suppression of production has also been established from the cone winding

production detail files. From the shift-wise production file recovered from RRM, it has clearly emerged that the appellants have accounted only 40s un-sized cones and did not account any other variety. So also, from cone winding production note books for the month of June, 2002 to August, 2002, it is established that the actual production of cotton yarn has not been accounted by RRM in the books of accounts during the relevant period. It has also been proved that RRM had accounted cone production as hank production during 02.2002 to 03.2002 and also during 04/2001 to 7/2001. Verification from the customers' end have also revealed that they had received only cotton yarn of RRM through Sh. Palanisamy/SVA. However, the same has not been accounted by RRM as hank yarn. Note books recovered from godown premises of SVA shows that RRM have received sale proceeds for the unaccounted clearances in cash and that Sh. Palanisamy regularly handed over huge amounts in cash to Shri. Rajendran, Driver of RRM and other personnel of RRM. The argument made by the appellants, during adjudication proceedings, that such cash transactions were only in the nature of working capital mobilization, has been adequately demolished by the adjudicating authority. We therefore find that documentary evidence unearthed during investigation, along with statements recorded from various persons, more than adequately corroborate the allegations in the SCN. These evidences and statements serve to connect the dots while establishing the charges against the appellant.

16. Both adjudicating and lower appellate authorities have sifted all these evidences on record and statements very carefully, analyzed their veracity in the face of counter arguments made by the appellants and has very objectively arrived, interalia, at the following conclusions:-

i) RRM had indulged in purchase of cotton without accounting

ii) RRM had manufactured cotton yarn without proper accounting and suppressed the actual production from their books of accounts

iii) RRM had accounted the production of cone yarn as hank yarn in their books of accounts

iv) RRM had shown bogus reeling work in their factory well in excess of their production capacity.

v) RRM had also used the job workers such as M/s. Arasan Textiles and M/s. Sakthi Reeling Unit as a platform to show fictitious conversion of cotton cone yarn into hank yarn

vi) RRM had cleared cotton yarn without issue of invoices and without payment of duty.

Vii) RRM had cleared cotton cone yarn to various parties through their broker Shri.Palanisamy and through SVA, managed by Shri Palanisamy and raised invoices as hank yarn to evade payment of duty since till 29.02.2002, cotton yarn in hank form attracted nil rate of duty.

viii) There was a clear nexus between RRM and Sh. Palanisamy/SVA and that invoices as cotton hank yarn was raised in the name of many fictitious persons and in actual cotton cone yarn was cleared by RRM to Sh. Palanisamy/SVA and the same was in turn sold by the latter to various customers. However the variety of cotton yarn, whether cone or hank, is deliberately not mentioned in the bills raised by SVA

ix) RRM have received the sale proceeds directly from the broker Shri. Palanisamy for all the clearances of cotton yarn cleared to various persons through him and the sale proceeds were received in cash for the unaccounted clearances.

17. Appellants have contended before us that investigation was faulty and that there is no credibility in the evidences and conclusions of the adjudicating authority. We do not find any merit in his contention. In our opinion, the investigation has more than adequately established the questionable modus operandi adopted by the appellants. Thus Revenue has discharged burden of proof. On the other hand, appellants failed to satisfactorily counter the stand taken and evidence adduced by Revenue against them. Preponderance of probability is in favour of Revenue when appellants failed to come out with clean hands. Although appellant tried that investigation should be in dark to unearth the offence committed, they failed since self-speaking evidence came up in the course of investigation. The evidences gathered by investigation were so cogent and those could not be scrapped or rebutted by the appellant. Hon'ble Supreme Court in the case of *State of West Bengal Vs. Mir Mohammed Omar* and others [2000(8) SCC 382 has held that:

> *"The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised*

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> *doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.*
> *In this case, when prosecution succeeded in establishing the afore narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognized by the law for the court to rely on in conditions such as this. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reach a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."*

The Hon'ble High Court of Madras in the case of *Alagappa Cement Ltd Vs. CEGAT* [2010(260) ELT 511 (Mad)] has categorically laid *that plea of absence of positive proof of commitment of offence is not a defence for the author of such plea.* It is settled principle of law that law does not insist upon an impossible threshold of proof to establish allegations, but if on probabilities the statutory authorities can establish evasion, the legal standards are adequately met with.

18. Viewed in the totality of the facts and circumstances of the appeals before us, in our considered opinion; the contentions of the appellant manufacturer (RRM) fail on all counts. This being so, the duty liability of Rs. 49,24,207/- evaded through such subterfuge by the appellants and demanded by the original authority under proviso to Section 11 (A) (1) of CEA, 1944, along with interest

thereon, which demand has been upheld by the Commissioner (Appeals) in the impugned order, does not call for any interference. For the same reasons, equal penalty imposed on the appellants under Section 11 AC ibid is also justified and appeal on this count also cannot succeed.

19. In Appeal No. E/476/2006, appellant Shri M. Ramamoorthy has denied the allegations leveled against him. He has further contended that allegations in the SCN were based on presumptions and assumptions and hence they were not liable to duty and demand in the SCN was unsustainable and not maintainable in law; he used to visit the mills occasionally only and he did not interfere with the day-to-day activities of the factory; that, the sales transactions were not directly under his supervision. He has further submitted that the original authority had not discussed the role played by the appellants in connection with the offence committed by RRM. He has stated various case laws for his argument that no penalty is imposable on the Director in absence of any conscious act on his part. However, analysis of facts on record reveals that Shri M. Ramamoorthy, had actually admitted in his statement dated 01.10.2002 that he was looking after the complete administration of RRM. In a further statement dated 29.11.2002 the said appellant had admitted that bulk of the yarn produced in RRM was sold to R. Palanisamy of Erode; that sometimes they were billing the goods directly to customers/consumers as per the directions/orders obtained by Shri R. Palanisamy and the payments would be received through

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him also in such cases. In further statement dated 5.4.2004, the said appellant even identified the names of the customers to whom the clearances were effected thorough R. Palanisamy. He admitted that he could not offer any explanation for the accountal of 751614 kgs. of cone yarn as conversion into hank yarn as against the reeling capacity of 515992 kgs. He could also not offer any explanation as to how RRM accounted hanks in the name of various parties when actually cone yarn bags were sent to Shri R. Palanisamy. Further, there is no evidence adduced by the appellant that he had at any time retracted admissions made by him in the aforesaid statements. Even in the course of examination of witnesses conducted by the consultant for RRM, during adjudication proceedings, Shri M. Ramamoorthy was not cross examined nor or for that matter none of the other persons who were cross examined have brought out any new facts to support the present contentions of the appellant in this appeal filed by him. In the circumstances, the acts and commissions committed by the appellant Shri M. Ramamoortny definitely attract the provisions of Rule 26 of the Central Excise Rules, 2002 and in consequence, the penalty imposed of Rs. 1,00,000/- on the said appellant by the original authority and upheld by the Commissioner (Appeals) in the impugned Order, does not merit interference in our view.

20. In Appeal No. E/450/2006, appellant Shri R. Palanisamy has submitted that he was not responsible for the malafide transactions of RRM; that lower authority as well as the Commissioner

(Appeals) have imposed/upheld penalty on him which is excessive and unwarranted; that no SCN was issued to M/s. SVA that though he is a person acting as independent cotton yarn procurer as well as depot in charge of RRM, there were no specific charges against him in the capacity of yarn procurer; that in the absence of guilt, personal penalty could not be imposed on him under Rule 26 of the Rules. However, from analysis of the facts on record it clearly emerges that in his statements dated 17.09.2002 and 5.10.2002, the said appellant had laid bare the modus operandi followed in this case, including his own role therein. Incriminating diary and other documents recovered from the godown of SVA and from R. Palanisamy, have clearly implicated the appellant in the entire clandestine removal and duty evasion exercise. In fact, Shri R. Palanisamy in his statement dated 17.09.02 and 5.10.02 has confirmed that the unaccounted receipts of cotton yarn from RRM and payment of amounts towards sale proceeds of the same. The appellant has not adduced any proof of having retracted his statement at any point of time. His inculpatory admissions have not been undone in the course of examination of various persons during adjudication proceedings. For these reasons, it is evident that the acts and omissions of Shri R. Palanisamy will definitely attract penalty consequence of Rule 26 of CER. This being so, the penalty of Rs. 50,000/- imposed under the said Rule by the original authority and upheld in the impugned order by the Commissioner (Appeals) does not call for any interference.

21. In Appeal No. E/477/2006, appellant Shri P. Dhandapani, Proprietor of M/s. Shakthi Reeling Unit, has argued that original authority did not discuss the role played by the appellant in connection with the offence committed by RRM; that receiving lower amount as conversion charges does not alone establish the offence; that case made against the appellant had been built on presumptions and assumptions and hence, no penalty under Rule 26 of the Rules is imposable. However, from analysis of the facts on record, it clearly emerges that the adjudicating authority has cogently shown how Shri P. Dhandapani was an important and compliant player in the entire exercise of clandestine removal and duty evasion perpetrated by RRM. In his statement dated 30.09.2002, the said appellant had stated that account note book seized from him contain details of bills raised by him and amount received from RRM; that yarn were received from RRM for dwelling and reeling of 2/20s, 3/30s, 2/40s yarn; that most of the 40s, 30s and 20s amount of yarn which were accounted as if sent by RRM for reeling have not received at all; that instead only AR3As/ invoices were received and in turn he had also raised the same as if the goods were reeled and sent back to the mill; that for all these he was paid only 0.15 paise per kg. off the record. Although Shri P. Dhandapani has changed his version during the cross examination, nonetheless his revised averments are not supported by any proof or evidence. On the other hand, the revelations that have emerged from the account note book seized from the said appellant Sh. P. Dhandapani, do not satisfactorily explain why they receive only a fraction of the normal job working charges for

conversion of cone yarn into hank yarn, which gives to the inescapable conclusion that the low amount paid was only as a consideration for making out fictitious documents. In the circumstances, the acts and omissions of the appellant Shri P.Dhandapani will definitely attract the provisions of Rule 26 of Rules and in consequence the penalty of Rs. 25,000/- imposed thereon by the original authority and upheld by the Commissioner (Appeals) in the impugned order does not call for any interference.

22. In the event all the four appeals are dismissed.

(Order pronounced in the open court on 10-02-2017)

10/02/2017

(MADHU MOHAN DAMODHAR)
Technical Member

10/2/2017

(D.N. PANDA)
Judicial Member

BB

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Customs, Excise & Service Tax Appellate Tribunal