**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.40439/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Adithya Ferro Alloys P. Ltd. **Appellant**
242/1, Surakudi Village, Peralam Main Road
Thiruinallur Commune
Karaikal – 609 607.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam, Madurai – 625 002.

APPEARANCE:

Ms. S.P. Sriharini, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

With

Excise Appeal No.40596/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Dhandapani Steel P. Ltd. **Appellant**
242/1, Surakudi Village, Peralam Main Road
Thiruinallur Commune, Karaikal – 609 607.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam, Madurai – 625 002.

Excise Appeal No.40713/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Ferromet Steels P. Ltd. **Appellant**
No. 80, Thandalacherry Village
Sathyavedu Road
Kavarapettai, Near Gummudipoondi
Chennai – 601 201.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings,
Bibikulam, Madurai – 625 002.

Excise Appeal No.40714/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Kamachi Steels Ltd. **Appellant**
B-4/N (b) SIPCOT Industrial Complex
Gummidipoondi, Chennai – 601 201.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings
Bibikulam, Madurai – 625 002.

Excise Appeal No.40715/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Goyal Ispat Ltd. **Appellant**
No. 24, Padalam Sugar Mill Road
Palayanur, Madurantam Tk
Kanchipuram – 603 308.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings
Bibikulam, Madurai – 625 002.

AND

Excise Appeal No.40716/2015

(Arising out of Order in Original No. 11 /2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. GBR Metals P. Ltd. **Appellant**
No. 295, GNT Road
Peravallur Village
Ponneri Taluk, Chennai – 601 206.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings
Bibikulam, Madurai – 625 002.

APPEARANCE:

Shri A. Mudimannan, Advocate for the Appellants
Shri Anoop Singh, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 41007 to 41012/2024

Date of Hearing :09.05.2024 / 04.06.2024
Date of Decision: 01.08.2024

These appeals are filed by the appellants against common impugned order No. 11 of 2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai.

2. Facts of the case are that M/s. Vaibhav Corporation are engaged in the manufacture of MS ingots. On the basis of intelligence that M/s.Vaibhav Corporation have evaded central excise duty payable on the clearance of MS ingots, the officers of DGCEI, Madurai Regional Unit searched its factory and factory premises on 12.11.2008 and have seized the hard discs of the two computers and nine documents under mahazar. Statements were recorded from the partners of the company. Based on the investigations conducted, it appeared that M/s. Vaibhav Corporation have violated the provisions of section 6 of the Central Excise Act, 1944 read with Rule 9 of Central Excise Rules, 2002 (**CER 2002**) and Rules 6, 8 and 10 of the above Rules with intention to evade payment of central excise duty. After due process of law, the adjudicating authority confirmed the demand on M/s. Vaibhav Corporation and also imposed penalties. The adjudicating authority also imposed a penalty of Rs.10,00,000/- each under Rule 26 of C.E.R. 2002 on all appellants herein who were allegedly concerned in purchasing the said clandestinely removed ingots. Aggrieved by the imposition of penalty, the present appellants have filed the present appeals.

3. I have heard learned Advocates Ms. S.P. Sriharini and Shri A. Mudimannan for the appellants and Shri Anoop Singh, learned Authorized Representative for the respondent-department.

3.1 The learned counsel on behalf of the appellant **M/s Aditya Ferro Alloys (P) Ltd., Karaikal**, submitted that they are not at all concerned in any transaction with the said M/s Vaibhav Corporation, Madurai and as such the impugned order in so far it relates to them is not sustainable. He stated that they are getting the required ingots for the manufacture of rerolled products from nearby Pondicherry and locally as well. Perusal of their records would clearly indicate that they had no transaction with M/s Vaibhav Corporation. Hence he prayed that the part of the impugned order which relates to them may be set aside. The learned counsel on behalf of the appellant **M/s Dhandapani Steel Pvt. Ltd., Erode,** submitted that they are the manufactures of Alloy Steel Castings and also exporting alloy steel castings to Australia, USA, Chile etc. They are not the manufacture of re-rolling products or TMT bars or rods and M/s Vaibhav Corporation is not known to them and they have not made any purchase of 'ingots' from them or any transaction. Further they had submitted that they had not purchased or sold any ingots from any other supplier during the period in dispute and they are in no way connected with the said M/s Vaibhave Corporation. He also expressed surprise as to how his company's name has been included in the show cause notice. He requested that the case against him may be dropped. The learned counsel on behalf of the appellant **M/s Ferromet Steels Pvt. Ltd., Chennai,** submitted that they had never purchased any material, more particularly, the subject MS ingots from M/s Vaibhav Corporation, Madurai and no transporter had delivered any quantity of MS ingots to them. Penalty under Rule 26 of Central Excise Rules is imposable only on a person and not on a firm or company and thus the proposal to impose penalty on the noticee under Rule 26 ibid is not legally valid. He prayed that the case against the appellant may be dropped. The learned counsel on behalf of the appellant **M/s Kamatchi Steel Ltd., Chennai,** submitted that they had never purchased any material, more particularly, the subject MS ingots from M/s Vaibhav Corporation, Madurai and no transporter had delivered any quantity of MS ingots to them. Penalty under Rule 26 of C.E.R. 2002 is imposable only on a person and not on a firm or company and thus the proposal to impose penalty on the noticee under Rule 26 ibid is not legally valid. He prayed that the case against the appellant may be dropped. The learned counsel on behalf of the appellant **M/s Goyal Ispat Ltd., Kanchipuram,** submitted that they had never purchased any material, more particularly, the subject MS ingots from M/s Vaibhav Corporation, Madurai and no transporter had delivered any quantity of MS ingots to them. Penalty under Rule 26 of C.E.R. 2002 is imposable only on a person and not on a firm or company and thus the proposal to impose penalty on the noticee under Rule 26 ibid is not legally valid. In the light of the above, they requested that the case may be dropped. The learned counsel on behalf of the appellant **M/s GBR Metals Pvt. Ltd., Chennai,** submitted that the firm has not purchased any material from M/s Vaibhav Corporation, Madurai and hence requested charges framed may be dropped. He stated that the allegation against all the appellants is based upon a Private Diary – No other corroborative evidences are available against the appellants. The Department also verified the appellant's records;

the Ledger Accounts and Profit & Loss and balance sheets and there was no invoices; no receipt of any materials from M/s. Vaibhav Mercantile, Madurai; no transport evidences for delivery of the Goods from Madurai to Appellant firm at Chennai; no statements and no examinations were either made from the Lorry Owner or Lorry Driver; no evidence to show that the mentioned consignments crossed the toll gates situated near the appellants units. Further he stated that a penalty under Rule 26 of the C.E.R. 2002 was not legally valid. Penalty under Rule 26 of C.E.R. 2002 is imposable only on a person and not on a firm or company. Thus, the proposal to impose penalty on the Appellant under Rule 26 of C.E.R. 2002 is not legally valid. In view of the above submissions, he prayed that this Tribunal may be pleased to allow the appellant's appeal and set aside the impugned order passed by the Commissioner of Central Excise, Madurai, with consequential reliefs and thus render justice.

3.2 The learned Authorized Representative for the respondent-department took me through the impugned order and reiterated the points given therein.

4. I have carefully gone through the appeal and have heard the rival parties. At the outset it must be stated that it is for the department to establish by methods known to law that duty was evaded and to bring out the role of the parties alleged to have been involved in a satisfactory manner. That onus cannot be shifted to the parties against whom allegations have been made. It is only when sufficient evidence, either direct or circumstantial, in respect of its allegations was disclosed by the Revenue that adverse inference could be drawn against the noticees. In the case of imposition of penalty, it has to be

proved further by revenue that the person penalised was involved in the blame worthy act with which he is charged.

5. On enquiry it was informed by revenue that the main noticee M/s. Vaibhav Corporation, Madurai has not filed an appeal. I find that the impugned order is very cryptic about the part played by the appellants. Para 53 of the impugned order which records the findings of the Ld. Adjudicating Authority against the appellants is reproduced below:

> *"53. I also observe that the clearance details of ingots shown in the 'Scrap-Ingor register, 'Loading Details' register and 'Roots' register for the relevant period, seized from the premises of Vaibhav are not imaginary ones but shows the actual details of clearances made to the 13 Nos. of steel units (to whom notice has been served) to whom the clandestinely removed 'Ingots' were shown to have been cleared in private documents. The details of quantity of ingots cleared to above mentioned 13 Nos. of buyers and the period of clearance were detailed in para 6 of show cause notice. Though, all the consignees have denied receipt of the clandestinely removed Ingots from Vaibhav, I observe that the consignees are manufacturers of TMT bars, which also attract' excise duty and therefore admission of receipt of the Ingots would automatically result in admission of suppression of their production, making them liable for appropriate recovery and penal proceedings under Central Excise Act and hence it is obvious that they preferred to deny such illicit procurement. The 'Roots Diary 2007 maintained by Vaibhav and recovered from them on which basis Annexure-IV to the show cause notice has been prepared indicating date wise despatches from Vaibhav to the aforesaid 13 steel units showing vehicle number, No. of pieces of Ingots and their weight. All these evidences having incriminating nature cannot be simply brushed aside and has enough ground to invoke penal provisions under Rule 26 of the Central Excise Rules, 2002 against the aforesaid 13 steel units who had knowingly purchased the clandestinely cleared goods despite their illicit nature. The arguments of the above said steel units that penalty under Rule 26 of Central Excise Rules, 2002 is imposable only on a person and not on a firm or company is not acceptable. Though 'person' is not defined in the Central Excise Act, 1944, 'person' includes any company or association or body of individuals whether incorporated or not. Therefore, in case of a contravention of any of the provisions of the Central Excise Act, its partners in charge of the business are responsible for the conduct of the same are liable unless such contravention took place without their knowledge or they exercised all due diligence to prevent such contravention. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in the case of "Agarwal Trading Corporation and Others Vs Asst. Collector of Customs, Calcutta and Others [1983(13) ELT.1467(SC)]."*

6. From the portion of the order extracted above the averments made by the appellant are correct. The case against all the appellants has been bunched together and disposed of in a single para on generalities without discussing the specific wrong doings in each individual case. The Department has built up the case of clandestine removal against the appellants based on the third-party documents which were recovered and statements that were recorded from the M/S. Vaibhav Mercantile without any evidence collaborating the alleged activity at the appellants end, like goods receipt register, stock register, transporters trip sheets, consignment note, VAT assessment of the appellant on the particular period, profit & Loss account/ yearly balance sheet of the appellants, statements etc. In fact, the appellants / company officials have in their statements categorically denied indulging in any unaccounted transactions. In such a situation it is difficult to sustain the charge of blame worthy conduct by the appellants merely on the assumptions and presumptions and hence no penalty could have been imposed on them. Revenue has failed to prove its case and hence the impugned order merits to be set aside.

7. Having regard to the discussions above, I set aside the impugned order in as much as it relates to the appellants. They are eligible for consequential relief, if any, as per law.

(Pronounced in open court on 01.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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