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

Excise Appeal No.42663 of 2014

(Arising out of Order in Original No. 55/2014 (C) and 56/2014 (c) dated 9.9.2014 passed by the Commissioner of Central Excise, Puducherry)

S. Jayapragash **Appellant**
CEO, M/s. JB Aluminium Extrusion
R.S. No. 243, Thirukanchi Road
Odiampet Village, Villianur
Puducherry – 605 110.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Goubert Avenue
Puducherry – 605 001.

APPEARANCE:

Shri S. Venkatachalam, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

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

Final Order No. 41087/2024

Date of Hearing : 13.08.2024
Date of Decision: 20.08.2024

This appeal is filed the appellant against Order in Original No. 55 & 56/2014 (C) dated 9.9.2014 passed by the Commissioner of Central Excise, Puducherry.

2. Brief facts of the case are that M/s. JB Aluminium Extrusion, a proprietorship firm, was engaged in the manufacture of aluminium extrusion channels falling under Tariff Item No. 7604 2100 of CETA, 1985. Smt. S. Vijayalakshmi was the proprietor of the said proprietorship firm, whereas all the day to day activities of the said firm were entirely managed by the appellant Shri S. Jayaprakash son of the proprietor. He is the Chief Executive Officer and Authorized

Signatory of the said firm. On intelligence that the firm is indulging in evasion of central excise duty through clandestine removals of their final products, i.e. 'aluminium extrusion channels', without payment of duty, without cover of invoices and without following the procedures prescribed under the Central Excise Law, the officers attached to the Preventive Unit, Puducherry visited the factory and verified their accounts. It was ascertained that the firm commenced commercial production during February 2010 and that they have been availing CENVAT credit procedure. All the records including sales registers, stock details, packing list, sales etc. relevant to manufacture and clearance of the final products maintained by the firm were verified. Upon completion of investigation, it was found that the proprietorship firm had removed certain quantity of the final products without the cover of invoice and without account for the same in their statutory book of accounts during the period from April 2010 to 12.5.2012. The finished goods that were cleared clandestinely worked out to Rs.3,06,10,690/-. Based on the statements and the records available, Show Cause Notice dated 30.10.2012 was issued to the firm and the appellant herein for demanding the duty and for imposing penalty. After due process of law, the adjudicating authority demanded duty of Rs.3,08,97,463/- along with interest and imposed equal penalty on the firm. A penalty of Rs.20,00,000/- was imposed on the appellant herein under Rule 26 of the Central Excise Rules, 2002. Aggrieved by the imposition of penalty of Rs.20 lakhs, the appellant has filed the present appeal before this Tribunal.

3. Shri S. Venkatachalam, learned Advocate appeared for the appellant and Shri Anoop Singh, learned Authorized Representative appeared for the department.

3.1 The learned Advocate for the appellant submitted that S. Jayapragash, the appellant is the Chief Executive Officer of M/s. JB Aluminium Extrusion who were engaged in the manufacture of Aluminium Extrusion Channels. The appellant denies the allegations which are made mainly based on four statements recorded on 12.05.2012, 17.5.2012, 18.05.2012 and 16.4.2013. The retraction of statements by the appellant by Affidavits is not considered in the show cause notice/impugned order. It is settled law that uncorroborated improved retracted statements cannot be a basis to impose penalty. During cross- examination held on 16.04.2014 the appellant further explained the contradiction in the statement and retraction. Therefore, the statements have no evidentiary value. The Ld. Advocate stated that the appellants is only a Power Attorney Holder and his mother Late S. Vijayalakshmi the proprietor of the concern only signed all statutory documents. The appellant has not dealt with any non-duty paid goods to attract penalty under Rule 26 of Central Excise Rules, 2006. Hence the penalty imposed is not sustainable in law. Further the penalty imposed is very high in the facts and circumstances of the case. Such excessive penalty is not warranted on a power of attorney holder in as much as equal penalty has been imposed on the Proprietorship concern. He further submitted that the unit incurred heavy loss and the unit was taken over by UCO bank through borrower and guarantors JM Financial Asset Reconstruction Company Pvt Ltd on 20.06.2017 and S. Vijayalakshmi the proprietor of the concern passed away on

26.10.2018. 50% of the ancestral small residential House was also attached by the bank. At present the appellant is working for small salary and hence has no wherewithal to pay the penalty imposed. The Ld. Advocate provided copies of the said documents and prayed for leniency of the Hon'ble Tribunal.

3.2 The Ld. AR stated that revenue had a strong case of clandestine clearance which was based on documents and records apart from statements of those involved. The retractions made were belated and an afterthought. However, considering the hardship faced by the appellant and the Ld. Advocates plea on behalf of his client who was facing severe hardship, a suitable decision may be taken in the matter.

4. I have carefully gone through the appeal. I find that the appellant being the CEO of the company involved in a serious blameworthy act has been rightly penalised. His Ld. Advocate has mainly pleaded for mercy and a reduction in the penalty due to the sever financial stress that the appellant is under. In the circumstances it is felt that the ends of justice would be met if the penalty is reduced to Rs 1,50,000/- (One lakh fifty thousand only).

5. In the circumstances the impugned order is partly modified, and the penalty is reduced to Rs 1,50,000/- (One lakh fifty thousand only). The appeal is disposed of accordingly.

(Order pronounced in open court on 20.08.2024)

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

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