CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 52426 OF 2018

[Arising out of Order-in-Appeal No. 304/C.I/DLH/2017 dated 16.11.2017 passed by the Commissioner, Central Excise (Appeals), New Delhi]

DEEPAK SINGH **.........Appellant**

S/o Shri Tej Pal Singh
R/o 126/52, Sant Nagar, Burari
Delhi-110084

Vs.

COMMISSIONER OF CENTRAL EXCISE, DELHI-I,
Central Revenue Building,
I P Estate, New Delhi
Now, Central Goods & Service Tax,
Delhi North Commissionerate,
Central Revenue Building, IP Estate,
New Delhi **........Respondent**

Appearance:
Present for the Appellant : Shri Archit Upadhyay and Shri Anil Kumar, Advocates

Present for the Respondent: Shri Rakesh Agarwal, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

Final Order No. 50269 /2024

Date of Hearing : 05/01/2024
Date of Decision: 13/02/2024

P V SUBBA RAO

Shri Deepak Singh[1] filed this appeal to assail the Order in Appeal[2] dated 16.11.2017 passed by the Commissioner (Appeals) whereby he upheld the order dated 18.4.2017 passed by the Additional Commissioner and rejected the appellant's appeal.

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1 Appellant
2 Impugned order

2. The appellant is aggrieved by penalty of Rs. 10,00,000/- imposed on him under Rule 26 of the Central Excise Rules, 2002[3]. The facts of the case are that receiving intelligence about clandestine manufacture of Pan Masala, anti-evasion officers of Central Excise, searched the premises where the goods were being manufactured and seized the goods and machinery, recorded statements and investigated the matter. Thereafter, a Show Cause Notice[4] dated 24.10.2011(hereinafter called the first SCN) was issued proposing confiscation of the raw materials, packing materials, finished goods and machines and also proposing to impose penalties. In this SCN, there was a proposal to impose penalty under Rule 26 on the appellant herein.

3. Another SCN dated 19.5.2014 (hereinafter called the second SCN) was issued demanding duty and proposing to impose penalties. In this SCN also, it was proposed to impose penalty under Rule 26 on the appellant herein.

4. Both these SCNs were adjudicated by the Additional Commissioner through the common order dated 18.4.2017 confiscating the goods as proposed in the first SCN and allowing their redemption on payment of fine but not imposing fines on anyone under this SCN. With respect to the second SCN, he confirmed the demand of duty with interest and imposed penalties including a penalty of Rs. 10,00,000/- on the appellant herein under Rule 26.

5. Learned authorised representative submits that the main noticee M/s. Shiv Flavours did not appeal against the order in

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3 **Rules**
4 **SCN**

original. Thus, the only appeal before us is with respect to this penalty on the appellant.

6. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records. The short question to be decided is if the penalty imposed on the appellant under Rule 26 can be sustained. Before examining the merits of the case, we find it appropriate to first examine Rule 26. It reads as follows:

> **26. Penalty for certain offences**
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> (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 rupees 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.
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> (2) **Any person, who issues**-
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> (i) **an excise duty invoice without delivery of the goods specified therein or abets in making such invoice**; or
>
> (ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund,
>
> shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.”

7. As may be seen, penalty under Rule 26 can be imposed if one is concerned in a manner indicated in the Rule with goods which were liable for confiscation or was in any way concerned such goods or any person who is connected with issue of invoices

without delivering goods so as to enable the person to enable the other person to avail CENVAT credit incorrectly.

8. In this appeal, no penalty has been imposed with respect to the confiscation of the goods (first SCN). The second SCN was only concerned with recovery of duty. It is in this SCN, penalty of Rs. 10,00,000/- was imposed on the appellant under Rule 26. This Rule does not provide for imposing penalty on the ground that no excise duty was not paid or short paid.

9. In short, in the first SCN, where there was confiscation of goods, no penalty was imposed on the appellant by the adjudicating authority and in the proceedings related to the second SCN, where duty is to be demanded, penalty was imposed under Rule 26 which is clearly beyond the scope of this Rule.

10. Since there is no basis for imposing penalty on the appellant under Rule 26 in the second SCN (which neither involved confiscation of goods nor issue of invoices without supplying goods), the penalty cannot be sustained and needs to be set aside and we do so.

11. The appeal is allowed and the impugned order is set aside with consequential relief, if any, to the appellant.

[Order pronounced on **13/02/2024**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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