CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 51760 OF 2017

[Arising out of the Reviewed Order-in-Appeal No. BHO-EXCUS-001-APP-92-93-17-18 dated 31.07.2017 passed by Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal (M.P.).]

Shri Ramesh Garg, Chairman of **...Appellant**
M/s K.S. Oil Ltd.,
A.B. Road,
Morena – 476 001 (M.P.).

Versus

Commissioner, CGST, Customs **....Respondent**
& Central Excise,
48, Administrative Area, Arera Hills,
Hoshangabad Road,
Bhopal – 462 011 (M.P.).

APPEARANCE:
None for the appellant
Shri Rakesh Agarwal, authorised representative for the department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59886/2024

DATE OF HEARING/DECISION : 09.12.2024

P.V. SUBBA RAO

Shri Ramesh Garg[1] filed this appeal to assail the penalty of Rs. 10,00,000/- imposed on him by the Joint Commissioner by order-in-original No. 39/JC/CEX/UJN/2016-17 dated 30.03.2017[2], under Rule 26 (1) of the Central Excise Rules, 2002[3].

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1. **appellant**
2. **impugned order**
3. **The Rules**

2. None appeared on behalf of the appellant. Nobody has been appearing on behalf of the appellant in the past also.

3. We have heard learned authorised representative for the Revenue and perused the records. Rule 26 reads as follows:

> **RULE 26. Penalty for certain offences.** — (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 ten 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 –
>
> > (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.

4. Evidently, penalty under Rule 26 can be imposed for acts and omission, which render goods liable for confiscation and

the quantum of penalty cannot exceed the duty payable on such goods or rupees ten thousand whichever is higher.

5. In the impugned order, goods have not been confiscated nor have any goods been held liable to be confiscated. We, therefore find, the essential ingredient to impose penalty under Rule 26, namely, confiscation of the goods or goods are liable for confiscation, has not been fulfilled in this case. Therefore, the penalty could not have been imposed under Rule 26.

6. In view of the above, we set aside the penalty imposed on the appellant in the impugned order and allow the appeal with consequential relief to the appellant, if any.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK