CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

EXCISE APPEAL NO. 52053 OF 2024

(Arising out of Order-in-Original No. 01/Pr. Commr/C.Ex/BPL/2024-25 dated 28.06.2024 passed by the Principal Commissioner, CGST & Central Excise, Bhopal)

M/s. Data Goods Carrier, **.....Appellant**
B.O. at Parking No. 01,
Near Raghav Lodge, Transport Nagar,
Gwalior, M.P. - 452001

VERSUS

Principal Commissioner, **.....Respondent**
CGST & Central Excise, Bhopal
35-C, GST Bhawan, Administrative Area,
Area Hills, Bhopal (M.P.) – 462 011

WITH

EXCISE APPEAL NO. 52041 OF 2024

(Arising out of Order-in-Original No. 01/Pr. Commr/C.Ex/BPL/2024-25 dated 28.06.2024 passed by the Principal Commissioner, CGST & Central Excise, Bhopal)

Manmohan Agarwal, **.....Appellant**
Operator of M/s. Data Goods Carrier,
B.O. at Parking No. 01,
Near Raghav Lodge, Transport Nagar,
Gwalior, M.P. - 452001

VERSUS

Principal Commissioner, **.....Respondent**
CGST & Central Excise, Bhopal
35-C, GST Bhawan, Administrative Area,
Area Hills, Bhopal (M.P.) – 462 011

APPEARANCE:

Shri Abhas Mishra, Advocate for the Appellant

Shri S.K. Ray, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMABIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 11.08.2025
DATE OF DECISION: 12.01.2026

FINAL ORDER NO's. 50042-50043/2026

JUSTICE DILIP GUPTA:

Excise Appeal No. 52053 of 2024 has been filed by M/s. Data Goods Carrier[1] and **Excise Appeal No. 52041 of 2024** has been filed by Manmohan Agarwal, Operator of the appellant, against that part of the order dated 28.06.2024 passed by the Principal Commissioner, CGST and Central Excise, Bhopal[2] by which penalty has been imposed upon them under rule 29 of the Central Excise Rule, 2017[3] read with section 11AC of the Central Excise Act, 1944[4].

2. The allegation against the appellant was that it was engaged in clandestine transportation of "Karamchand" Brand Pan Masala/Zafrani Zarda manufactured and supplied by M/s. Ashish Enterprises[5].

3. The order dated 28.06.2024 passed by the Principal Commissioner is also against Ashish Enterprises and the portions of the order against Ashish Enterprises are reproduced below:

> "**46.1 In respect of M/s Ashish Enterprises, Gwalior-**
>
> **(i)** I confirm the demand of Central Excise Duty of Rs.13,11,358/- and NCCD of Rs. 5,36,83,560/- (Total C. Ex. duty + NCCD of Rs. 5,49,94,918/-) [Rupees Five Crore Fifty Nine Lakh Ninety Four Thousand Nine Hundred Eighteen Only] under Section 11A of the Central Excise Act, 1944 read with the provisions of Finance Act 2001/Finance Act 2020and order to recover the same from M/s Ashish Enterprises, Shri Krishna Nagar, Haider Ganj, Lashkar, Gwalior, Madhya Pradesh. Remaining demand of NCCD amounting to Rs. 1,18,84,320/- (Rupees One Crore Eighteen Lakh Eighty Four

1. **The appellant**
2. **the Principal Commissioner**
3. **the 2017 Rules**
4. **the Central Excise Act**
5. **Ashish Enterprises**

Thousand Three Hundred and Twenty Only) is dropped.

(ii) I confirm the demand of interest on the demand, so confirmed at Sr. No. (i) above, and order to recover the same from M/s Ashish Enterprises, Shri Krishna Nagar, Hairder Ganj, Lashkar, Gwalior, Madhya Pradesh under Section 11AA of Central Excise Act, 1944.

(iii) I impose penalty of Rs. 5,49,94,918/- (Rupees Five Crore Forty Nine Lakh Ninety Four Thousand Nine Hundred Eighteen Only) under Section 11AC of Central Excise Act, 1944 read with Rule 28 of Central Excise Rules 2017 upon Ashish Enterprises, Shri Krishna Nagar, Haider Ganj, Lashkar, Gwalior, Madhya Pradesh.

(iv) I impose penalty amounting to Rs. 20,00,000/- (Rupees Twenty Lakh Only) under Rule 28(1)(c) of Central Excise Rule, 2017 read with section 11AC of Central Excise Act, 1944 2017, for not taking registration for manufacturing of Tobacco Products, upon Ashish Enterprises, Shri Krishna Nagar, Haider Ganj, Lashkar, Gwalior, Madhya Pradesh."

4. Ashish Enterprises filed Excise Appeal No. 52020 of 2024 to assail that portion of the order that was passed against Ashish Enterprises confirming the demand of central excise duty with interest and imposing penalty under rule 28 of the 2017 Rules. This order against Ashish Enterprises has been set aside by order date in the said Excise Appeal No. 52020 of 2024 filed by Ashish Enterprises.

5. Thus, the imposition of penalty upon the appellant and the Operator has to be set aside for this reason alone.

6. There is also justification in the contention of the learned counsel for the appellant and the Operator that penalty could not have been imposed on the appellant under section 11AC of the Central Excise Act as it can be

imposed only on the person who is liable to pay duty and in the present case no duty demand has been confirmed against the appellant.

7. Penalty under rule 29 of the 2017 Rules can be imposed on a person who is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in an any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Central Excise Act.

8. In the first instance, the allegation of clandestine removal of goods by Ashish Enterprises has been set aside by order of date in the appeal filed by Ashish Enterprises.

9. The case against the appellant and the Operator is based on the private documents seized from the premises, which documents do not link them to the clandestine activities of Ashish Enterprises. This fact has been examined at length in Excise Appeal No. 52020 of 2024 filed by Ashish Enterprises that has been decided by order of date.

10. Thus, penalty under rule 29 of the 2017 Rules read with section 11AC of the Central Excise Act cannot be sustained and is set aside. The impugned order imposing penalties upon the appellant and the Operator are set aside. The two appeals are, accordingly, allowed.

(Order Pronounced on **12.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya