# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
## PRINCIPAL BENCH, COURT NO. IV

**Excise Appeal No. 482 -483 of 2007**

[Arising out of Order-In-Original No. 13/Commr/CEX/IND/2006 dated 20.4.2006 passed by Commissioner of Customs & Central Excise, Indore (MP)]

**Commissioner of Customs & Central Excise, Indore (MP)** — **Appellants**

**Vs.**

**Shri J C Mansukhani, MD, Man Industries India Ltd.** — **Respondent**
**Shri K G Mantri,**
**Vice President (Comm), Man, Industries India Ltd.**

**Appearance**:

Shri R K Manjhi, AR for the Appellants
Shri M Saharan, Advocate for the Respondent

**CORAM**:

**Hon'ble Shri Ashok Jindal, Member (Judicial)**
**Hon'ble Mr. Ashok K Arya, Member (Technical)**

Date of Hearing : 28. 11.2016
Date of decision : 20.02.2017

**FINAL ORDER NO.** 51882-51883/2016

**Per Ashok K Arya :**

1. Revenue is in appeal against the Commissioner's order dated 20.4.2006, wherein Central Excise duty amounting to

Rs.1,28,56,776/- along with interest has been confirmed against M/s. Man Industries, who is the repondent and equivalent penalty has also been imposed on them. The impugned order has not imposed any penalty on Shri J C Mansukhani , MD and Shri K G Mantri, Vice President (Commercial), who are also the respondents before us.

1.1. Main issue of the appeal are as under :

i) The subject issue relates to imposition of penalty under Rule 26 of Central Excise Rules on the respondents MD and Vice President (Counsel) of the assessee-company. However, the demand of duty under section 11A(1) is confirmed by the Adjudicating authority that the assessee and the same is not the issue in the present appeal.

ii) Commissioner while confirming the demand imposed penalty under Section 11 A of Central Excise Act, 1994 on the assesse; however, he did not impose any penalty under Rule 26 of the Central Excise Rules on Mr. J C Mansukhani, MD and Shri K G Mantri, VP (Commercial).

2. Heard Shri R K Manjhi, learned DR appearing for the Revenue and Shri M Saharan, leanred Advocate appearing for the respondent-assessee.

3. The Ld AR based on their appeal memorandum and the written notes inter alia mainly submits as under:-

i) The adjudicating authority erred in dropping charges against Noticee respondents. Shri J C Mansukhani deliberately tried to mislead the department by making a false statement that bare pipes were cleared outside the factory premises and brought back for coating purpose. This was done as an afterthought as a legal obfuscation to avoid payment of duty.

ii) Shri K G Mantri, the respondent, himself admitted that bare pipes were never physically removed outside from the factory premises.

Iii) There is no reasoning as to how because of lack of personal enrichment, penalty cannot be imposed.

4. Learned advocate appearing for the respondents –inter-alia submits that there has been no involvement of Shri J C Mansukhani and Shri K G Mantri, in alleged non-payment of duty and therefore, no penalty can be imposed upon them.

5. After careful consideration of the facts, and the submissions of both the sides, it appears that the respondents namely, Shri J C Mansukhani, MD and Shri K G Mantri, Vice President (Commercial) were in the knowledge of the facts as well as they were the party to the facts leading to evasion of duty of Central Excise to the tune of Rs.1,28,56,776/- . The respondent Shri J C Mansukhani, holds very senior position of Managing Director in the assessee company namely, M/s Man Industries Ltd. (MIL). It is on record that M/s.

MIL has intentionally split the tender in two parts one for bare pipes and the other for PE/CTE coating job. And both the respondents were having the knowledge and were party to this modus operandi of evasion of huge Central Excise duty amounting to Rs.1,28,56,776/- .

5.1 The impugned order, inter-alia, has imposed equivalent amount of penalty of Rs.1,28,56,776/- on M/s. MIL, who presently are not party to these proceedings. However, M/s. MIL also had filed an appeal against the same impugned order and their appeal was rejected sustaining the liability of duty as well as imposition of penalty by the Tribunal as reported in ***Man Industries India Ltd. vs. CCE, Indore [2013 (292) ELT 554 (Tri-Del)].***

5.2 The contentions of both the respondents are that the company namely M/s. MIL was held responsible for evasion of duty and penalty was imposed on the company; and there is no personal involvement of the respondents, do not have sufficient force. On the face of the fact of mis-leading statement by the respondent, Shri J C Mansukhani, MD, where he inter-alia stated that the goods namely, bare pipes manufactured in SAW Pipe Division were first cleared to plot of CWC land, from where these bare pipes were again taken only for coating and after they got coated, the pipes were stored in the same premises i.e. on land of CWC taken on lease; whereas the panchnama dated 25.11.04 drawn in the premises of MIL makes it obvious that rented land of CWC is infact a part of the factory premises of MIL and not a separate storage space as made out by the respondent, Shri J C Mansukhani, Managing Director.

5.3 Similarly, Shri K G Mantri, Vice President (Commercial) with M/s. MIL also misrepresented the facts on the issue of location of the plant and machinery in the factory premises of MIL. Thus respondent, Shri K G Mantri has also played a part in evasion of duty by M/s. MIL which is a huge evasion of Central Excise duty amount to Rs.1,28,56,776/- .

5.4 Considering above discussions, it appears that both the respondents deserve to be imposed penalties in terms of Rule 26 of the Central Excise Rules, 2002, even when the main noticee M/s. MIL has been imposed the penalty equivalent to the duty evaded. It is also made clear that imposition of penalty is necessary in terms of Rule 26, with a further view that the said imposition of penalty will deter the respondents in future from playing such a role which led to evasion of payment of taxes/ dues due to the Exchequer. Consequently, a token penalty of Rs. 80,000/- (Rupees Eighty Thousand only) is imposed on the respondent, Shri J C Mansukhani and a token penalty of

Rs.20,000/- (Rupees twenty thousand only) is imposed on the respondent no. 2, Shri K G Mantri under Rule 26 of Central Excise Rules, 2002.

6. In the result, both the appeals filed by the department are allowed in above terms.

(pronounced in the open court on 20.02.2017 )

**( Ashok Jindal )**
**Member(Judicial)**

**( Ashok K Arya )**
**Member(Technical)**

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