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

Appeal No. E/178-180/2010-Ex[SM]
[Arising out of Order-in-Appeal No. 47/PKJ/CCE/ADJN./2009 dated 28.10.2009, passed by the Commissioner of Central Excise, New Delhi]

Shri Parvesh Jain
Babu Di Fancy Hatti
Jainico Traders **....Appellant**

Vs.

C.C.E., New Delhi **....Respondent**

Appearance:
Sh. A.K. Mishra, Sh. Harish Kohli, Sh. J.P. Kaushik, Advocate for the Appellant
Sh. R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 19.01.2017

Date of Pronouncement: 14.03.2017

FINAL ORDER NO. 52319-52321 /2017-CU[SM]

Per V. Padmanabhan

This order deals with the appeals filed by Shri Parvesh Jain, M/s Babu Di Fancy Hatti, and M/s Jainico Traders. They have challenged the Order-in-Original No. 47/2009 dated 28.10.2009 passed by the Commissioner (Adjudication), New Delhi. The department, through DGCEI, initiated investigation through simultaneous search on 21.01.2008 of the premises of:

i. M/s Cosmo International (Shri Ashok Jain, Proprietor).

ii. M/s Riemer Cosmetics (Shri Vikas Jain, Proprietor).

iii. M/s Max Fair India (Shri Parvesh Jain, Brother-in-Law of Shri Ashok Jain).

2. All the above firms were manufacturing cosmetic products and selling them through various trading firms, prominent among them being:

a) M/s Babu Di Fancy Hatti and M/s D.D. Brothers, both proprietor Shri Darshan Lal.

b) M/s Jainico Traders whose proprietor is Shri Sanjay Jain.

3. Searches were also conducted, in addition to the factory premises at various other premises including those of traders above. A lot of incriminating documents were recovered. In particular, the seized records included a spiral notebook recovered from the premises of M/s Max Fair India, (Proprietor Shri Pravesh Jain) which contained the details of sale of goods valued about of Rs 6.82 Crores during the period May, 2007 to January, 2008. A ledger book was also recovered from premises of M/s Babu Di Fancy Hatti (Brown cover, Neelgagan Delux Notebook) which contained monthwise details of purchases made from M/s Cosmo, M/s Riemer Cosmetics and M/s Max Fair India without bills. Two CPUs were also recovered from the premises of M/s Riemer Cosmetics. Statements were recorded from various persons

including Shri Ashok Jain, Shri Parvesh Jain, Shri Darshan lal, Proprietor of M/s BDFH and D.D. Brothers as well as Sanjay Jain, Proprietor of M/s Jainico Traders on 21.01.2008. On conclusion of investigations, the department alleged that Central Excise duty has been evaded by adopting the following *modus operandi:*

> Shri Ashok Jain was the mastermind of the evasion. He got cosmetics manufactured from M/s Cosmo, M/s Riemer Cosmetics and M/s Max Fair India and cleared the goods clandestinely to M/s BDFH and M/s D.D. Brothers without issuing invoices and without payment of duty during the period 1.06.2003 to 21.01.2008. SSI exemption was separately availed for each of the three units as above, which was sought to be denied through the Show Cause Notice dated 26.06.2008. In the Show Cause Notice, the department alleged that Shri Ashok Jain had got cosmetics manufactured through three dummy units, which were purchasing raw materials as well as selling final products without payment of duty in cash. Further, it was alleged that even in respect of goods, which were accounted and invoiced, the goods were shown as sold at MRP's, which were very depressed.

3. In line with the above, the Show Cause Notice demanded Central Excise duty amounting to Rs 4,81,45,644/- along with a proposal to levy interest as well as penalty of an equal amount. The duty demand as well as imposition of penalties was confirmed in the impugned order. In addition, penalties of various amounts were

imposed on several persons. In respect of the three appellants, the penalties were levied as follows:

1.	M/s BDFH	Rs 50 lakhs.
2.	M/s Jainico Traders	Rs 50,000/-
3.	Shri Parvesh Jain	Rs 1 lakh

All the above penalties were imposed under Rule 26 of the Central Excise Rules.

4. With the above background, I heard Shri J.P. Kaushik, ld. Counsel representing M/s Babu Di Fancy Hatti, Shri A.K. Mishra, Ld. Counsel representing M/s Jainico traders and Shri Harish Kohli, ld. Counsel representing Shri Parvesh Jain. Revenue was represented by R.K. Mishra, ld. DR.

5. Shri J.P. Kaushik, Advocate representing M/s. Babu Di Fancy Hatti pleaded that the appellants were purchasing the goods from family owned concerns of Sh. Ashok Jain- M/s. Cosmo (owned by Sh. Ashok Jain), M/s. Riemer (owned by Sh. Vikas Jain), and M/s Max (owned by Sh. Pravesh Jain); that the actual purchases made by the appellant during 01.06.2003 – June' 07 period was for Rs. 5,86,14,425/- not Rs. 12,74,22,665/- as the latter figure also includes the purchases made by M/s. D.D. Brothers, that the appellant bonafidely believed that the firms of Sh. Ashok Jain were availing SSI exemption and hence duty was not being paid; that for this reason, they did not bother whether the goods were being

received with duty paying documents, that they were not aware of the non-duty paid nature of the goods and in view of this M/s. Babu Di Fancy Hatti are not liable for penalty under Rule 26, which may be set aside.

6. Shri A.K. Mishra, Counsel representing M/s. Jainco Traders made the following submissions:

> "So far as imposition of Penalty on M/s. Jainco Traders is concerned, they had purchased the goods from M/s. Cosmo, M/s. Riemer and M/s. Max under proper invoices and the goods were duly accounted in their books of accounts. The appellant had no knowledge that M/s. Cosmo, M/s. Riemer and M/s. Max were wrongly availing the SSI exemption. The allegation of knowledge on the part of the appellant of the duty evasion by the manufacturer is without basis. Therefore, there is no justification for penalty on M/s. Jainco Traders under Rule 26 of the Central Excise Rules, 2002".

7. Shri Harish Kohli, Ld. Counsel representing Shri Pravesh Jain, Proprietor, M/s Max submitted that imposition of penalty on Sh. Pravesh Jain under Rule 26 of the Central Excise Rules, 2002 on the ground that he abetted Sh. Ashok Jain in the clandestine removal of the goods manufactured in the factory of M/s Max, is not justified. He submitted that the allegation is that Sh. Ashok Jain was the real owner of M/s Max and Sh. Pravesh Jain was only acting as per the instructions of Sh. Ashok Jain and was only getting a payment of Rs. 25,000/- per month. However, this is incorrect, as he, as well as Sh. Ashok Jain, have retracted those statements. M/s Max is an independent unit owned by Sh. Pravesh Jain. The allegation of clandestine manufacture and clearance on the basis of some entries in the spiral note book

recovered from the factory premises of M/s. Max is without any basis, since for the manufacture of the huge quantity of finished goods, alleged to have been cleared clandestinely by M/s. Max, extra raw-material, power, man power and packing material would be required. Revenue has not produced any evidence of any extra power consumption, employment of extra man power or procurement of raw-material for manufacture of the finished goods. Therefore, there is no justification for imposition of penalty on Sh. Parvesh Jain.

8. Ld. DR submitted that the main appeal filed on behalf of the manufacturers and Shri Ashok Jain has already been dismissed by the Tribunal and hence, the order has become final, as far as the demand of duty and imposition of penalty against Shri Ashok Jain. With reference to BDFH, he submitted that the contents of the ledger book recovered from the premises of BDFH and the spiral note book recovered from the factory premises of M/s Max tally with each other and have been further corroborated by the statements of Shri Darshan Lal, Proprietor as well as Shri Parvesh Jain. During the period 01.06.2003 to 21.01.2008 goods from all the three manufacturing firms involving Central Excise duty of nearly Rs 3.5 crores have been cleared clandestinely by Shri Ashok Jain to BDFH and DD brothers. Since, it is established that BDFH and D.D. Brothers have been party to the evasion of Central Excise duty, penalty imposed is fully justified.

9. With reference to M/s Jainico traders, he submitted that Shri Sanjay Jain, Partner has admitted that they were purchasing goods from Shri Ashok Jain both, with bills and without bills every month. Further, goods were seized from their premises which were cleared without payment of duty. Accordingly, the penalty imposed is fully justified.

10. With reference to the penalty on Shri Parvesh Jain, Proprietor of M/s Max he submitted that the investigation has established that during the relevant period, goods worth nearly Rs 5.5 crore attracting duty of Rs 91 lakhs have been found to have been cleared to BDFH without payment of duty from M/s Max. Shri Parvesh Jain also in his statement has admitted that he has managed the sales without invoices. Consequently, penalty is liable to be imposed on Shri Parvesh Jain under Rule 26.

11. Heard both sides and perused the records. The impugned order demands Central Excise duty amounting to about Rs 4.8 crores from Shri Ashok Jain for goods cleared in the names of M/s Cosmo, M/s Riemer and M/s Max. Penalty equal to duty also stands imposed on Shri Ashok Jain. The separate appeal filed by Shri Ashok Jain already stands dismissed by the Tribunal. In the present appeals, the three appellants have challenged the imposition of penalty under Rule 26 of the Central Excise Rules, 2002. These appeals are dealt with one by one.

12. <u>M/s Babu Di Fancy Hatti (BDFH):</u>

A penalty of Rs 50 lakhs have been imposed on BDFH under Rule 26. Cosmetic items manufactured in the name of M/s Cosmo, M/s. Riemer and M/s. Max were sold through BDFH. Shri Darshan Lal, the common Proprietor of M/s BDFH and M/s D.D. Brothers admitted in his statement dated 21.01.2008 that he was regularly purchasing cosmetics from Shri Ashok Jain both under bills and without bills. In respect of goods purchased without bills, payments were settled in cash and for goods purchased with bills, payments were settled by cheque. Statement of Shri Darshan Lal has never been retracted. From the premises of M/s BDFH ledger book has been recovered giving details of the goods procured from Shri Ashok Jain with and without bills. These were found to tally with a spiral notebook recovered from the premises of M/s. Max and have further been corroborated by the statements of Shri Darshan Lal and Parvesh Jain. The investigation undertaken by DGCEI has revealed that during the period 01.06.2003 to 21.01.2008, BDFH and D.D. brothers have procured and traded in cosmetics cleared without payment of duty by Shri Ashok Jain. The Central Excise duty so evaded by Shri Ashok Jain amounts to about Rs 3.5 crores. Hence, it is established that BDFH, whose Proprietor is Shri Darshan Lal, have abetted in evasion of duty by Shri Ashok Jain.

13. It has been argued on behalf of BDFH that penalty has been imposed on them taking into account the combined value of clearances in the name of BDFH as well as DD brothers. It has further been submitted that they were under the bonafide belief that the firm of Shri Ashok Jain was availing SSI exemption and hence no duty was to be paid. It has also been argued that the value of the goods has been inflated three times by the adjudicating authority.

14. Shri Darshan Lal is the Proprietor of BDFH as well as M/s D.D. Brothers. It is on record that goods cleared without payment of duty by Shri Ashok Jain in the name of all the three firms- M/s Cosmo, M/s Riemer and M/s Max have been sold through M/s BDFH and DD Brothers. This stands admitted in statement dated 21.01.2008. Documents evidencing such sales recovered from the premises of M/s BDFH establish that Shri Darshan Lal through both M/s BDFH as well as DD brothers have abetted Shri Ashok Jain in these clandestine clearances and hence will be liable for penalty under Rule 26. For the above reasons, I find that the penalty imposed on BDFH by the adjudicating authority is fully justified and merits no interference.

15. A penalty of Rs 50,000/- has been imposed on Jainico traders, Proprietor Shri Sanjay Jain. Shri Sanjay Jain, Partner has admitted that they were purchasing goods from Shri Ashok

Jain both with bills and without bills every month. Further, goods were seized from their premises which were cleared without payment of duty. In view of the above, the penalty imposed under Rule 26 is fully justified and merits no interference.

16. A penalty of Rs 1 lakh has been imposed on Shri Parvesh Jain, who was the Proprietor of M/s Max. The investigation has established that during the relevant period, goods worth nearly Rs 5.5 crores attracting duty of Rs 91 lakhs have been found to have been cleared to M/s BDFH without payment of duty from M/s Max. Shri Parvesh Jain also in his statement has admitted that he has managed the sales without invoices. Consequently, penalty is liable to be imposed on Shri Jain under Rule 26. Even though Shri Parvesh Jain has claimed that he was only a paid employee of Shri Ashok Jain, it is on record that he has been instrumental in getting goods manufactured in the premises of M/s Max and clearance of the same without payment of duty. This fact has also been corroborated by their main purchaser viz Shri Darshan Lal, Proprietor of M/s BDFH and DD brothers as well as Shri Sanjay Jain, Proprietor of Jainico Traders in their statements. Even the raw material suppliers have confirmed in their statements that they have supplied raw materials without bills to M/s. Max as also to other two firms of Shri Ashok Jain. In view of the above, Shri Parvesh Jain, Proprietor of the M/s Max will be liable for levy

of penalty under Rule 26 of the Central Excise Rules. The Penalty imposed is upheld.

17. As discussed in the above paragraphs, I find no reasons to interfere with the impugned order passed in respect of the three appellants before me. All the three appeals are dismissed.

[Pronounced in the open court on 14.03.2017]

(V. Padmanabhan)
Member(Technical)

Ritu S.