CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 06.03.2017
Date of pronouncement: 10.04.2017

Excise Appeal Nos. 1565, 1576 to 1578, 1660 to 1667, 1680 of 2008
Excise Appeal Nos. 84 - 85 of 2009

(Arising out of order-in-original No.9/2008 (C. Ex.) dated 24.04.2008 passed by the Commissioner (Appeals-I) Central Excise, Jaipur)

M/s Anand Parkash & Sons (HUF) Appellant
M/s R. K. Silk Mills (India) Limited
Sh. R. K. Goel, Director
Sh. R. K. Gupta, Excise Officer
M/s Palson Fabrics Pvt. Ltd.
M/s Hari Om Textile
M/s Berry Brothers
M/s Orion Fabrics Pvt. Limited
M/s Sri Sai Shanti Textile
M/s Shavellon Fabrics
Sh. Dev Raj Sindhal
Sh. Mahender Kumar Miglani, Prop. of M/s Miglon Synthetics
M/s Ankur Sulz Pvt. Limited
M/s Pioneer Suitings Pvt. Limited
M/s Nishu Fabrics

Vs.

CCE, Jaipur-I Respondent

Appearance:

Sh. Bipin Garg, Sh. Naveen Mullick, Sh. Poojan Malhotra and Sh. Kumar Vikram, Advocates for the appellant –assessee

Sh. H. C. Saini, AR for the Revenue

Coram:

Hon’ble Mr. Justice (Dr.) Satish Chandra, President
Hon’ble Mr. Ashok K. Arya, Member (Technical)

Final Order Nos. **52783 - 52797/2017**

Per: **Ashok K. Arya**:

M/s R.K. Silk Mills (India) Limited (hereinafter also referred to as M/s RKSM) and others are in appeal against order-in-original No. 9/2008 dated 24.04.2008 passed by the Commissioner, Central Excise, Jaipur-I wherender inter-alia a demand of Rs. 1,54,87,744/- alongwith interest and equivalent penalty has been confirmed against M/s RKSM. The impugned order also imposes a penalty of Rs. 25 lakhs on Shri R. K. Goel, Director of M/s RKSM and penalty of Rs. 2,50,000/- on Shri R. K. Gupta, Authorised Signatory of M/s RKSM.

1.2 The impugned order further imposes penalty of Rs. 2,50,000/- each on the following, who are also in appeal before the Tribunal.

i) M/s Palsons Fabrics Pvt. Limited
ii) M/s Hariom Textile
iii) M/s Berry Brothers
iv) M/s Orion Fabrics Pvt. Ltd.
v) M/s Anand Prakash & Sons (HUF)
vi) M/s Sri Sai Shanti Textile (SSST)
vii) M/s Ankur Sulz Pvt. Limited
viii) Shri Devraj Sindhal S/o Sh. Bishan Das Sindhal
ix) M/s Shavellon Fabrics
x) M/s Nishu Fabrics
xi) M/s Pioneer Suitings Pvt. Limited
xii) Mahender Kumar Miglani, Prop. of M/s Miglon Synthetics.

2. The brief facts of the case are that the appellant M/s RKSM holding Central Excise registration, are engaged in manufacture of processed man-made fabrics/ cotton fabric falling under Chapter heading 55 of the First Schedule to the Central Excise Tariff Act.

2.1 The Directorate General of Central Excise Intelligence (DGCEI) conducted search operation in the factory and office premises of the appellant –assessee M/s RKSM based on the intelligence that they had been indulging in evasion of Central Excise duty by clandestinely removing the processed fabrics by adopting a modus-operandi of repeating the same lot nos. for various consignments of grey fabrics received by them. DGCEI officers placed under seizure 9933.75 mtrs. of processed fabrics valued at Rs. 5,96,025/- under the reasonable belief that the same were offending in nature and liable for confiscation under Central Excise Act, 1944 and the Rules framed thereunder since the same were manufactured out of the unaccounted grey fabrics and kept unaccounted in RG-1 register in the factory with an intention to remove the same without the cover of Central Excise invoice(s) and without payment of Central Excise duty.

2.2 Based on further investigation and the statements recorded of various persons and the documents recovered, the Revenue issued a show cause notice (SCN) dated 03.02.2007 to M/s RKSM and other appellants inter alia for recovery of Central Excise duty of Rs. 1,54,87,744/- involved on 18,91,549.94 mtrs. of processed fabrics valued at

Rs.10,94,76,736/- alongwith interest and proposing equivalent penalty. The show cause notice also proposed imposition of penalties on other appellant-noticees.

2.3 Commissioner vide the impugned order dated 24.04.2008 inter alia confirmed demand alongwith interest and equivalent penalty on the appellant-assessee and other penalties on other appellants as mentioned earlier. Hence, these appeals by the appellants before the Tribunal.

3. For M/s Anand Parkash & Sons (HUF) (Appeal No. E/1565/2008), Shri Poojan Malhotra, ld. Advocate represented. For Appeal Nos. 1576, 1577 & 1578 of 2008 Shri Bipin Garg, ld. Advocate represented the appellants. Appeal Nos. 1661 to 1667 have been represented by Shri Naveen Mullick, ld. Advocate, For Appeal No. 1680 of 2008 – none appeared on behalf of the appellant, and for Appeals Nos. 84-85 of 2009, Sh. Kumar Vikram, ld. Advocate appeared for the appellant. Revenue was represented by ld. AR, Shri H. C. Saini.

3.1 On behalf of the respective appellants ld. Advocate Shri Bipin Garg mainly submits that:

i) The appellant M/s RKSM is engaged in the manufacture of processed man-made fabrics after getting supply of grey fabrics. They are suppliers mainly to Government department.

ii) The suppliers exaggerated the figures of grey fabrics mainly at the instance of M/s RKSM as they wanted to get the finances/ loan from the Banks for replacing their old machinery.

iii) The shortages and excesses are nullified if figures of shortages and excesses are compared.

iv) The department has investigated only thirteen suppliers and others were not investigated by the department.

v) In the worst case scenario their demand cannot exceed approximately Rs. 11 lakhs.

vi) They were not given opportunity of cross-examination.

vii) Parallel invoice book was not provided to the appellant-assessee.

viii) The appellants should be allowed deemed credit of the grey fabric received though no documents were provided.

ix) No single evidence of clandestine removal has been provided by the department. If 8% shrinkage and 4% damage is taken into consideration there will be no any shortage or excess production.

x) Searches were made on 08.07.2003 and show cause notice was issued on 03.02.2007. The demand has been issued after the period of one year from the date of search. Therefore, the demand is time barred.

4. Shri Naveen Mullick, ld. Advocate on behalf of the respective appellants inter alia mainly submits as under:

i) While challenging the invocation of Rule 26 of Central Excise Rules, the appellant also denied having received certain number of meters of processed fabrics without documents from M/s RKSM, the statement of Sh. Jagdish Bhutani was forcefully taken; they seek cross-examination of the following:

a. Sh. Rajender Kumar Gupta and

b. Sh. R. K. Goel, Director M/s RKSM

ii) The Commissioner of Central Excise, Jaipur however imposed penalty of Rs. 2.50 lakhs on the appellants under Rule 26 of the Central Excise Rules on the ground that they indulged in abetting the commission of offence by concerning themselves with receipt of unaccounted for and non-duty paid processed fabrics. To establish that the appellant was falsely implicated; they sought cross-examination of Sh. Rajender Kumar Gupta and Sh. R.K. Goel, Director M/s RKSM which was denied without assigning any reasons in the impugned order. Thus, there has been a violation of the principles of natural justice.

iii) Even otherwise, the impugned order is perverse and arbitrary as the provisions of Rule 26 of Central Excise Rules clearly mandates that the penalty to be imposed cannot exceed the duty involved towards the goods in dispute. Without ascertaining the value of the goods and the duty involved, the ld. Commissioner proceeded to impose penalty of Rs. 2.50 lacs, which has no legal sanction. In the present case, the penalty has been imposed arbitrarily. It is an alternate submission while the appellant submits that they are not liable for any penal action.

iv) In the present case, all the transaction were handled and conducted by Sh. K. K. Shah, broker and he received the payments from the appellant. The very fact that Sh. K.K. Shah, broker has been let off from the issuance of the show cause notice by itself confirms that there is no evidence in respect of the disputed stocks that the payment of Central Excise duty was not discharged and further there has been no contravention of the Central Excise Rules.

v) It is submitted that issuance of impugned show cause notice for penalising them under Rule 26 of Central Excise Rules is *non-est* in law. Such rule only becomes applicable where a person has reason to believe about the goods being liable for confiscation.
In this connection, reliance is placed on the following:

a) ***Steel Tubes of India Ltd. vs. CCE, Indore*** -2007 (217) ELT 506 (Tri.LB)

b) ***Aditya Steel Ind. Vs. CCE, Hyderabad*** -1996 (84) ELT 229 (Tribunal)

c) ***Woodmen Industries vs. CCE, Patna*** -2004 (164) ELT 339 (Tri. Kolkata).

(vi) Merely some records recovered from M/s RKSM carrying the name 'DEV RAJ' has been the basis to implicate the appellant and thereby force him to admit the same in his statement. There is otherwise, no such corroboration to such statement.

(vii) In his statement, Sh. Mahender Kumar Miglani denied having sent any goods to M/s RKSM. He was even shown certain invoices issued by M/s Pioneer Suitings Pvt. Ltd. Alwar in the name of

‘MIGLON’ for clearances of grey fabrics and such invoices allegedly showed grey fabrics were received by M/s RKSM. On being shown such invoices, Sh. Mahender Kumar Miglani denied having sent any grey fabrics to M/s RKSM. In short, there was no admission by Sh. Mahender Kumar Miglani either about the grey fabrics having been sent to M/s RKSM or having received any processed fabrics from M/s RKSM by him or his firm.

5. On behalf of M/s Anand Parkash & Sons (HUF), Sh. Poojan Malhotra, ld. Advocate’s submissions inter alia are as under:

i) The quantity 9013.6 mtrs. of processed fabric valued at Rs. 1,89,286/- i.e. @ Rs.21/- per meter, allegedly received by appellant from M/s RKSM without the cover of invoice (para 19, internal page 9 of impugned order refers):

The duty on said fabrics comes to Rs. 15,503/- (i.e. @ 8.19% of Rs. 1,89,286/- on pro-rata basis). The value of 9013.6 mtrs. @ 54.82 per mtr. comes to Rs. 4,54,126/- and duty @ 8.19% comes to Rs. 40,569/-.

ii) The ld. Adjudicating authority has incorrectly and exorbitantly imposed penalty of Rs. 2,50,000/- under Rule 26 of Central Excise Rules, 2002 against duty involvement of Rs. 15,503/- or maximum of Rs. 40469/-. The Rule 26 ibid stipulates imposition of penalty not exceeding the duty involved on the goods or Rs. 10,000/- whichever is higher.

6. After having gone through the case record and submissions of both the sides, it appears that there are sufficient incriminating evidences available on the record to sustain the demand of duty of Central Excise of Rs. 1,54,87,744/- against the appellant –assessee M/s RKSM. The argument of the assessee-appellant that they have inflated their production figures of receipt of grey fabric to avail bank loan facility for replacing old machinery of the factory does not carry sufficient force as there is no evidence to corroborate the same. On the other hand, there are enough

corroborative evidences to prove that the appellant-assessee namely M/s RKSM procured extra grey fabrics and clandestinely manufactured and removed the processed fabrics from their factory. In this regard, Commissioner in the impugned order inter alia observes as under:

> "68.6 *I find that the allegations of suppression of production of processed fabrics and its clandestine removal is not based on presumption and assumption, as contended by the assessee, but the entire case is based on the incriminating documents found in the premises of the assessee and thorough investigation conducted in the matter. As per Section 36A of the Central Excise Act, 1944, the truth of the contents of such documents can be presumed unless the contrary is proved. The scrutiny of the documents recovered, investigations conducted at various ends and depositions made revealed that M/s R.K. Silk Mills (I) Ltd. Khairthal had received 1921968.98 mtrs. of grey fabrics un-accountedly through various means for illicit production of processed fabrics as evidenced from the facts given below:*
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> a. *Shri R.K. Gupta, an authorised signatory of RKSM admitted that he had submitted daily reports of grey receipt, machine-wise production, goods passed/ damaged, dispatch of processed fabrics and cash reports, fuel and electricity consumption reports to their Delhi office which were resumed from the office premises under panchnama dated 08.07.03.*
>
> b. *The documents/ records seized at the office premises of RKSM contained details grey receipt by RKSM Khairthal from various parties as well as from its Delhi office for processing without any cover of documents, production thereof without accounting for and clandestine removal of processed fabrics.* ***The seized records / documents also***

contained details of production and consumption of fuel and electricity and also collection of job charges.

c. *Shri R. K. Gupta had* ***categorically admitted that they had received 1921968.98 mtrs of grey fabrics unaccountedly at "RKSM" Khairthal without the cover of any documents*** *from various parties and from its office at Delhi and processed the same without accounting for in the records i.e. grey receipt register and Form IV register,* ***after allotting the fictitious Lot No. and clandestinely removed 1891549.94 mtrs of processed fabrics manufactured out of the same***.

d. *Apart from the above, M/s Palson Fabrics Pvt. Ltd., M/s Hari Om Textile, M/s Berry Brothers, M/s Orion Fabrics Pvt. Ltd, M/s Anand Prakash & Sons (HUF), M/s Sri Sai Shanti Textile (SSST), M/s Ankur Sulz Pvt. Ltd. , Shri Dev Raj Sindhal S/o Shri Bishan Dass Sindhal, M/s Shevellon Fabrics, M/s Nishu Fabrics, M/s Pioneer Suitings Pvt. Ltd., M/s Miglon Synthetics have all in their respective statement* ***admitted having sent the unaccounted grey fabrics to RKSM for processing and received the same after processing without payment of Central Excise duty and Central Excise invoices***. *They have also admitted the fact of paying the processing charges in cash to RKSM.*

e. *The IN & OUT Register maintained at the office godown of RKSM at Delhi seized on 08.07.03 also contained the details of dispatch of grey fabrics by the vehile No. HR 38F9586 and receipt of processed fabrics from RKSM Khairthal through the same vehicle.*

f. *The total quantity of fuel consumed evidently for operating machinery is numerous even during the period when the production was shown as 'NIL'.*

g. *The* ***recovery of parallel invoice No. 29 dated 06.07.03*** *amongst the records / documents seized from their office on 08.07.03 and* ***blank invoice No. 29 available in their invoice book for the year 2003-04****.*

h. ***Shri R. K. Goel, Director of M/s R. K. Silk Mills (I) Ltd. Khairthal had also confirmed the submission*** *made by the authorised signatory for receipt of unaccounted for grey fabrics at RKSM Khairthal, processing thereof without accounting for and clandestine removal of 1891549.94 mtr. of processed fabrics without payment of duty and without issue of invoice. He had also confirmed the statements of the above parties.*

Further, ***in the statements tendered by Shri R. K. Gupta, authorised signatory, Shri R. K. Goel, Director*** *of M/s R. K. Silk Mills (India) Ltd., Khairthal under Section 14 of Central Excise Act, 1944 on various occasions, have* ***categorically admitted clandestine production and clearance of processed fabrics from their factory****. The suppliers of grey fabrics, as discussed in the show cause notice in detail, also in their respective statements have admitted having sent the unaccounted grey fabrics to RKSM for processing and received the same after processing without payment of Central Excise duty and Central Excise invoices. These statements have not been retracted. Now,* ***RKSM have come up with a cooked story that in order to borrow money from the bankers they prepared records of fake production of processed fabrics to prove their viability before the bankers*** *and the same were recovered/ resumed by the department and on the basis of which the impugned demand has been raised on assumption and presumption. This contention of the assessee is nothing but an after-thought version and is* *untenable in view of the factual position discussed above. Hence, the case laws cited do not support the assessee".*

(Emphasis supplied)

6.1 The appellant-assessee's argument that the Revenue investigated merely only thirteen suppliers and not the others cannot favour the appellant-assessee; when in case of thirteen suppliers the department's case is proved, this ground of the assessee has no force. The statements of Shri R. K. Goel, Director of M/s RKSM and Sh. R. K. Gupta, Authorised Signatory of M/s RKSM clearly supports the Revenue's case. However, assessee did not furnish the required addresses in case of other concerned suppliers. In this regard, the impugned order observes as under:

> "68.8 *I find that in para 46 of the impugned Show Cause Notice, it is clearly mentioned that the names of the parties were written in coded forms in the reports. Shri R. K. Goel, Director, RKSM and Shri R. K. Gupta, Authorised Signatory of "RKSM" Khairthal were asked to give the full addresses of he parties whose names were written in coded forms in the reports to complete the investigation at their end,* ***but they did not co-operate and did not furnish the addresses****. Some of the coded names were deciphered during investigation and their statements were recorded. However, statements of remaining parties could not be recorded in the absence of their full addresses.* ***Shri R. K. Gupta also admitted the fact of processing the grey fabrics without accounting for in the records .....***"

(Emphasis supplied)

6.2 The Assessee has argued that there has been a gap of more than one year from the searches in issuing the show cause notice; therefore, the show cause notice is time barred. However, considering the suppression of facts with intention to evade payment of duty it cannot be said that show cause notice was to be issued within one year from the relevant date. The period involved is from April, 2002 onwards and demand has been issued within the five year period from the relevant date as per the provisions of Section 11A of the Central Excise Act, 1944. Therefore, it cannot be said that on this count that the demand is not recoverable from the assessee-appellant.

6.3 Thus, in the light of above discussions, there is no scope to interfere with the impugned order in respect of confirmation of the demand of Central Excise duty of Rs. 1,54,87,744/- alongwith interest and imposition of equivalent penalty against the assessee –appellant under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2001/2002.

7. The main pleading of the appellant **Shri R. K. Goel, Director** against the penalty of Rs. 25 lakhs imposed on him is that he was not concerned with any activities of Rule 26 of the Central Excise Rules, 2002. Sh. R. K. Goel says that only an allegation against the appellant is that without his consent and participation clandestine removal of goods was not possible. He has pleaded that the entire charge of clandestine removal was based on inferences and possibilities and there is no positive evidence. However, from the evidence on record, as discussed earlier, it cannot be said that the department's case of unaccounted receipt of the

grey fabric and clearance of processed fabric without payment of duty and without issue of Central Excise invoice against the appellant - assessee is based on inferences and possibilities. The appellant being a Director in the company cannot abdicate his responsibility of payment of duty of Central Excise. He has been imposed a penalty of Rs, 25,00,000/- under Rule 26 of Central Excise Rules, 2002. Therefore, the contravention of the provisions of Rule 26 against Sh. R. K. Goel is sustained. However, considering that the equivalent penalty of Rs. 1,54,87,744/- has been imposed on the appellant-assessee, we take a lenient view in case of Sh. R. K. Goel and the penalty in his case is reduced from Rs. 25 lakhs imposed by the impugned order to Rs. 5,00,000/- (five lacs) only which is 20% of the original penalty of Rs. 25 lakhs.

8. The main pleading of the appellant, **Shri R. K. Gupta, Authorised Signatory** against the penalty of Rs. 2,50,000/- imposed on him is that penalty under Rule 26 is not to be imposed on the employee of the manufacturing company as he does not have any status/ identity independent of the manufacturing company. However, provisions of Rule 26 are very clear that any person who is 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, is liable to a penalty under Rule 26 of the Central Excise Rules. Shri R. K. Gupta, being Authorised Signatory of assessee M/s RKSM cannot

abdicate himself of his responsibility of complying with the law of Central Excise and he cannot state that he was not concerned with the excisable goods on which duty was liable to be paid. Here, the Central Excise duty has been evaded to the tune of Rs. 1,54,87,744/- and as per facts and evidences on record he is liable to be penalised under Rule 26 of the Central Excise Rules, 2002. The impugned order imposed penalty of Rs.2,50,000/- on Shri R. K. Gupta. However, considering the totality of facts and circumstances of the case where the appellant-assessee has been imposed penalty of Rs. 1,54,87,744/-, and Shri R. K. Gupta being an employee of the assessee, we take a lenient view and therefore, his penalty is reduced from Rs. 2,50,000/- to Rs. 50,000/- (fifty thousand only), which is 20% of the penalty imposed by the impugned order.

9. There are other twelve appellants on which penalty of Rs.2,50,000/- each has been imposed under Rule 26 of Central Excise Rules, 2002. Out of these twelve, there are following four who are private limited companies.

i) M/s Palson Fabrics Pvt. Limited,

ii) M/s Orion Fabrics Pvt. Limited,

iii) M/s Ankur Sulz Pvt. Limited,

iv) M/s Pioneer Suitings Pvt. Limited.

9.1 Out of remaining eight, following six (i) M/s Hari Om Textile, (ii) M/s Berry Brothers, (iii) M/s Anand Prakash & Sons, (iv) M/s Sri Sai Shanti Textile, (v) M/s Shaellon Fabrics and (vi) M/s Nishu Fabrics appear to be either partnership firm or proprietorship firm as they have not used in their name and style the suffix private limited. The remaining two individuals are (i) Shri Dev Raj Sindhal and (ii) Mahender Kumar Miglani.

10. The main contention of **M/s Palson Fabrics Pvt. Limited, M/s Orion Fabrics Pvt. Limited, M/s Ankur Sulz Pvt. Limited & M/s Pioneer Suitings Pvt. Ltd.** against imposition of penalty is that they are impersonal entities and penalty under Rule 26 of Central Excise Rules is not imposable on them, they having the status of a company. It is also pleaded that Rule 26 of Central Excise Rules does not have a provision of imposing penalty on the ground of abetment. They also cited following case laws in support:

i) ***Steel Tubes of India Ltd. vs. CCE, Indore***- 2007 (217) ELT 506 (Tri. LB)

ii) ***Woodmen Industries vs. CCE, Patna*** -2004 (164) ELT 339 (Tri. Kolkata).

10.1 Above case laws hold that penalty under Rule 26 of Central Excise Rules, 2002 (Rule 209A of erstwhile Central Excise Rules, 1944) is not imposed on a company but only on a person. Therefore, following the ratio in the above case laws penalty imposed on these four companies is hereby dropped.

11. The impugned order imposes a penalty of Rs.2,50,000/- on **M/s Hari Om Textiles** under Rule 26 of the Central Excise Rules, 2001/2002

read with Rule 26 of the Central Excise Rules. The main argument of the appellant against the imposition of penalty is that their statement was recorded and they were not allowed cross-examination of Shri R. K. Gupta, A.S. and Sh. R. K. Goel, Director. It is also pleaded by M/s Hari Om Textiles that penalty has been imposed arbitrarily. However, there is on record confessional statement of Sh. Jagdish Bhutani of M/s Hari Om Textiles. Therefore, M/s Hari Om Textiles has been concerned with the despatch of unaccounted grey fabric and receipt of processed man-made fabric on which Central Excise duty has not been paid. Consequently, penalty is liable to be imposed under Rule 26 of the Central Excise Rules. On the penalty imposed on M/s Hari Om Textiles is Rs. 2,50,000/- , which considering the totality of the facts and circumstances, we find unreasonably high. We, therefore, reduce the said penalty from Rs.2,50,000/- to Rs. 50,000/- (fifty thousand only), which is 20% of the penalty imposed by the impugned order.

12. **M/s Sri Sai Shanti Textiles**, a partnership firm has inter alia pleaded that they are only doing trading in processed fabrics. They submit that they being partnership firm have different legal entity than the partners, therefore, penalty under Rule 26 cannot be imposed on them. However, larger Bench of Tribunal in ***Gopal Industries Ltd. vs. CCE, Indore*** – 2007 (214) ELT 19 (Tri. LB) holds that by mere joining hands, a different and distinct legal entity or legal personality is not

brought about. The larger Bench of the Tribunal in the said decision observes as under:

> "15. *An individual person has a legal personality and status recognized by virtue of natural persons' rights and liabilities. A body of natural persons will retain their individual legal status and personality. They can collectively embark upon tasks they choose to undertake. By mere joining hands they do not bring about a different and distinct legal entity or legal personality. For their individual and collective actions they would themselves be liable jointly and severally in their partnership pursuits. When they constitute a partnership firm and adopt a firm name for their business, such firm name is not a name of any different and distinct juristic personality but only a convenient collective description of such body of individuals. It is the law alone that can create or recognize a juristic personality distinct from the constituent individuals as in the case of companies. Therefore, merely because definition of 'person' would include more than one person as a body of individuals, there is no automatic birth of a juristic person unless specifically so recognized by law*".

12.1 Further Hon'ble Supreme Court in the case of ***Agarwal Trading Corporation and Others vs. Asst. Collector of Customs, Calcutta and others*** - 1983 (13) ELT 1467 (S.C.) holds that on a firm or its partners a penalty can be imposed and a 'person' who includes an association or body of individuals. Hon'ble Supreme Court in the said case inter alia observes as under:

> "7. *The second contention that because the firm is not a legal entity, it cannot be a person within the meaning of Section 8 of the Foreign Exchange Regulation Act or of Section 167(3), (8) and (37) of the Sea Customs Act, is equally untenable. There is of course, no definition of 'person' in either of these Acts but the definition in Section 2(42) of the General Clauses Act, 1897, or Section 2(3) of the Act of 1868 would be applicable to the said Acts in both of which 'person' has been defined as including any company or association or body of individuals whether incorporated or not. It is of course contended that this definition does not apply to a firm which is not a natural person and has no legal existence, as such clauses (3), (8) and (37) of Section 167 of*

> *the Sea Customs Act are inapplicable to the appellant firm. In our view, the explanation to Section 23C clearly negatives this contention. In that a company for the purposes in that section is defined to mean any body corporate and includes a firm or other association of individuals and a Director in relation to a firm means a partner in the firm. The High Court was clearly right in holding that once it is found that there has been a contravention of any of the provisions of the Foreign Exchange Regulation Act read with Sea Customs Act by a firm, the partners of it who are in-charge of its business or are responsible for the conduct of the same, cannot escape ability, unless it is proved by them that the contention took place without their knowledge or they exercised all due diligence to prevent such contravention*".

12.2 Following above observations of the Hon'ble Supreme Court (supra) and the CESTAT in case of ***Gopal Industries Ltd.*** (supra), when there are enough evidences corroborating the fact that appellant M/s Sri Sai Shanti Textile sent unaccounted grey fabrics to RKSM for processing and received the same after processing without proper invoices and without payment of Central Excise duty, the penalty is deserved to be imposed on them under Rule 26 of Central Excise Rules. However, considering the totality of facts and circumstances, the penalty of Rs. 2,50,000/- imposed on them seems to be on higher side. We therefore, reduce the said penalty to Rs. 50,000/- (fifty thousand only), which is 20% of the penalty imposed by the impugned order.

13. Sh. Anuj Berry, Prop. of **M/s Berry Brothers** confessed that they were involved in despatch of unaccounted grey fabric receipt of processed fabrics on which Central Excise duty was not paid. Their argument that broker Sh. K.K. Shah has not been made party to the show cause notice is not sufficient defence for M/s Barry Brothers. The statement recorded of

Sh. Anuj Berry supports the case of the Revenue against them. They are therefore, liable for imposition of penalty under Rule 26 of the Central Excise Rules, 2001 read with Rule 26 of the Central Excise Rules, 2002. However, considering the totality of the facts and circumstances of the case, penalty imposed on M/s Berry Brothers of Rs. 2,50,000/- appears to be on higher side and the same is, therefore, reduced to Rs.50,000/- (Fifty thousand only), which is 20% of the penalty imposed by the impugned order.

14. On behalf of **M/s Anand Parkash & Sons (HUF)** ld. Advocate argued that the penalty of Rs. 2,50,000/- imposed is exorbitantly high. Considering the totality of facts and circumstances of the case the penalty imposed appear to be on higher side and the same is reduced to Rs.50,000/- (fifty thousand only), which is 20% of the penalty imposed by the impugned order.

15. **M/s Shavellon Fabrics** pleads that they are not concerned with any goods received from M/s RKSM; they purchase thread from open market and get the same converted to grey fabrics from M/s Sanjay Suitings. There was no notice issued to M/s Sanjay Suitings and there is nothing on record to link the receipt of the goods by M/s Shavellon Fabrics. There is nothing on record whereby M/s Shavellon Fabrics can be said to be involved with the evasion of duty of Central Excise as confirmed by the impugned order. When there is no evidence to prove the involvement of M/s Shavellon Fabrics in case of evasion of demand of Central Excise

duty confirmed by the impugned order. The penalty of Rs. 2,50,000/- imposed on the appellant is hereby dropped.

16. In case of **M/s Nishu Fabrics**, it has been pleaded that till 31.03.2003 their business activity was closed and thereafter from 01.04.2003 to 15.11.2003 they took only the job work of M/s Pioneer Suitings Pvt. Ltd., Alwar. However, impugned order in para 34 makes a mention that how M/s Nishu Fabrics is concerned with the present case of evasion of duty of Central Excise made mainly against the appellant-assessee M/s RKSM. Therefore, the appellant M/s Nishu Fabrics's argument that they are not concerned with the present case, cannot be accepted as it is. However, considering the overall facts and circumstances of the case, the penalty imposed on them seems to be high, the same is, therefore, reduced to Rs. 50,000/- (fifty thousand only), which is 20% of the penalty imposed by the impugned order.

17. The main pleading of **Shri Dev Raj Sindhal** is that he did not have any premises to deal with the fabric. He is only a consultant and he has got diploma in weaving. Considering the submissions of Shri Dev Raj Sindhal we do not find his direct involvement in evasion of duty of Central Excise. Therefore, the penalty imposed on Shri Dev Raj Sindhal is hereby dropped.

18. **Shri Mahender Kumar Miglani, Prop**. M/s Miglon Synthetics has pleaded that he did not send any grey fabric to M/s RKSM and did not

receive any processed fabric from M/s RKSM either for him or for his firm. When Sh. Miglani denied having sent any goods (gray fabrics) or having received any processed fabrics from RKSM in his statement recorded by DGCEI officers, the Revenue's case against him is not sustainable, as further there are not sufficient substantial evidences on record, whereby his involvement in evasion of duty of Central Excise could be proved. Therefore, penalty imposed on Sh. Miglani under Rule 26 of Central Excise Rules is hereby dropped.

19. In the result, the impugned order is modified to above effect and the appeal filed by the assessee, M/s R. K. Silk Mills (India) Ltd. is dismissed; the appeals filed by M/s Palson Fabrics Pvt. Ltd, M/s Orion Fabrics Pvt. Ltd., M/s Pioneer Suitings Pvt. Ltd., M/s Ankur Sulz Pvt. Ltd., Shri Dev Raj Sindhal and M/s Mahender Kumar Miglani are allowed; the appeals filed by Sh. R. K. Goel, Sh. R. K. Gupta M/s Hari Om Textiles, M/s Sri Sai Shanti Textiles, M/s Berry Brothers, M/s Anand Parkash & Sons (HUF), M/s Shavellon Fabrics and M/s Nishu Fabrics are partly allowed in above terms.

(Pronounced on **10.04.2017**).

(Justice (Dr.) Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

Pant