CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO.1

Appeal No. E/1543, 1742/2012-DB

(Arising out of CESTAT Order-In Original No.36-37/2012 dated 27.02.2012 passed by CCE,Indore)

DATE OF HEARING: 28.03.2017
DATE OF DECISION: 13.04.2017

Shri Manohar Singh Rana ….Appellant
Shri Vijay Soni

V/s

C.C.E. Indore ….Respondent

Appearance

Ms. Swetima Diwedi, Advocate for the Appellant
Shri H.C. Saini, DR for the Respondent

CORAM: HON'BLE MR. SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER(TECHNICAL)

FINAL ORDER NO. 52882,52883/2017

Per Ashok K Arya:

1. These two appeals have been filed by Shri Manohar Singh Rana and Shri Vijay Soni against Order in Original No.36-37/2012 dated 27.02.2012 passed by the Commissioner, Central Excise, Indore. The Order in Original is passed mainly in case of the assessee, M/s Soni Spat Ltd. The Order in Original disposed off two Show Cause Notices No DGCEI No. IV(6)INV/RUI72/07/Ptl/1309 dated 2.6.2008 & No. DGCEI/AZU/36-11/2009-10/440/IND/ dated 7.05.2009. The Order in Original inter alia imposes a penalty of Rs.5 lakhs each on the present Appellants under Rule 26 of the

Central Excise Rules, and Rule 15 of the Cenvat Credit Rules, 2004. The main assessee M/s Soni Ispat Ltd. is presently not before us. The main appeal No.E/1540/2011 was dismissed by the Tribunal vide order No.FO/A/52593/2017 dated 28.02.2017 Thus, the matter presently concerns with these two Appellants only.

2. The brief facts are that:

i) The Appellant Shri Vijay Soni is the Director, and Appellant Shri Manohar Singh Rana works as Excise Incharge & Authorised Signatory of the assessee M/s Soni Ispat Ltd., who are said to have been indulging in evasion of Cenvat duty by way of under-valuation of excisable goods manufactured by them, suppression of production of excisable goods and illicit/clandesline clearances of same without payment of appropriate Cenvat duty.

ii) The officers of the Directorate General of Central Excise Intelligence (DGCEI) made searches of their factory premises and related office/premises at Indore and Mumbai on 8.12.2007 and incriminating documents/records were seized under proper Panchanamas.

iii) Based on further investigation and the statements recorded of the concerned persons and the documents recovered, two Show Cause Notices dated 07.05.2009 & 2.06.2008 were issued.

iv) In case of the Show Cause Notice dated 7.5.2009, the impugned Order-In-Original has imposed penalty of Rs.5 lakh each on the present Appellants namely Shri Vijay Soni and Shri Manohar Singh Rana. Therefore, these two appeals have been filed by the Appellants before the Tribunal.

3. With this background, we have heard the ld Counsel Ms. Swetima Diwedi for the Appellants and Shri H.C. Saini, ld DR for the Revenue.

4. On behalf of the Appellant, the ld Counsel inter alia submits the following:

a) Penalty imposed under Rule 26 of Central Excise Rules, 2002 is bad in law as there was no knowledge on their part regarding intention of payment of duty by M/s Soni Ispat Ltd.

b) There is no evidence to show that the Appellant has any personal knowledge of deliberate non- payment of duty or they were involved in the alleged act of commission of any offence related to Central Excise Rules.

c) There is no evidence to involve the Appellant in the alleged activity of dealing in contraband excisable goods.

d) The Appellants have no specific role in alleged evasion of duty. They are merely an employee and could not do anything independently on their own. They rely on the following case laws:

i) *Cipta Coated Steels Ltd.*
v/s
Commissioner of C.Ex., Aurangabad 1999(133)
E.L.T. 490 (Tribunal)

ii) *Z.U. ALVI*
v/s
Commissioner of C. Ex., Bhopal 2000(117)
E.L.T. 69 (Tribunal)

It was held that Appellant an employee of the manufacturer not having any existence independent of manufacturer as far as Central Excise Law is concerned. Appellant having acted only in his capacity as an employee of manufacturer, not falls within the purview of Rule 209A of Central Excise Rules, 1944.

iii) O.P. Aggarwal
v/s
Commissioner of Customs, Kandla 2005 (185)
E.L.T. 387 (Tribunal)

It was held that employees of company carrying out orders given to them are not person in charge/responsible for conduct of its business and are not liable to penalty – Sections 111, 112, 113 and 114 of Customs Act , 1962.

5. The ld DR Sh. H.C. Saini reiterates the findings given in the impugned order.

6. After going through the facts of the case and submissions of both the sides, it appears that both Appellants have been made liable for the penalty under Rule 26 of Central Excise Rules, 2002 based only on the statement of Shri Rajiv Saini, CMD of the assessee company. There are no specific documentary evidences or even the statements of these two Appellants indicating that they had a guilty

[mind, and they had personal knowledge and involvement in the evasion of duty/taxes. As per the provisions of Rule 26 of Central Excuse Rules, 2002, element of personal knowledge or mens rea is an essential prerequisite for imposing the penalty thereunder. The Tribunal in the case of *Z.U. ALVI v/s Commissioner of C. Ex., Bhopal* (supra) observes that employee of the manufacturer does not have any existence independent as far as Central Excise Law is concerned.

6.1 When the Department fails to establish that these two Appellants had personal knowledge and guilty mind *(mens rea)* in respect of the activities of the assessee leading to evasion of duty of Central Excise, the penalty imposed under Rule 26 of Central Excise, 2002 on the Appellants is not sustainable. Therefore, following Tribunal's decisions in the case of *Z.U.ALVI v/s Commissioner of Ex. Bhopal (supra)* and in case of *O.P. Agarwal v/s Commissioner of Customs, Kandla* (supra), the penalty of Rs.Five lacs each imposed on both the Appellants under Rule 26 of Central Excise, 2002 is hereby dropped.

7. In the result, the impugned order is set aside pertaining these two penalties. In the result both the appeals are allowed.

(Pronounced in open court on 13.04.2017)

Justice (Dr.) Satish Chandra
(President)

(Ashok K Arya)
Member(Technical)

M.T.