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

Excise Appeal Nos. E/1542, 1736 of 2012

[Arising out of Order-in-Original No. 42/Commr/CEX/IND/2012 dated 09.03.2012 passed by the Commissioner of Central Excise Customs & Service Tax, Indore]

Shri Manohar Singh Rana **Appellants**
Shri Vijay Soni

Vs.

Commissioner of Central Excise **Respondent**
Customs, & Service Tax, Indore

Appearance:
Shri Ashok Kumar, Advocate for the Appellants
Shri H C Saini, DR for the Respondent

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

Date of Hearing : 07.04.2017
Date of Decision : 12.06.2017

FINAL ORDER NO. 53860-53861/2017

Per: Ashok K Arya:

The appellants namely, Shri Vijay Soni, Joint Managing Director of M/s. Metalman Industries Ltd. (MIL), and Shri Manohar Singh Rana, Manager (Excise) and authorised signatory are in appeal against order in original No. 42/2012 dated 9.3.12 wherein inter alia penalty of Rs. 15 lakh each has been imposed on both of them under Rule 26 of the Central Excise Rules and Rule 15 of Cenvat Credit Rules, 2004.

2. Brief facts are that:-

i) one manufacturing Company namely M/s. Metalman Industries Ltd. (MIL) was found to be involved in evasion of Central Excise duty by clearing the goods without payment of duty as well as by violation of Rules etc. M/s. Metalman Industries Ltd. also fraudulently availed the cenvat credit of duty on inputs. The appellant namely, Shri Vijay Soni working as Joint Managing Director with M/s. Metalman Industries was found directly controlling the day to day activities and overall affairs of M/s. MIL.

ii) The other appellant, Shri M S Rana was working as Manager (Excise) and Authorised Signatory of M/s. MIL and was handling the day to day activities and affairs of M/s. MIL and was found willing facilitator in evasion of Central Excise duty and fraudulent availment of Cenvat credit by M/s. MIL.

iii) The assessee M/s. MIL and both the appellants were issued Show Cause Notice dated 8.2.2009 proposing recovery of Central Excise duty as well as recovery of unauthorized

Cenvat Credit availed by M/s. MIL along with imposition of penalties on M/s. MIL and present two appellants.

iv) The above SCN dated 8.2.2009 was adjudicated by the Commissioner, Indore vide impugned order in original dated 9.3.2012 wherein inter alia the total demand of duty (including disallowance of unauthorized Cenvat Credit) of Rs. 12,55,81,417/- has been confirmed along with interest and equivalent penalty against M/s. MIL. Additional penalty of Rs. 50 lakh was also imposed on M/s. MIL under Rule 25 of Central Excise Rules, 2002. The impugned order has imposed penalty of Rs. 15 lakh each on present appellants.

v) The appeal filed by the assessee M/s. MIL has been dismissed on account of non-prosecution by the Tribunal vide Final Order No. 52839/2017 in Appeal No. E/1541/2012-(DB)

vi) Now the present two appellants Shri Vijay Soni and Shri M S Rana are before the Tribunal.

3. With above facts, all parties, represented by Shri Ashok Kumar, learned advocate for the appellants, and Shri H C Saini, learned DR for the Revenue have been heard.

4. Learned Advocate based on written submissions and appeal memoranda on behalf of the appellants inter alia submits as follows:-

(i) Both Vijay Soni and M S Rana worked merely as employees and salaried persons, and were paid for their duties as such, and had no interest in the company whatsoever.

(ii) Both the appellants, Vijay Soni and M S Rana, who are no more employees of the Company, most respectfully submit that considering the facts, penalty imposed only on the basis of certain statements, may kindly be set aside. They have been merely following the orders of their superiors in the factory and were not having *mens-rea* for doing anything wrong, if at all.

(iii) There is no evidence to show that appellants had personal knowledge of deliberate non payment of duty or involved in act of omissions and commissions violating the Central Excise Rules.

(iv) There is no evidence to involve the appellants in alleged activity of dealing in contraband excisable goods.

(v) Therefore, penalty cannot be imposed on the appellants under Rule 26 of Central Excise Rules.

5. After having gone through the facts of the case and submissions of the parties, it appears that the appellants namely, Shri Vijay Soni, Joint Managing Director and Shri M S Rana, Manager (Excise) are not responsible for evasion of duty of Excise including fraudulent availment of Cenvat Credit by the company M/s.MIL. They did not get any pecuniary benefit from the evaded duty. They were working under the command of their boss (superior).

5.1 Considering the fact that these appellants were working merely as employees with the manufacturer assessee M/s. MIL, we refer to the Tribunal's decision in the case of *Z U Alvi V/s CCE, Bhopal* 2000 (117) ELT 69 (Tribunal) and *O.P. Agarwal V/s CC, Kandla* 2005 (185) ELT 387 (Tri-Delhi) wherein it was observed that employees carrying out orders given to them are not liable to penalty. The Tribunal in the case of Z U Alvi (supra) observed as under:

> **2.**Appellant has been proceeded against as an employee of BHEL. A reading of the impugned order would show that the appellant was responsible for effecting payment of Central Excise duties to the Government which was payable by BHEL. So the Commissioner appears to have proceeded against the appellant to impose penalty on account of his misfeasance and malfeasance as an employee of BHEL. Appellant as an employee could not have an existence independent of BHEL as far as Central Excise law is concerned. Appellant was only an employee of BHEL. He was not the person Incharge or was responsible for the conduct of the business of BHEL. Rightly the Commissioner has not proceeded against the

> appellant as a person who was Incharge and responsible for the conduct of the business at the time when BHEL committed default in paying the duties as adjudicated upon by the earlier orders. Commissioner proceeded against the appellant under Rule 209A, which can apply only to a person who dealt with the contraband article, not as manufacturer. Appellant had no dealings with the contraband article otherwise than in his official capacity as an employee of BHEL, the manufacturer. So, by no stretch of imagination can the appellant fall within the purview of Rule 209A of the Central Excise Rules. Therefore, the Commissioner was clearly in error in thinking that penalty contemplated by Rule 209A could be imposed on the appellant who was only an employee of the manufacturer, namely BHEL.

The tribunal in case of O.P. Agarwal (supra) inter alia observes as under:

> The other two appellants Shri Dinesh Thakur and Shri B.L. Dhaluka are General Manager. As per the statement dated 31-5-1996, Shri Dinesh Thakur looks after the imports of the Company from Calcutta and exports production/processing are being looked after by Shri B.L. Dhaluka. He has further deposed that Shri B.L. Dhaluka mainly gives instructions regarding supply of the raw material (plastics) to processors and Dinesh Thakur gives instructions for supply of raw material. Being employees of the Company, they are carrying out the orders given to them. As held by this Tribunal in the case of *Z.U. Alvi* v. *CCE, Bhopal,* - 2000 (117) E.L.T. 69 (T), Appellants as employees could not have an existence independent of Company. They are not the persons in-charge or were responsible for the conduct of the business of the Companies. They had no dealings with the impugned goods otherwise than in their official capacity as employers of the Companies who indulged in malpractices. In view of this penalty under the provisions of Customs Act is not imposable on both Shri Dinesh Thakur and Shri B.L. Dhaluka. We, therefore, set aside all the penalties imposed on them.

5.2. Therefore, following the Tribunal's decisions (supra) the penalties imposed by the impugned order on both the appellants are set aside.

6. In the result, the impugned order is modified to above effect and the appeals are allowed.

(Pronounced in the open Court on 12/06/2017)

(Ashok K Arya)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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