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

Appeal No. E/4157, 4158/2012-EX(SM)

[Arising out of Order-in-Appeal No. 06/D-I/2012 dated 24.09.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Sahu Refrigeration Industries Ltd.
Shri Rajiv Lohia, Director ....Applicants

Vs.

C.C.E. New Delhi ....Respondent

Appearance:

Shri B.S. Yadav, Advocate for the Appellants
Shri M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)

Date of Hearing: 30.12.2016

FINAL ORDER NO. 56491-56492/2016-EX(SM)

Per S.K. Mohanty:

These appeals are directed against the impugned order dated 27.09.2012 passed by the Commissioner, Central Excise, Delhi, imposing penalty of Rs.70,000/ each on the appellants.

2. The brief facts of the case are that M/s. Punjab Stainless Steel Industries is a manufacturer-exporter of utensils. They claim rebate of duty paid on excisable materials, used in the manufacture of said utensils., The said exporter purchased various raw materials namely, stainless steel cold rolled sheets, SS Circle, cold rolled SS Strips, SSCR Coils / sheets, SS Flats, etc. from manufacturers / dealers. The DGCEI officials visited the factory of the said manufacturers and during scrutiny of records, found that the said raw materials were never received in the factory of the appellant

and drawback benefit has been claimed by him fraudulently. On the basis of such intelligence report, the department proceeded against M/s. Punjab Stainless Steel Industries and other manufacturers / dealers for recovery of duty and for imposition of penalties. Vide the impugned order dated 20.04.2012, the Ld. Commissioner of Central Excise has imposed penalty of Rs.70,000/- each on both the appellants under rule 26 of Central Excise Rules, 2002.

3. Heard both the sides and perused the records.

4. The short question involved in this appeal for consideration by the Tribunal is, whether Rule 26 ibid can be invoked for imposition of penalty, in the eventuality when the persons concerned are not involved in dealing with the excisable goods.

5. Rule 26 ibid as is existed prior to 11.05.2007 only dealt with imposition of penalty in the circumstances where the person concerned dealt with excisable goods concerning transportation, removal, depositing, keeping, concealing, selling, or purchasing excisable goods, and those goods are liable for confiscation under the Act and the Rules. The said rule 26 ibid was amended and sub-rule (2) was inserted vide Notification No. 08/2007-CE(NT) dated 01.03.2007 w.e.f. 11.05.2007, providing for imposition of penalty on the person who issues invoices without delivery of the goods, specified therein or abets in making such invoices.

6. In this case, the allegation against the appellants are that without supplying the goods, bogus invoices were issued, facilitating the manufacturer M/s. Punjab Stainless Steel Industries, to fraudulently avail the duty drawback. The original authority has

held that as the goods were not supplied by the appellant, the case does not fall under the ambit of sub rule (1) of Rule 26 ibid. Since all these invoices referred to in the adjudication order were issued by the appellants much before 11.05.2007, when sub-rule (2) was not inserted in Rule 26, penalties cannot be imposed on the appellants, as the said sub-rule will not have the retrospective application. Thus, Rule 26 ibid cannot be invoked for imposition of penalty.

7. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeals filed by the appellants are allowed.

[Dictated and Pronounced in the open Court]

(S.K. Mohanty)
Member (Judicial)

Bhanu