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

Date of hearing/decision: 09.10. 2017

Excise Appeal Nos. 3825, 3827-3828 of 2012
(Arising out of order in original No.05/D-1/2012 dated 30.08.2012 passed by the Commissioner, Central Excise-I, New Delhi).

Rajinder Kumar Gaur Appellant
Pannalal Shyamsukha
R. P. Tripathi

Vs.

CCE, Delhi-I Respondent

Appearance:

Sh. Aditya Kumar, Advocate for the assessee
Sh. R. K. Mishra, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 57106 – 57108/2017

Per: **Mr. Justice (Dr.) Satish Chandra**:

Sh. Aditya Kumar, ld. Advocate appeared in Ex. A. No. 3827 of 2012. None appeared on behalf of other two appellants.

2. After hearing both sides and on perusal of record, it appears that against the same impugned order, regarding the noticee the matter has come up before the Tribunal (Final Order No. 55575 - 55576/2017 dated 26.07.2017) where the matter was remanded to the original authority. The said order is reproduced as under:

> *"The present appeals have been filed against the order-in-original No. 05/D-I/2012 dated 30.08.2012 passed by the Commissioner of Central Excise, Delhi-I..*
>
> *2. Brief facts of the case are that the appellant were associated in the company who made "RAJSHREE" pan masala and other product of alike nature. The factory was visited by the officers of the department and*

they found various discrepancies. Later, they raised the demand of duty and also levied the penalty in individual cases. Being aggrieved, the present appeals have been filed.

Ex. Appeal No. 3823/2012:

In the instant case, the penalty of Rs. 50 lakhs was levied on the appellant who was associated with the company M/s K.P. Pouches Pvt. Ltd. He was holding 29% share in the company. It is the submission of the ld. Counsel Sh. Rupesh Kumar that the show cause notice was issued on 31.12.2010 where Shashikant Chaurasia 1st appellant was not the party. An addendum dated 08.09.2011 was issued where he was made party. Ld. Counsel submits that in addendum, he cannot be made a party as per the ratio laid down in ***Mahindra & Mahindra Ltd. vs. CCE, Mumbai-V – 2006 (196) ELT 62 (Tri. Mumbai)****. He also submits that penalty is not leviable.*

3. On the other hand, Sh. R. K. Mishra, ld. AR for the Revenue submits that Shashikant Chaurasia was made the Authorised Signatory in the Punjab National Bank and looking after the entire activities of the company as per the statement of the Manager, Punjab National Bank dated 24.12.2004.

4. After hearing both parties and on perusal of record, it appears that the investigation was started in the instant case when the officers visited the factory premises and found the discrepancies. The submission of the department is that the appellant Shashikant Chaurasia was the Authorised Signatory in the Punjab National Bank as per the statement of the Manager (PNB) dated 24.12.2004. The account was opened by the appellant.

5. On the other hand, in reply to the show cause notice, the appellant clearly mentioned that Shashikant Chaurasia has ceased current account in Punjab National Bank since March 2004 and left control over the assessee-company.

6. Thus, there are conflicting facts emerging in the instant case. When it is so, then we deem fit to set aside the impugned order and remand the matter to the adjudicating authority to decide the issue denovo but after providing reasonable opportunity of hearing to the appellant. Fresh evidence, if necessary, may be admitted as per law.

7. In the result, this appeal is allowed by way of remand.

Ex. Appeal No. 3824 of 2012:

In the instant case, penalty of Rs. 50 lakhs was imposed on the appellant company under Rule 26 of the Central Excise Rules.

8. After hearing both parties and on perusal of record, it appears that the penalty can be imposed only on the person and not on the firm as per the ratio laid down in the case of ***Aditya Steel Industries – 1996 (84) ELT 229 (Tri.)****. Similar views were expressed in the case of* ***Commissioner vs.***

> ***Woodmen Industries -2004 (170) ELT A307 (SC)*** *where it was clearly observed that penalty under Rule 26 is imposable only on a person and not on the firm. In other words, the penalty is imposable only upon an individual and it cannot be imposed upon firm or company. When it is so, then we found no reason to levy of the penalty upon the assessee –appellant who is not an individual as per the ratio laid down by the Supreme Court (supra), hence, we set aside the impugned order and allow the appeal.*
>
> *9. In the result, appeal (E/A No. 3823 of 2012) filed by the appellant is allowed by way of remand and appeal (E/A No. 3824 of 2012) is allowed."*

3. By following our earlier order (supra), we set aside the impugned order and remand the matters to the original authority with the same direction.

4. In the result, appeals are allowed by way of remand.

(Dictated and pronounced in the open Court).

(B. Ravichandran) (Justice (Dr.) Satish Chandra)
Member (Technical) President

Pant