IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/1175 & 1176/2012 [SM]

[Arising out of common Order-in-Original No.21/ COMMR/ CEX/ IND/ 2012 dated 31.01.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore]

Mr.Sunil Kothari, Director
Mukesh Sangla **...Appellants**

Vs.

C.C.E., Indore **... Respondent**

Present for the Appellant : Mr.Manish Saharan, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 23/11/2017

FINAL ORDER NO. 58101-58102 /2017

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 31.01.2012 passed by the Commissioner, Customs, Central Excise & Service Tax, Indore, wherein penalty of Rs.5,00,000/- each were imposed on the appellants under Rule 15 of the Cenvat Credit Rules, 2004 and under Rule 26 of the Central Excise Rules, 2002.

2. Brief facts of the case are that Cenvat credit taken by M/s. Laxmi Pipes & Fittings Pvt. Ltd. was denied by the Department based upon the records found from the premises

of M/s. Signet Overseas Ltd. and its employees, handwritten slips and laptop seized from the residence of Shri Kriti Kala, Cashier of M/s.Signet Overseas Ltd. (SOL), statement of Shri Kriti Kala and Shri.Mukesh Sangla, Director of M/s. SOL. The Department has alleged that M/s.Laxmi Pipes & Fittings Pvt. Ltd. had availed Cenvat Credit, without actual receipt of the goods and that M/s.Laxmi Pipes paid the amount to M/s.Signet Overseas in Cheque and in turn, the said amount was returned back to it in cash. The impugned order, in this case, has confirmed the demand of Rs.91,16,808/- and imposed equal amount of penalty on M/s. Laxmi Pipes & Fittings Pvt. Ltd. The appeal filed by the said party was dismissed by the Tribunal on the ground of non-prosecution. The said party has not filed any further application for revival of the appeal. The present two appellants have filed the appeal against imposition of penalties. Shri Sunil Kothari is the Director of M/s. Laxmi Pipes & Fittings Pvt. Ltd. and the other appellant Shri Mukesh Sangla is the Director of SOL, who is alleged to be the middle man between the parties involved in the fraudulent activities.

3. The ld. Advocate appearing for the appellant submits that the proceedings initiated by the Department against various persons namely, Parag Pentachem Pvt. Ltd., Mukesh Sangla, Rajshree Plastiwood, Askas Plastics Pvt. Ltd. etc. were decided by the Tribunal vide order dated 26.06.2015 and 23.06.2016, in dropping the adjudged demand against those appellants. Thus, he submits that since the issue arising out of

the common investigation was dealt with by the Tribunal in respect of the other parties and the duty demand and penalties imposed on them were dropped, the equal treatment should be adopted in the case of the present appellants.

4. On the other hand, the ld. DR appearing for the Revenue submits that the Department has mainly proceeded against the statement dated 06.12.2007 recorded from Shri Mukesh Sangla, the M.D. of M/s. SOL, wherein he has specifically stated that without supplying the goods only invoices were issued, facilitating availment of Cenvat Credit, that he also stated before the Departmental Officers that the Cenvat Credit was returned by those buyers in cash. Thus, the ld. D.R. submits that since the present appellants helped the other appellants to fabricate the documents and involved in the fraudulent activities, imposition of penalties are proper and justified and the impugned order cannot be interfered with for a different conclusion.

5. Heard both sides and perused the records.

6. I find that out of the common investigation undertaken at different places, including the appellants and based on the statement dated 06.12.2007 of Shri.Mukesh Sangle, the Department proceeded against various persons including the appellants herein. Since the statement recorded from Shri Mukesh Sangla was not considered by the Tribunal vide order dated 17.06.2015 and exonerated the appellants therein,

included Shri Mukesh Sangla, holding that there is no clandestine receipt of only fabricated documents, I am of the view that similar treatment can be adopted for appellant Shri Mukesh Sangla, inasmuch as, he was also the appellant before the Tribunal in the case booked against M/s. Parag Pentachem Pvt. Ltd. Since the Tribunal upon consideration of the facts has dropped the penalty imposed on Shri Mukesh Sangla vide order dated 17.06.2015, holding that he has no role in the fake transactions, I am of the view that the penalty imposed on him in this appeal can also be dropped. Accordingly, the impugned order, imposing the penalty on Shri Mukesh Sangla is set aside and the appeal is allowed in his favour.

7. With regard to imposition of penalty on Shri Sunil Kotari, the Director of Laxmi Pipes & Fittings Pvt. Ltd., I find that the Department has basically relied on the statement dated 06.12.2007 recorded from Shri Mukesh Sangla, the Director of M/s.SOL and concluded that by diverting the goods to M/s. SOL, M/s. Laxmi Pipe & Fittings Pvt. Ltd. had received the payment in cash through its Director Shri Sunil Kotari. Since the statement recorded from Shri Mukesh Sangle was discarded by this Tribunal in the same investigation conducted by Department in the case of Parag Pentachem Pvt. Ltd. and Askas Plastics Pvt. Ltd., for deciding the present issue, such statement cannot be taken into contingence in view of the facts that the statements were discarded by the Tribunal on earlier occasions. Further, the Department has also not filed

any appeal against the order dated 26.05.2015 and 23.06.2016 passed by the Tribunal.

8. In view of above, I do not find any merits in the impugned orders, in imposing penalties against the appellants. Accordingly, after setting aside the same, I allow the appeals filed by the appellants.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita