CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court – I

Appeal No: E/31285/2017
(Arising out of Orders-in-Appeal No: HYD-EXCUS-MD-AP2-0011-17-18-CE and HYD-EXCUS-MD-AP2-0012-17-18-CE, dated 14.08.2017 passed by Commissioner (Appeals-II), GST & CE, Hyderabad)

GAJANAN ROAD LINES	..	Appellant
	Vs	
CCT Hyderabad GST	..	Respondent

Appearance
Shri Nagesh V. Rao, Consultant for the Appellant.

Shri Dass Thavanam, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. Ravindran, MEMBER (JUDICIAL)

Date of Hearing: 04.09.2018
Date of Decision: 04.09.2018

FINAL ORDER No. A/31083/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Orders-in-Appeal No. HYD-EXCUS-MD-AP2-0011-17-18-CE and HYD-EXCUS-MD-AP2-0012-17-18-CE, dated 14.08.2017.

2. The relevant facts arise for consideration, after filtering out unnecessary details are the appellant herein is the transporter and he has various premises wherein he collects goods from various consignors and despatch the same to the consignees. The premises of the appellant was searched and found that there were eight truck loads of fans packed in cartons apart from the stocks, consignment notes were issued for the said fans mentioning the name and destination. On further investigation, it was noticed by the Officers that the said fans were, supposedly received from various manufacturers located in and around Gandhinagar, Balanagar and Jeedimetla and no invoice or way bills were issued by consignors covering the material. It was also noticed that the goods were manufactured and cleared clandestinely without documents and without payment of duty, the goods were detained and subsequently seized under a panchnama. Show cause notices were issued for demand of duty and for confiscation of the said goods alongwith trucks and proposing to impose penalty on appellant. Appellant contested the show cause notice on merits submitting that they are not the manufacturers and the details of the manufacturers are given, whose statements were recorded by the authorities but no further investigation was taken up, that they are not liable to pay any duty nor penalized under rule 26 of Central Excise Rules, 2002. Adjudicating authority after due process of law held that the goods are liable for confiscation and confirmed the demand of Rs. 17,11,090/- including Ed. Cess and Higher Education Cess and imposed a penalty on the manufacturers and other individuals plus imposed penalty of Rs.

10,00,000/- on the appellant herein. An appeal was filed before the first appellate authority resulted in upholding the Order-in-Original. The said impugned order is contested before the Tribunal.

3. Ld. Consultant, after giving an overall picture of the issue involved submits that imposition of penalty under rule 26 of Central Excise Rules 2002 is incorrect. It is his submission that transporter is not the manufacturer of the brands of fans found loaded in the truck and no investigation was done to find out the manufacturers of the said goods supposedly cleared without payment of duty. It is his further submission that unless the goods are manufactured, liability of duty and imposition of penalty under rule 26 will not be arise. It is his submission that lower authorities have not considered the factual position as departmental officers investigated the so called manufacturers whose names, addresses and phone numbers were given by the appellant, but the authorities have simply recorded the statements which denied having manufactured the fans which were found in appellant premises. He would rely upon the following decisions seeking to set aside the penalty imposed under Rule 26 of Central Excise Rules, 2002.

a) Suraj Ashok Shinde Vs. CC Patna [2018(359)ELT 707 (Tri.-Kolkata)]

b) Welcome Transport Co. vs. CCE, Indore [2014(308)ELT 104 (Tri.-Del.)]

c) VIP Enterprises vs. CCE, Mumbai [1999(108) ELT 671 (Tri.-Mum.)]

d) CCE Coimbatore vs. Al Matheswara Lorry Service [2004(171) ELT 421 (Tri.-Chennai)]
e) Gagan Freight Carriers vs. CCE, Chandigarh [2003(151) ELT 633 (Tri.-Del.)]
f) Perfect Transport Co. vs. CCE, Vapi [2013(297)ELT 248 (Tri.-Ahmd)]
g) Jaykrishna Bala vs. CCE, Rajkot [2004(170)ELT 574 (Tri.-Mum.)]
h) Nirmal Transporters vs. CCE, Pune-II [2014(312)ELT 803 (Tri.-Mum.)]

4. Ld. DR on the other hand submits that appellant was unable to produce any documents indicating that the goods were cleared on payment of appropriate duty and in the absence of any such documents, the penalty imposed by the adjudicating authority and upheld by the first appellate authority is correct and impugned order needs to be upheld.

5. On careful consideration of the submissions made, I find that there is no dispute as to the fact that fully manufactured fans packed in cartons were found in the godown premises of the appellant, consignment notes were issued for the consignments loaded in the trucks mentioning the name and the destination, appellant could not produce any invoice, way bills issued by the consignors or the manufacturers covering the material. Despite given an opportunity to produce the documents which would indicate that appropriate central excise duty has been paid on these fans, appellant could not do so. On a specific query from the Bench as to whether he would like to substantiate the claim that the goods were manufactured and delivered to the appellant for despatches to destinations by any documents, it was informed that all documents which were there

were already relied on in the show cause notice. I find that show cause notice itself directed the appellant to produce any documents while defending the case, as made in the show cause notice for imposition of penalty under rule 26. Appellant could not do so. Penalty under provisions of Rule 26 is imposed. The said Rule 26 reads as under.

> "26. Penalty for certain offences - (1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is higher:
>
> Provided that …… (proviso inserted wef 01.03.2016 by notification No. 8/2016-CE(NT), hence inapplicable to instant case)
>
> (2) Any person, who issues
> (i) an excise duty invoice…..'; or
> (ii) any other document ……., shall be liable to a penalty not exceeding the amount of such benefit or five thousand rulees, whichever is higher." [emphasis supplied]

6. It can be seen from the above reproduced provisions that the same would apply directly in the case in hand, as appellant is the person who acquired the possession of goods and were concerned with depositing or keeping the fans on which admittedly duty liability was not discharged. In my view, appellant has no case for praying for setting aside the penalties imposed under rule 26.

7. It is to be seen from the records that the duty liability on the entire stock which were seized and confiscated is only Rs. 17,11,090/- while the

penalty imposed on appellant is Rs. 10.00 lakhs. Considering it from any angle, the penalty imposed on the appellant seems to be excessive. Considering the fact that the duty liability is approximately Rs.17.00 lakhs, while upholding the penalty imposed on the appellant, I modify the impugned order by fixing the penalty on appellant as Rs. 5.00 lakhs (Rupees five lakhs only), to that extent uphold the impugned order.

8. Impugned order is modified to that extent and the appeal stands disposed off accordingly.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg