IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Misc. Application (ROM) No.76724/2018 and
Appeal Nos.E/316/2009, E/385 & 386/2009

(Arising out of Order-in-Original No.03/Commissioner/CE/Haldia/Adjn./2009 dated 30.01.2009 passed by the Commissioner of Central Excise, Haldia Commissionerate, Kolkata)

Commissioner of Central Excise, Haldia
...APPELLANT(S)

VERSUS

M/s Monalisha Garments
Spectrum Silk Mills
Marvel Fashion ...RESPONDENT (S)

APPEARANCE
Shri D.Haldar, AC(AR) for the Appellant
None for the Respondent.

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 26.11.2018

ORDER NO.FO/76981-76982/2018

Per Bench :

Two appeals have been filed by the Revenue against the Order-in-Original No.03/Commissioner/CE/Haldia/Adjn./2009 dated 30.01.2009 passed by the Commissioner of Central Excise, Haldia Commissionerate, Kolkata. Revenue has also filed a Misc. Application for ROM against the Final Order of the Tribunal No.FO/76058/2018 dated 14.05.2018. All the above are taken up for decision through this common order since the impugned order is common.

2. M/s. Monalisha Garments is a 100% EOU engaged in the manufacture of 100% Polyester dyed/Printed Scarves and other goods. Department

carried out investigations into the affairs of M/s. Monalisha Garments and noticed serious infractions of the EOU Scheme. After issuance of show cause notice, the adjudicating authority upheld the demand of Central Excise duty amounting to Rs.4,12,30,895/- alongwith interest from M/s. Monalisha Garments. He also upheld the imposition of penalty of an equal amount, but he refrained from imposing penalty against the two co-noticee M/s. Spectrum Silk Mills and M/s. Marvel Fashion. The reasons cited by the adjudicating authority for non-imposition of penalty against the two co-noticee is that these EOUs are situated outside the jurisdiction of the Haldia Commissionerate.

The appeal already filed by Revenue against the impugned order was allowed vide Final Order dated 14.05.2018. Against such decision the Department filed Misc. Application for ROM against the following observations made in the final order:

> "3. *As far as the other issue regarding imposition of penalty on the appellant No. 3 and 4 are concerned, we find that Department has not filed a separate appeal. Defect memo was also issued by the Registry by letter dated 30.06.2009."*

3. None is present on behalf of the respondents. Heard Shri D.Haldar, AC(AR) on behalf of the Revenue. He fairly conceded that the Misc. Application for ROM has become infractuous in view of the fact that separate appeals already stand filed by Revenue in respect of M/s. Spectrum Silk Mills and M/s. Marvel Fashion on 14.07.2009 in response to the Defect Memo issued by 30.06.2009. In view of the above, the Misc. Application for ROM is dismissed as infractuous.

4. With reference to the appeals filed against M/s. Spectrum Silk Mills and M/s. Marvel Fashion, ld. DR submitted that the adjudicating authority was in error in taking the view that no penalty can be imposed against

these EOUs for the reason that they were situated outside the jurisdiction of the Commissionerate. He argued that the criteria to determine jurisdiction for adjudication is the place where the offence was committed. Since the offence committed was within the jurisdiction of the Haldia Commissionerate, the adjudicating authority was fully empowered to penalize the two respondents under Rule 26, as has been argued by Revenue in the grounds of appeal.

5. The main plea of the Revenue is that penalty is imposable against M/s. Spectrum Silk Mills as well as M/s. Marvel Fashion. Both these EOUs are situated in Surat and Rajkot respectively, outside the jurisdiction of the Haldia Commissionerate. The main demand is against M/s. Monalisha garments whose EOUs is situated within the jurisdiction of the Haldia Commissionerate. The Adjudication Manual issued by CBEC in Para-55 has clarified the issue regarding competence for adjudcation of offence. It is clearly specified that the jurisdiction for determining the competence for adjudication is the place where the offence was committed. In view of the fact that the alleged offence has been committed within the Haldia Commissionerate, we find that the show cause notice, proposing penalty against the two co-noticees under Rule 26 is justified.

6. After going through the record, we note that the investigations undertaken by the Revenue has established that M/s. Monalisha Garments has claimed receipt of duty free material from M/s. Spectrum Silk Mills as well as M/s. Marvel Fashion (both EOUs). However, it stands established that only invoices were received from M/s. Spectrum Silk Mills as well as M/s. Marvel Fashion, but no goods were received.

7. From the facts of the case, it stands established that both the above persons have facilitated M/s. Monalisha Garments in misusing the EOU

Scheme, resulting in huge evasion of duty to the Government. For the role played by M/s. Spectrum Silk Mills and M/s. Marvel Fashion, we impose penalty under Rule 26 as follows.

a) M/s. Spectrum Silk Mills is imposed penalty of Rs.20.00 lakhs

b) M/s. Marvel Fashion is imposed penalty of Rs.20.00 lakhs.

8. In the result, the Misc. Application for ROM filed by Revenue is dismissed. The appeals filed by Revenue against M/s. Spectrum Silk Mills and M/s. Marvel Fashion are allowed in the above terms.

(Dictated and Pronounced in the Open Court)

S/d. S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(V.Padmanabhan)
MEMBER (TECHNICAL)

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