

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76969 of 2018

(Arising out of Order-in-Appeal No.499/HWH/CE/2017-18 dated 09.01.2018 passed by Commissioner of CGST & Central Excise (Appeals), Kolkata-II.)

M/s. Vikas Forge Pvt Ltd

(108, Dharmatala Road, Ghusuri, Howrah-711107)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Howrah
Commissionerate**

(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.76054/2023

Date of Hearing : 10 July 2023

Date of Decision : 10 July 2023

PER R. MURALIDHAR

No one appeared on behalf of the Appellant. However, in the interest of justice, the Appeal was taken up for disposal.

2. I have perused the documents with the help of Learned AR.

3. It is seen that the OIO was passed by the Adjudicating Authority by confirming the demand of Rs.1,27,720/- against the Appellant Company i.e. Vikas Forge Pvt. Ltd. and Rs.10,000/- penalty was imposed on Jugal Kishore Kaushik, the Managing Director of the Company. On appeal, the Commissioner (Appeals) has held at Para 6 as under:-

6. *I find that the issue involved in this case is regarding clearance of 20,000 Kgs of the said goods clandestinely without issuance of central excise invoices and recording in the DSA and thereby without payment of duty of Rs.1,27,720/- by the company, by way of suppressing the facts to the Department with*

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the intent to evade duty. I also find that the company had not filed any appeal before me. However, the appellant have filed an appeal before me against imposition of personal penalty of Rs.10,000/- under rule 26 (1) of the said Rules. Accordingly, without interfering into the lower authority's order pertaining to confirmation of the demand of duty of Rs.1,27,720/- along with interest and imposition of equal penalty of Rs.1,27,720/- on the company, I proceed to decide whether imposition of personal penalty of Rs.10,000/- under rule 26(1) of the said Rules on the appellant in the instant case is justified or not.

4. On perusing the Form EA-1 filed by the Appellant, it is seen that each and every page of this Appeal has been signed by Jugal Kishore Kaushik as a Director signing the Appeal for M/s Vikas Forge Pvt. Ltd. Apart from this, in the EA 1 Serial No. 6 (iii), it is clearly indicated that the amount of duty of Rs.1,27,720/- is being contested. Therefore, it is clear that this Appeal is filed by the Company only not by the Director in his individual capacity. Non-mentioning of the Company's name at Serial No. 2 could be on account of typographical error. If the Commissioner (Appeals) had carefully looked at these details, he would not have come to the erroneous conclusion as observed above. Unfortunately, he has failed to go through the details and has erroneously taken the view that the Appeal has been filed towards personal penalty of Rs.10,000/- imposed on the Director. The present Appeal before Tribunal has been filed by the Company, being aggrieved by this OIA.

5. As per the factual matrix discussed above, it is clear that the Appellant Company had filed their Appeal before the Commissioner (Appeals) which was erroneously taken by him as an Appeal filed by the Director. I remand the matter to the Commissioner (Appeals) to decide the Appeal filed by the present Appellant i.e. Vikas Forge Pvt. Ltd. against the duty of Rs.1,27,720/- confirmed against them in the OIO No. 13/AC/CE/HND-I/ADJN/2014 dated 27.02.2014 .

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6. Since in the OIA passed by the Commissioner (Appeals), the penalty imposed against the Director has already been set aside, it is not open for the Commissioner (Appeals) to consider this issue for disposal.
7. The Adjudicating Authority will follow the principles of natural justice and decide the issue within three months from the date of receipt of this Order.
8. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja