**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 70879 of 2013**

(Arising out of Order-in-Original No. 18/COMMR/BOL/13 dated 10.04.2013 passed by the Commissioner of Central Excise and Service Tax, Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum, West Bengal, PIN – 731 204)

**Shri Satya Naranayan Dey** **: Appellant**
Proprietor of M/s. Shyam Sons India,
18, Atul Ghosh Lane, Salkia,
Howrah – 711 106 (West Bengal)

**VERSUS**

**Commissioner of Central Excise and Service Tax,** **: Respondent**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur,
District: Birbhum (West Bengal), PIN – 731 204

**APPEARANCE:**

Shri S.P. Majumder, Advocate, for the Appellant

Shri S. Dey and Shri D. Sue, Authorized Representatives, for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 77198 / 2025**

DATE OF HEARING / DECISION: 05.08.2025

**ORDER: [PER SHRI ASHOK JINDAL]**

The appellant is in appeal against the imposition of penalty of Rs.15,00,000/- under Rule 26(2) of the Central Excise Rules, 2002.

2. The facts of the case are that the appellant is the proprietor of M/s. Shaym Sons India, 18, Atul Ghosh Lane, Salkia, Howrah – 711 106. The appellant had issued invoices to M/s. SPS Steel & Power Ltd. and M/s. SPS Metal Cast & Alloys Limited, on which the said purchasers had availed CENVAT Credit. However, it is alleged by the Revenue that the duty paying documents, on which the credit has been

availed, were issued by the appellant without accompanying any goods. Thus, penalties were proposed under Rule 26(2) of the Central Excise Rules, 2002.

3. The matter was adjudicated and by way of the impugned order, a penalty of Rs.15,00,000/- was imposed on the appellant under the said Rules.

3.1. Aggrieved by the imposition of penalty, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that the sole issue involved is whether, under the allegation that the appellant has not dealt with the goods in question, whether penalty is imposable on him under Rule 26 of the Central Excise Rules, 2002 or not. It is the submission of the Ld. Counsel for the appellant that as the appellant has not dealt with the goods in question, no penalty is imposable on him.

5. Heard the Ld. Counsel for the appellant and have gone through the provisions of Rule 26 of the Central Excise Rules, 2002, which are reproduced hereinbelow: -

> *"26(1): Any person who acquired 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 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 greater.*
>
> *(2) Any person, who issues -*
>
> *(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or*

> *(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."*

5.1. We find that in this case, no goods are involved. Therefore, the issue that arises is whether, under these circumstances, penalty is imposable on the appellant as per the said provisions or not.

5.2. The said issue has been examined by this Tribunal in the appellant's own case decided vide *Final Order No. 77582-77584 of 2024 dated 21.11.2024 in Excise Appeal No. 75755 of 2019 & ors. [CESTAT, Kolkata]*, wherein it has been observed as under: -

> *"13. That with respect to the penalty imposed upon the second appellant in terms of Rule 26 of the Cenvat Credit Rules, 2004, it is submitted that such invocation of provisions of Rule 26 ibid is itself self-contrary to the allegation of the Revenue inasmuch as for invocation of Rule 26 ibid dealing with the goods, which are liable for confiscation, is the primary requirement and when the allegation of Revenue is non-receipt of goods in actual, question of dealing with such non-available goods cannot arise. Further, neither Adjudication Order nor the impugned Appeal Order confiscates any excisable goods and as such, provision of Rule 26 is not imposable. Imposition of single penalty under two separate provisions of law is seriously bad in law. As such, penalty so imposed is liable to be set aside also."*

6. Admittedly, neither are the goods available nor are goods involved in this case. Hence, we find that penalty under Rule 26(2) of the Central Excise Rules, 2002 is not at all imposable in the facts and circumstances of the case.

7. In view of the above, we set aside the impugned order imposing penalty on the appellant under Rule 26(2) of the said Rules.

8. Accordingly, the appeal filed by the appellant is allowed.

(Operative part of the order was pronounced in open court)

Sd/-
**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

Sd/-
**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sdd