CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1672 of 2012

(Arising out of Order-in-Original No. Belapur/54/Bel IV/R-IV/Commr/SLM/10-11 dated 31.03.2011 passed by the Commissioner of Central Excise, Belapur)

Shri Vinoo Bakshi **Appellant**
Row House – 20,
Julelal Co-op. Housing Society,
Sector 2, Airoli, Navi Mumbai.

Vs.

Commissioner of Central Excise, Belapur **Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Karan Sarawagi, Advocate, for the Appellant
Shri Dhirendra Kumar, Joint Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 28.10.2022
Date of Decision: 28.10.2022

FINAL ORDER NO. A/86050/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Original No. Belapur/54/Bel IV/R-IV/Commr/SLM/10-11 dated 31.03.2011 passed by the Commissioner of Central Excise, Belapur. By the impugned order, a penalty of Rs.1,00,000/- has been imposed under Rule 26 of the Central Excise Rules, 2002 on the appellant.

1.2 Against the other part of the order, the matter has been settled under SVLDRS and the appeals dismissed as deemed withdrawn.

2.1 As per the show cause notice, the charge against the appellant is that he helped Shri Sudeep Ghosh in floating a company by acting as a partner in M/s. Eureka Tanks & Vessels in order to evade payment of central excise duty, thereby rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002 as the said goods valued at Rs.3,24,53,948/- are liable for confiscation under Rule 25 of the Central Excise Rules, 2002.

2.2 For imposition of penalty as above, the Commissioner at para 62 of the order has observed as follows:-

"62. Further, it is proved beyond doubt that Shri Sudeep Ghosh has deliberately floated a company in the name of M/s. Eureka Tanks & Vessels, in order to evade payment of Central Excise duty and thereby rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002. Further, Shri Vinoo Bakshi, has helped Shri Sudeep Ghosh in floating a dummy company by acting as a partner in M/s. Eureka Tanks & Vessels in order to evade payment of Central Excise duty and thereby rendered himself liable for penalty under Rule 26 of the Central Excise Rules, 2002."

2.3 Aggrieved by the imposition of penalty, appellant has filed this appeal.

3.1 We have heard Shri Karan Sarawagi, Advocate, for the appellant and Shri Dhirendra Kumar, Joint Commissioner, Authorised Representative for the Revenue.

3.2 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.1 From para 62 of the order reproduced above, it appears that the Commissioner has not recorded any finding with regard to application of Rule 26 of the Central Excise Rules, 2002 under which he has imposed the penalty.

4.2 Rule 26 of the Central Excise Rules, 2002 reads as follows:-

*"**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 greater.

Provided *that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.*

(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."

4.3 In terms of this rule, specific knowledge in respect of the goods liable for confiscation has to be adjudged before penalty under this rule can be imposed. Since no such determination has been done, Rule 26 of the Central Excise Rules, 2002 would not be applicable.

4.4 Earlier vide our final order No. A/86626-86628/2021 dated 27.07.2021 in similar circumstances where main appellant has settled under SVLDRS, we have observed as follows:-

"5. This being the facts on record and in view of the fact that the main appellant has resolved the dispute with the respondent/department, continuance of this proceeding after laps of 12 years would not be any help to either of the parties. Therefore, taking a lenient view and having regard to the fact

that no specific allegation is available against these appellants to fix a personal responsibility, we set aside the order passed by the adjudicating authority and discharge the appellants from the penal liability."

5.1 Penalty imposed on the appellant is set aside.

5.2 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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