CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1660 OF 2012

[Arising out of Order-in-Appeal No: US/475 to 477/M-II/2012 dated 7th August 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai.]

Zapak Digital Entertainment Limited
401 Level 4 Infiniti Mall, New Link Road,
Andheri (West), Mumbai - 400053 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – II
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug
Parel, Mumbai - 400012 ***…Respondent***

APPEARANCE:

Ms Ankita Vashistha, Advocate for the appellant

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85107 /2023

DATE OF HEARING:	02/09/2022
DATE OF DECISION:	31/01/2023

PER: C J MATHEW

The limited issue in this appeal of M/s Zapak Digital Entertainment Limited, against order-in-appeal no. US/475 to 477/M-

II/2012 dated 7th August 2012 of Commissioner of Central Excise (Appeals), Mumbai-II, is the upholding of penalty of ₹ 1,50,000/- under rule 26 of Central Excise Rules, 2002 by the original authority. It was alleged that the appellant had been handling goods manufactured by M/s Brio Media & Entertainment Pvt Ltd having brandname ‘Zapak’ affixed that did not belong to them and had wrongly availed exemption available under notification no. 8/2003-CE dated 1st March 2003 thereby liable for confiscation under rule 25 of Central Excise Rules, 2002.

2. It is the contention of the Learned Counsel for the appellant that provision for imposition of penalty under rule 26 of Central Excise Rules, 2002 could not have been invoked against artificial persons for which reliance was placed on the decision of the Larger Bench of the Tribunal in *Steel Tubes of India Ltd v. Commissioner of Central Excise, Indore [2007 (217) ELT 506 (Tri.-LB)].* It is also submitted that the very same issue had been agitated in several disputes in the past with stand of the Tribunal remaining unchanged. Reliance was placed on the decision of the Tribunal in *Apple Sponge and Power Ltd v. Commissioner of Service Tax, Audit-I [2018 (362) ELT 894 (Tri.-Mumbai)]* and in *Kakateeya Fabs (P) Ltd v. Commissioner of Central Excise, Bhopal [2018 (15) GSTL 350 (Tri.-Del.)].*

3. In view of the decision of the Larger Bench of the Tribunal on the inapplicability of Rule 209A of Central Excise Rules, 1944 wherein it has been held that

> *'9. As regards the second issue in reference it can be noticed that the Rule 209A pre-supposes a knowledge as to the liability of the confiscation of the goods which being transported etc. It was argued extensively by the authorized representative for the department that the expression "Any person" would include any company or association or body of individual, whether incorporated or not. Reliance was also placed on the definition of the word person in Section 3(42) of The General Clauses Act, 1897, for this proposition. Undoubtedly the expression "Any person" would include a natural and unnatural person i.e. it would include in its ambit any company or corporation or body of individual/s. The moot question is that whether such unnatural body corporate has its own mind, to have knowledge that the goods are liable for confiscation. It is common knowledge that a corporation/company is run by a Board of Directors, who are individuals. They are the trustees of the shareholders of the corporation/company. The decisions taken by the Board of Directors would be for the company but it will not be a decision of the corporation/company. In a given situation, if the Board of Directors decide between themselves, and pass a resolution to engage in the act of evasion of the duty on excisable goods it would be an act of individuals who did so for their personal gain. The corporation/company, stands to no gain out of misdemeanors of the individuals i.e. Board of Directors. In the eyes of law, the corporate entity being a person would be held responsible for the act of the natural persons. But in order to punish the guilty individuals, the veil of corporate entity had to be lifted to understand the correct*

> *picture. Precisely for these reasons only the provisions of Rule 209A came in to statute, in order to punish the guilty acting behind the veil of corporation/company. If in a given situation a parcel booking clerk of the Indian Railways, in order to have some personal gain, colludes with others to book the goods without any duty paying documents (though he has knowledge that the goods have to be booked on the basis of duty paying documents) and the goods are seized by the authorities at the destination point, can the Indian Railways be penalized under the provisions of Rule 209A of the Central Excise Rules, 1944? The resounding answer would be "NO" as Indian Railways is not having any knowledge that the goods so booked are liable for confiscation. The booking clerk is in knowledge and hence he is liable to be penalized under the said Rule 209A. Accordingly, we find that the conclusion reached by the Tribunal in the case of Indian Roadways Corporation Ltd. (supra) is also correct and does not require any reconsideration.'*

and which is identical to rule 26 of Central Excise Rules, 2002 now invoked on the present appellant, the penalty imposed on the appellant in the impugned order is set aside and appeal allowed.

(Order pronounced in the open court on 31/01/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*