CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 87232 of 2013

(Arising out of Order-in-Original No. Belapur/85/Tal/R-II/COMMR/KA/12-13 dated 28.02.2013 passed by the Commissioner of Central Excise & Customs, Belapur)

Mr. Amit Burman ....Appellant
1B/31, Windermere,
Off New Link Road,
Oshiwara, Andheri (W),
Mumbai-400 053.

VERSUS

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

APPERANCE:

Shri S. P. Mithani, Advocate for the Appellant

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85008/2024

Date of Hearing: 04.01.2024
Date of Decision: 04.01.2024

PER: MR. ANIL G. SHAKKARWAR

Heard both the sides and perused the records.

2. The Appellant was imposed with a penalty of Rs.1,00,000/- under Rule 26 of Central Excise Rule, 2002. The contention of Revenue is that the Appellant was involved in fraudulent export of goods and helping the manufacturer exporter in fraudulent receipt of rebate of Rs.7,25,34,077/-.

3. The learned Counsel for the Appellant Shri S. P. Mithani, Advocate submits that the demand against the alleged erroneous rebate of amount Rs.7,25,34,077/- was conformed through the same Impugned order and the said manufacturer exporter on filing appeal before this Tribunal through Excise appeal No. 87391 of 2013 was held through the Final Order No. A/86180/2022 dated 16.11.2022 to be not liable for such recovery by Revenue by way of allowing the appeal of said manufacturer exporter.

4. We have taken the earlier Final Order dated 16.11.2022 into consideration and also taken into consideration the Provisions of Rule 26 of Central Excise Rules, 2002 and have come to a conclusion that in the instant case when the goods were manufactured and cleared from the manufacturing unit, the Central Excise duty was paid which was subsequently refunded to the manufacturer as rebate and therefore, there is no case of evasion of Central Excise duty. Since there was no case of evasion of Central Excise duty on clearance, the question of any person abating evasion of Central Excise duty and rendering the goods

liable for confiscation on which Central Excise duty was paid does not arise.

5. We, therefore, hold that the penalty of Rs.1,00,000/- imposed on the Appellant is not in accordance with law. We, therefore, setaside the said penalty imposed under Rule 26 of the Central Excise Rules, 2002 and allow the appeal.

(Dictated and pronounced in the open court)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Kajal