CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85035 of 2013

(Arising out of Order-in-Original No. 02/Commissioner /Goa/CX/2012-13 dated 31.08.2012 passed by the Commissioner of Customs, Central Excise and Service Tax, Panji, Goa)

Shri Utsavlal Jain, **.... Appellant**
Managing Director of
M/s Suman Die Casting Pvt. Ltd.
Off: 13/15, 3rd Floor, Room No. 27,
Bhuleshwar, Mumbai – 400 002

Versus

Commissioner of Central Excise, Goa **.... Respondent**
ICE House, EDC Complex, Patto Plaza,
Panji, Goa – 403 001

WITH

Excise Appeal No. 85036 of 2013

(Arising out of Order-in-Original No. 02/Commissioner /Goa/CX/2012-13 dated 31.08.2012 passed by the Commissioner of Customs, Central Excise and Service Tax, Panji, Goa)

Shri Shivaji Bhupal Chavare, **.... Appellant**
Director of M/s Suman Die Casting Pvt. Ltd.
Off: 13/15, 3rd Floor, Room No. 27,
Bhuleshwar, Mumbai – 400 002

Versus

Commissioner of Central Excise, Goa **.... Respondent**
ICE House, EDC Complex, Patto Plaza,
Panji, Goa – 403 001

Appearance:

Shri Vinay S. Sejpal , Advocate for the Appellants

Shri P.K. Acharya, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85621-85622/2024

Date of Hearing: 24.06.2024

Date of Decision: 24.06.2024

Per: S.K. Mohanty

Briefly stated, the facts of the case are that M/s Suman Die Casting Pvt. Ltd., during the relevant period, was engaged in the manufacture of Aluminium Alloy Ingots and Zinc Alloy Ingots, falling under Chapter sub-headings 7601.10 and 7901.20 of the First Schedule to the Central Excise Tariff Act, 1985. The said manufacturer was availing CENVAT Credit of Central Excise duty paid on various inputs as provided under Rule 57A of the Central Excise Rules, 1944 and Rule 3 of the CENVAT Credit Rules, 2002. An intelligence was gathered that the manufacturer of Aluminium Wires avail MODVAT/CENVAT Credit on the basis of invoices, without actual receipt of the inputs in the factory premises and utilize such MODVAT/CENVAT Credit on clearance of the finished products outside the factory premises. On the basis of such intelligence, the Central Excise Department visited the factory of M/s Suman Die Casting Pvt. Ltd. and seized various records under Panchanama dated 18.09.2003. On the basis of detailed investigation into the matter, show-cause proceedings were initiated against M/s Suman Die Casting Pvt. Ltd., seeking for confirmation of the central excise duty demand along with interest and for imposition of penalty. Besides, the show-cause notice had also proposed for imposition of penalty on Shri Utsavlal Jain, Managing Director of M/s Suman Die Casting Pvt. Ltd. and Shri Shivaji Bhupal Chavare, Director of the said company under Rule 209 of the Rules, 1944 and Rule 26 of the Rules, 2002. The matter arising out of show-cause notice dated 27.08.2004 was adjudicated vide Order-in-Original dated 23.08.2005. Feeling aggrieved with the said adjudication order, M/s Suman Die Casting Pvt. Ltd. preferred appeal before the Tribunal and the Tribunal vide order dated 09.03.2006 has remanded back the matter to the original authority for fresh fact finding on the basis of enquiries made during the course of investigation. Pursuant to the remand direction of the Tribunal, the original authority took up the *de novo* adjudication proceedings and passed the Order-in-Original No. 02/Commissioner /Goa/CX/2012-13 dated 31.08.2012 (for short referred to as 'the impugned order') in confirming the proposals made in the show-cause notice dated 27.08.2004. In the impugned order, the learned adjudicating authority has confirmed the Central Excise duty demand along with interest and imposed penalty on M/s Suman Die Casting Pvt. Ltd. and also imposed penalty of Rs.25 lakhs each on Shri Utsavlal Jain and Shri Shivaji Bhupal Chavare. Being dis-satisfied with the adjudication order dated 31.08.2012, all the notices had filed appeal before the Tribunal. However, for non-compliance of the requirement of Section 35F of the Central Excise Act, 1944, the appeal filed by M/s Suman Die Casting Pvt. Ltd. was dismissed. The said notice had not further agitated the matter and the present appeals are filed by other appellants Shri Utsavlal Jain and Shri Shivaji Bhupal Chavare, on whom penalties were imposed under Rule 209 of the Rules, 1944 and Rule 26 of the Rules, 2002.

2. The appellants have assailed the impugned order on the ground that the provisions of erstwhile Rule 209 ibid and Rule 26 ibid shall not be invoked inasmuch as no proposals were made in the show-cause notice for confiscation of the goods, which were not available in the factory. The appellants further stated that since Rule 26 is subject to the provisions of Rule 25 ibid, in absence of the proposal for confiscation, the action on the part of the Department for imposition of penalty cannot be sustained.

3. Heard both sides and perused the case records.

4. We find that Rule 209A *ibid* and Rule 26 ibid were similarly worded, concerning imposition of personal penalty. Since, the period of dispute involved in these appeals is from February, 2000 to September, 2003, both the provisions are attracted herein for consideration of the issue as to whether, the Department's action for imposition of penalty under Rule 209 and 26 *ibid* was proper or otherwise. Since imposition of personal penalty under both the rules was similarly worded, we are extracting the provision of Rule 26 *ibid* for resolution of the present dispute: -

> ***"Penalty for certain offences.***
> ***RULE 26.*** *— (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."*

On reading of the above statutory provisions, it transpires that question of imposition of personal penalty would arise only in the eventuality, when the person concerned on whom the penalty is sought to be imposed, was having the knowledge that the offending goods were liable for confiscation. On reading of the show-cause notice as well as the impugned order, we find that the authorities below nowhere had mentioned that the appellants had a preknowledge that the goods which were not received in the factory were liable for confiscation. Since the show-cause notice in this case, had not proposed for confiscation of the goods and the said aspect has not been dealt with in the adjudication order, we are of the considered view that the imposition of penalty under Rule 26 *ibid* on the appellants cannot stand judicial scrutiny. We find that the issue arising out of the present dispute is no more open for any debate in view of the order of this Tribunal passed in the case of *Castrol India Ltd. Vs. Commissioner of Central Excise, Surat – 2008 (222) ELT 408 (Tri-Mum).* The relevant paragraph in the said order is extracted herein below: -

> ***"20.*** *As regards imposition of penalty of Rs. 5 lakhs on Shri D. Arvind, Sr. Manager (indirect Taxation), Rs. 1 lakh on Shri Vivek Sharma, Manager (Finance). Rs. 10 lakhs on Shri N. Chandrashekharan, the then Commercial Controller and Rs. 10 lakhs on Shri Mukesh Palta, the then Director (Finance) under Rule 209A, we find that penalty can be imposed under Rule 209A only if it is found that the concerned persons have dealt with the goods in any manner which they knew are liable to confiscation and in this case no goods have been held liable to confiscation and accordingly penalty under Rule 209A on these appellants cannot be sustained and is accordingly set aside."*

5. In view of the above discussions, we do not find any merits in the impugned order, insofar as it has imposed penalty on the appellants under Rule 209/26 of the Rules, 1944/2002. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha