

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**EXCISE APPEAL NO: 85612 OF 2014**

[Arising out of Order-in-Appeal No: AV(316-319)275,275, 277, 278/2013 dated 05<sup>th</sup> December 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

**Rampal Bishmbardas Agarwal**

Plot No. 128/129 Near Bagadia International Hotel  
Manish Nagar, Jalna - 431203

*... Appellant*

*versus*

**Commissioner of Central Excise, Customs & Service Tax**

Town Centre, N-5, CIDCO, Aurangabad - 431003

*...Respondent*

**WITH**

**EXCISE APPEAL NO: 85613 OF 2014**

[Arising out of Order-in-Appeal No: AV(316-319)275,275, 277, 278/2013 dated 05<sup>th</sup> December 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

**Rajat Rampal Agarwal**

Durga Re-Rolling Mills Pvt Ltd  
Plot No. D-41 Additional MIDC Area, Jalna - 431203

*... Appellant*

*versus*

**Commissioner of Central Excise, Customs & Service Tax**

Town Centre, N-5, CIDCO, Aurangabad - 431003

*...Respondent*

**WITH**

**EXCISE APPEAL NO: 85614 OF 2014**

[Arising out of Order-in-Appeal No: AV(316-319)275,275, 277, 278/2013 dated 05<sup>th</sup> December 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

**Durga Re-Rolling Mills Pvt Ltd**

Plot No. D-41 Additional MIDC Area, Jalna - 431203

*... Appellant*

*versus*

**Commissioner of Central Excise, Customs & Service Tax**

Town Centre, N-5, CIDCO, Aurangabad - 431003

*...Respondent*

**AND**

**EXCISE APPEAL NO: 85615 OF 2014**

[Arising out of Order-in-Appeal No: AV(316-319)275,275, 277, 278/2013 dated 05<sup>th</sup> December 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

**Pannalal Shivratan Bagadia**

Bagadia Place, Opp: Syndicate Bank  
Rajendra Prasad Road, Jalna - 431203

*... Appellant*

*versus*

**Commissioner of Central Excise, Customs & Service Tax**

Town Centre, N-5, CIDCO, Aurangabad - 431003

*...Respondent*

APPEARANCE:

Shri Jitin Singhal, Advocate for the appellants

Shri PK Acharya, Superintendent (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: 86082-86085/2024**

DATE OF HEARING:

01/04/2024

DATE OF DECISION:

30/09/2024

PER: C J MATHEW

The issue in this appeal of M/s Durga Re-Rolling Mills Pvt Ltd, arising from seizure of ₹ 29,46,000/- in cash from their premises during search on 9<sup>th</sup> February 2012 as well as detention of vehicle found to be unloading scrap at the premises, along with that of three individuals pertains to the confiscation of the said amount for being ‘sale proceeds of clandestinely cleared goods’ under section 121 of Customs Act, 1962 read with section 12 of Central Excise Act, 1944 and the imposition of penalties of ₹ 2,50,000/- each on the assessee and on Shri Rajat Rampal Agarwal under rule 26 of Central Excise Rules, 2002 and of ₹ 5,000/- each on the other two persons under rule 27 of Central Excise Rules, 2002.

2. The order<sup>1</sup> of Commissioner of Central Excise & Customs (Appeals), Aurangabad, on challenge by the assessee and individuals, held that

*‘13. In addition to common points in their stay applications, appellant no.2 has contended that penalty cannot be imposed upon him under Rule 25 of the Central Excise Rules, 2002 since there was no clearance of goods without payment of duty and that penalty is linked with duty of excise and clearance of excisable goods. I find that a fair inference of evasion of duty by appellant no 1 is established by the respondent. Further, appellant no.2 has submitted that he was not concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other*

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<sup>1</sup> [order-in-appeal no. AV(316-319)275,275, 277, 278/2013 dated 05<sup>th</sup> December 2013]

*manner deals. However, I find that his involvement in such evasion of duty is established from records and various statements as mentioned in the show cause notice and elaborated in the impugned order. That Rule 26 ibid would be applicable to the appellants no.1 and 2 is quite clear from the applicability of Rule 26 to "Any person...." This has been further substantiated by the adjudicating authority by citing the summary of judgment in case of Twenty First Century Wire Rods Ltd. Vs. C.C.E- Goa 2010 (250) E.L.T. 94 (Tri. Mumbai). The appellant nos. 3 and 4 have submitted that they were not concerned with any activity which is covered under the Central Excise Rules, 2002 and therefore, imposition of penalty under Rule 27 is without any authority of law and deserves to be set aside. However, I find that their involvement in this whole affair which is in the context of Central Excise duty evasion only is established from records and the various statements as mentioned in the show cause notice and elaborated in the impugned order.'*

3. We have heard Learned Counsel for the appellants and Learned Authorised Representative.

4. It is on record that the vehicle detained at the time of visit of the central excise officers was subsequently found to be carrying cargo that was in order owing to which detention had been lifted. Insofar as recovery of cash is concerned, it is not that the original authority had identified the goods that were purportedly manufactured clandestinely and for which the seized cash was consideration but, owing to insufficient justification on the part of persons whose statements had

been recorded during investigation, had held the seized amount to be liable to confiscation on presumption of being sale proceeds.

5. Section 121 of Customs Act, 1962 permits confiscation of sale proceeds contingent upon the goods liable to confiscation, and sold, having been established as transacted by a person having knowledge or reason to believe that the goods are smuggled goods. It is apparent, therefore, that this provision that when adopted for the purpose of central excise law in accordance with section 12 of Central Excise Act, 1944, and the connection thereon though not dealt with in the order of both the lower authorities, must necessarily relate to goods established as having been clandestinely removed. From a perusal of the orders of the lower authorities, it is seen that the failure to offer explanation or inadequacy of explanation of the source had triggered confiscation. Consequently, the provisions of section 121 of Customs Act, 1962 have been stood on its head by drawing an inference of unaccounted cash being attributable to proceeds of clandestine removal. As pointed out by Learned Counsel, there is no evidence of clandestine production with reference to utilization of raw materials or transportation records and the inference thereon of seized cash being sale proceeds.

6. In these circumstances, there is no reason to conclude that there has been clandestine removal of goods and, consequently, of the

amount recovered as proceeds of clandestine goods.

7. Accordingly, the penalties imposed on the assessee and the individuals also do not survive. Appeals are accordingly disposed off.

*(Order pronounced in the open court on 30/09/2024)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***

*\*/as*