CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE MISCELLANEOUS APPLICATION No. 86121 of 2024

(on behalf of the appellant)

IN

EXCISE APPEAL No. 85059 of 2021

(Arising out of Order-in-Appeal No. DL/07-09/APPEALS THANE/TR/2020-21 dated 28.07.2020 passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai Zone, Mumbai)

Ajramar Impex Private Limited **.... Appellant**
Plot No.4, Jai Saket Co-op Housing Society
Dadi Sheth Road, Malad (West)
Mumbai – 400064.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
Thane Rural Commissionerate
4th Floor, Central GST Bhawan, Plot No. 24-C,
Sector-E, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051.

WITH

EXCISE MISCELLANEOUS APPLICATION No. 86120 of 2024

(on behalf of the appellant)

IN

EXCISE APPEAL No. 85071 of 2021

(Arising out of Order-in-Appeal No. DL/07-09/APPEALS THANE/TR/2020-21 dated 28.07.2020 passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai Zone, Mumbai)

S.K. Oswal Polymers **.... Appellant**
Shop No.1, Jai Saket Co-op Housing Society
Dadi Sheth Road, Malad (West)
Mumbai – 400064.

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
Thane Rural Commissionerate
4th Floor, Central GST Bhawan, Plot No. 24-C,
Sector-E, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051.

APPEARANCE:

Shri Bhalchandra Y. Sawant, Consultant for the Appellants

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85183-85184/2025

Date of Hearing: 18.10.2024
Date of Decision: 17.02.2025

PER: M.M. PARTHIBAN

Miscellaneous applications were filed by the appellants praying for revising the grounds of appeal in the concerned appeals filed by the appellants. On going through the averments made in the miscellaneous applications, the prayer made by the appellants is considered and revised grounds of appeal are taken into consideration for disposing of the appeals. The miscellaneous applications are disposed of accordingly.

2. These appeals have been filed by M/s Ajramar Impex Private Limited, Mumbai and M/s S.K. Oswal Polymers, Mumbai (herein after, for short, referred together as 'the appellants') against the Order-in-Appeal No. DL/07-09/APPEALS THANE/TR/2020-21 dated 28.07.2020 (referred to, as 'the impugned order') passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai Zone, Mumbai.

3.1 Brief facts of the case, leading to this appeal, are summarized herein below:

3.2 The appellants herein, *inter alia*, are engaged in supplying goods viz. 'Absolac ABS Resin' to M/s Synoprene Polymers Limited (SPPL), which is a sister concern of the appellants during the disputed period 2009-2010. The Directorate General of Central Excise Intelligence, Mumbai Zonal Unit, on the basis of intelligence received and developed by them. had conducted an investigation into alleged evasion of central excise duty in effecting clandestine clearances by SPPL, *inter alia*, using the sale invoices supplied by the appellants without actual despatch/receipt of goods. On completion of the investigation, Show Cause Notice F. No. DGCEI/MZU/I&ISC/12(4) 433/12 dated 28.06.2014 was issued to SPPL for demand of duty evaded under the Central Excise Act, 1944 and the rules made thereunder, besides proposing for imposition of penalty on the appellants and other co-noticees.

3.3 In adjudication of the SCN, the original authority vide Order-in-Original dated 12.09.2019, *inter alia*, had imposed penalty on the appellants viz., Rs.5,25,362/- on M/s S.K. Oswal Polymers. Mumbai and Rs.2,13,328/- on

M/s Ajramal Impex Private Limited, Mumbai under Rule 26(2) of the Central Excise Rules, 2002. Being aggrieved with the above order, the appellants along with one another co-noticee M/s Amrit Polychem Private Limited, Mumbai have filed appeals before the Commissioner (Appeals-Thane). In a common order dated 28.07.2020, which is impugned herein, he had dismissed the appeals on the ground that the appellants are registered dealers under Central Excise and knowingly have dealt with excisable goods by aiding and abetting with the purchaser SSPL and allowing wrong availment of Cenvat credit by merely issuing their respective sale invoices without transporting corresponding goods. Feeling aggrieved with the said impugned order, the appellants have filed these appeals before the Tribunal.

4. Heard both sides and perused the case records.

5.1 It is a fact on record that in respect of the SCN dated 28.06.2014 issued to the main noticee M/s. Synoprene Polymers Private Limited (SPPL), Mumbai and various other co-noticees including the appellants herein, the duty demands were confirmed in the Order-in-Original dated 12.09.2019, demanding Rs. 58,07,871/- on the main noticee, who had evaded central excise duty and penalties were also imposed under Section 11AC of the Central Excise Act, 1944. Besides the appellants and other co-noticees were also imposed with a penalty under Rule 26(2) of the Central Excise Rules, 2002. I find that there is no order by higher appellate authorities either in setting aside or rejecting the confirmation of adjudged demands against main noticee SPPL vide the original order dated 12.09.2019 or penalties imposed on any of the noticees. It is thus clear that the adjudged demands against the duty evasion in this case has become final.

5.2 Further, in respect of appeal filed by the appellants along with one another co-noticee M/s Amrit Polychem Pvt. Ltd., the learned Commissioner (Appeals) vide impugned order dated 28.07.2020 had dismissed the appeal filed by all parties, by upholding the original order. Further, on an appeal filed before the Tribunal by all the three co-noticees, against such common order dated 28.07.2020passed by the learned Commissioner (Appeals), the learned Counsel appearing for M/s Amrit Polychem Pvt. Ltd., alone appeared when the matter was listed for hearing on 20.04.2023, and none appeared for the appellants in the present case. Therefore, the issue of imposition of penalty under Rule 26(2) *ibid* in respect of that co-noticee alone i.e., M/s Amrit Polychem Pvt. Ltd., was decided by this Tribunal, vide Final Order No. 85230/2024 dated 20.02.2024, by rejecting the appeal.

5.3 The learned counsel for the appellants had forcefully submitted that the conclusion arrived at by the learned Commissioner (Appeals) that both the appellants had admitted that they paid cash amount to SPPL, as receipt back (cash payment) for the amounts received from SPPL by cheque in respect of 14 consignments is factually incorrect. Further, he stated that the submissions made by them in respect of statement given by Mr Jatin Somaiya, MD & CEO of SPPL stating that in respect of 14 consignments (11 pertaining to S.K. Oswal and 3 pertains to Ajramar Impex) no goods were received by them from the appellants, was disowned by the appellants; and transport records for confirmation of movement of vehicles submitted by them, have not been examined by the learned Commissioner (Appeals). Therefore, he submitted that the penalty imposed on the appellants in the impugned order is liable to be dismissed.

6. It is clear that the adjudged demands against the duty evasion having been confirmed against the main noticee SPPL, the issue in respect of duty evasion and consequent confirmation of demands in this case has become final. In this context, I find that legal provisions under Rule 26(2) of Central Excise Rules, 2002 clearly provide that any person, who issues an excise duty invoice without delivery of the goods, on the basis of which the main noticee SPPL had taken ineligible CENVAT credit, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater. On careful reading of the documents on record, it is noticed that the appellants have admitted that they had issued the documents extending CENVAT credit to the manufacturer without supply of inputs, in a few cases. Considering the overall duty evasion involved in the present case, I find that the penalty imposed on the appellants in the present case is in accordance with the provisions of the Rule 26(2) *ibid*. The gravity of the offence involved in issue of such invoice or abetting, does not gets diluted as the adjudged demands against duty evasion has become final. Further, in a similar case involving an appeal filed by the third appellant before the learned Commissioner (Appeals), this Tribunal had found that there is no ground to interfere with the impugned order therein. In other words, the penalty imposed on the appellants in that case decided in Final Order No. No. 85230/2024 dated 20.02.2024 upheld the impugned order dated 28.07.2020.

7. In view of the above, I do not find any grounds to interfere with the impugned Order-In-Appeal dated 28.07.2020 passed by the learned Commissioner (Appeals-Thane). Therefore, in the result the appeals filed by the appellants are dismissed.

(Order pronounced in open court on 17.02.2025)

(M.M. Parthiban)
Member (Technical)

Sinha